

Answers to problem solving questions

Outline Answer

Issues: A1, A2 and P: *Joint venture to burgle/P acts beyond the scope of the plan and commits murder/MR/withdrawal/duress; (See 5.3 and 5.5)*

X: *Accessory (aiding and abetting) to murder; (See 5.1 and 5.2)*

Definitions: *Murder (AR/MR), Burglary (AR/MR), Aiding and abetting (AR/MR), Joint venture (nature/MR).*

Law: A1 & A2's liability:

Burglary: *Joint venture on the basis of an original agreed plan to commit burglary. (See 5.3.1, 5.3.3) This offence was committed by all and thus they are all guilty as co-defendants.*

Murder: *(a) Joint venture: P has gone beyond the scope of the original plan and committed murder. (See 5.3.3) Not only that, he has done so with a weapon of which A and B were unaware. (See 5.3.3) Jogee needs to be applied: liability will be determined on the basis of MR:*

- *Did A and B intend to encourage or assist P in killing or GBH? If not they will not be liable for murder*
- *Their foresight of possible death/GBH is evidence as to their intention. Note that this might be conditional intention.*
- *Fundamentally different means (Rahman, English) are no longer important. What matters is the intention, not the method (Jogee).*

- *For which offence will A1 and A2 be liable if they lacked the foresight of P's intended crime? If English is followed they will have no liability for murder or manslaughter. If other cases such as Stewart & Scholfield, Day, Gilmour and Rahman are followed, they will be guilty of manslaughter.*

- *Withdrawal: However, A1 may put forward the defence of withdrawal. The test for planned enterprises is whether the withdrawal (jumping through the window) was timely, effective and communicated? (Whitehouse, Becerra & Cooper, Rook). A sudden change of mind and place without an attempt to persuade P to desist will never suffice (Becerra). (See 5.5)*

- *(b) Duress: under current law, duress is no defence to murder or attempted murder. Therefore, A1, as P's younger brother, would be liable to conviction of murder for P's offence provided he foresaw the risk of GBH/death.*

X's liability:

X has aided and abetted P's offence of murder by supplying him with a knife knowing there was a risk of violence. There must be evidence of assistance and encouragement which, in supplying the knife, there undeniably is. (See 5.2.1)

The MR for accessories is –

- *intention (Gamble) and knowledge of the circumstances (Johnson & Youden);*
 - *it need not be X's purpose to assist provided s/he knows that there is a risk that the act is capable of assisting (Bryce);*
 - *X need only know that P might commit an offence (Sutton, Webster);*
 - *and that P might commit a particular type of offence (Bainbridge, Maxwell).*
- (See 5.2.2)**

Where there is a deliberate change of plan by P, an accessory will not share P's liability under the principles of transferred malice (Saunders & Archer) (See 5.2.2 C) but may be guilty if s/he foresaw a risk of P's offence under the Powell/English principle above. This principle applies to accessories in general as well as to joint ventures. Thus, X, on the current law, will become an accessory to murder.