

Chapter 15

Martin gives Clement seven good reasons why Clement should kill Edith. Clement rejects the suggestions. Dick overhears what Martin has said, is persuaded by his arguments, and kills Edith. What crimes, if any, has Martin committed?

Martin could face a charge either of encouraging or assisting an offence (s.44 Serious Crime Act 2004) or being an accomplice. The former appears stronger as there is no need to show that the person incited (Clement) goes on to commit the crime. Martin's only defence would be that he did not believe Martin would follow his advice. As to being an accomplice to Dick's murder it seems unlikely that that Martin could be found to have aided, abetted, counselled or procured Dick to commit the offence. The only argument that could lead to his conviction would be that Martin's encouragement to Clement was intended to be a message to anyone who was listening and not just Clement.

James and John decide to shoplift. James knows that John has a flick-knife in his pocket. When they are stopped by a store detective, John produces a gun (which James did not know he had) and shoots the detective dead. What crimes have been committed?

Clearly John is guilty of murder. The key question centres on James liability as an accomplice. Following the *Jogee* it would need to be shown that James intended to assist or encourage John to kill. A key issue will be whether the weapon James knew about was similar to the kind of weapon John used. If it was a similar weapon the jury may be satisfied that James intended to assist John whether he used a knife or a gun. The defence will emphasise that a gun is more likely to cause death and so may be regarded as more dangerous, and so James did not intend to assist such an enterprise.