

Answers to Exam questions

Chapter 16

Question 1

Critically evaluate the law relating to accessorial liability in light of the Supreme Court decision in *R v Jogee* [2016] UKSC 8.

Bullets

- You are asked to critically evaluate the law relating to accessorial liability. You should use the introduction to address the question, perhaps by broadly summarising the significance of the decision in *R v Jogee* [2016] UKSC 8.
- Discuss accessorial liability under s.8, Accessories and Abettors Act 1861. Set out the actus reus and mens rea elements. Consider the complicated mens rea required for liability under s.8, AAA 1861. What is the mens rea? Do all academics agree? What is the degree of foresight required? See *Bainbridge* (1960).
- Consider also the doctrine of joint enterprise and the line of authorities which have now been reversed by *R v Jogee*. What was the Supreme Court's view of the doctrine of joint enterprise? What were the problems with the doctrine? You might mention the fact that the law prior to *R v Jogee* was confusing and lacked coherence in this regard. You should refer to key cases on joint enterprise which deal with the degree of foresight required of a defendant: see *Chan Wing-Siu* (1984) and *Powell and Daniels; English* (1997).
- You should provide a critical analysis of the case of *R v Jogee*. Does this case clarify the law on accessorial liability? To what extent is the law now settled? Make reference to academic opinion which considers problems which arise out of the decision.
- You should also refer to cases which dealt with situations where the act of the principal was fundamentally different to that foreseen by the defendant: see *Rahman and others* (2008), and the impact of *R v Jogee* on such situations.
- You might also consider the proposals made by the Law Commission and refer to the overlap with inchoate liability under the Serious Crime Act 2007.
- You should conclude by addressing the question.

Question 2

Bill, Steve and Janey decide to carry out a robbery at a jewellery shop. Bill acts as the 'look out' and he positions himself by the door. Steve and Janey agree that Janey will carry a gun in order to scare the jeweller, if necessary. Steve knows that Janey has a violent past and suspects that she might use the gun to kill the jeweller. Steve and Janey approach the counter and they both threaten the jeweller, demanding that he hands over some jewellery and opens the safe. The jeweller complies. However, when the jeweller reaches under the counter to activate the security alarm, Janey pulls out the gun. When Bill sees the gun, he shouts, 'we didn't agree on a gun!' and he runs out of the shop. Janey fires the gun at the jeweller, killing him instantly.

Discuss the criminal liability of the parties.

Bullets

- This question asks you to consider the liability of the parties and requires consideration of both the robbery and the killing which takes place.
- Bill, Steve and Janey will all be guilty of conspiracy to commit robbery under s.1, Criminal Law Act 1977. You should consider the elements of this offence.
- Bill aids or assists the offence by acting as 'look out' (see s.8, Accessories and Abettors Act 1861). You should consider whether the mens rea is also present.
- Steve and Janey both commit the actus reus and mens rea elements of robbery under s.8, Theft Act 1968.
- You should also consider whether anyone might be liable for encouraging or assisting the robbery under the Serious Crime Act 2007.
- Janey will also be guilty of the murder, thus the final issue is whether Bill and Steve may also be criminally liable for the murder.
- There appears to be no evidence that Bill has participated in the murder by encouraging or assisting the murder (*R v Jogee* (2016)). There is no evidence that he aided, abetted, counselled or procured the murder (s.8, Accessories and Abettors Act 1861).

- In the event that there is such evidence, Bill might argue that he had withdrawn his participation. As he is at the scene of the offence, he must do more than simply communicate his withdrawal (*Becerra and Cooper* (1976)). He must “countermand” or “repent”. Thus, he would not have withdrawn effectively. So, if there is evidence that he has participated in the murder (which is unlikely), he will be guilty of murder.
- Consider whether Steve has participated in the murder by encouraging or assisting murder and whether he has the necessary mens rea (see *R v Jogee*). Explain what is required under *R v Jogee* in order to convict Steve and that the law has been restricted by this authority, making it more difficult to convict such a defendant.
- You should also consider whether anyone might be liable for encouraging or assisting the murder under the Serious Crime Act 2007.