

'Standard' Complicity (A, A, C, P):

AR: an act or (sometimes) omission (rules about A, A, C, P)

- **Aiding** and **Procuring**: must make a difference, Pr needn't be aware
- **Counselling** and **Abetting**: needn't make a difference, Pr must be aware

MR about D's own acts:

1. **Deliberately does the act realizing it is capable of assisting/encouraging the offence**
2. **Intends that the act will assist/encourage the offence**

This requirement is extended by the Court (eg Bryce) to oblique intent: ie, where D is indifferent whether Pr will or will not go ahead and commit the crime, provided D **believes** that, **if** Pr commits the crime, his act **will** in fact **assist/encourage**

MR about Pr's acts: **foresees a real and substantial risk** that Pr will commit the offence

This requirement can be broken down into:

1. Did D foresee the offence?

What counts as 'foresight'? It's been interpreted to only mean foresight of a risk, or belief that P might commit the offence, or other tests that amount to about the same thing (see Bryce, Blakely, Rook...) => so, essentially: **recklessness** (no need that D intends/desires that Pr commits the offence: Bryce, NCB v Gamble)

Things to check

- a. If D didn't foresee a specific offence, D must at least foresee a '**list**' (Maxwell) or '**type**' (Bainbridge) of offences, which includes the one committed.
- b. D must foresee Pr's **conduct**, not necessarily its consequence (eg stabbing, not death) (Powell, Rahman – applied to standard complicity by analogy)
- c. Pr must not have deliberately made a **variation** in an aspect of the crime that D's assistance/encouragement had been *specifically* targeted towards? (eg changed the V that D *specifically* wanted P to kill). Else, Pr's offence no longer is 'within the scope of D's authority' (Calhaem).
- d. D must foresee **Pr's MR** for the offence: any form of MR sufficient for the offence will do, eg intent to kill *or* cause GBH in murder (Powell – applied to standard complicity by analogy)
 - Special rules when Pr's MR takes his act into an altogether different offence (eg Gilmour, Yemoh – applied to standard complicity by analogy): **ms** conviction

2. If yes to (1), was the **method of commission fundamentally different** to what he foresaw?

Note: Many details of this 'fundamental difference' rule stem from JE, and are applied to standard complicity by analogy.

Things to check

- a. Anything to do with the **method or way** of commission (eg beating up v drowning)
- b. If **weapons** are involved, there are specific rules (English, Rahman, Mendez):
 - Rahman: fundamental difference only if different and more lethal weapon (*identity* of weapon)
 - Mendez: fundamental difference as long as Pr's *act* more life-threatening (*use* of weapon)

Note: If D intends V's death, method or weapon is irrelevant ('plain vanilla' case of JE – applied by analogy to standard complicity). For specific variations in the foreseen acts or weapons, discussed by the courts, see the table in the lecture handout (Weblearn).

Note: As noted, some of the **MR** requirements here attributed to standard complicity were *originally developed in JE cases*. The law isn't clear whether they can also apply to standard complicity *by analogy*. Following Gnago, the majority of the doctrine thinks they can, and so does this handout.

Joint Enterprise:

AR:

1. **Common purpose** to commit an offence, aka the 'agreed offence'
Affray not enough (Gnago), but on the other hand no need for a pre-plan (eg D sees Pr beating V and joins in to help him beat V: here Pr and D are acting towards a common purpose although they never had a prior agreement)
2. **Act in pursuit** of the common purpose
3. **Assist/encourage** Pr to commit another offence, aka the 'collateral offence'
 - o Some say that the assistance/encouragement can be **inferred** from the agreement
 - o The collateral offence must have been committed as **an incident of** the agreed offence

Note: the 'agreed offence' may or may not be committed. If it is, assess liability as per the normal rules, including principals and accessories.

MR about D's own acts: basically, the MR of a standard accomplice towards the agreed offence, ie:

1. **Deliberately does the act realizing it is capable of assisting/encouraging the agreed offence**
2. **Intends that the act will assist or encourage the agreed offence**
(extended by Bryce to include oblique intent, ie indifferent belief that it will assist or encourage)

Note: D needn't intend to assist/encourage the collateral offence, or even believe his act is capable of doing so. Big difference with standard complicity! Hence, it is possible to convict D under JE even if he had tried to *actively discourage* Pr from committing the collateral offence ('whatever happens, don't commit the collateral offence'), provided he foresaw that Pr might still commit it (as per the 'MR about Pr's acts' below). So there is a considerably lower MR for JE than there is for standard complicity. Lord Mustill in Powell admits that this is 'intellectually' problematic; but that's the law.

Where D was a co-perpetrator of the agreed offence (principal, co-principal, accomplice), and we have already proven this in the PQ, as a matter of logic we don't need to separately prove again that he had the MR towards the agreed offence (just say his MR about the agreed offence has already been shown).

MR about Pr's acts: **foresees a real and substantial risk** that Pr will commit the collateral offence

This requirement can be broken down into:

1. **Did D foresee the offence?**

What counts as foresight? Essentially **recklessness**, as per the rules in Powell: D must not consider the risk so remote as to render it negligible.

- Things to check {
- a. **List/type**
 - b. **Conduct** (same as for standard complicity; recall that several of these rules were originally developed in JE cases)
 - c. **Variations**
 - d. **Pr's MR**

2. **If yes to (1), was the method of commission fundamentally different** to what he foresaw?

- Things to check {
- a. **Method** (same as for standard complicity; recall that this 'fundamental difference' rule was originally developed in JE cases)
 - b. **Weapons**

Note: If D intends V's death, method or weapon is irrelevant ('plain vanilla' case). For specific variations in the foreseen acts or weapons, discussed by the courts, see the table in the lecture handout (Weblearn).

Withdrawal (defence to either kind of complicity)

What it takes to withdraw – conflicting authority:

- ✓ Old cases, eg Becerra and Cooper (1976), required countermanding, ie undoing the assistance or encouragement given. This is the view also favoured by Ashworth, and arguably the one that best coheres with the rationale of recognising this defence.
- ✓ More recent cases, however, no longer require countermanding (Whitefield (1984) specifically rejects it). They instead put the emphasis on:
 - **Unequivocal notice and timely withdrawal** (O’Flaherty, Whitefield)
 - Rook: not showing up not enough
 - ‘unequivocal notice’ was also stressed in Becerra and Cooper
 - More generally, ‘**enough** to demonstrate that he or she is withdrawing from the joint enterprise. This is ultimately a question of fact and degree for the jury’ (O’Flaherty)
 - for example: not follow into second street (O’Flaherty)

In sum:

Standard Complicity

- I. AR: A/A/C/P
- II. MR about D’s own acts:
 1. Deliberately does the act realizing it is capable of assisting/encouraging the offence
 2. Intends or believes that the act will assist/encourage the offence
- III. MR about Pr’s acts: foresees a real and substantial risk that Pr will commit the offence
 1. Did D foresee the offence?
 - a. List/type
 - b. Conduct
 - c. Variations
 - d. Pr’s MR
 2. If yes to (1), was the method of commission fundamentally different than foreseen?
 - a. Method
 - b. Weapons

Joint Enterprise

- I. AR:
 1. Common purpose to commit agreed offence
 2. Act in pursuit of common purpose
 3. Assist/encourage Pr to commit collateral offence
- II. MR about D’s own acts: towards the agreed offence:
 1. Deliberately does the act realizing it is capable of assisting/encouraging the agreed offence
 2. Intends or believes that the act will assist/encourage the agreed offence
- III. MR about Pr’s acts: foresees a real and substantial risk that Pr will commit the *collateral offence*
 1. Did D foresee the offence?
 - a. List/type
 - b. Conduct
 - c. Variations
 - d. Pr’s MR
 2. If yes to (1), was the method of commission fundamentally different than foreseen?
 - a. Method
 - b. Weapons