

A jurisdiction has the following decisional law on questions of principal and accomplice liability:

CASE A: The defendant, a hardware store owner, sold several customers a device which detects police radar and enables speeders to avoid detection. When one of the devices broke down and the speeder was arrested, he confessed that he often sped, secure in the knowledge that the device would warn him of police radar in the vicinity. Held: The defendant is guilty as an accomplice to speeding.

CASE B: The defendant told a friend that the defendant had stored some stereo equipment in a self-storage locker. He gave the friend a key and asked her to pick up the equipment and deliver it to the defendant's house. The friend complied and removed the equipment from the locker using the key. In fact, the equipment belonged to the defendant's neighbor, whose locker key the defendant had found in the driveway. Held: The defendant is guilty as a principal to burglary.

CASE C: A city council member accepted a bribe from the defendant in exchange for his vote on the defendant's application for a zoning variance. A statute prohibits the taking of bribes by public officials. Held: The defendant is not guilty as an accomplice to the city council member's violation of the bribery statute.

CASE D: The defendant, an innkeeper, sometimes lent his rooms to prostitutes whom he knew to be using the rooms to ply their trade. He charged the prostitutes the same price as other guests at his inn. Held: The defendant is not guilty as an accomplice to prostitution.

In this jurisdiction, conviction for statutory rape requires proof of the defendant's knowledge that the victim is underage. A high school student, who knew that a girl was underage, encouraged his friend, who was unaware of the girl's age, to have sex with the girl. The student has been charged with statutory rape.

Should the student be convicted or acquitted of this crime?

- A. Convicted on the authority of Case A.
- B. Convicted on the authority of Case B.
- C. Acquitted on the authority of Case C.
- D. Acquitted on the authority of Case D.

Explanation:

Parties to a crime

Modern view	Common law	Definition	Liability
Principal	Principal (first degree)	Performs criminal act with requisite intent or uses innocent agent to commit criminal act	Target & foreseeable crimes
Accomplice	Principal (second degree)	Present at crime & aids/encourages principal with intent that principal commit crime	
	Accessory before the fact*	Not present at crime but aids/encourages principal with intent that principal commit crime	
Accessory after the fact		Knows principal has committed felony & helps principal avoid arrest or conviction	Independent crime

*Common law liability requires conviction of principal.

In this jurisdiction, statutory rape occurs when a person has sex with a victim (actus reus) with knowledge that the victim is underage (mens rea). And a conviction can stem from either:

principal liability – if the actus reus was committed by the defendant or, as evidenced in Case B, another who acted on the defendant's behalf but ***lacked the requisite mens rea*** (ie, an **innocent agent**) *or*

accomplice liability – if the defendant intentionally aided or encouraged another who ***had the requisite mens rea*** (ie, the principal) before or during a crime with the intent that the crime be completed.

Here, the student had the requisite mens rea since he knew that the girl was underage. But like the defendant in Case B, the student did not commit the actus reus—he encouraged his friend to do so. And since the friend *lacked* the mens rea necessary to commit statutory rape because he did not know that the girl was underage, he was an innocent agent (like the friend in Case B). Therefore, the student should be convicted of statutory rape as a principal—not an accomplice.

(Choices A, C, & D) Cases A, C, and D concern accomplice liability, which subjects the principal and accomplice to *equal* liability for a crime. But this theory of liability does not apply here because the friend lacked the necessary mens rea for statutory rape in this jurisdiction—ie, knowledge that the victim was underage. Therefore, the student cannot be liable as an accomplice to the friend's innocent act.

Educational objective:

Principal liability is imposed when (1) the defendant possessed the requisite mens rea and (2) the actus reus was committed by the defendant or the defendant's innocent agent—ie, a person who lacked the mens rea required for the crime.

Copyright © 1995 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.