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Accessory Liability

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Accessory Liability

As a work of legal scholarship, *Accessory Liability* is undeniably modest in its physical stature but is a book of truly ambitious scope and breadth. From the outset it must be stated that due to the forum in which this review is written, however, the focus will inevitably favour this book's examination of the topic with respect to the law of equity and trusts. This is not to minimise the contribution that this book makes to other areas of the law, merely to point out that it is beyond the scope of this review to discuss these in as much detail.

It must first be said that the author of *Accessory Liability*, Paul S. Davies, undertook a truly daunting task when he researched and wrote this impressive volume. Any student of the law would recognise the rather confusing and entangled state of liability with respect to accessories, perhaps no more so than in the law of equity and trusts. Lacking real clarity and guidance from the highest levels of the judiciary, courts have stumbled through the appraisal of accessory liability and have left the law in a great state of confusion.

Accessory Liability is clearly divided up into a number of sections, from a basic appraisal of primary wrongs and the meaning of accessories, to specific applications in a number of areas of law. Much is taken from criminal law, including an analogy with those actions capable of constituting accessory liability in this sphere. While perhaps seeming pedantic, the chapters devoted to defining precisely what may be considered accessory actions are extremely useful and the courts would do well to refer to them when such issues of liability arise again in the future. Recent developments in criminal law, exemplified by the February 2016 Supreme Court case of *R v Jogee* with respect to joint enterprise, illustrate just how vital an understanding of this area is: the legal quagmire that accessory liability so often throws in the way of those seeking answers can only be navigated with care and precision.

Moving forward from these introductory and background sections, the author goes on to assess accessory liability in a number of diverse areas of law. This includes a further examination of accessory liability in criminal law and then within the civil law realms of equity, contract, and tort. An examination and contrast of important cases in contract with respect to accessory liability, e.g. *Lumley v Gye* and *OBG Ltd v Allan*, is extremely useful for a reader unfamiliar with this area of law and gives the reader enough understanding to grasp the more advanced discussions then entered into.

This ambition, to assess conduct and liability across both criminal and civil law, is indeed to be commended. Many courts have confused liability between these areas and the often subtle distinctions required to interpret and apply the law appropriately; the majority opinion of the House of Lords in the case of *Twins v Yardley* exemplifies this well. This authority is discussed in the 'Equity' chapter of *Accessory Liability* and its ramifications explored in satisfying depth through cases such as *Royal Brunei Airlines v Tan*, *Barlow Clowes v Eurotrust* and *Ultraframe v Fielding*. Despite the lack of clarity provided by subsequent case law, the author's analysis of accessory liability with respect to equity and trusts law is superb. The Supreme Court would do well to take Davies's examination into consideration when the issue of accessory liability eventually makes its way up to this highest level of our judiciary. Despite the expert handling of the case law and legal principles by the author, the lack of cohesion in this area does indeed come across well.

In addition to the actions necessary for liability, which are commonly assessed by the courts and extra-judicially, *Accessory Liability* also examines the mental elements that may be necessary for successful claims. This discussion of *mens rea* for both criminal and civil liability could very easily have led to confusion, but the author handles it most admirably in all areas. In criminal law this is to be expected, but to examine and apply the respective legal principle in contract, tort and equity as well is exceptionally difficult to manage. Nevertheless, an assessment of both *actus reus* and *mens rea* is essential for any examination of accessory liability; it is, perhaps, why this area of law has been so confused for so long.

Accessory Liability, is an exceptionally diligent and impressive work. Where other authors would have been tempted to produce a weighty tome assessing all aspects of this area of law in great and unnecessary detail, Paul S. Davies has succeeded in composing an approachable and concise work of legal scholarship. It is brief yet thorough in its appraisal of the law. In addition to defining appropriate claims, their necessary legal requirements, and application in criminal, equity, and common law, there is also the welcome consideration of possible defences to these claims. A most practical addition, often lacking in other works, this section is extremely useful to both academics and practitioners alike. It also lifts the consideration of this topic out of the realms of pure academic theory and provides a usefully practical consideration. Its discussion following examination of the basic legal requirements of these claims and their application in a number of different areas of the law is logical and adds to the book's efficient yet effective nature. As the author points out, while application of the law regarding accessory liability often differs depending upon the area of law in which it is applied, defences to these claims are often similar. Rather than assessing defences in each different area, therefore, they are logically discussed together in a single section. By structuring the book in this way, it is much more effective and persuasive and also eminently sensible.

The final section of the book is, rather than an afterthought, one of the most important. After all of the previous discussions, the last words regarding accessory liability are saved for the examination of appropriate remedies. To a student of the law, the availability of remedies for liability is one of the most problematic and yet significant topics in need of examination. It is perhaps the most pragmatic of all topics, for any claimant will most likely be concerned most with it: how to recover losses for wrongs done to them. While this section of the book is perhaps not as long as it could have been, it is still a very welcome addition and demonstrates the great appreciation for this area of law that the author possesses. Had this section of the book not existed, or been overlooked, then a real sense of completeness would not have been achieved.

Overall, *Accessory Liability* is a book to be applauded and highly recommended. Within its pages lies an appraisal and appreciation for this specific area of law that has been sorely lacking for far too long. Accessory liability is an exceptionally complicated and problematic area and yet, through clarity of thought and diligence of writing, Paul S. Davies has produced a work that is concise, readable, and thoroughly comprehensive. From background information to requirements, from application to defences and remedies, *Accessory Liability* is both complete and compelling. Perhaps its only criticism is that it attempts to do too much within the limits of its rather modest length. While it was admirable to discuss this topic with respect to several areas of law, it was somewhat disappointing to this reviewer that more attention was not given to one alone. Had focus lain more with equity and trusts, for example, then it would most likely have provided a unique work of essential scholarship. The same could, of course, have been said about contract, tort, or criminal law. It is with hope and expectation,

therefore, that *Accessory Liability* provides a beginning rather than an end to Paul S. Davies's examination of this topic. If this is the case then it is to be expected that this extremely complicated area of law will soon be made much clearer.