1

Introduction

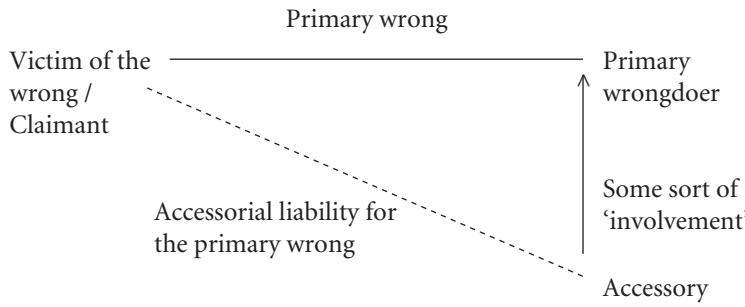
'Accessory liability' involves fundamental issues of responsibility, causation and justice. Complications concerning accessories are to be found in every area of the law, whether the defendant's liability is accessorial to a breach of fiduciary duty, to a breach of contract, or to a tort, for example. But each such area of the law has tended to be examined as a discrete topic, isolated from how accessory liability operates in neighbouring parts of the legal landscape. This book aims to reverse that trend.

'Accessories' give rise to much debate beyond the legal context. The most common usage of the term is in the world of fashion. Whether or not a particular outfit cuts the mustard amongst the fashion cognoscenti may well depend upon how it is accessorised. The accessories – handbag, earrings, necklace, and so on – are not the primary focus of a person's attire, but are potentially very important. Without such accessories, an outfit may feel incomplete.

So it is with the law. It is possible simply to say that a trustee committed a breach of trust, and leave it at that. But that may not present a complete picture of what happened. The breach of trust may only have been committed because the trustee was induced to act in the way he or she did by a friend, and was wrongly assured that his or her actions were lawful by a dishonest solicitor. Adding the friend and solicitor as 'accessories' provides a fuller account of the situation. They should not simply be ignored, and their role in the infringement of the claimant's rights deserves to be properly understood.

I. What is Accessory Liability?

For accessory liability to arise, a 'primary wrong' must first be established: this may be the breach of an equitable obligation, breach of contract, or a tort. The person who commits this primary wrong can be called a 'primary wrongdoer'. It must then be shown that the accessory did something in relation to the primary wrong (the conduct element) and was at fault in some way (the mental element). The following diagram may help to represent accessory liability:



This 'triangle' of liability can be found in every area of the law. The focus of this book will be upon the private law of obligations. However, the same diagram can also be used to illustrate accessory liability in the criminal sphere. In the criminal domain, the language of a 'primary offence' committed by a 'primary offender' might be preferred to the language of 'wrongdoing'. But little seems to turn on this distinction, and it should not be confusing to call a criminal act a 'wrong'. The term 'primary wrong' will therefore generally be used to encompass criminal acts as well as civil wrongs.

The key potential conduct and mental elements for accessory liability will be outlined in chapter two. It is important to appreciate at the outset that accessory liability is based upon the defendant's deliberate participation in a primary wrong committed by another. This requirement of participation has been encapsulated in the criminal law by the words 'aid, abet, counsel, or procure'.[1] The accessory must act in a manner which contributes to the commission of the primary wrong, and thereby the infringement of the victim's rights. Accessory liability is derivative in the sense that it must be parasitic to a primary wrong.

II. Why is Accessory Liability Important?

Accessory liability has received far more attention in the criminal context than in the private law.[2] The comparative neglect of accessory liability in the law of obligations is both surprising and undeserved. Possible rationales for accessory liability will be introduced in chapter two, but there are three important, practical concerns which have meant that cases concerning accessory liability continue to exercise the courts.

[1] Accessories and Abettors Act 1861, s 8.

[2] For an excellent monograph on the criminal law in this area, albeit now a little dated, see KJM Smith, *A Modern Treatise on the Law of Criminal Complicity* (Oxford, Clarendon Press, 1991).

A. Pragmatic Factors

i. Insolvency

Often the reason why a claimant chooses to sue an accessory rather than, or in addition to, a primary wrongdoer, is a fear that it will be impossible to obtain a satisfactory remedy from the primary wrongdoer due to the latter's poor financial situation. This may well be because the primary wrongdoer is insolvent, and therefore unable to satisfy the victim's claim. In such situations, claimants have a natural tendency to look to someone else to provide redress. This regularly prompts claims to be made against accessories who have participated in the primary wrong.

ii. Preserving Relationships

A claimant may have a pre-existing relationship with the primary wrongdoer, which the claimant does not want to endanger through litigation. For example, the claimant may be the employer of an employee who has breached a contract, or the claimant may be the beneficiary under a trust which has been run, in breach of duty, by a trustee who is a relative of the claimant. In such circumstances, the claimant may understandably seek to avoid the risk of jeopardising the relationship he or she enjoys with the employee or relative, and try to obtain a remedy for the infringement of his or her rights by bringing a claim against an accessory instead. So, if possible, the claimant might prefer to sue a trade union which induced the employee to breach his or her employment contract, or a solicitor who encouraged the relative to act in a manner which the solicitor knew constituted a breach of trust.

iii. Convenience

It may be more convenient for a claimant to sue an accessory rather than the primary wrongdoer. For instance, the accessory might be within the jurisdiction of the court, but not the primary wrongdoer.[3] And where there is one person who participates in a large number of similar primary wrongs, it might be difficult to track down every individual primary wrongdoer, but straightforward to identify the person who could be sued as an accessory. This type of scenario has recently been particularly prominent in the context of intellectual property rights: one website might actively encourage millions of users to access material, such as videos and music, which infringes a copyright held by the claimant, for example. It would clearly be very difficult to sue each primary wrongdoer who accesses the

[3] A claimant might be required to establish a claim against an accessory in order to serve a primary wrongdoer outside the jurisdiction as a necessary or proper party to the claim against the accessory: see eg *Fish & Fish Ltd v Sea Shepherd UK* [2013] EWCA Civ 544, [2013] 3 All ER 867.

material. By contrast, it would seem much more efficient to bring a claim against the owner of the website which encourages the numerous primary wrongs.[4]

B. Moral Considerations

Although claimants are generally motivated by the practical desire to obtain compensation for losses they have wrongfully suffered, it is crucial to appreciate that accessory liability does not rest exclusively upon these practical concerns. There is a moral core at the heart of accessory liability which justifies its existence. In his Nobel Lecture, the Russian writer Aleksandr Solzhenitsyn said: 'And the simple step of a simple courageous man is not to take part in the lie, not to support deceit. Let the lie come into the world, even dominate the world, but not through me'.[5]

This theme has been taken up by legal philosophers,[6] and Cooper has argued that accessory liability 'reflects this common and intuitive moral perception that responsibility for wrongs extends to participants in wrongs'.[7] Examples are commonly found in everyday life; if one schoolchild paints graffiti on the wall of a school at the instigation of a classmate, both children will be in trouble. Yet the latter did not directly graffiti at all, and did not even touch a paintbrush. But because of his or her participation in the vandalism, it is inevitable that he or she will not be spared the ire of the teachers.

However, Solzhenitsyn's principle, as expressed above, may be too absolute.[8] It is unrealistic to expect people not to participate in wrongs at all costs; such participation will sometimes be justifiable.[9] And often parties will have no inkling that they are participating in a primary wrong. To impose liability upon such persons would greatly restrict their freedom to carry out apparently lawful acts. That seems unreasonable: it is important that the victim's rights be appropriately protected, but those rights are not absolute. The moral core of accessory liability is best respected by imposing liability only upon those who are culpable.[10]

[4] In *Metro-Goldwyn-Mayer Studios Inc v Grokster Ltd* 545 US 913, 929–930 (2005) Souter J, delivering the Opinion of the US Supreme Court, said: 'When a widely shared service or product is used to commit infringement, it may be impossible to enforce rights in the protected work effectively against all direct infringers, the only practical alternative being to go against the distributor of the copying device for secondary liability on a theory of contributory or vicarious infringement'.

[5] A Solzhenitsyn, *One Word of Truth . . .* (London, Bodley Head, 1972) 27.

[6] For discussion, see eg J Gardner, 'Complicity and Causality' (2007) 1 *Criminal Law and Philosophy* 127, reprinted in J Gardner, *Offences and Defences: Selected Essays in the Philosophy of Criminal Law* (Oxford, Oxford University Press, 2007) ch 3.

[7] DJ Cooper, *Secondary Liability for Civil Wrongs* (PhD thesis, University of Cambridge, 1996) 1.

[8] C Kutz, *Complicity: Ethics and Law for a Collective Age* (Cambridge, Cambridge University Press, 2000) 190–191.

[9] See eg *Brimelow v Casson* [1924] 1 Ch 302. See further ch 7.

[10] See ch 2.III.

III. Doctrinal Difficulties in the Law of Obligations

The lack of attention paid to accessory liability in the private law has perhaps contributed to some of the doctrinal difficulties that have arisen regarding third party liability in every area of the law of obligations. The confusion that has arisen suggests, at the very least, that a more detailed and considered examination of accessory liability is warranted. Some of these problems will be outlined here, before being developed more fully in subsequent chapters.

A. Equity

Accessory liability in equity has had a chequered trajectory. It was for a long time understood that a person could be liable for *inducing* any breach of trust,[11] but would only be liable for *assisting* a breach of trust if that primary breach of trust were dishonest.[12] Not only did this create a distinction between inducement and assistance,[13] but it also meant that a dishonest person who assisted an innocent breach of trust could not be liable, whereas an honest person who assisted a dishonest breach of trust might be. However, it now appears, in England at least, that a person can incur accessory liability for assisting or inducing any breach of fiduciary duty.[14]

Nevertheless, important difficulties remain. For example, it is not yet entirely clear whether or not the primary wrong must concern the claimant's property.[15] Nor has a clear, stable mental element been established by the cases. Earlier authority favoured 'knowledge',[16] although that term itself potentially covers a wide range of mental elements.[17] Current orthodoxy prefers a mental element of 'dishonesty', although it is perhaps not entirely clear whether 'dishonesty' is defined objectively, the standard being set by what the reasonable man would

[11] *Fyler v Fyler* (1841) 3 Beav 550.

[12] *Barnes v Addy* (1874) LR 9 Ch App 244.

[13] C Harpum, 'The Stranger as Constructive Trustee' (1986) 102 *LQR* 114, 141–146. For exploration of these conduct elements, see ch 2.II.

[14] *Royal Brunei Airlines v Tan* [1995] 2 AC 378 (PC), 387 (Lord Nicholls); *Twinsectra Ltd v Yardley* [2002] UKHL 12, [2002] 2 AC 164. Compare the position in Australia: *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* [2007] HCA 22, (2007) 230 CLR 89.

[15] The better view is that it should not: *Brown v Bennett* [1999] 1 BCLC 649, 657 (Morritt LJ); *Goose v Wilson Sandford & Co (a firm)* [2001] Lloyd's Rep PN 189, [88] (Morritt LJ); *JD Wetherspoon plc v Van de Berg & Co Ltd* [2009] EWHC 639 (Ch), [2009] 16 EG 138 (CS), [518] (Peter Smith J); *Novoship (UK) Ltd v Mikhaylyuk* [2014] EWCA Civ 908 [87]–[93] (Longmore LJ, delivering the judgment of the Court). *cf Satnam Investments Ltd v Dunlop Heywood & Co Ltd* [1999] 3 All ER 652 (CA), 671 (Nourse LJ delivering the judgment of the Court); *Petrotrade Inc v Smith* [2000] 1 Lloyd's Rep 486 (QBD), [25]–[28] (Steel J). See further ch 4.III.B.

[16] eg *Barnes v Addy* (1874) LR 9 Ch App 244.

[17] *Baden v Société Générale pour Favoriser le Développement du Commerce et de l'Industrie en France SA* [1993] 1 WLR 509, 575–576 (Gibson J). The concept of 'knowledge' is further explored in ch 2.III.B.

consider to be dishonest,[18] or subjectively, such that the defendant him or herself must realise that his or her conduct would be considered to be dishonest.[19] Moreover, it is not even clear whether 'dishonesty' is an appropriate test, particularly since it necessarily depends upon what the defendant knows.[20]

Claims against an inducer or assister have been recognised to be accessorial in nature.[21] But the same principles underpinning liability for 'dishonest assistance' in equity have sometimes been said to explain liability for receipt of trust property in breach of trust.[22] It will be important to consider whether such arguments should be accepted; the better view is that receipt-based liability is based upon the recipient's beneficial receipt of trust property, and does not inevitably depend upon the recipient's participation in another's wrong.[23] It may be that a party both assists and receives,[24] but it is helpful to disentangle assistance liability in order to appreciate its accessorial, parasitic and participatory nature.[25]

B. Contract

In the contractual context, accessory liability is recognised under the 'tort of inducing a breach of contract', which is sometimes also known as the 'tort of *Lumley v Gye*', or the '*Lumley* tort', after the leading case of the same name.[26] Establishing the elements required for accessory liability has proved troublesome. For a long period, it was not even clear that the primary wrong required a *breach* of contract; it was thought that simple *interference* with contractual rights, which fell short of any breach of the promissory obligations, might also provide the basis of a claim against an accessory.[27] But it has recently been made clear that a breach of contract is necessary:[28] accessory liability must be parasitic to a primary wrong.

However, difficulties still surround both the conduct and mental element. Orthodoxy indicates that inducement alone can give rise to accessory liability,[29] but in some cases assistance, or facilitation, may also suffice.[30] The mental element

[18] *Royal Brunei Airlines v Tan* [1995] 2 AC 378 (PC).

[19] *Twinsectra Ltd v Yardley* [2002] UKHL 12, [2002] 2 AC 164.

[20] Lord Millett has described dishonesty as 'an unnecessary distraction, and conducive to error': *Twinsectra Ltd v Yardley* [2002] UKHL 12, [2002] 2 AC 164, [134].

[21] *Royal Brunei Airlines v Tan* [1995] 2 AC 378 (PC).

[22] eg P Finn, 'The Liability of Third Parties for Knowing Receipt or Assistance' in DWM Waters (ed), *Equity, Fiduciaries and Trusts* (Ontario, Carswell, 1993).

[23] *cf* Lord Nicholls, 'Knowing Receipt: The Need for a New Landmark' in W Cornish, R Nolan, J O'Sullivan and G Virgo (eds), *Restitution: Past Present and Future* (Oxford, Hart Publishing, 1998).

[24] eg *Abou-Rahmah v Abacha* [2006] EWCA Civ 1492, [2006] 1 All ER (Comm) 827.

[25] D Sheehan, 'Disentangling Equitable Personal Liability for Receipt and Assistance' (2008) 16 *Restitution Law Review* 41.

[26] *Lumley v Gye* (1853) 2 E & B 216.

[27] *Torquay Hotel Co Ltd v Cousins* [1969] 2 Ch 106 (CA).

[28] *OBG Ltd v Allan* [2007] UKHL 21, [2008] 1 AC 1.

[29] See eg H Carty, 'The Economic Torts in the 21st Century' (2008) 124 *LQR* 641, 651.

[30] *British Motor Trade Association v Salvadori* [1949] Ch 556 (Roxburgh J), 565; *D C Thomson & Co Ltd v Deakin* [1952] Ch 646 (CA), 694 (Jenkins LJ); *Rickless v United Artists Corporation* [1988] QB 40 (CA), 59 (Stephen Brown LJ); *Global Resources Group Ltd v Mackay* [2008] CSOH 148, 2009 SLT 104, [13].

has proved similarly problematic. The *Lumley* tort is often known as an 'intentional' tort,[31] but 'recklessness' appears to suffice,[32] and the basis of liability may essentially rest upon knowledge.[33] The suggestion that accessory liability will only be imposed upon a defendant who intended to harm the victim is often raised,[34] but this is not generally accepted.[35]

The idea that accessory liability requires an intention to harm the claimant may be a result of the fact that the *Lumley* tort is often considered to be one of the so-called 'economic torts', which generally require such an intention.[36] However, not only do the other 'economic torts' have a different mental element to the *Lumley* tort, they also have different conduct elements and are not parasitic upon a wrong committed by another. Moreover, the *Lumley* tort can apply in relation to any breach of contract, and is not limited to protecting economic, trade or business interests. Although it has been suggested that only a 'purist' would linger upon such distinctions,[37] these differences are important. Liability under *Lumley* should not be crammed under the umbrella of the economic torts. It is better considered to be an example of the general law of accessory liability.

C. Tort

The elements of accessory liability where the primary wrong is a tort are a little obscure. This is because accessory liability largely lies latent beneath the expansive heading of 'joint tortfeasance'.[38] In a leading study, Carty has suggested that there are three main conduct elements which may lead to liability as a joint tortfeasor: authorisation, combination and procurement.[39] But defining these terms is no easy task.[40] For example, to what extent, if any, is combination distinct from conspiracy? Significantly, restricting accessory liability to these three conduct element means that assistance or encouragement will not, without more, lead to liability:[41]

[31] See eg *OBG Ltd v Allan* [2007] UKHL 21, [2008] 1 AC 1, [1] (Lord Hoffmann).

[32] *Emerald Construction Co Ltd v Lowthian* [1966] 1 WLR 691 (CA), 700–701 (Lord Denning MR); *OBG Ltd v Allan* [2007] UKHL 21, [2008] 1 AC 1, [40] (Lord Hoffmann).

[33] See eg AP Simester and W Chan, 'Inducing a Breach of Contract: One Tort or Two?' (2004) 63 *CLJ* 132.

[34] *Douglas v Hello! Ltd* [2005] EWCA Civ 595, [2006] QB 125, [221] (Arden LJ); *OBG Ltd v Allan* [2007] UKHL 21, [2008] 1 AC 1, [306] (Baroness Hale, in contrast to the leading approach of Lord Hoffmann and Lord Nicholls).

[35] *Lumley v Gye* (1853) 2 E & B 216; *OBG Ltd v Allan* [2007] UKHL 21, [2008] 1 AC 1.

[36] This intention is required of the tort of intentionally causing loss by unlawful means and unlawful means conspiracy, eg. See generally H Carty, *An Analysis of the Economic Torts,* 2nd edn (Oxford, Oxford University Press, 2010).

[37] S Deakin and J Randall, 'Rethinking the Economic Torts' (2009) 72 *MLR* 519, 536.

[38] Even Glanville Williams' seminal book on joint torts only devotes seven pages to accessory liability: GL Williams, *Joint Torts and Contributory Negligence* (London, Stevens & Sons Ltd, 1951) 9–16.

[39] H Carty, 'Joint Tortfeasance and Assistance Liability' (1999) 19 *Legal Studies* 489.

[40] See further ch 6.III.

[41] *CBS Songs Ltd v Amstrad Consumer Electronics Plc* [1988] AC 1013 (HL); *Credit Lyonnais Bank Nederland NV (Now Generale Bank Nederland NV) v Export Credits Guarantee Department* [2000] 1 AC 486 (HL).

assistance falls beyond the scope of procurement, and, absent a common design, there will be no combination. This exclusion of assistance from the scope of accessory liability is controversial.[42]

Problems also surround the mental element, and this has been exacerbated by the lack of judicial discussion. At times, it appears to have been assumed that the mental element necessary for accessory liability simply mirrors that required for the primary wrong.[43] But this may set the mental element at too low a level, given that many torts do not demand a high level of fault, if they even require the defendant to be at fault at all. The lack of clarity provided by cases on joint tortfeasance led the Court of Appeal in *Grimme Maschinenfabrik GmbH v Derek Scott (t/a Scotts Potato Machinery)*[44] to seek guidance from the analogous contract cases decided under *Lumley*. This might lead to a more restrictive mental element, which needs to be clearly established.

A failure properly to highlight the accessorial nature of liability is one reason why the conduct and mental elements remain to some extent uncertain. Joint tortfeasance is a vast concept. Conspirators and those liable vicariously may also be branded 'joint tortfeasors', and where two defendants both commit the primary wrong jointly, the label of 'joint tortfeasance' may still be used. Yet the relationship between accessory liability and these other types of liability is weak, and lies essentially in the fact that there is more than one defendant. More could be learned from looking to instances of accessory liability in other areas of the law.

IV. Looking Across the Legal Landscape

The above, brief survey of the problems faced in every area of the private law reveals some interesting similarities and common difficulties. Regardless of the nature of the primary wrong, courts have struggled to maintain a stable approach either to the conduct element or to the mental element. In every area of the civil law, instances of accessory liability tend to be subsumed within larger umbrella headings which cover not only accessory liability but also other forms of liability which rest upon different principles: 'third party liability' in equity; the 'economic torts' where the primary wrong is a breach of contract; 'joint tortfeasance' in tort.

These headings are prone to mislead and give rise to confusion. It would be better to look *across* the private law, and have a general heading of 'accessory

[42] J Dietrich, 'Accessorial Liability in the Law of Torts' (2011) 31 *Legal Studies* 231; P Davies, 'Accessory Liability for Assisting Torts' (2011) 70 *CLJ* 353. See too *Fish & Fish Ltd v Sea Shepherd UK* [2013] EWCA Civ 544, [2013] 3 All ER 867, [41]–[44] (Beatson LJ).

[43] eg Carty, 'Joint Tortfeasance and Assistance Liability', above n 39 at 501.

[44] *Grimme Maschinenfabrik GmbH v Derek Scott (t/a Scotts Potato Machinery)* [2010] EWCA Civ 1110, [2011] Bus LR D129, [106] (Jacob LJ). The primary wrong at issue was breach of a patent: see ch 6.IV.B.

liability'.[45] An insistence upon examining the private law by reference to discrete *subjects* – such as equity, contract and tort – may fail to illuminate the key principles underpinning liability.[46] However, by looking at particular *themes* in the law of obligations, lessons already learned in analogous areas are more readily assimilated. Accessorial liability regarding a breach of contract seems much more closely related to accessorial liability regarding a breach of fiduciary duty than to the 'economic tort' of intentionally causing loss by unlawful means, for example. It is helpful to recognise this explicitly. As Birks has argued, there should be 'one law on the civil liability of accessories'.[47]

Throughout the private law, accessory liability is ripe for thorough examination. In *Royal Brunei Airlines v Tan*,[48] accessory liability in equity underwent significant re-examination, and in *OBG Ltd v Allan*[49] the House of Lords emphasised the importance and accessorial nature of *Lumley* liability. Calls for the 'fusion' of the common law and equity in this area are not new,[50] and in *OBG* Lord Nicholls explicitly chose to 'leave open the question of how far the *Lumley v Gye* principle applies equally to inducing a breach of other actionable obligations such as statutory duties or equitable or fiduciary obligations'.[51]

The clarity which is emerging in the equitable and contractual spheres should be encouraged, and its focus sharpened. Looking at parallel developments in other areas of the law may help to achieve this, and further provide guidance as to the appropriate approach where the primary wrong is a tort. This is particularly important in the tortious context given the impetus provided by extensive litigation concerning the protection of intellectual property rights.

Some of the difficulties which have emerged from the cases may be due to a failure clearly and convincingly to identify the rationales of liability. This is not an easy task, but is rendered all the more difficult if a blinkered approach to discrete subjects is taken. Considered discussion of accessory liability in one area might help to inform accessory liability in another. At the very least, the reasons why a primary wrong, conduct element and mental element are all required in every area of the private law should be better understood, even if it were ultimately to be concluded that different primary wrongs can legitimately generate different regimes of accessory liability.

It is suggested that similar principles underpin the imposition of liability upon an accessory regardless of the nature of the primary wrong: the protection of the victim's rights, the culpability of the defendant, and the potential effect of liability

[45] See eg P Sales, 'The Tort of Conspiracy and Civil Secondary Liability' (1990) 49 *CLJ* 491; Cooper, *Secondary Liability for Civil Wrongs*, above n 7.

[46] W Gummow, 'Knowing Assistance' (2013) 87 *Australian Law Journal* 311.

[47] P Birks, 'Civil Wrongs: A New World' in *Butterworth Lectures 1990–91* (London, Butterworths, 1992) 100.

[48] [1995] 2 AC 378 (PC), 387 (Lord Nicholls).

[49] [2007] UKHL 21, [2008] 1 AC 1.

[50] eg *Royal Brunei Airlines v Tan* [1995] 2 AC 378 (PC), 387 (Lord Nicholls); *Twinsectra Ltd v Yardley* [2002] UKHL 12, [2002] 2 AC 164, [127] (Lord Millett).

[51] *OBG Ltd v Allan* [2007] UKHL 21, [2008] 1 AC 1, [190] (Lord Nicholls); see too [3] (Lord Hoffmann).

upon a party's freedom of action are all consistently important concerns.[52] Moreover, issues regarding the remedies available against accessories, and what defences they may have, appear similar in each area of the law. Much is to be gained from looking beyond the confines of 'tort', 'contract' and 'equity' and across to neighbouring areas in order to ensure a coherent means of analysing and then tackling problems regarding accessories.[53]

V. Approach of the Book

Chapter two examines the key terms and concepts which are used in every area of the law. It is important to do this at the outset: the same language should have the same meaning regardless of the particular nature of the primary wrong. It is both confusing and unnecessarily complex for the same terms to have different meanings in different domains of the law. Chapter two also highlights the principal possible conduct and mental elements which might provide the foundations for accessory liability in the private law. Chapter three then provides a brief survey of how accessory liability operates in the criminal sphere. Although this might be considered to be somewhat tangential to the core, private law focus of this book, accessory liability has been analysed much more extensively in the criminal law; important lessons might be drawn in appropriate circumstances from the criminal experience, as is highlighted in subsequent chapters.

A detailed analysis of accessory liability in the law of obligations is then necessary to show how the fundamental concepts described in chapter two are employed when the primary wrong is a breach of equitable duty (chapter four), breach of contract (chapter five), or a tort (chapter six). In each chapter, the current law is discussed before the rationales and appropriate shape of accessory liability are considered. It will be argued that knowingly assisting a wrong is itself wrong.

It is necessary to consider equity, contract and tort in separate chapters in order to illustrate how legal doctrine has developed into its present state. But chapters four, five and six will only go as far as establishing the conduct and mental elements which might ground a claim against an accessory and lead to prima facie liability. There may still be defences available to the defendant, and these are discussed in chapter seven with reference to the entirety of the law of obligations. Similarly, the remedies available to claimants who bring private law claims against accessories are considered in chapter eight, and similarities across the traditional boundaries of the law of obligations highlighted. Finally, chapter nine offers some conclusions regarding accessory liability. The key themes and tensions are illus-

[52] These principles are outlined in ch 2.I.

[53] As is perhaps suggested by cases such as *Grimme Maschinenfabrik GmbH v Derek Scott (t/a Scotts Potato Machinery)* [2010] EWCA Civ 1110, [2011] Bus LR D129.

trated in the context of private law claims more generally. It is important that further consideration is given to when, why and by what methods English law imposes accessorial liability. This book aims to contribute to this significant topic.