R. v Roach (2004):

Ronald Roach met Mark Dube, who was engaged in a fraudulent telemarketing scheme. The fraudulent scheme was based on a list of residents of the United States who had entered a legal contest. Dube hired telemarketers to contact those on the list and inform them that they were a contest winner of a motor vehicle or $25,000.

Dube would then phone the “winners” and inform them that they would win two of the following four prizes: $25,000 in cash, a Ford Taurus, a home stereo system, or jewelry. Before the prize could be shipped, it was necessary to collect state taxes, along with shipping and handling charges. Winners were requested to send amounts ranging from US$600 to over US$9000 along with an affidavit confirming that they had won the two prizes. Inexpensive stereos and watches were then sent to those who responded. Some of the prizewinners complained to police, but before the scheme was stopped, US$45000 had been collected.

Dube encouraged Ronald Roach to establish a company to distribute merchandise as prizes offered by his telemarketing company. The defendant, a meat cutter, had no experience in telemarketing and claimed that he relied on Dube’s business expertise. Subsequently, with the assistance of a Mr. Strongi, a paralegal, Roach registered a business and rented a mailbox. Roach and Dube then signed an agreement providing that the business would distribute merchandise as directed by Dube Enterprises. The agreement stated that the responsibility for placement and payment for merchandise rested with the telemarketing company. The sole responsibility of the distributor was to provide and distribute the merchandise according to instructions. Roach collected the mail and from each money order $100 was deposited into a prize fund and the balance into a bank account. These funds were received by the police, and Dube was convicted of fraud.

Roach was charged with fraud over $5000 and conspiracy to commit fraud. In his defence, he claimed that he believed Dube’s telemarketing operation was legal and that the funds set aside for prizes would grow and eventually the motor vehicles and the $25000 prizes would be available. The trail Judge instructed the jury that *mens rea* for party liability under *Criminal Code Section 21* was satisfied with actual knowledge, recklessness, or willful blindness that the finances of the contestants would be adversely affected. Also, the accused did act knowingly, being reckless or knowingly blind to the fact that he would assist Dube in the commission of an offence.

Roach’s conviction was appealed and a new trial ordered. The appeals court held that criminal liability should only attach to Roach’s acts if he intended to commit further crime. His recklessness did not satisfy these requirements. The Court noted that the highest form of *mens reus* is required because under section twenty-one of the *Criminal Code*, a party to an offence faces the same penalties as the principal.

Analysis Questions:

1. Infer definitions of the terms: knowledge, recklessness, and willful blindness.
2. As a juror, would you accept Mr. Roach’s claim of innocence? Justify your answer.