

## THEME 1: INTRODUCTORY PRINCIPLES

**LO1: Define a perpetrator in the commission of a crime and differentiate between different types of perpetrators**

*A person is a PERPETRATOR if*

a) his conduct, the circumstances in which it takes place and the culpability with which it is carried out are such that he satisfies all the requirements for liability;

b) if he acted together with one or more persons and the conduct required for a conviction is imputed to him by virtue of the principles relating to common purpose.

The different persons who may be involved in the commission of a crime are divided into **3 categories: perpetrators, accomplices & accessories after the fact.**

### ACCOMPLICE

Somebody who does not satisfy all the requirements for liability contained in the definition of the crime;

does not qualify for liability to the principles relating to *common purpose* **BUT** who *unlawfully and intentionally* furthers its commission by somebody else.

*Consciously associates themselves with the commission of a crime by assisting the perpetrator/co-perpetrators, giving them information/advice OR offering them the opportunity or means to commit the crime or facilitate its commission.*

### ACCESSORY AFTER THE FACT

## THEME 1: INTRODUCTORY PRINCIPLES (cont)

a) somebody who, *after the commission of the crime*, **unlawfully and intentionally** helps the perpetrator or accomplice to escape liability.

b) only comes in **AFTER** the commission of the crime

### CO-PERPETRATORS

If several persons commit a crime together, it is unnecessary to single out who can be the perpetrator and that helpers, must necessarily fall into a different category.

1) not always practical to identify one principle perpetrator as the *principle offender* or *actual perpetrator*

2) if several people commit a crime and all comply with all the requirements for perpetrators, they are simply *co-perpetrators*

3) two persons may act in such a way that each *contributes equally* to the crime

### DIRECT & INDIRECT PERPETRATORS

a) An indirect perpetrator is somebody who commits a crime through the instrumentality of another. b) the distinction that may be drawn between direct & indirect perpetrators is irrelevant. c) direct/indirect perpetrators are suitable terms to describe a **factual situation**. d) the difference between the two has no bearing on a person's liability

### LIABILITY OF PERPETRATOR NOT ACCESSORY IN NATURE

## THEME 1: INTRODUCTORY PRINCIPLES (cont)

a) liability of a perpetrator/co-perpetrator is based on his own act and his own culpability.

b) **DOES NOT** depend on the commission of a crime by somebody else; his liability is completely independent

### LO 2: Explain the need for and the role of the doctrine of common purpose

#### NECESSITY OF DOCTRINE OF COMMON PURPOSE

1) If several people acting together killed 'Y', it is always impossible to ascertain with certainty who amongst them contributed casually to 'Y's' death

2) It may be without a doubt that at least one of the group, namely the shooter, caused Y's death but there are also situations in which the conduct of no single one of them can with certainty be described as a cause of Y's death.

### LO3: Define the doctrine of common purpose

#### THE DOCTRINE OF COMMON PURPOSE: SUMMARY OF PRINCIPLES

Courts apply a scientific doctrine to enable it to convict several people acting together of murder - *doctrine of common purpose*

1) If 2 or more people, having a common purpose to commit a crime, act together in order to achieve that purpose, the conduct of each of them in the execution of that purpose is imputed to the others.

## THEME 1: INTRODUCTORY PRINCIPLES (cont)

2) In a charge of having committed a crime which involves the causing of a certain result, the conduct imputed includes the causing of such result

3) Conduct by a member of the group of persons having a *common purpose* which different from the conduct envisaged in the said common purpose may not be imputed to another member of the group unless the latter knew that such other conduct would be committed, or foresaw the possibility that it might be committed & reconciled himself to that possibility.

4) A finding that a person acted together with one or more other persons in a *common purpose* is not dependent upon proof of a prior conspiracy. Such a finding may be inferred from the conduct of a person or persons.

### THEME 1: INTRODUCTORY PRINCIPLES (cont)

5) A finding that a person acted together with one or more other persons in a *common purpose* may be based upon the first-mentioned person's active association in the execution of the particular criminal act of the other participant(s). **HOWEVER**, in a charge of murder this rule applies only if the active association took place while the deceased was still alive and before a mortal wound or mortal wounds had been inflicted by the person or persons with whose conduct such first-mentioned person associated himself.

6) If, on a charge of culpable homicide the evidence reveals that a number of persons acted with a *common purpose* to assault or commit robbery and that the conduct of one or more of them resulted in the death of the victim, the causing of the victim's death is imputed to the other members of the group as well, but *negligence* in respect of the causing of the death is not imputed.

### THE DOCTRINE OF COMMON PURPOSE - GENERAL

- If 2 or more people in acting in *common purpose* to commit a crime, the conduct of each of them in the execution of that purpose is imputed to the others.

### THEME 1: INTRODUCTORY PRINCIPLES (cont)

- *Common purpose* is not couched in general terms and therefore, not confined to one type of crime only. **mostly found within the context of the crime of murder**

- The persons must all have had the intention to murder and to assist one another in committing the murder.

- The *basis of the doctrine* is the idea that each member of that plot gave the other an implied mandate to execute the unlawful criminal act.

### DIFFERENCE BETWEEN PRIOR CONSPIRACY & ACTIVE ASSOCIATION

#### Restrictions to common purpose doctrine

~ If reliance is placed on a prior agreement or conspiracy between the participants, it is enough to prove that X agreed with the wide and general common design of conspirators.

~ If reliance is placed not on a previous conspiracy, but on active association, there must be proof that X associated himself, not with the wide and general common design, but with the specific act, whereby the other participants committed the crime.

### COMMON PURPOSE AND DOLUS EVENTUALIS

### THEME 1: INTRODUCTORY PRINCIPLES (cont)

For X to have a *common purpose* with others to commit murder, it is not necessary that his intention to kill be present in the form of *dolus directus*

It is enough if his intention takes the form of *dolus eventualis*

### COMMON PURPOSE IN CHARGES OF CULPABLE HOMICIDE

1. One cannot intend to be negligent

2. An inference can be drawn that the *common purpose doctrine* can never be applied to convict people of *culpable homicide*

3. If there are difficulties in proving causation, the doctrine can be applied in charges of *culpable homicide*, see decision in *Nkwenja, Magmoed v Janse van Rensburg, read with Sefatsa*

**LO5: Evaluate the constitutionality of the doctrine of common purpose with reference to applicable case law**

### COMMON PURPOSE DOCTRINE IS CONSTITUTIONAL

In *Thebus*, the **ConCourt** held that the doctrine is compatible with the Constitution.

~ X's rights to dignity & freedom aren't infringed

~ If the doctrine didn't exist,

1) there would have been acceptable situations convicting only the person who had actually committed the principle act

### THEME 1: INTRODUCTORY PRINCIPLES (cont)

2) whereas those who have intentionally contributed to the commission of the crime would have been guilty.

### LO4: Identify the requirements of an effective withdrawal from a common purpose

1) To escape conviction on the ground of a withdrawal from the *common purpose*, X must have clear intention to withdraw from such a purpose;

2) To succeed with the defence of withdrawal, X must perform some **positive act** of withdrawal;

3) The withdrawal must be voluntary, if X withdraws upon discovering that the police had uncovered the plot, the withdrawal is not voluntary;

4) The withdrawal will amount to a defence only if it takes place before the course of events start taking place;

5) The type of act required for an effective withdrawal depends upon a number of circumstances

6) The role played by X in planning to commit the crime has a strong influence on the type of conduct which the law requires him to perform to succeed with a defence of withdrawal

### ACTIVE ASSOCIATION IN COMMON PURPOSE

It follows that prior agreement is not the only form of common purpose liability.

### THEME 1: INTRODUCTORY PRINCIPLES (cont)

#### 2 categories of common purpose

- 1) where there is prior agreement to commit a common offence;
- 2) where liability arises from an **active association** and participation in a common criminal design with the requisite intention to commit a crime

If there is no proof of prior agreement, the following **5 REQUIREMENTS** must be met according to the decision in *Mgedezi*

- 1) X must have been present at the scene of the crime;
- 2) X must have been aware of the assault on Y;
- 3) X must have intended to make common cause with the person or persons committing the assault;
- 4) X must have manifested his sharing of a common purpose by himself performing some act of association with the conduct of others;
- 5) X must have intended to kill Y

### THEME 2: JOINING-IN (LATE-COMER)

**LO6: Define a "joiner in" (late-comer) and apply the definition to a factual scenario in S v Motaung**

X, acting either on his own or together with others in a *common purpose*, has already wounded Y lethally.

#### THEREAFTER

### THEME 2: JOINING-IN (LATE-COMER) (cont)

~ While Y is still alive, Z, who has not previously (expressly or tacitly) agreed with X or his associates to kill Y, arrives at the scene & inflicts an injury on Y, which blow does not hasten his death;

***Y dies from the wound inflicted by X***

~ The person in Z's position is referred to as **"joiner-in"**

### THEME 3: ACCOMPLICES

**LO7: Define an accomplice with reference to case law**

A person is guilty of a crime as an accomplice if he, **unlawfully & intentionally** engages in conduct whereby he furthers the commission of a crime by somebody else.

~ By furthers is meant, any conduct whereby a person **facilitates, assists/emcourages** the commission of a crime, gives advice concerning its commission or makes it possible for another to commit it.

**REQUIREMENTS FOR LIABILITY AS AN ACCOMPLICE**

- 1) Accessory nature of liability
- 2) Act/Omission which furthers the crime
- 3) Unlawfulness
- 4) Intention

**IMPOSSIBILITY OF BEING AN ACCOMPLICE TO MURDER**

### THEME 3: ACCOMPLICES (cont)

~ For a person to be an accomplice to murder, he would intentionally have to further somebody else's commission of the crime, without his own conduct qualifying as a co-cause of the death.

~ If his conduct is a co-cause of the death - **he is a co-perpetrator**

~ It is impossible for somebody to be an accomplice to murder

~ One cannot further Y's death without casually furthering it.

#### PUNISHMENT

***The same punishment may be imposed on an accomplice as on the perpetrator***

*This doesn't mean the court may not in certain circumstances impose a heavier or lighter sentence on an accomplice than on the perpetrator*

The extent to which the accomplice furthered the commission of the crime plays an important role in determining the extent of the punishment.

### THEME 4: ACCESSORIES AFTER THE FACT

**LO9: Examine this category of participation in the commission of a crime with reference to the need for its continued existence in our criminal law**

#### DEFINITION

### THEME 4: ACCESSORIES AFTER THE FACT (cont)

A person is an accessory after the fact to the commission of a crime if, after the completion of a crime, he **unlawfully & intentionally** engages in conduct intended to enable the perpetrator of, or accomplice in, the crime to evade liability for his crime, or to facilitate such a person's evasion of liability.

#### ASSISTING THE PERPETRATOR TO EVADE LIABILITY

~ An accessory after the fact protects either the **co-perpetrator or accomplice**

~ X must commit some act whereby he enables a person who has committed a crime to evade liability

**THUS**, X does not commit the crime if he is a witness to the commission of a crime to which he is not a party, and simply quietly walks away.

~ The position is different if X is a policeman, an omission by him to report the commission of a crime amounts to being accessory after the fact.

#### INTENTION

- 1) **The Accessory after the fact** must render his assistance intentionally
- 2) He must know that the person he is helping committed the crime
- 3) He must intend to enable the perpetrator of or accomplice in the offence to evade liability for his offence, or to facilitate such a person's evasion of liability.

## THEME 4: ACCESSORIES AFTER THE FACT (cont)

4) *Dolus Eventualis* may suffice

5) One is capable of being an accessory after the fact in respect of a crime requiring *negligence*

## ACCESSORY CHARACTER OF LIABILITY

~ There can only be an accessory after the fact if somebody else has committed the crime as a perpetrator.

~ One cannot be an accessory after the fact for a crime committed by oneself.

~ If the person who helps the perpetrator after the commission of the offence agrees with him before its commission to assist him *thereafter*, the picture changes completely.

## PUNISHMENT

~ Section 257 of Criminal Procedure Act provides that, the punishment of an accessory after the fact may not exceed the punishment which may be imposed in respect of the crime committed by the perpetrator.

~ The Accessory After the Fact did not participate in the actual crime, he is usually sentenced more leniently than the perpetrator.

## THE SAFATSA JUDGEMNT

### THE FACTS

~ A crowd of about 100 people attacked Y, who was in his house

~ They pelted the house with stones, hurling petrol bombs through windows

## THE SAFATSA JUDGEMNT (cont)

~ Catching him as he was fleeing from his burning house, stoning him, pouring petrol over him and setting him alight

~ The appellants (6) were part of the crowd

## COURT'S FINDING

Their conduct consisted of acts such as grabbing hold of Y

- wrestling with him, throwing stones at him, exhorting the crowd to kill, forming part of the crowd which attacked him, making petrol bombs and setting Y's house alight

## UNANIMOUS JUDGEMENT

~ The court confirmed the convictions of the six accused who were convicted of murder

~ The court based its conviction on the *doctrine of common purpose*

~ The court found that they all had the *common purpose* to kill Y