

**BEFORE THE SUPREME COURT CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**CO-PROSECUTORS' APPEAL AGAINST THE  
JUDGMENT OF THE TRIAL CHAMBER IN CASE 002/01**

**TABLE OF AUTHORITIES**

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*Note: All authorities are excerpts unless otherwise indicated by an asterisk (\*)*

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STATE	LEGISLATION AND CASES (word version of relevant parts of Authorities referred above 75 to 215)
AUSTRALIA	<p><b>LEGISLATION ('Code States' – States of the Commonwealth of Australia that have codified their criminal law)</b></p> <p><b>Crime Code Act 1899 (Queensland), Section 8</b> <i>Offences committed in prosecution of common purpose</i> 'When 2 or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a <u>probable consequence</u> of the prosecution of such purpose, each of them is deemed to have committed the offence.' NOTE: Identical wording is present within section 8 of the Criminal Code Act 1902 (Western Australia) and section 4 of the Criminal Code Act 1924 (Tasmania).</p> <p><b>Crime Code Act 1899 (Queensland), Section 302(2)</b> <i>Definition of murder</i> 'Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say... (2) If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life; is guilty of murder...In the second case it is immaterial that the offender did not intend to hurt any person.' NOTE: Identical wording is present within section 279 of the Criminal Code Act Compilation Act 1913 (Western Australia). <i>See also:</i> Criminal Code Act 1924 (Tasmania), Section 157(1)(c).</p> <p><b>CASE LAW: 'COMMON LAW STATES': (States of the Commonwealth of Australia that maintain a common law approach): R v. Vandine [1970] 1 NSW 252</b> On the facts of that case, the appellant had agreed with S and M to rob a messenger. During the course of that robbery, the messenger was killed when struck by M with an iron bar which, within the appellant's knowledge, M brought to the scene of the crime. The appellant was to be a principal, and was thereby convicted of murder. Chief Justice Herron stated that: 'It seems to me to have been a matter for a common-sense jury to decide whether or not a wounding of the victim with the bar was a <u>consequence of the conspiracy</u> to rob. It seems to me that there was evidence fit for the jury to consider that the appellant knew that McCoy had the bar and must have known that it was intended to be used as a natural consequence if the occasion presented itself to McCoy as necessary to affect their purpose'. <i>See also:</i> R v. <i>Surrige, Surrige and Harris</i> (1942) 42 SR (NSW) 278.</p> <p><b>Johns v. R (1980) 143 CLR 108</b> NOTE: Post-1975 case that considered the pre-1975 cases of R v <i>Vandine</i>. Johns, the accused, had participated in a common plan, with two other men, to rob Morris. Pursuant to the common plan, Johns had driven one of the men, who he had known to be carrying a loaded gun, to the agreed drop-off location. Johns waited in the car whilst the other men carried out the robbery, during the course of which Morris was shot. Johns was convicted of murder by the Supreme Court of New South Wales, and his appeal to the High Court was dismissed. In rebutting the argument that 'the participants in a common design are only responsible for the probable, as distinct from the possible, consequences of execution of the common purpose', the High Court held that the <u>scope of the common purpose did extend to the possible consequences of the criminal venture</u>, but, accepting the test was a subjective one, held that the possible consequences which could be taken into account were those which were within the contemplation of the parties to the understanding or arrangement. In reaching such a conclusion the court stated that 'the recent decisions in England and New South Wales are against him (the appellant)', referring also to a number of authorities in support of the JCE III doctrine.</p> <p><b>'CODE STATES': Brennan v. The King (1936) 55 CLR 253</b> The accused, along with three other men, had 'arranged to break and enter into a jeweller's shop, steal jewellery therein, overpower the</p>

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	<p>caretaker, Whitfield [the deceased], if he resisted, gag him and tie him up'. The accused, whilst a party to the arrangement (i.e. to the JCE), was only to keep watch outside the shop, 'in order to prevent surprise or to be ready to give assistance, whilst the other men were in the shop.' Upon facing resistance from the caretaker, the other two men attempted to gag him and, during the course of the struggle, the caretaker was killed. The accused was found guilty of manslaughter. Starke J (at 260-1) interpreted 'probable consequence' within section 8 of the Criminal Code Act 1913 to mean that which 'a person of average competence and knowledge might be <u>expected to foresee</u> as likely to follow upon the particular act; though it may be that the particular consequence is not intended or foreseen by the actor'. In his consideration of section 8, Justice Starke stated further that: 'The expression "offence of such a nature that its commission was a probable consequence of the prosecution of such purpose" fixes on the purpose which there is a common intention to prosecute. It then takes the nature of the offence actually committed. It makes guilty complicity in that offence depend upon the connection between the prosecution of the purpose and the nature of the offence. The required connection is that the nature of the offence must be such that its commission is a probable consequence of the prosecution of the purpose.'</p> <p><i>Stuart v. The Queen</i> (1974) 4 ALR 545 F had taken two drums of petrol into a nightclub and applied a match to them, thereby causing the death of 15 persons. Whilst the accused was not present at the club when the fire was lit, it was determined that F's action had been 'in execution of a plan which S had formed and to which F had become a party, having as its object the extortion of protection money from the owners [of the night club]'. As the Court emphasised, '[i]t was no part of the plan that murder should be committed'. The High Court interpreted the meaning and effect of both section 8 and section 302(2) of the Criminal Code (Qld). In relation to section 8, Justice Gibbs stated that '[t]he question posed by [section 8] is whether in fact the nature of the offence was such that its commission was a probable consequence of the prosecution of the common unlawful purpose and not whether the accused was aware that its commission was a probable consequence. This was recognized by all the members of this court in <i>Brennan v R.</i>' Further, in relation to section 8, Justice Gibbs held that '[t]he words of s 8 had the effect that if F and S formed a common intention to prosecute an unlawful purpose in conjunction with one another, and if in the prosecution of that purpose F committed the offence of murder, and if that offence was of such a nature that its commission was a probable consequence of the prosecution of such purpose, then S was deemed to have committed murder.' As to the joint application of sections 302(2) and 8, Justice Gibbs concluded that '[t]he two sections are not in conflict and have the combined effect that when two persons form a common intention to prosecute an unlawful purpose, and in the prosecution of that purpose one does an act which is likely to endanger human life, and in fact causes death, and the nature of that crime was such that its commission was a <u>probable consequence</u> of the prosecution of the purpose, the other is deemed to have committed the offence of murder.'</p> <p><i>R v. Solomon</i> [1959] Qd R 123 (considered by the High Court in <i>Stuart v The Queen</i> [above]) Justice Philip (at 129) stated that 'section [s 8] extends the criminal responsibility of persons who have made a concert to commit an offence. They are responsible not only for the concerted — the willed — offence, but also for such offences — but only such offences — as are objectively the <u>probable consequence of the prosecution of the concert.</u>'</p>
AUSTRIA	<b>LEGISLATION: Austrian Penal Act 1852 and 1945 (as amended to 1965), Section 1 <i>Evil intent</i></b> 'Evil intent is required for any felony. However, evil intent obtains not only when before or

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	<p>at the time of the harmful act or omission the felon deliberated and decided on the very evil which is the consequence of the felony, but also when for a different evil purpose an act is committed or omitted which commonly causes, or at least can easily cause, the harm which occurred.’</p> <p><b>Section 126 [Rape] Punishment</b> [Aggravating impact of unintended criminal results – responsibility for crimes beyond the scope of the original intention/plan] ‘The penalty for rape is severe imprisonment of between five and ten years. If the violence resulted in a serious harm to the victim with respect to her health or even her life, then the penalty shall be extended to a period of from ten to twenty years. If the felony caused the death of the victim, then there shall be severe imprisonment for life.’</p> <p><b>Section 195 [Robbery] Punishment</b> <i>Criminal responsibility for consequences beyond the scope of the original plan</i> ‘If in the course of the robbery someone was wounded or harmed so that he suffered a severe bodily injury (section 152) as a result or if someone was put into a state of distress by continuous mishandling or dangerous threatening, then everyone who participated therein shall be punished by life-long severe imprisonment.’</p>
BANGLADESH	<p><b>LEGISLATION: Penal Code 1860, Section 34</b> <i>Acts done by several persons in furtherance of common intention</i> ‘When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.’</p> <p><b>Section 149</b> <i>Every member of unlawful assembly guilty of offence committed in prosecution of common object</i> ‘If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.’</p> <p><b>Section 111</b> <i>Liability of abettor when one act abetted and different act done</i> ‘When an act is abetted and <u>a different act is done</u>, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it: Provided the act done was a <u>probable consequence</u> of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment’ <i>Illustration (c)</i> ‘A instigates B and C to break into an inhabited house at midnight for the purpose of robbery and provides them with arms for that purpose, B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the <u>probable consequence</u> of the abetment. A is liable to the punishment provided for murder.’</p>
BERMUDA	<p><b>LEGISLATION: Criminal Code Act 1970, Section 28</b> <i>Offences committed in prosecution of common purpose</i> ‘When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a <u>probable consequence</u> of the prosecution of such purpose, then each of such persons is deemed to have committed the offence.’</p>

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BOTSWANA	<p><b>LEGISLATION: Penal Code 1964, Section 22</b> <i>Offences committed by joint offenders in prosecution of common purpose</i> ‘When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and in the prosecution of such purpose an offence is committed of such a nature that its commission was a <u>probable consequence</u> of the prosecution of such purpose, each of them is deemed to have committed the offence.’</p> <p><b>Section 23</b> <i>Counselling another to commit an offence</i> (1) ‘When a person counsels another to commit an offence, and an offence is actually committed after such counsel, it is immaterial whether the offence actually committed is the same as that counselled or a different one, provided in either case that the facts constituting the offence actually committed are a <u>probable consequence</u> of carrying out the counsel. (2) The person who gave counsel is deemed to have counselled the other person to commit the offence actually committed by him.’</p>
CAMBODIA	<p><b>LEGISLATION: Criminal Code 1929 and Criminal Code 1956, Article 145</b> There is a plurality of authors when it is established that at least two persons agreed to commit an offence, either as co-authors or as accomplices by aid and abetting.</p> <p><b>Article 231</b> If one or several crimes mentioned by articles 204, 222 and 225* would have been perpetrated or solely attempted by a band, death penalty will be applied to all the participants of the band and to those who have been caught on the spot of the seditious meeting, without distinction, will be punished by the same sentences, although non having been caught on the spot, whoever would have led the sedition or would have held any position within the band or any post of command.</p> <p>*<b>Article 225</b> An attack whose purpose will be either to incite civil war by arming or paying people to arm themselves against each other, or to bring devastation, massacre and looting, in one or in many communes, shall be punishable by death.</p> <p><b>Article 505</b> Intent to cause death shall be presumed when a lethal weapon is used to commit the assault. It may also be inferred, inter alia, from the sheer violence of the assault, the number of wounds inflicted or the vulnerability of the part of the victim's body that is assaulted.</p>
CANADA	<p><b>LEGISLATION: Criminal Code 1893, Section 61(2)</b> ‘If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by anyone of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been known to be a <u>probable consequence</u> of the prosecution of such common purpose.’</p> <p><b>CASE LAW: R v. Silverstone [1931] O.R. 50</b> The accused was involved in a gang fight in which someone was killed. It was unclear who struck the fatal blow. The fight was held to be the result of a common plan. The court held that the fighters, ‘formed a common intention to prosecute an unlawful purpose, and to assist each other therein,’ and if an offence were committed by one of them in the prosecution of such common purpose, and the commission of such offence was, or ought to have been known to be a <u>probable consequence</u> of the prosecution of such common purpose, the prisoner might be found guilty as if he had struck the blow. <i>See also: R v LeBlanc</i></p>

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	<p>(1948) 92 C.C.C.47.</p> <p><i>Cathro v. The Queen</i> [1956] SCR 101 The appellant and another formed a common purpose to rob a storekeeper with as much force as was required to overcome his resistance. During the robbery the storekeeper was restrained and suffocated. Both men were charged with murder. The court held that if the two had formed a common intention to rob the storekeeper and while assisting each other in that robbery the other murdered the storekeeper, ‘the appellant would be a party to the offence of murder if the commission thereof was, or ought to have been known by him to be a <u>probable consequence</u> of the prosecution of such robbery.’ See also: <i>R v Eli Guay &amp; Christina Guay</i> [1957] OR 120-139.</p>
EGYPT	<p><b>LEGISLATION: Penal Code 1937, Article 43</b> ‘A person who joins in committing a crime shall receive its punishment, even if it is not the one he premeditated to commit, once the crime that is actually committed has been a potential result of instigation, agreement, or the assistance taking place.’</p>
ETHIOPIA	<p><b>LEGISLATION: Penal Code 1957, Section 35(3) Collective Offences</b> ‘When the person who committed the offence went beyond what was intended by the instigator the latter shall be liable to punishment only for the offence he intended or could foresee.’</p>
FIJI	<p><b>LEGISLATION: Penal Code 1970, Section 22 Offences committed by joint offenders in prosecution of common purpose</b> ‘When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a <u>probable consequence</u> of the prosecution of such purpose, each of them is deemed to have committed the offence.’</p>
FRANCE	<p><b>Legislation: Penal Code 1810, Article 313</b> ‘If the crimes and delicts, provided for in the present and preceding sections, have been committed in a seditious assembly, with rebellion, or pillage, they are imputable to the chiefs, authors, instigators, and inciters of such assembly, rebellion, or pillage; who shall be punished as guilty of such crimes or delicts, and condemned to the same penalties as are awarded against those who have personally committed them.’</p> <p><b>Article 97:</b> ‘In the cases where one or more of the crimes mentioned in articles 86, 87, and 91, shall have been effected or only attempted by a band, the penalty of death, with confiscation of property, shall be inflicted, without distinction of degrees, on all the individuals making a part of the band, and who shall have been seized upon the spot of the seditious assembly. Whoever shall have directed the sedition, or shall have exercised any function or command in the band, shall be punished with the same penalties, though he has not been seized upon the spot.’</p> <p><b>Article 265:</b> ‘Every association of malefactors against persons or property, is a crime against the public peace.’</p> <p><b>Article 266:</b> ‘This crime is committed by the mere fact of the organization of bands, of correspondence between such bands, or their chiefs or commanders, or of making agreements to render any account, or make any distribution or division of the profits of delinquency.’</p>
GERMANY	<p><b>LEGISLATION: Criminal Code 1871, Article 82</b> ‘In the case of a joint criminal enterprise</p>

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	<p>aiming to treason, all acts in the furtherance of the common plan must be taken into consideration.’</p> <p><b>Decision of the Federal Court of Justice of Germany, BGH 17.03 (1967) Az.: 4StR 33/67</b> The court held that, ‘[a]s the defendants agreed on their common plan in a fully responsible state, they will be considered responsible for all crimes done in the <u>natural furtherance of this plan</u> due to the actio libera in causa principle.’</p> <p><b>Decision of the Federal Court of Justice of Germany, BGH 11.05 (1971) Az.:VI ZR 211/69</b> Involved a scenario where youths were throwing rocks at each other. The court held that all the participants were liable for the injury that one of them received even if that injury had not been directly intended. Such a finding was premised on the fact that it was <u>foreseeable</u> and the risk of such injuries had been taken.</p> <p><i>See also “Section C: JCE III liability was firmly established in customary international law after the Second World War” in Appeal Brief.</i></p>
GHANA	<p><b>LEGISLATION: Penal Code 1960, Section 21</b> <i>Cases where one crime is abetted and a different crime is committed (1)</i> ‘Where a person abets a particular crime, or abets a crime against or in respect of a particular person or thing and the person abetted actually commits a different crime, or commits the crime against or in respect of a different person or thing, or in a manner different from that which was intended by the abettor, the following provisions shall have effect - (a) if it appears that the crime actually committed was not a <u>probable consequence</u> of the endeavour to commit, nor was substantially the same as the crime which the abettor intended to abet, nor was within the scope of the abetment, the abettor shall be punishable for his abetment of the crime which he intended to abet in the manner provided by this Chapter with respect to the abetment of crimes which are not actually committed; and (b) in any other case, the abettor shall be deemed to have abetted the crime which was actually committed, and shall be liable to punishment accordingly. (2) If a person abets a riot or unlawful assembly with the knowledge that unlawful violence is intended or is likely to be used, he is guilty of abetting violence of any kind or degree which is committed by any other person in executing the purposes of the riot or assembly, although he did not expressly intend to abet violence of that kind or degree.’ <b>Illustration - Subsection (2)</b> <i>Persons assemble together for the purpose of breaking open a prison and releasing a prisoner by force. Some of them are armed</i> ‘If murder is committed by one of these in breaking open the prison, all persons, whether armed or not, who took part in or otherwise abetted the breaking open the prison, are guilty of abetting murder, if they knew that arms were carried and were intended or likely to be used.’</p>
GREECE	<p><b>LEGISLATION: Penal Code 1950, Article 27 (Intent)</b> ‘(1)...who wilfully conducts her/himself so as to give rise to an offense, the statutory defined elements of a crime, or one who <b>by</b> her/his conduct shows their approval of them, acts intentionally. (2) If a statute requires knowledge of a certain particular as an element, conditional intent shall not suffice; if the law requires that the act be committed for the purpose of causing a certain harm, the perpetrator must have intended to cause that harm.’</p> <p><b>Article 45 (Co-principals)</b> ‘If several persons jointly commit an offense, each one shall be punished as a principal.’</p> <p><b>Article 189(1) (Disturbance of the peace)</b> ‘One who participates in the public assembly of a crowd which by collective force commits acts of violence upon persons or property or unlawfully enters</p>



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	<p>houses, buildings, or other immovable property of others shall be punished by imprisonment for not more than two years.’</p> <p><b>LEGAL SCHOLARSHIP: I. Anagnostopoulos &amp; K. Magliveras, ‘Criminal Law in Greece’ in F. Verbruggen &amp; V. Franssen (eds.) International Encyclopaedia of Laws, (The Hague: Kluwer Law International 2000), para. 87.</b> Found that Article 27(1) recognised three types of intent (<i>dolus</i>): 1. Direct intent: the principal intends the harm caused by her/his illegal behaviour; 2. Indirect intent: the principal intends another form of harm, but recognizes the criminal act as a <u>necessary consequence</u> of her/his act, but nevertheless accepts it; and 3. Indirect intent: the principal is aware of the <u>probable materialization</u> of constitutive elements of a crime as a result of her/his action, but nevertheless accepts it.</p>
INDIA	<p><b>LEGISLATION: Penal Code 1860, Section 34</b> <i>Acts done by several persons in furtherance of common intention</i> ‘When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.’</p> <p><b>Section 149</b> <i>Every member of unlawful assembly guilty of offence committed in prosecution of common object</i> ‘If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.’</p> <p><b>CASE LAW: Nanak Chand v The State Of Punjab (1955)</b> The court stated that, ‘[e]ven if the offence committed was not in direct prosecution of the common object of the assembly, it would yet fall under s. 149 if it could be shown that the offence was such as the members knew was likely to be committed. The expression ‘know’ does not mean a mere possibility, such as might or might not happen.’ The court noted that, ‘if the offence committed by that person is in prosecution of the common object of the unlawful assembly or such as the members of that assembly <u>knew to be likely to be committed</u> in prosecution of the common object, every member of the unlawful assembly would be guilty’. <i>See also: Queen v Sabid Ali (1873) 20 WR 5 Cr; Chikkarange Gowde v State of Mysore AIR (1956) SC 731.</i></p>
IRAQ	<p><b>LEGISLATION: Penal Code 111 of 1969, Article 53</b> ‘A party to an offence, whether as principal or accessory, is only punishable by the penalty for the offence that has actually been committed even though he did not intend to commit the offence, as long as the offence that is committed is the <u>probable consequence</u> of his participation in it.’</p>
ISRAEL	<p><b>LEGISLATION: Mandatory Criminal Code Ordinance 1936, Section 24</b> ‘When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose any offence or offences is or are committed of such a nature that the commission is a <u>probable consequence</u> of the prosecution of such purpose, each of such persons being present at the commission of any of such offences is deemed to have committed the offence or offences committed.’</p> <p><b>CASE LAW: Yossef Dahan &amp; David Ben Haroush v. State of Israel (1969) 23(i) PD, 197</b> The two defendants had undertaken to commit a bank robbery. During the robbery Haroush accidentally fired his gun and, under the pressure of the situation, the defendants decided to</p>

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	<p>leave. While he was withdrawing, but after Haroush had already exited, Dahan shot and killed the bank manager. The Supreme Court found both offenders guilty of murder on the basis of section 24. See also: <i>Goldstein v. Attorney General</i> [1954] PD 10, 505 (citing with approval <i>Pinkerton v. US</i> 328 US [1946] 460) and referring to the principle of ‘solidarity of responsibility of co-conspirators’</p>
ITALY	<p><b>LEGISLATION: Penal Code 1930, Article 110</b> ‘When more than one person participate in the same crime, each of them is subject to the punishment [prescribed by the law for that crime], under the conditions specified in the following articles.’</p> <p><b>Article 116</b> If the crime that was committed is different from the one intended by one of the co-perpetrators, this co-perpetrator will be responsible for it if the crime is a consequence of his act or omission. If the crime committed is more serious than the one intended, the sentence for the person who intended the lesser crime will be diminished.</p>
JAPAN	<p><b>LEGISLATION: Penal Code 1907, Article 60</b> ‘Two or more persons who commit a crime in joint action are all <i>principals</i>.’</p> <p><b>Article 181(1)</b> A person who commits a crime proscribed under Article 176 [forcible indecency], paragraph 1 of Article 178 [quasi forcible indecency] or an attempt of the above-mentioned crimes and <u>thereby causes the death or injury</u> of another shall be punished by imprisonment with work for life or for a definite term of not less than 3 years. (2) A person who commits a crime proscribed under Article 177 [rape], paragraph 2 of Article 178 [quasi rape] or an attempt of the above-mentioned crimes and <u>thereby causes the death or injury</u> of another shall be punished by imprisonment with work for life or for a definite term of not less than 5 years.(3) A person who commits a crime proscribed for in Article 178(2) [rape] or an attempt of the above-mentioned crimes and <u>thereby causes the death or injury</u> of another shall be punished by imprisonment with work for life or for a definite term of not less than 6 years.</p> <p><b>Article 240</b> ‘When a person who has committed the crime of robbery causes another to suffer injury at the scene of the robbery, the person shall be punished by imprisonment with work for life or for a definite term of not less than 6 years, and in the case of causing death, the death penalty or imprisonment with work for life shall be imposed.’</p> <p><b>Article 241</b> ‘When a person committing the crime of robbery rapes a female, imprisonment with work for life or for a definite term of not less than 7 years shall be imposed, and <b>in the case of causing death thereby</b>, the death penalty or imprisonment for life with work shall be imposed.’</p> <p><b>Article 178(2)</b> ‘When two or more persons <b>jointly commit</b> the crimes proscribed under Article 177* [rape] or paragraph 2 of Article 178* [quasi-rape], they shall be punished by imprisonment with work for a definite term of not less than 4 years.’</p> <p><b>Article 111</b> ‘(1) When, as a result of commission of the crime proscribed under paragraph 2 of Article 109 or paragraph 2 of the preceding Article, a fire spreads to and burns any object provided in Article 108 or paragraph 1 of Article 109, imprisonment with work for not less than 3 months but not more than 10 years shall be imposed.</p> <p><b>CASE LAW: Judgment of the Supreme Court, 470 Kei-Ji-Han-Rei-Shu 10 (22 October 1931)</b> A instigates B to inflict a bodily injury upon C, and that injury accidentally results in C’s death.</p>

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	<p>The Japanese Supreme Court held that A is guilty of instigating the crime of <b>aggravated</b> bodily injury (i.e. the excess offence). <i>See also: Judgment of the Supreme Court, 12 Keishu 1718 (Sup. Ct. 28 May 1958) ('the Nerima case')</i>.</p>
KENYA	<p><b>LEGISLATION: Penal Code 1930, Section 21</b> <i>Joint offenders in prosecution of common purpose</i> ‘When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a <u>probable consequence</u> of the prosecution of such purpose, each of them is deemed to have committed the offence.’</p> <p><b>Section 22 (1)</b> <i>Counselling another to commit offence</i> ‘When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one...provided in either case that the facts constituting the offence actually committed are a <u>probable consequence</u> of carrying out the counsel...the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by him.’</p> <p><b>CASE LAW: Solomon Mungai &amp; Ors v. Republic [1965] EA 363</b> The court held that, ‘if the evidence supports the inference that violence of any degree has been used in prosecuting a certain design incidentally resulting in death, and if the offence charged was a <u>probable consequence</u> of the use of that violence, then all sharing in the design are murderers.</p> <p><b>Dickson Mwangi Munene &amp; Alexander Chepkonga Francis v. R (2011) eKLR</b> (<i>Interprets pre 1975 law</i>) The court held that it is evident from the above definition that in order to secure a conviction on the basis of common intention, the prosecution must prove that the accused had (a) a criminal intention to commit the offence charged jointly with others, (b) the act committed by one or more of the perpetrators in respect of which it is sought to hold an accused guilty, even though it is outside the common design, was a <u>natural and foreseeable consequence of effecting that common purpose</u>, and that (c) the accused was aware of this when he or she agreed to participate in that joint criminal act.’</p>
MALAWI	<p><b>LEGISLATION Penal Code 1930, Section 22</b> <i>Offences committed by joint offenders in prosecution of common purpose</i> ‘When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a <u>probable consequence</u> of the prosecution of such purpose, each of them is deemed to have committed the offence.’</p>
MALAYSIA	<p><b>LEGISLATION: Penal Code 1936, Article 34</b> <i>Each of several persons liable for an act done by all, in like manner as if done by him alone</i> ‘When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.’ <i>See also: Article 35.</i></p> <p><b>CASE LAW: NOTE: Whilst the cited case law is Singaporean, Singapore remained part of Malaysia until 1965, remaining part of the Federal Court system of Malaysia until 1969. Public Prosecutor v. Neoh Bean Chye [1975] 1 MLJ 3</b> The Court of Criminal Appeal of Singapore held that it is only the intention of the doer of the crime that is in question and, when that is established, the whole group can be held liable, constructively or vicariously, for that crime. It is not necessary for other members of the group to possess the mens rea for the offence that they are</p>

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	<p>actually charged with.</p> <p><b>Mimi Wong &amp; Anor v. Public Prosecutor</b> [1972] 2 MLJ The Court stated that, ‘[u]nder section 34 of the Malaysian code, where the intention of the actual perpetrator is not identical to the common intention, so long as it is consistent with the carrying out of the common intention, the group is liable for the acts of the actual perpetrator.’</p>
NEW ZEALAND	<p><b>LEGISLATION: Crimes Act 1961, Section 66</b> <i>Parties to offences</i> (2) Where 2 or more persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of the common purpose if the commission of that offence was known to be a <u>probable consequence</u> of the prosecution of the common purpose.’</p> <p><b>CASE LAW: R v. Gush</b> [1980] 2 NZLR 92 (<i>Interprets pre-1975 law</i>) The Court of Appeal considered the meaning of ‘<u>probable consequence</u>’ in the context of section 66(2). They held that this wording referred to ‘an event that could well happen.’ [94-96].</p>
NIGERIA	<p><b>LEGISLATION: Criminal Code Act 1916, Section 8</b> <i>Offences committed in prosecution of common purpose</i> ‘When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a <u>probable consequence</u> of the prosecution of such purpose, each of them is deemed to have committed the offence’.</p> <p><b>CASE LAW: Digbehin &amp; Ors v. R</b> (1963) All N.L.R. 388 The fact that the first appellant knew that the second appellant bore firearms was enough for the common purpose to make him equally guilty of murder. The court stated that ‘[w]here a number of persons join in an unlawful assault it is a question of fact in every case whether the death of the person assaulted is a <u>probable consequence</u> of that particular assault and, if a weapon is used by one of the persons, the test to be applied is whether his use of the weapon was a <u>probable consequence</u> of their joint purpose.’ [392]. <i>See also: Garba v. Hadejia Native Authority</i> (1961) NRNLR 44.</p>
PAKISTAN	<p><b>LEGISLATION: Penal Code 1860, Section 110</b> <i>Punishment of abetment if person abetted does act with different intention from that of abettor</i> ‘Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with intention or knowledge of the abettor and with no other.</p> <p><b>Section 111</b> <i>Liability of abettor when one act abetted and different act done</i> ‘When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly, abetted it: Proviso: Provided the act done was a <u>probable consequence</u> of the abetment; and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment. <b>Illustration</b> ‘A instigates B and C to break into an inhabited house at midnight for the purpose of robbery and provides them with arms for that purpose, B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the <u>probable consequence</u> of the abetment. A is liable to the punishment provided for murder.’</p>
PAPUA NEW	<b>LEGISLATION: Criminal Code Act 1974, Section 8</b> <i>Offences committed in prosecution of</i>

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GUINEA	<p><i>common purpose</i> ‘Where–(a) two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another; and (b) in the prosecution of such purpose an offence is committed of such a nature that its commission was a <u>probable consequence</u> of the prosecution of the purpose, each of them shall be deemed to have committed the offence.’</p>
PHILIPPINES	<p><b>CASE LAW: <i>The People of the Philippines v. Carbonel</i> GR No. L-24177, 15 March 1926</b> The Supreme Court stated that conspiracy shall be demonstrated where two persons pursue the same object, often by the same means, and complete their acts with a view to attaining the commonly pursued object. The court found that it is not essential that each conspirator take part in every act, nor that he shall know the exact part to be performed by the other conspirators. Conspiracy implies concert of design and not participation in every detail of execution. In the same vein, the court noted that it is not necessary that the plan cover in detail the various means by which it is to be executed. Rather, it is sufficient that there is a general plan to accomplish the result, the execution of which will be sought by such means as may from time to time be found expedient. By the same token, it is not material that the plan which was carried out differs widely from the original plan. The court also held that direct proof of conspiracy is not essential, stating that ‘it need not be shown that the parties actually came together and agreed in express terms to enter in and pursue a common design’. Therefore the consent of the conspirators to the plan can be, and usually will be, inferred from the facts and circumstances of the case. In order to prove a conspiracy all that needs to be demonstrated is that: Two or more people pursued the commission of the same unlawful object; each completed a part; and their acts indicate a closeness of personal association and a concurrence of sentiment. In this manner, even in the absence of a proven meeting at which the conspirators determine the means of commission, a conspiracy may be inferred. Therefore, where one is able to show a unity of purpose amongst the conspirators it is not necessary to demonstrate that the offences with which one conspirator is charged were specifically contemplated or included in the original design. By virtue of this, an accused might be held liable for offences not specifically contemplated, so long as such offences were within the general scope of the conspiracy. <i>See also: The People of the Philippines v. Amadeo Peralta</i> GR No. L-19069, 29 October 1968; <i>The People of the Philippines v Acaja</i> GR No L-7235, 29 April 1955, <i>The People of the Philippines v Enriquez</i> 58 Phil. 536 (1933) and <i>The People of the Philippines v del Rosario</i> 40 OG (3d Supp.) 25 (1939); <i>The People of the Philippines v. Santos</i> GR No. L-7315, 27 July 1955; <i>The People of the Philippines v. Pardo</i> 45 OG 2023 (1947) and <i>The People of the Philippines v. Buyco</i> 47 OG (12th Supp.) 11 (1950).</p>
POLAND	<p><b>LEGISLATION: Penal Code of the Polish People's Republic 1932, Article 14 (1) <i>Indirect intention – dolus eventualis</i></b> ‘Not only when the offender wills to commit it, but also when he <u>foresees the possibility of the criminal consequence</u> or the criminality of his action, and assents thereto.’</p> <p><b>Penal Code of the Polish People's Republic 1969 - Article 7 (1) <i>Indirect intention – dolus eventualis</i></b> ‘An offense is intentional when the perpetrator has the intent to commit the prohibited act, that is he wills its commission or <u>foreseeing the possibility</u> of committing it he reconciles himself to do this.’</p> <p><b>Article 16 <i>Joint perpetration</i></b> ‘Not only shall the person who has committed an offense himself or together with another person be liable for perpetration, but also the person who has directed the commission by another person of a prohibited act.’</p>

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	<p><b>CASE LAW: <i>Trial of Hauptsturmführer Amon Leopold Goeth</i></b> The accused was charged with closing down the Tarnow ghetto on 3 September 1943. As a result, an unknown number of people perished at the ghetto, while others died through asphyxiation during transport or were exterminated in other camps, in particular at Auschwitz. Being held guilty of the charge, the accused was held liable for deaths indirectly resulting from his actions, those being deaths for which he <u>lacked both personal contribution and direct intent but which were foreseeable</u> (given his knowledge of transport conditions and the fate of prisoners are the camps).</p>
SEYCHELLES	<p><b>LEGISLATION: Penal Code 1955, Section 23</b> ‘When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such nature that its commission was a <u>probable consequence</u> of the prosecution of such purpose, each of them is deemed to have committed the offence.’</p>
SOUTH AFRICA	<p><b>LEGISLATION: Native Territories’ Penal Code (Act 24 of 1886), Section 78</b> ‘If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been, known to be a <u>probable consequence</u> of the prosecution of such common purpose.’</p> <p><b>CASE LAW: <i>R v. Garnsworthy &amp; Ors 1923 WLD 17</i></b> The accused were found guilty of murder under the common purpose doctrine. Their alleged common unlawful purpose had been to bring activities at a mine to a halt. Eight people died during their attack on the mine. The court stated, ‘[n]ow the law upon this matter is quite clear. Where two or more persons combine in an undertaking for an illegal purpose, each of them is liable for anything done by the other or others of the combination, in the furtherance of their object, if <u>what was done was what they knew or ought to have known</u>, would be a probable result of their endeavouring to achieve their object’ (Dove Wilson JP at 19).</p> <p><b><i>R v. Morela 1947 (3) SA 147 (AD)</i></b> A home owner was shot and killed by one of three intruders who had entered the home with a common purpose of committing theft. The Appellate Division upheld the accused’s conviction of murder despite the State’s inability to prove he had fired the lethal shot. The court held that all of the intruders must have been conscious of the fact that at least one of them was armed with a gun, and that they had <u>foreseen the possibility</u> that it would be used during the robbery and had been reckless as to the possible result.</p> <p><b><i>R v. Sikepe &amp; Ors 1946 AD 1101</i></b> The group had a common purpose of stealing from the deceased. It could not be proved who in the group had strangled the deceased. The murder convictions of all of the accused were upheld on the basis of the common purpose doctrine. The court held that they were all conscious of <u>the possibility that violence could ensue</u> during the commission of the theft and that someone could be killed in the process, and that the accused had been reckless as to the occurrence of this result. <i>See also: R v. Ndhlangisa &amp; Anor 1946 AD 1101; R v. Ncube &amp; Koza 1950 (2) PH H211 (AD); R v. Matsitwane &amp; Anor 1942 AD 213; S v. Nkomo &amp; Anor 1966 (1) SA 831 (AD); R v. Kubuse &amp; Ors 1945 AD 189; S v. Gaillard 1966 (1) PH H74 (AD); S v. Dambalaza &amp; Ors 1964 (2) SA 783 (AD); R v. Ngcobo 1928 AD 372.</i></p>
SOUTH	<p><b>LEGISLATION: Korean Criminal Code 1953, Article 15</b> [<i>Dolus eventualis</i>] ‘Crimes for which punishment becomes more severe due to the results thereof shall not be punishable for more severe</p>

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KOREA	<p>crimes if such results were not foreseeable.’</p> <p><b>Article 30</b> [<i>Joint principal liability</i>] ‘When two or more persons have jointly committed a crime, each of them shall be punished as a principal offender for the crime committed.’</p> <p><b>Article 114(1)</b> [<i>Unitary system of liability</i>] ‘A person who organizes a group whose purpose is to commit a crime, or who joins such a group, shall receive the punishment specified for such crime.’</p> <p><b>Article 116</b> ‘Persons who assemble in large numbers for the purpose of using violence or intimidation or taking destructive action and do not disperse after being ordered to do so three or more times by officials authorized to control such matters, shall be punished by penal servitude or imprisonment for not more than two years or fined not more than ten thousand hwan.’</p> <p><b>Article 263</b> [<i>Simultaneous crimes - Group liability for individual action</i>] ‘Where injury results from one of several instances of independent conduct and it is impossible to determine which person caused the injury, the offenders shall be deemed to be co-principals.’</p> <p><b>CASE LAW:</b> See: <i>Kei-Ji-Han-Rei-Shu</i> 10 (22 October 1931); <i>Judgment of the Supreme Court</i> 98Do30 (Sup. Ct. 27 March 1998).</p>
SOVIET UNION	<p><b>LEGISLATION: Fundamental Principles of the Criminal Legislation of the USSR and the Union Republics 1924, Article 8</b> <i>Indirect intent – dolus eventualis</i> ‘A crime shall be regarded as committed intentionally if the perpetrator was conscious of the socially dangerous character of his action or omission, <u>foresaw its socially dangerous consequences</u> and wished them or consciously permitted them to occur.’</p> <p><b>Russian Soviet Federated Socialist Republic Criminal Code 1960, Article 8</b> <i>Intentional commission of a crime (Indirect intent – dolus eventualis)</i> ‘A crime shall be deemed to be committed intentionally if the person who commits it is conscious of the socially dangerous character of his action or omission to act, foresees its socially dangerous consequences, and desires these consequences or consciously permits them to occur.’</p> <p><b>Article 3 [also see 1958 Basic Principles]</b> <i>The foundation of criminal liability</i> ‘Only persons guilty of committing a crime, that is, those who intentionally or by negligence have committed a socially dangerous act specified by the criminal statute, shall be held responsible and shall incur punishment.’</p> <p><b>Article 9</b> <i>Commission of a crime through negligence</i>, ‘A crime shall be deemed to be committed through negligence if the person who commits it <u>foresees the possibility</u> of the occurrence of the socially dangerous consequences of his actions or omission to act [i.e. awareness] but frivolously counts on their being prevented [i.e. willingly takes the risk], or if he <u>does not foresee the possibility of the occurrence of such consequences although he should and could foresee them.</u>’</p> <p><b>LEGAL SCHOLARSHIP:</b></p> <p><b>Andrey Vyshinsky (Soviet politician, jurist and diplomat; State Prosecutor at Moscow Trials and Nuremberg Trials)</b> <i>Note:</i> Whilst the trials were a product of Stalinist society, those principles of Soviet law expounded by Vyshinsky as state prosecutor must be taken as representative of contemporaneous Russian legal thought. In explaining the Soviet definition of complicity, and as</p>

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	<p>articulated during the 1938 Moscow Trials, Vyshinsky stated that '[t]o establish complicity, we must establish that there is a common line uniting the accomplices in a given crime, that there is a common criminal design... If, say, a gang of robbers will act in such a way that one part of its members will set fire to houses, violate women, murder and so on, in one place, while another part of the gang will do the same in another place, then even if neither the one nor the other knew of the crimes committed separately by any section of the common gang, they will be answerable in full for the total of the crimes.' [Cited in John C. Hogan, "Justice in the Soviet Union: The Trial of Beria and Aides for Treason"(1955) 41 American Bar Association Journal 408 at p. 477]. Later, writing in 1949, Vyshinsky noted that, '[i]n our view, every participant in a criminal group must be held responsible for each specific crime if it flows from the general aim of the group'. This applied even if the conspirators did not know each other. As to the authoritative quality of Trainin's words, one must appreciate the political weight of the book's editor, deputy foreign minister Andrei Vyshinsky. As Kirsten Sellars observed, such political backing ensured that the book was scrutinized as a '<i>de facto</i> official statement' [Kirsten Sellars, "Crimes Against Peace and International Law" (New York: Cambridge University Press, 2013) 55].</p>
SRI LANKA	<p><b>LEGISLATION: Criminal Code, Ordinance No. 2 of 1883, Section 146</b> <i>Every member of an unlawful assembly to be deemed guilty of any offence committed in prosecution of the common object</i> 'If an offence is committed by any member of an unlawful assembly in prosecution of the common object of the assembly, or such as the members of that assembly <u>knew to be likely to be committed in prosecution of that object</u>, every person who, at the time of the committing of that offence, is a member of the same assembly is guilty of that offence.'</p> <p><b>CASE LAW: <i>The King v. Sellathurai</i> (1947) 48 NLR 570:</b> The twelve accused were found guilty of attempted culpable homicide not amounting to murder for their varying levels of participation in a common plan to harm a group of workers. The court held that '[i]n order to make members of an unlawful assembly vicariously liable for the act of any one of them under section 146 of the Penal Code, the act must be one which, upon the evidence, appears to have been done with a view to accomplish the common object attributed to the members of the unlawful assembly.' It was found that the crimes committed were the <u>foreseeable consequence</u> of the assembly's common object.'</p> <p><i>Further Application(s): The King v. Abeywickrema et. Al.</i> (1943) 44 NLR 254, 256; <i>Khan v Ariyadasa</i> (1965) 67 NLR 145 (PC).</p>
TANZANIA	<p><b>LEGISLATION: Penal Code 1945, Section 23</b> 'When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a <u>probable consequence</u> of the prosecution of such purpose, each of them is deemed to have committed the offence.'</p>
THAILAND	<p><b>LEGISLATION: Penal Code 1956, Section 59</b> <i>Criminal liability</i> 'A person shall be criminally liable only when such person commits an act intentionally, except in case of the law provides that such person must be liable when such person commits an act by negligence, or except in case of the law clearly provides that such person must be liable even though such person commits an act unintentionally'.... '[t]o commit an act intentionally is to do an act consciously and at the same time the doer desired or <u>could have foreseen</u> the effect of such doing.'</p> <p><b>Article 86</b> 'If the offence occurred is committed by the offender beyond the scope of the</p>



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	<p>employment, propagation or publication, or in excess of the intention of the supporter, the instigator, the person making the propagation or publication to the general public to commit the offence, or the supporter to commit the offence, as the case may be, shall be criminally liable for the offence only in so far as it is within the scope of the employment, propagation or publication, or within the scope of the intention of the supporter to commit the offence only.’ But, by circumstances, <u>if it may be foreseen that such offences may occur</u> from the employment, propagation or publication, or support, the instigator, the person making the propagation or publication to the general public to commit the offence, or the supporter to commit the offence, as the case may be, shall be criminally liable for the offence that occurred.’ ...the offender shall be criminally liable for higher punishment only when the offender <u>must know or could foresee</u> that such consequence would occur.’</p> <p><b>Section 213</b> ‘Whenever an offence is committed by any member of a secret society or criminal association in prosecution of the common aim of such society or association, every member who was present at the time of the commission of such offence, or who was present at the meeting where the commission of such offence was decided upon, and the chief manager or office-bearer of such society or association, shall be liable to the punishment prescribed for such offence.’</p> <p><b>Section 340</b> ‘Whoever with three persons upwards participates in committing robbery, such persons are said to commit gang-robbery, and shall be punished with imprisonment of ten to fifteen years and fined of twenty thousand to thirty thousand Baht... If the gang-robbery causes death to the other person, the offender shall be punished with death.’</p>
UGANDA	<p><b>LEGISLATION: Penal Code Act 1950, Section 20</b> <i>Joint offenders in prosecution of common purpose</i> ‘When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of that purpose an offence is committed of such a nature that its commission was a <u>probable consequence</u> of the prosecution of that purpose, each of them is deemed to have committed the offence.’</p> <p><b>CASE LAW: R v. Dominiko Omenyi s/o Obuka &amp; Ors (1943) 10 EACA 81</b> Eleven appellants were convicted of murder. The Court stated that ‘[i]t was impossible to say who actually caused the death and it was held that it had to be decided whether the evidence and the actions or words proved against one of them established beyond reasonable doubt that (i) he, with others, formed a common intention to prosecute an unlawful purpose (such intention could, of course, be formed at any time and it is not necessary that there should have been some previous meeting at which they conspired to do the act), (ii) that the offence of murder was a <u>probable consequence</u> of the prosecution of that unlawful purpose, and (iii) that murder was in fact committed in prosecution of that unlawful purpose.’ As such it was held that any one of the accused was a party to a common intention to kill the deceased and thus all were criminally liable for the death.</p> <p><b>Dracaku s/o Afia v. R [1963] EA 363</b> The court held that ‘there was no evidence of any agreement formed by the appellants prior to the attack made by each’, however, ‘that is not necessary if an intention to act in concert can be inferred from their actions’, as was the situation ‘where a number of persons took part in beating a thief.’ In the Court’s view, the Prosecution had to prove the following elements of the offence: a) a criminal intention to commit the offence charged jointly with others, b) the act committed by one or more of the perpetrators in respect of which it is sought to hold an accused guilty, <u>even though it is outside the common design, was a natural and foreseeable consequence of effecting that common purpose</u>, and that c) the accused was aware of</p>

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	this when he or she agreed to participate in that joint criminal act.
UNITED KINGDOM	<p><b>CASE LAW: <i>R v. Swindall &amp; Osborne</i> (1846) 2 Car. &amp; K. 230</b> Two cart drivers (the Accused) had engaged in a race, during which a pedestrian had been killed. It was impossible to determine which of the two drivers had fatally struck the deceased. Both accused, given that they had agreed to the (illegal) race, were held criminally responsible for the death under the doctrine of common purpose. Indirect intention was imputed to the group members by virtue of their intentional, and continued participation in the criminal pursuit. <i>See also: R v Betts and Ridley</i> (1930) 29 Cox CC 259.</p> <p><b><i>R v. Smith</i> (1963) 3 All E.R. 597</b> With three others, the accused participated in an attack on a pub. Beforehand, one participant stated his intention to ‘tear up the joint.’ With such knowledge, the accused joined him in throwing bricks through the glass door of the pub. Another participant carried a knife, later using it to kill the barman who tried to defend himself. The accused was convicted of manslaughter on the basis that the killing was within the scope of the common design to attack the bar and was a <u>foreseeable consequence</u> of such an act. Although the accused argued that he was not a party to the use of the knife, the court reasoned that, ‘It is significant ... that [the accused] knew that Atkinson carried a knife... It must have been clearly within the contemplation of a man like [the accused] who...had left the public house only to get bricks to tear up the joint, that if the barman did his duty to quell the disturbance and picked up the night stick, anyone who knew that he had a knife in his possession, like Atkinson, might use it on the barman, as Atkinson did. By no stretch of imagination, in the opinion of this court, can that be said to be outside the scope of the concerted action in this case.’ The court concluded that ‘anything which is within the ambit of the concerted arrangement is the responsibility of each party who chooses to enter into the criminal purpose.’</p> <p><b><i>R v. Anderson &amp; Morris</i> (1966) 2 QB 110</b> While the two accused were fighting a victim, one stabbed him. The other denied knowledge of the knife. On appeal his manslaughter conviction was quashed. The Court summarized the law of the preceding 130 years by stating that, ‘where two persons embark on a joint enterprise, each is liable for the acts done in pursuance of that joint enterprise, that that includes <u>liability for unusual consequences</u> if they arise from the execution of the agreed joint enterprise but, if one of the adventurers goes beyond what has been tacitly agreed as part of the common enterprise, his co-adventurer is not liable for the consequences of that unauthorised act.</p>
UNITED STATES OF AMERICA	<p><b>LEGISLATION: 1973 Texas Criminal Code, Section 7.02(b)</b> <i>Criminal responsibility for conduct of another</i> ‘If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was <u>one that should have been anticipated as a result of the carrying out of the conspiracy.</u>’</p> <p><b>1963 Minnesota Criminal Code Chapter 753. Article 1, Section 609.05</b> <i>Liability for crimes of another</i> (1) ‘A person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime. (2) A person liable under subdivision 1 is also liable for any other crime committed in pursuance of the intended crime if <u>reasonably foreseeable</u> by the person as a <u>probable</u></p>

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	<p><u>consequence</u> of committing or attempting to commit the crime intended.’</p> <p><b>1955 Wisconsin Criminal Code, Section 939.05(2) Parties to crime</b> ‘A person is concerned in the commission of the crime if the person: (a) Directly commits the crime; or (b) Intentionally aids and abets the commission of it; or (c) Is a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it. Such a party is also concerned in the commission of any other crime which is committed in pursuance of the intended crime and which under the circumstances is a <u>natural and probable consequence</u> of the intended crime.’</p> <p><b>1969 Kansas Criminal Code, Section 21-3205 Liability for crimes of another</b> (1) ‘A person is criminally responsible for a crime committed by another if such person intentionally aids, abets, advises, hires, counsels or procures the other to commit the crime. (2) A person liable under subsection (1) hereof is also liable for any other crime committed in pursuance of the intended crime <u>if reasonably foreseeable</u> by such person as a <u>probable consequence</u> of committing or attempting to commit the crime intended. (3) A person liable under this section may be charged with and convicted of the crime although the person alleged to have directly committed the act constituting the crime lacked criminal or legal capacity or has not been convicted or has been acquitted or has been convicted of some other degree of the crime or of some other crime based on the same act.’</p> <p><b>CASE LAW: <i>Pinkerton v. United States</i> (1946) 328 640</b> The US Supreme Court held that a conspirator is liable for any substantive offenses committed by co-conspirators in the course of, and in furtherance of, the conspiracy, if those offenses are <u>reasonably foreseeable, necessary, or natural, even if not committed by, known to, or intended by the conspirator.</u> [646-648] <i>See also: Park v Huff</i> 506 F.2d 849 (1975) at 855; <i>State v Stein</i>, 70 N.J. 369 (1976); <i>State v Moore</i> 580 S.W.2d 747 (1979) at 752.</p> <p><b><i>United States v. Decker</i> 543 F.2d 1102 (1976)</b> In this case the Court held that vicarious liability in criminal conspiracies should be applied to narcotics distribution so that a conspirator is liable for any remote sale of the drug passing through the conspiracy. The Court noted that the Pinkerton rule is formulated so that ‘a conspirator is accountable only for the acts of others in furtherance of the conspiracy, i.e. those acts which were within the scope of or were a <u>reasonably foreseeable consequence</u> of the unlawful agreement’.</p>
URUGUAY	<p><b>LEGISLATION: Penal Code 1933, Article 63 Liability for offenses other than those agreed</b> ‘If the offense committed was more or equally serious as that agreed, but of a different nature, or complicated by other crimes, the participants who were strangers to that fact will be liable for the offense agreed and committed; and only for that committed without agreement, as could have been so intended, according to the general principles. If the offense committed was less serious than that agreed, they are liable only for the first.’</p> <p><b>Article 65 Crowd participation</b> ‘The principles set out in the case of participation in crimes committed by a mob will be replaced by the following: 1 If the meeting had the objective of committing certain crimes, all who have participated materially in the execution, as well as those who have not participated materially, but have assumed the role of directors, will be liable as authors. 2. If the meeting did not have the objective of committing crimes, and they were then</p>

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	committed, on the impulse of the crowd in uproar, all who participated materially in the execution will be liable as accomplices; and as authors, those who acted as instigators, whether or not they have had material participation in the execution of the criminal acts and are exempt from punishment the other.’
WESTERN SAMOA	<b>LEGISLATION: Crimes Ordinance 1961, Section 2</b> <i>Parties to offences</i> ‘Where 2 or more persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of the common purpose if the commission of that offence was or ought to have been known to be a <u>probable consequence</u> of the prosecution of the common purpose.’
ZAMBIA	<p><b>LEGISLATION: Penal Code 1931, Section 22</b> <i>Offences committed by joint offenders in prosecution of common purpose</i> ‘When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a <u>probable consequence</u> of the prosecution of such purpose, each of them is deemed to have committed the offence.’</p> <p><b>CASE LAW: <i>Mutambo &amp; Ors v. The People</i> [1965] ZR 15</b> As to ‘<u>probable consequence</u>’, the court stated that it is ‘that which a person of average competence and knowledge might be <u>expected to foresee as likely</u> to follow upon the prosecution of the particular purpose although the consequence was not foreseen by the Appellant’. As to ‘common purpose’, the court stated that ‘[i]t is the offence which was actually committed in the course of prosecuting the common purpose which must be a <u>probable consequence</u> of the prosecution of the common purpose.’</p> <p><b><i>Petro &amp; Anor v. The People</i> (1967) ZR 140 (CA)</b> The two appellants were part of a group of a five people who visited a farm. The other three members of the group entered the house and fatally shot a person inside. The intruders then stole property from the premises, of which the two appellants received a share. The Court of Appeal held that once it was accepted that the common purpose which the appellant joined was limited to burglary, no responsibility for what happened when the firearm was used would be imposed upon him: it could not be said that murder was a <u>probable consequence</u> of the limited common purpose which he had joined. Liability under Section 22 was dependent on the <u>foreseeability of the ‘additional’ crime</u>, with no responsibility being imposed for those crimes that were not a ‘<u>probable consequence</u>.’</p> <p><b><i>Sakala v. The People</i> (1987) ZR 23 (SC)</b> (<i>Interprets pre-1975 law</i>) The appellant was convicted of aggravated robbery whilst acting in the company of two other conspirators, after the conspirators attacked a night watchman with an axe during the commission of the robbery. On appeal, the court was told that the conspirators had specifically agreed that the watchman would not be harmed, and that the appellant assumed that there would be no resistance from the night watchman. The court stated that ‘[T]he section clearly contemplates that liability will attach to an adventurer for the criminal acts of his confederates, which will be considered to be his acts also, if what those confederates have done is a <u>probable consequence</u> of the prosecution of the unlawful common design. In this regard, liability will attach for any confederates’ criminal act which is within the scope of the common unlawful purpose and this will be so whether the act was originally contemplated or not. Where the act was not originally contemplated, an adventurer will only be relieved of liability if the criminal act of his confederates falls wholly outside the common purpose’. The court further held that ‘although the appellant may well have been told that no harm would be done to the watchman, he must have realised that at least threats and possibly some force</p>

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	<p>- such as tying up - would have to be used against the watchman if he discovered the intruders'. This 'would have amounted to aggravated robbery and was within the contemplation of the appellant.' Further, '[t]he fact that the watchman was axed contrary to the alleged agreement does not absolve the appellant of guilty intention that some form of aggravated robbery should take place if necessitated by the watchman's possible vigilance.' [25]</p>