

CASES SUMMARY

Criminal Law 2 CRW201-X

Participation Williams 1980 (1) SA 60 (T)	
Facts	While travelling in a train, X1 stabbed Y with a knife. X2, who saw the attack, grabbed Y around the neck and held him while X3 hit him with a broken bottle. After the fatal wound was inflicted, X4 helped to pick up the body and move him away but played a passive role during the previous events. The trial court convicted X1 and X3 of murder and X2 and X4 of being accomplices to murder. X2 and X4 appealed their sentence.
Legal question	Can participants be divided into perpetrators and accomplices?
Finding	X2's sentence was found to be correct; X4's appeal was upheld.
Ratio decidendi	X2 was found to have knowingly aided and assisted with the commission of the crime and, therefore, he is punishable as if he had committed it. It is doubtful if someone can be an accomplice to murder and the question to be answered is simply: can a person further the death of the victim without simultaneously causing it? The answer appears to be no and <i>Snyman</i> is of the opinion that X2 was wrongfully convicted as an accomplice and qualifies rather as a perpetrator. X4 didn't associate himself with the murder and he didn't promote the commission of the crime and, therefore, no crime was proved.
Participation Safatsa 1988 (1) SA 868 (A) Leading case on the doctrine of common purpose	
Facts	A crowd of ±100 people attacked Y in his house by bombarding it with stones and petrol bombs and, when he fled, they stoned him, poured petrol over and set him alight. The six appellants formed part of the crowd. Their acts consisted of: grabbing hold of, wrestling with, throwing stones at, exhorting the crowd to kill and forming part of the crowd which attacked Y, making petrol bombs and setting the house alight.
Legal question	Can individuals acting in a group only be convicted of murder if a causal connection can be proved between each individual's act and Y's death?
Finding	The six convictions of murder was confirmed by applying the doctrine of common purpose and, if a common purpose to kill is proved, the accused may be convicted without proving a causal connection between every individual's conduct and Y's death.
Ratio decidendi	The existence of a common purpose between the participant and others may be proved by the fact that he actively associated himself with the actions of the other members of the group and a causal connection between him and Y's death needn't be proved.
Participation Lungile 1999 (2) SACR 597 (A)	
Facts	During a robbery, a policeman arrived on the scene and several shots were fired between him and X2. At the end of the shootout one of the employees of the shop was dead, the policeman and X2 were injured, X3 escaped and X1 was captured by a policeman with the stolen money and jewellery in his possession. They were convicted of robbery and murder and X2 was also convicted of being unlawfully in possession of an unlicensed firearm and ammunition. Leave to appeal was granted.
Legal question	If X2 flees because he is afraid of being arrested or being injured or aims to make good his escape, is his withdrawal motivated by a clear intention to withdraw from the common purpose which he was a part of?

Finding	The appeals of the appellants against their convictions and sentences were dismissed.
Ratio decidendi	In order to escape conviction on the grounds of a withdrawal from a common purpose, whether by prior agreement or active association, X3 must have a clear and unambiguous intention to withdraw from such purpose. It could be argued that X3's flight from the shop when he saw the policeman enter with a firearm demonstrated his lack of association with any common purpose, but this argument wouldn't be based on dissociation from a common purpose, but rather at creating doubt whether there had in fact ever been an association with a common purpose. This distinction is subtle and, hadn't there been a prior agreement to commit a crime, this might've been a valid argument. In view of the prior agreement to commit a robbery and his participation in the execution thereof, however, the fact that X3 left the scene before the shooting started can't avail him.
Attempt Schoombie 1945 AD 541	
Facts	X had gone to a shop in the early hours of the morning and poured petrol around and underneath the door so that it flowed into the shop placing a tin with inflammable material against the door, but he was caught in the act when a policeman appeared. He was convicted of attempted arson and the matter was referred to the Appellate Division.
Legal question	If X is interrupted during the commission of a crime, will he be guilty of attempt?
Finding	The Appellate Division confirmed his conviction of attempted arson.
Ratio decidendi	The judgment authoritatively confirmed that the test to be applied in these cases was to distinguish between acts of preparation and acts of consummation and the court found that X's acts constituted consummation.
Attempt Davies 1956 (3) SA 52 (A)	
Facts	The appellants were convicted of attempt to commit the former crime of abortion, but the foetus which they had caused to be aborted was already dead although they believed it to still be alive. The crime of abortion could, in terms of its definition, be committed only in respect of a live foetus and they consequently appealed their conviction → mistake about the facts.
Legal question	Could someone be convicted of the former crime of attempted abortion if at the time of the appellants' act the foetus was already dead and it was, therefore, impossible to abort a live foetus as per the definition of the crime?
Finding	The appeal was dismissed and 4 of out of 5 appeal judges held such conduct punishable as attempt.
Ratio decidendi	The Appellate Division adopted the subjective test where the appellant's subjective state of mind was the decisive factor. It held that they would have been guilty of attempt even if the woman hadn't been pregnant, provided, of course, that they had believed that she was pregnant and had performed some act intending to bring about an abortion. It doesn't matter if the impossibility of achieving the purpose was because of the wrong means employed or if the object in respect of which the act is committed is of such a nature that the crime cannot be committed in respect of it as the law seeks to punish the evil state of someone's mind which manifested. The exception to the rule that an attempt to commit the impossible is punishable was formulated by Schreiner JA and holds that it will not apply where the impossibility originated from a person's mistaken view of the law where there is no crime; it only applies to cases where it originated from the mistaken view of the material facts.
Incitement Nkosinyana 1966 (4) SA 655 (A)	
Facts	X had suggested to Y that they murder Z. However, Y was in fact a policeman who suspected X of trying to murder Z and wanted to trap X. X was unaware of the fact that Y was a policeman. X was convicted of incitement to commit murder and appealed.

Legal question	Does a person's initial unwillingness to commit a crime that needs to be overcome by, or the fact that he is a policeman who is not susceptible to, persuasion, coercion or argument stand in the way of a conviction of incitement to commit a crime?
Finding	The Appellate Division found X guilty of incitement to commit murder.
Ratio decidendi	An inciter is somebody " <i>who reaches out and seeks to influence the mind of another to the commission of a crime</i> ". The emphasis is on the inciter's conduct and not on the person incited and, therefore, it is immaterial whether the other person is capable of being persuaded and the means used to attempt to influence doesn't carry any weight. It isn't necessary to prove an initial unwillingness on the part of the person incited, which was overcome by persuasion, coercion or argument and the court held that the fact that Y was a policeman who at no time was susceptible to persuasion didn't stand in the way of a conviction for incitement. Incitement can be committed even in respect of a police trap in which the police officer involved has no intention of ever committing the actual crime, but who simply wants to trap the inciter.
Theft R v Sibiya 1955 (4) SA 247 (A)	
Facts	X removed Y's car without his consent and took a joyride in it intending to return it to Y. However, the car overturned and landed in a donga. When the police arrived at the scene, X (apparently unhurt) was still standing near the car. X was convicted of theft and appealed his conviction.
Legal question	Is the mere temporary use of a thing with the intention of restoring it to the lawful owner (<i>furtum usus</i>) still punishable in our law?
Finding	The Appellate Division held that he had not committed theft and that <i>furtum usus</i> no longer constitutes a form of theft in our law.
Ratio decidendi	South African courts have followed English law in this regard, which required an intention to permanently deprive the owner to constitute theft. If one describes the intention required for theft as an intention to appropriate, it likewise follows that the perpetrator must've the intention to permanently deprive the owner of his property. Thus, where the perpetrator intends to deprive the owner only temporarily, he respects and recognises the owner's ownership or rights in respect of the property, which is contrary to the very essence of appropriation.
Fraud R v Heyne 1956 (3) SA 604 (A)	
Facts	The appellants had sold liquor on a large scale contrary to the provisions of the Liquor Act and omitted to give particulars of such sales in the books or intentionally made false entries in the books. These misrepresentations to the police, whose task it is to control the particulars of liquor sales, resulted in at least potential prejudice to the state. The trial court convicted them of fraud and they appealed.
Legal question	Can attempted fraud be committed if the misrepresentation has not yet come to the complainant's attention and can potential prejudice be sufficient for a conviction of fraud?
Finding	The Appellate Division confirmed their conviction of fraud.
Ratio decidendi	The Appellate Division held that the making of false entries in a register reflecting the sale of liquor potentially prejudices the state in its control of the sale of liquor. "Likely to prejudice" doesn't mean that there should be a probability of prejudice, but only that there should be a possibility of prejudice. This means that what is required is that prejudice can be, not will be, caused. It was also held that attempted fraud is indeed possible and will arise in the case where the misrepresentation has been made, but has not yet come to Y's attention, for example where a letter containing a misrepresentation is lost in the post or intercepted.