

# PARTIES TO AN OFFENCE

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## Who are The Parties to An Offence?

This is a situation in which two or more parties form a common intention to carry out a criminal act. The degree of their participation might vary but the law would hold them jointly and severally liable for the commission of the crime. The law regards all of them as partners in the crime as encapsulated in the maxim *“particeps criminis”*.

For the prosecution to be successful, it has to establish the common intention of the parties charged. **S.8** of the criminal code provides that if a group of people with a common intention to carry out an unlawful purpose, carry out such purpose, they shall be liable for any offence that results from the carrying out of the unlawful purpose. **S.9** of the **Criminal Code** provides that if a person counsels a crime to another, who by following his counsel commits a crime, they shall both be held liable for the result of the action.

For convenience, parties to an offence can be divided into two:

1. Principal Offenders
2. Secondary Offenders

## Principal Offenders

This is the person who commits the actual offence. According to **Binns** the principal offender is the one who stabs the victim in the wounding offence, penetrates the non-consenting victim in the rape offence, damages a person's property in the case of criminal damage or causes death of the victim in the offence of homicide. Thus, a principal offender is the person whose act is the immediate cause of the physical injury suffered by the victim.

In English law, according to the provisions of the **Accessories and Abettors Act 1861**, all the parties to a crime would be tried, indicted and punished in the same way. This was changed in the **English Criminal Act of 1967**, where principal parties were known as the “principals in the first degree” and secondary parties were known as “principals in the second degree”.

It should however be noted that by the provision of **S.7 of the Criminal Code**, those that aid, counsel or procure a crime would still be regarded as liable for the commission of such crime.

In **Bashaya vs State (1998) 5 NWLR pt 550**, the deceased, while on a journey, was attacked by a group of men, armed with sticks and other weapons, and was killed. The person that delivered the fatal blow was considered inconsequential and they were all convicted for murder.

It should be noted that a person might not commit an offence but would still be regarded as a principal offender if he commits such offence through an “Innocent Agent”. In the case of **R vs Stringer**, an employer who dictated a fraudulent letter to his secretary was regarded as the principal offender. The secretary who had no idea that the letter was for fraudulent purposes was regarded as an “innocent agent”.

Also, an innocent agent can also be regarded as a person who doesn't have capacity or is insane. In the case of **R vs Michael (1840) vol 9 AC**, a mother who intended to kill her baby told her nurse, who had no idea it was poison, to administer a poisonous substance to her baby. The nurse didn't and kept the drug on a shelf.

Subsequently, a child saw the drug and gave the baby, causing its death. It was held that the child was an innocent agent and the mother as the principal agent. The case would not have been different had the nurse administered the poison. See also **Atiku vs State (2010) 9 NWLR pt 1194**.

## Secondary Offenders

Different people might be involved in the commission of an offence. Those who aid, counsel or procure the offence are regarded as secondary offenders. In the case of **R vs Bryce (2004) vol 2 CAC**, the court held that in charging secondary offenders, phrases like aid, abet and procure should be used.

It should be noted that the mere presence of the accused at the scene of the crime does not state a case for him having aided or encouraged the commission of the crime. The prosecution has to prove that the accused intended to give encouragement or encouraged the commission of the crime.

In the case of **Akanni and ors vs The State (supra)** the accused stood and watched as a woman burnt to death in a house. In absence of evidence of them aiding or committing the crime, it was held that they were not guilty.

Also, in the case of **R vs Clarkson (1971) vol 55 CA Reports**, two of the defendant stumbled into a room in which a girl was being raped. They neither joined in the act or attempt to stop it. The court held that inasmuch as they didn't join in the act, they were not liable for any offence.

See also: S. 10 and 7 of the Criminal Code, Section 83 and 79 of the Penal Code, **Iyaro vs State (1988) NWLR pt**

**691. Okosun and Ors vs AG Bendel State (1985) 11 S.C.**

It should be noted that a necessary ingredient for proof of being a party to a crime is the intention to bring about the actus reus of the crime;Â **S.8 Criminal Code**.

If the law says 'aid or abet' it means to assist or facilitate in the commission of a crime;Â **Ubahar vs State (2003) 6 NWLR pt 1000**. According to the case ofÂ **Amoo vs the State (1954) 4 SC**Â if a statute uses the term 'counsel' in relation to a secondary offence, it means to advise in the commission of the crime. In the case ofÂ **Idika vs State (1975) Q.B**, it was stated that if the statute uses the word 'procure' it means to invite or persuade.

## **SOURCES**

1. Lecture delivered by Dr Mrs. M.A. Abdulraheem Mustapha
2. Okonkwo and Naish: Criminal Law in Nigeria
3. The Nigerian criminal Code
4. The Nigerian Penal Code
5. Accessories and Abettors Act 1861
6. English Criminal Act 1867