

# **Criminal Law Part A - Week 6**

## **Working Group Practice Questions**

**Complete Answers with IRAC Method**

**Topic:** Participation Liability

**Exam Date:** January 21, 2026

## ■ KEY LEGAL PROVISIONS

### Article 47(1) DCC - Perpetration (Three Forms):

1. Direct perpetration: 'commit a criminal offence personally'
2. Co-perpetration: 'jointly with another'
3. Perpetration by means: 'cause an innocent person to commit a criminal offence'

### Article 47(1)(2) DCC - Instigation:

**Authorized means (exhaustive):** Gifts • Promises • Abuse of authority • Use of violence • Threat • Deception • Providing opportunity, means, or information

### Article 46a DCC - Attempt to Instigate:

When perpetrator does NOT commit or attempt the crime (no derivative liability required)

### Article 48 DCC - Aiding:

- (1) Intentionally assist during commission
- (2) Intentionally provide opportunity, means, or information

**Article 49(1) DCC:** Aiding carries reduced sentence (one-third reduction)

## QUESTION 1: ABANDONED BURGLARY

### Scenario 1a

**FACTS:** A promises B €1,000 to burglarize C's house. B is enticed and decides to do it. Near C's house, B sees a policeman on patrol. B decides not to go through with the plan and returns home.

**QUESTION:** Is A liable as an instigator (Art. 47(1)(2) DCC) to burglary?

#### ISSUE:

Whether A is liable as an instigator to burglary under Article 47(1)(2) DCC.

#### RULE:

Instigation requires:

1. Derivative liability - the factual perpetrator must be liable
2. Causing the factual perpetrator to act (psychological causation)
3. Use of authorized means listed in Article 47(1)(2)
4. Intent to instigate
5. Intent with respect to the offence in question

#### APPLICATION:

- ✓ A used a promise (€1,000 reward) - authorized means
- ✓ A had intent to instigate (wanted B to commit burglary)
- ✓ A had intent regarding the offence (wanted burglary to occur)
- ✓ A's promise caused B's decision to commit burglary

■ **HOWEVER:** B did NOT commit or even attempt the burglary. B abandoned the plan before taking any preparatory steps. No derivative liability because B is not liable for completed OR attempted burglary.

#### CONCLUSION:

**NO**, A is not liable as an instigator to burglary because derivative liability is missing. The factual perpetrator (B) did not commit or attempt the offence.

### Scenario 1b

**QUESTION:** Is there another way to hold A liable?

**ISSUE:** Whether A can be held liable through another form of participation.

**RULE:** Article 46a DCC - Attempt to Instigate: NOT a form of participation (no derivative liability required); The person targeted did NOT commit a complete or attempted crime; Means listed in Article 47(1) must be used; Intent to instigate required; Intent with respect to offence required.

**APPLICATION:** A used a promise (authorized means). B did NOT commit or attempt the crime. A had intent to instigate B and intent regarding burglary. All elements of attempt to instigate are fulfilled.

**CONCLUSION: YES**, A can be held liable for attempt to instigate burglary under Article 46a DCC.

## Scenario 1c

**FACTS (MODIFIED):** B is forcing open a door with a crowbar, but when she sees the policeman, she flees.

**QUESTION:** Is A liable as an instigator to burglary?

**ISSUE:** Whether A is liable as an instigator when B attempted but did not complete the burglary.

**RULE:** Instigation requires derivative liability - the factual perpetrator must be liable for either completed OR attempted offence.

**APPLICATION:** B used a crowbar to force open the door = attempt to commit burglary. B took substantial steps toward completing the offence (began execution phase). B is liable for attempted burglary. Therefore derivative liability exists. A used promises, had intent to instigate, had intent regarding burglary, and caused B's decision. All elements of instigation are fulfilled.

**CONCLUSION: YES,** A is liable as an instigator to **attempted burglary** under Article 47(1)(2) DCC. Note: A is liable for instigation to attempted burglary, not completed burglary, because that is what B actually committed.

■ **KEY LESSON:** Derivative liability is **ESSENTIAL** for instigation. Without it, only attempt to instigate (Art. 46a) is possible. Instigator's liability mirrors perpetrator's liability.

## QUESTION 2: BEGGING FOR ASSAULT

**FACTS:** A wants B to assault C. At first, B refuses. However, after A kneels on the floor and begs B to do it ('do this for me, pleaseeeeeeeeeee!') B gives in. B assaults C by hitting him on the head with a tennis racket.

**QUESTION:** Is A liable as an instigator to assault?

**ISSUE:** Whether A's begging constitutes one of the authorized means for instigation.

**RULE:** Instigation requires use of one of the specific means listed in Article 47(1)(2): gifts, promises, abuse of authority, use of violence, threat, deception, or providing opportunity, means, or information. **This list is EXHAUSTIVE.**

**APPLICATION:** B committed assault (derivative liability exists). A had intent to instigate and intent regarding assault. **HOWEVER:** A merely begged B to commit the assault. Begging, pleading, or asking is NOT one of the authorized means. The means requirement is NOT fulfilled.

**CONCLUSION: NO,** A is not liable as an instigator to assault because begging is not an authorized means under Article 47(1)(2) DCC. The list of means is exhaustive and mere persuasion or begging does not qualify.

■ **KEY LESSON:** The authorized means list is EXHAUSTIVE. Begging, asking, pleading, requesting politely, and emotional persuasion are NOT sufficient. Always check if the method fits within one of the seven categories.

### QUESTION 3: WRONG CRIME COMMITTED

**FACTS:** A promises B money to commit burglary in C's house. B agrees, but while driving to C's house, he changes the plan; B does not commit the burglary, but sets C's house on fire.

**QUESTION:** Is A liable as an instigator to arson?

**ISSUE:** Whether A can be liable as an instigator to arson when A instigated burglary but B committed arson instead.

**RULE:** Instigation requires that the instigator have intent with respect to the specific offence committed. Article 47(2) DCC: 'With regard to the last category, only those actions intentionally solicited by them and the consequences of such actions are to be taken into consideration.'

**APPLICATION:** B committed arson (derivative liability for arson exists). A used promises (authorized means). A had intent to instigate. HOWEVER: A's intent was directed at burglary, not arson. A did not intentionally solicit the arson. B deviated from the instigated crime. A lacks intent with respect to arson.

**CONCLUSION: NO**, A is not liable as an instigator to arson because A did not intentionally solicit arson - A only solicited burglary. A could potentially be liable for attempt to instigate burglary under Article 46a, but not for instigation to arson.

■ **KEY LESSON:** Intent must match the crime committed. Article 47(2) only considers 'actions intentionally solicited.' When perpetrator deviates, instigator is not liable for the new crime.

## QUESTION 4: LESSER CRIME COMMITTED

**FACTS:** A gives B three alpacas so that he will kill C. B accepts, but when he enters C's house with a golf club and runs into C's cute son, he changes his mind. He does not want to make C's son an orphan. He decides that just causing severe bodily injury will do. B hits C on the knee with a golf club and causes severe bodily injury.

**QUESTION:** Is A liable as an instigator?

**ISSUE:** Whether A is liable as an instigator when the factual perpetrator commits a lesser crime than the one instigated.

**RULE:** Instigation to voluntary homicide (Art. 287 DCC) and causing severe bodily injury (Art. 302 DCC) are different offences. Article 47(2) DCC: Only actions intentionally solicited are considered. The instigator's intent must correspond to the offence committed.

**APPLICATION:** B committed severe bodily injury (derivative liability exists for this offence). A used gifts (three alpacas - authorized means). A had intent to instigate and intent regarding voluntary homicide. HOWEVER: B committed severe bodily injury, not voluntary homicide. A did NOT intentionally solicit severe bodily injury. A only solicited voluntary homicide. The offences are distinct under Dutch law.

**CONCLUSION:** NO, A is not liable as an instigator to severe bodily injury. **HOWEVER:** A IS liable for instigating attempted voluntary homicide because B took substantial steps toward killing C (entered with weapon, approached victim) before changing his mind.

■ **KEY LESSON:** Lesser included offenses don't transfer liability. Each offense is distinct. Instigating murder ≠ instigating assault. BUT can be liable for attempted murder if perpetrator began execution.

## QUESTION 5: EXCEEDING INSTIGATED CRIME

### Scenario 5a

**FACTS:** A promises B money to cause severe bodily injury to C. A makes B promise him that he will NOT kill C. When B is hitting C with a hockey stick, C fights back and presses his thumb into B's eye. This enrages B so much that he decides to kill C. B does indeed kill C. When A hears that C has died, he is shocked: he was sure B would keep his promise.

**QUESTION:** Is A liable as an instigator to voluntary homicide?

**ISSUE:** Whether A is liable as an instigator to voluntary homicide when B exceeded the instigated crime.

**RULE:** Instigation requires intent with respect to the offence in question. Article 47(2): Only actions intentionally solicited are considered. The instigator must have intended the specific crime committed.

**APPLICATION:** B committed voluntary homicide (derivative liability exists). A used promises (authorized means). A had intent to instigate severe bodily injury. HOWEVER: A explicitly made B promise NOT to kill C. A was shocked when C died - shows A did not intend homicide. A did NOT intentionally solicit voluntary homicide. B exceeded the scope of what A instigated. A lacks intent regarding voluntary homicide.

**CONCLUSION:** NO, A is not liable as an instigator to voluntary homicide because A did not intentionally solicit the killing - A only solicited severe bodily injury and explicitly told B not to kill. A WOULD BE LIABLE as an instigator to severe bodily injury under Article 302 DCC.



## Scenario 5b

**QUESTION:** Does your answer change if A makes B promise not to kill C, but A knows that B is a homicidal maniac with serious aggression regulation issues?

**ISSUE:** Whether A's knowledge of B's dangerous character affects A's intent regarding voluntary homicide.

**RULE:** Intent (mens rea) can be established through: (1) Direct intent (dolus directus) - purpose/aim; (2) Conditional intent (dolus eventualis) - awareness of substantial risk and acceptance.

### APPLICATION - Two Arguments:

**Argument for NO liability:** A explicitly told B not to kill and was shocked by the death. This shows A did NOT accept or approve of the risk. Making B promise shows A tried to prevent the killing. Therefore A lacked conditional intent regarding homicide.

**Argument for YES liability:** A knew B was a 'homicidal maniac' with aggression problems. A knowingly set a violent confrontation in motion. A was aware of a substantial/concrete risk that B would kill. By proceeding despite this knowledge, A accepted the risk. This could constitute conditional intent (dolus eventualis) regarding homicide.

**CONCLUSION:** The answer could possibly change to **YES**. A strong argument exists that A had conditional intent regarding voluntary homicide because A was aware of the substantial risk (given B's character) and consciously accepted that risk by proceeding with the instigation. However, the explicit promise and A's shock could support the opposite conclusion. This is a borderline case depending on how broadly conditional intent is interpreted.

■ **KEY LESSON:** Intent can include conditional intent (dolus eventualis). Key factors: (1) Awareness of substantial/concrete risk; (2) Acceptance of that risk. Knowing someone is dangerous + giving them opportunity = possible acceptance of risk.

## QUESTION 6: PERPETRATION BY MEANS

**FACTS:** A gives B a new bicycle to prank C. B has to pretend to shoot C with a 'fake' gun. A will give B the gun. According to A, C will be shocked but appreciate the prank. However, A does NOT give B a fake gun, but a REAL gun. A is fully aware of this; B does not suspect at all that it might be a real gun. B aims the gun at C's head, pulls the trigger and C's head explodes. B tries to save C, but this is to no avail. C dies.

**QUESTION:** Is A liable as an instigator or a perpetrator by means with respect to voluntary homicide?

**ISSUE:** Whether A is liable as an instigator or as a perpetrator by means (indirect perpetrator).

**RULE:** Instigation (Art. 47(1)(2)): The factual perpetrator **MUST** be liable (derivative liability required). Perpetration by means (Art. 47(1)): Using an innocent person to commit a criminal offence - the factual perpetrator is **NOT** liable. The key distinction: Is B liable for voluntary homicide?

### APPLICATION:

**B's liability:** Voluntary homicide requires intent to kill. B thought the gun was fake. B had **NO** intent to kill C (only to prank). B is **NOT** liable for voluntary homicide (lacks mens rea). B is an innocent agent.

**A's liability:** A knew the gun was real. A had intent that C would die (gave real gun, not fake). A used B as an instrument to kill C. B was innocent (no intent to kill). A caused B to perform the killing act. This fits perpetration by means: causing an innocent person to commit a criminal offence.

**Why NOT instigation:** Instigation requires derivative liability. B is **NOT** liable for voluntary homicide. Therefore A cannot be an instigator.

**CONCLUSION:** A is liable as a **perpetrator by means (indirect perpetrator)** of voluntary homicide under Article 47(1) DCC, **NOT** as an instigator. A used B as an innocent instrument to kill C.

■ **KEY LESSON:** Perpetration by means vs. Instigation - Critical distinction is whether agent is liable. If agent is innocent (lacks capacity/knowledge/voluntariness), **YOU** are the principal perpetrator, not an instigator.

## QUESTION 7: COMPLEX ROBBERY

**THE PLAN:** A wants to steal from an old lady who keeps money in a sock. B tells A about the old lady. A recruits D and E to execute the robbery with detailed instructions. C agrees to drive D and E for payment (crate of beer).

**THE EXECUTION:** C drives D and E to location and waits outside with engine running. D and E enter and search. D finds sock with money. Old lady discovers them. D takes sock and runs. E helps D escape. C drives them back. Money split equally: A, D, and E each get 1/3.

### Question 7a: D and E's Liability

**QUESTION:** Discuss D and E's liability with respect to either co-perpetration or aiding.

**RULE:** Co-perpetration criteria: (1) Derivative liability; (2) Actus reus - complete cooperation (substantial contribution); (3) Intent to co-perpetrate (conscious cooperation); (4) Intent with respect to the offence. Factors: intensity of cooperation, division of tasks, role in preparatory/execution phases, presence at crucial moments.

**APPLICATION - D:** D actively searched for money per A's instructions, found the sock, took it when discovered, escaped with the money = substantial contribution to physical execution. Worked together with E pursuant to agreement. Knowingly cooperated. Present during entire execution. Performed essential acts.

**APPLICATION - E:** E searched for money per A's instructions and helped D escape = substantial contribution. Worked together with D pursuant to agreement. Knowingly cooperated. Present during entire execution. Participated in the search.

**CONCLUSION:** Both D and E are liable as **co-perpetrators of theft** under Article 47(1) DCC ('jointly with another'). They jointly executed the theft with complete cooperation, substantial contributions, and conscious cooperation. This is NOT merely aiding because both made substantial contributions and jointly executed the criminal plan.

## Question 7b: A's Liability

**QUESTION:** Discuss A's liability with respect to either co-perpetration or aiding.

**RULE:** Co-perpetration requires: Complete cooperation with substantial contribution; Physical presence is NOT required; An intellectual and/or material contribution of sufficient weight. Factors: intensity of cooperation, division of tasks, role in preparatory phase, importance of defendant's role.

**APPLICATION - A's role:** Initiated the entire plan (asked B for victim information, recruited D and E). Organized the participants. Gave detailed instructions to D and E on how to execute. Received equal share of stolen money (1/3). Had intent to co-perpetrate. Was absent during physical execution. BUT made substantial intellectual contribution in preparatory phase.

**Co-perpetration factors present:** High intensity of cooperation (organized everyone). Clear division of tasks (A planned, D/E executed). Essential role in preparatory phase (provided plan and instructions). Equal sharing of proceeds shows partnership status. A's instructions were crucial for theft's success.

**CONCLUSION:** A is liable as a **co-perpetrator of theft** under Article 47(1) DCC. Although A was not physically present, A made a substantial intellectual contribution through planning, organizing, and instructing the execution. Physical presence is NOT required for co-perpetration. The intensity of cooperation, A's essential role in the preparatory phase, and the equal sharing of proceeds demonstrate complete cooperation of sufficient weight for co-perpetration.

### Question 7c: B's Liability

**QUESTION:** Discuss B's liability with respect to either co-perpetration or aiding.

**RULE:** Aiding (Art. 48 DCC): Providing the opportunity, means, or information necessary to commit the crime; Intent to aid; Intent with respect to offence. Co-perpetration requires: Substantial contribution; Complete cooperation.

**APPLICATION - B's role:** B provided information (told A about the old lady and money in the sock). This information was necessary for the theft (A wouldn't know victim otherwise). B's contribution occurred in preparatory phase. HOWEVER: B was NOT involved in planning, organizing, or executing the theft. B did NOT participate in the agreement between A, D, and E. B's contribution was limited to providing information. B received no share of the proceeds. No evidence of complete cooperation with the others.

**CONCLUSION:** B is liable as an **aider to theft** under Article 48(2) DCC for 'intentionally provid[ing] the opportunity, means or information necessary to commit the crime.' B's contribution was limited to providing information and does not rise to the level of substantial contribution required for co-perpetration. B facilitated the theft but was NOT part of the complete cooperation among the actual perpetrators. NOTE: B's sentence would be reduced by one-third per Article 49(1) DCC.

## Question 7d: C's Liability

**QUESTION:** Discuss C's liability with respect to either co-perpetration or aiding.

**RULE:** Aiding criteria: Assist during the commission OR provide opportunity, means, or information; Intent to aid; Intent with respect to offence. Co-perpetration criteria: Substantial contribution; Complete cooperation; Conscious cooperation.

**APPLICATION - C's role:** C drove D and E to the crime scene. C waited outside with engine running (classic getaway driver). C drove D and E back with stolen money. This constitutes assistance during commission of the theft. C had intent to aid (knowingly participated for payment). C had intent regarding theft (knew about and facilitated). C received payment (crate of beer).

**Why NOT co-perpetration:** C was not interested in the plan (half-hearted participation). C's contribution was limited to transportation. C did NOT share in the stolen money. C received only minor compensation (beer, not equal share). C was NOT involved in planning or execution of actual theft. This is NOT substantial contribution or complete cooperation.

**CONCLUSION:** C is liable as an **aider to theft** under Article 48(1) DCC for 'intentionally assist[ing] during the commission of the crime.' C's role as getaway driver facilitated the theft, but the limited nature of the contribution and lack of equal partnership status means this is aiding, not co-perpetration. NOTE: C's sentence would be reduced by one-third per Article 49(1) DCC.

■ **KEY LESSON - Question 7:** Co-perpetration requires substantial contribution + complete cooperation. Equal profit-sharing = strong indicator. Physical presence NOT required (A was mastermind). Getaway driver usually = aider (limited role). B and C get sentence reduction; A, D, E do not.

## QUESTION 8: USING CHILDREN TO STEAL

**FACTS:** Parents and two children (9-year-old son, 6-year-old daughter) enter jewelry store. Mother points at items for son to steal. Son steals multiple pieces of jewelry. Daughter also takes jewelry. Father stands guard at entrance. Children are NOT criminally liable (given assumption).

**QUESTION:** In what way can the parents be held liable for this incident under Dutch law?

**ISSUE:** How can the parents be held liable when they used their children (who are not criminally liable) to steal jewelry.

**RULE:** Perpetration by means (Art. 47(1)): 'Who cause an innocent person to commit a criminal offence' - the factual perpetrator is NOT criminally liable (innocent agent); the person using the innocent agent is the perpetrator. Instigation (Art. 47(1)(2)): Requires the factual perpetrator to be liable (derivative liability) - NOT applicable here because children are not criminally liable. Co-perpetration: Could apply if parents physically participated.

### APPLICATION:

**Method 1: Perpetration by Means (MOST APPROPRIATE)** - Mother: Used her children as instruments to commit theft. Children are not criminally liable. Mother pointed at items for son to steal. Mother directed him to steal multiple times. Mother kept lookout. She caused innocent persons (children) to commit theft. Liable as perpetrator by means under Article 47(1).

**Father:** Stood guard (less clear if he directed children). If he participated in directing/using children → perpetrator by means. If he only stood guard without directing → potentially co-perpetrator or aider.

**Method 2: Functional Perpetration** - The mother controlled the theft operation. She exercised hegemony over the act through her children. Functional perpetration under Article 47(1).

**Method 3: Co-perpetration** - If both parents jointly planned and executed the scheme through their children. Co-perpetration under Article 47(1) with substantial contributions through organizing, directing, and lookout. Complete cooperation between spouses.

**CONCLUSION:** The parents can be held liable under Dutch law through: **MOST APPROPRIATE: Perpetration by means (Art. 47(1))** - The parents, particularly the mother, used their children as innocent instruments to commit theft. Since the children are not criminally liable, the parents are the principal perpetrators. Mother: Clearly liable as perpetrator by means for directing her son to steal. Father: Liability depends on role - if actively directed → perpetrator by means/co-perpetrator; if merely assisted → aider.

■ **KEY LESSON:** Using innocent agents = YOU become the perpetrator. When someone is innocent (lacks capacity/knowledge/voluntariness), the person using them is the principal perpetrator, NOT an instigator, NOT an aider. You get FULL perpetrator sentence (no reduction). Can't hide behind someone else's innocence.

## ■ SUMMARY: KEY CONCEPTS

Form	Derivative Liability?	Key Requirement	Example
Instigation	YES (required)	Authorized means + causation	Hiring hitman
Attempt to Instigate	NO	Target didn't commit crime	Target abandons plan
Perpetration by means	NO (agent innocent)	Use innocent agent	Child delivers bomb
Co-perpetration	YES	Substantial contribution	Joint robbery
Aiding	YES	Any contribution (small OK)	Driving getaway car

**Good luck with your exam preparation! ■**

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