

Explanation illegal
omission the doing of
that thing.



**ASSIGN
BUSTER**

Explanation I: The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be found to do that act.

Principle: Explanation relates to the same person and shows that he may be guilty as an abettor, though as a principal he may be innocent. Explanation

II: To constitute the offence of abetment it is not necessary that the abetment should be committed or that the effect necessary to constitute the offence should be caused. Illustrations: (a) A, instigates B to murder C, B refuses to do so. A is guilty of abetting B to murder C.

(b) A instigates B to murder D. B, in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

According to Section 107, a person abets the doing of a thing when he instigates any person to do a thing or engages with one or more other person or persons in any conspiracy for the doing of that thing or intentionally aids, by any act or illegal omission the doing of that thing. In either of the first two cases it is immaterial for the conviction of the abettor whether the person instigated commits the offence or not or the persons conspiring together actually carry out the objects of the conspiracy. Second part of Expl. 2 of Section 107 lays down that to constitute the offence of abetment it is not necessary that the effect requisite to constitute the offence should be caused. Illustration mentioned above makes it clear that since D recovered from the wound it is clear that A's wish was not fulfilled as murder was not caused but even then A is guilty of instigating B to commit murder. Explanation III: It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same

guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations: A instigates B who is of an unsound mind to set fire to a public building. B does so. B has committed no offence but A is guilty of abetting the offence of abetment of setting fire to a public building under Section 108.

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable of committing an offence and having the same design as A.

Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes death of Z'. B, in consequence of the abetment, does that act in the absence of A and thereby causes Z's death.

Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder and he is, therefore, subject to the punishment of death. (c) A instigates B to set fire to a dwelling-house.

B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that what he is doing is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence but A is guilty of abetting the offence of setting fire to the house. (d) A, intending to cause a theft to be committed instigates B to take property belonging to Z out of Z's possession. A induces B, to believe that the property belongs to A, B takes the property out of Z's possession in

good faith believing it to be A's property. B does commit theft but A is guilty of abetting theft. The above illustrations clearly indicate that the offence of abetment depends upon the intention of the person who abets and not upon the result of abetment. The abettor may be guilty of abetment though the principal offender is acquitted. Abetment is a distinct offence by itself and not because it is connected with another offence and it may be complete even though the person may refuse to do it.

Illustration (d) makes it clear that in order that abettor may be punished it is not necessary that the person abetted should have committed the offence and been punished. Explanation IV: The abetment of an offence, being an offence, the abetment of such an abetment is also an offence. Illustration: A instigates B to instigate C to murder Z, A is equally liable for abetment as B. A woman asks a physician to supply her with poison to help her to poison her son-in-law. If the physician supplies her the poison he would be intentionally aiding her and thus abetting her to commit the murder of her son-in-law. Her request to the physician is an abetment of an abetment and it is complete with her request whether the physician complies with her request or refuses it.

Explanation 4 to Section 108, I. P. C., provides that the abetment of an offence being an offence, the abetment of such an abetment is also an offence. Therefore, there can be an abetment of the offence punishable under Section Explanation V: It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration: A concert with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name C agrees to procure the poison and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here though A and C have not conspired together, yet, C has engaged in the conspiracy in pursuance of which Z has been murdered and he is equally liable for the murder. Abetment involves active complicity on the part of the abettor at a point of time before the actual commission of offence, and it is of the essence of the crime of abetment that the abettor should substantially assist the main offender towards the commission of the crime.

Under Section 108, a person abetted need not be capable of committing any offence. The abettor can employ an innocent agency, incapable of committing a crime, such as, a child below seven years of age or a lunatic. The person abetted may also do act with an intention or knowledge quite different from the intention or knowledge of abettor in abetting the commission of the crime. This section makes no distinction between a principal who is innocent and one who is himself guilty. In either case offence of the abettor remains the same. In the case of Gurubachan Singh v. Satpal Singh, the Supreme Court upheld that if suicide is committed at abetment the abettor will be punished if it is proved that suicide is committed due to abetment. As the Code does not recognise accessories after the fact in the light of abettors, persons supporting the abettor cannot be tried for subsequent abetment.

A person may be charged both for the abetment as well as for the commission of an offence. But if he is convicted of the main offence, he cannot be also convicted of the abetment of the same offence. There must be abetment of the commission of an act. The section does not contemplate any act of subsequent abetment. Ingredients: According to Section 108 an abettor must be— (a) One who abets the commission of an offence; or (b) One who abets the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.