

Ingredients: other
person apart from
these seven was



**ASSIGN
BUSTER**

Ingredients: (i) An assembly of five or more persons; (ii) A common object; (iii) The common object must be one of the five mentioned in the section; (iv) Such object is common to all the members; (v) Members joined or continued to join such assembly; (vi) They acted dis-honestly; and (vii) They assembled knowingly. The first condition to be fulfilled in designating an assembly an “unlawful assembly” is that such assembly must be of five or more persons, who should meet for a common object. It is not necessary that the identity of all of them should be established. There must be more than four persons having the common object. Where there was no satisfactory evidence that the fifth person shared the common object of beating the deceased with lathis; there can be no unlawful assembly with the remaining four persons.

Similarly, in *Amar Singh v. State of Punjab* initially seven persons were charged for offences under Sections 148 and 149, two of them were acquitted by the Sessions Court and one by High Court, and no other person apart from these seven was stated to have been involved in the crime, it was held that the conviction of the remaining four cannot be sustained. In other words on the acquittal of three accused persons, the remaining four accused cannot be convicted under Section 148 or Section 149. In the case of *Yunis alias Kariya, etc. v. State of Madhya Pradesh*, the Court decided that the presence of accused as part of unlawful assembly is sufficient for conviction.

Fact that accused was a member of unlawful assembly and his presence at place of occurrence not been disputed is sufficient to hold him guilty even if no overt act is imputed to him. In the case of *Lallan v. State of Bihar*, the Court decided that the requirement of law is having the common object being present at the place of occurrence.

<https://assignbuster.com/ingredients-other-person-apart-from-these-seven-was/>

The accused sharing the common intention should be personally present at the scene of occurrence. The second necessary ingredient is that the object of the assembly must be common to the persons composing the assembly, that is to say, they must be aware of it and concur in it. Some present and immediate purpose should be there to carry into effect the common object. In an important case *Maku v. State of U.*

P., the Supreme Court made the police proceedings clear and observed that where certain accused who was under police custody had run away from the custody; Police chased the accused and caught him. After that police used physical force on him. In this proceeding accused died on spot. The act of police was held not as unlawful because the accused had violated the law.

The mob had the common object of taking the deceased to the Panchayat. Since most of the members of the mob were armed with lathis, the rest of the mob was not unaware that force was likely to be used. If force was likely to be used while the members of the unlawful assembly knew and in fact it was used by the individual members of the mob was not as mere fight seers but parties to the assault as members of an unlawful assembly sharing a common object. Evidence of premeditation or preparation is not necessary to impute a common object to the members of an unlawful assembly in view of Explanation to Section 141. There must be a finding as to what common object was.

Previous concert is not necessary. The common object required by Section 141 is different from the common intention required by Section 34 in this respect. Mere presence of a person along with members of an unlawful

assembly is not sufficient to support a finding that he had the common object of the unlawful assembly. There must be other evidence direct or circumstantial to justify a finding that he had the common object. To attract the provisions of Section 141, the only ingredient necessary is that the object should be common to the persons who composed the assembly; that is to say, they should all be aware of it and concur in it. There must also be some present and immediate purpose of carrying into effect the common object. The same object is not necessarily a common object, but it becomes so only when it is known to and shared by all having it, i.

e., the same object. It is not possible to prove what was in the mind of the persons assembled. That can only be inferred from the conduct of the assembly. The common object of the unlawful assembly can be collected from the nature of the assembly, arms used by them and the behaviour of the assembly at or before the scene of occurrence. The common object is an inference to be deduced from the facts and circumstances of the case. All the five accused persons were lying in ambush on either side of the lane when the victim came near the place of occurrence whereupon two of the accused persons exhorted while the remaining three fired shots causing several injuries to the victim who died as a result thereof.

The manner in which they were lying in wait, the firearms they were having with them, the exhortation the two of them gave, the firing by the remaining three that followed, the threats given by the latter three to the witness not to question them, the manner of running away after snatching the rifle and the belt of cartridges from the deceased—all these are sufficient to come to the conclusion that the five accused had constituted an unlawful assembly and <https://assignbuster.com/ingredients-other-person-apart-from-these-seven-was/>

as members of such assembly had committed the various offences. The third and the most important ingredient is that the common object must be to: (i) Overawe by criminal force: The gist of an offence under clause (1) consists in (i) overawing, (ii) by show of criminal force, (iii) the Government, or (iv) a public servant in the lawful discharge of his public duty. A person is said to overawe another when he restrains him by awe, fear of superior influence. Overawing merely by superior influence is not criminal, nor is overawing by fear illegal unless it is attended by show of criminal force.

Where a person is terrified into doing what he had otherwise no mind to do and refraining from doing what he had otherwise a mind to do, he is said to be overawed and where that fear is brought by show of force, he is said to be overawed by show of criminal force. But to attract the application of this clause it is necessary that the assembly should have had the common object to overawe and it is not enough that the assembly did have the effect of overawing. Thus, where a Sub-Inspector of Police, was thinking of re-arresting a person who had escaped from his custody, a crowd carrying lathis began to assemble and the Sub-Inspector considered their appearance so formidable that he desisted from carrying out his intention from arresting the man. The assembly could not be said to be an unlawful assembly.

Overawing by show of criminal force of the Government is by itself illegal but so far as a public servant is concerned the use of criminal force is only illegal if it was used to obstruct such public servant in the exercise of his lawful duties that is if the public servant was not exercising his legal duties this clause will not be attracted. (ii) Resist legal process: ' Legal process' means a measure in accordance with law. Any resistance to the carrying out of the <https://assignbuster.com/ingredients-other-person-apart-from-these-seven-was/>

provisions of any law or to the execution of legal process is deemed to be illegal. This clause has not the effect of making an assemblage of persons an unlawful assemblage if the object with which they assembled was perfectly legal one. Where the warrant was not one which could be lawfully' executed against the judgment-debtor, resistance to the execution of such warrant did not constitute an offence under Section 141. (iii) Commit " Mischief" and " Criminal Trespass": The terms " mischief" and " criminal trespass" are defined by Sections 425 and 441, respectively.

" Offence" here means a thing punishable under the Code, or under any special or local law if punishable under such law with imprisonment for a term of six months or upward whether with or without fine (Section 40). This restriction prescribing minimum punishment applies only to offences under any special or local law. Where five or more persons illegally seize cattle and carry them to the pond they cannot be said to constitute an unlawful assembly as the seizure of cattle even illegally and carrying them to the pond does not fall under the mischief or any of the offence contemplated by the clause. (iv) Take or obtain possession of any property by criminal force: No person is entitled to vindicate his right to possession of any property by resort to criminal force. The right is subject to the limitations contained in Sections 97 to 106. The right is available only against an offence and not against a lawful act. Where the right itself is doubtful and it becomes necessary to resort to force in order to defend it the provisions of this clause would be applied and the assembly gathered for that purpose would clearly be an " unlawful assembly".

Incorporeal rights: The rights of ownership or possession of property are corporeal rights, while rights of using the property are incorporeal rights. In the case of incorporeal rights, such as, a right of way or a right to use water etc., no one is in possession of it except during the actual movement when he is peacefully exercising it. Any attempt to vindicate such a right by the use of force when the supply of water has been withheld must necessarily be an attempt to enforce a right or supposed right within the meaning of this clause and not an act to maintain an existing right of peaceful possession.

It is perfectly immaterial whether the act which one seeks to prevent by the use of criminal force is legal, or illegal, the test of criminality being the determination to use criminal force and act otherwise than in due course of law so as to threaten public peace. Enforcement of right or supposed right: The phrase “ enforce a right or a supposed right” can only apply when the party claiming the right has no possession over the subject, to the right, and therein lies the distinction between enforcing a right and maintaining a right. When people go to defend their rights, that cannot be described as “ enforcing” any right or “ supposed right”. If persons are rightfully in possession of land, and find it necessary to protect themselves from aggression, they are justified in taking precautions by arming themselves and using such force as is necessary to prevent the aggression.

There must be no confusion between the two kinds of right; one the right to defend, other the right to enforce any right or supposed right. If a person is forced to maintain or defend his right he cannot be said to have committed any illegal act. There is a difference between “ forced to maintain or defend” any right and “ to enforce” any right or supposed right. What Section 141 <https://assignbuster.com/ingredients-other-person-apart-from-these-seven-was/>

prohibits is enforcing any right or supposed right and not maintaining or defending one's right. Section 141 must be read with Sections 96 to 106 of the Code dealing with the right of private defence. Unlawful assembly when right of private defence exceeded: The general exceptions govern the offences defined in the Code. Section 96 lays down that nothing is an offence which is done in exercise of the right of private defence.

The exercise of the right of private defence within the limits prescribed by law will not fall within the expression "to enforce any right or supposed right" as contemplated in Section 141. The assembly cannot be called an unlawful assembly if its object is to defend property by the use of force within the limits prescribed by law. So long as the force used is "within the limits prescribed by law" no offence is committed, and the provisions of Section 141 and consequently of Section 149 would not apply. But when the force applied for exercising the right of private defence is in excess of what is prescribed by law, an offence clearly is committed, and in such a case each is liable only for his individual acts done in excess of such right. Apart from them, their associates in the occurrence also would be constructively guilty of the said offence, if the principles of constructive liability are applicable to them. (v) Compel any person to do what he is not legally bound to do by means of criminal force: The element of compelling another is important in this clause.

This clause is very comprehensive and is applicable to all the rights a man can possess whether they concern the enjoyment or not. Explanation (i): An assembly which is lawful in its inception may become unlawful subsequently.

An assembly which was lawful at its inception became unlawful the moment
<https://assignbuster.com/ingredients-other-person-apart-from-these-seven-was/>

one of them called on others to assault members of other party and they in response to this incitation started to chase the members of the other party who were running away. Evidence of pre-meditation or preparation is not necessary to impute a common object to the members of an unlawful assembly. The mob wanted that the deceased should come to the Panchayat where the matter would be settled.

At that time it cannot be said that the mob had any intention of assaulting and killing the deceased. But the fact that they had been armed with lathis showed that they were prepared to use force if it was necessary. One specified member of the mob dealt a lathi blow on the head of the deceased as a result of which he fell on the ground. There was no clear evidence as to what others did in assaulting the deceased but since they knew from the arms carried that force was likely to be used and in fact it was used, they were liable as members of an assembly which clearly became an unlawful assembly with the assault.