

Joint Negligent Enterprise

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Recently, the Supreme Court of Israel gave its ruling in appeal case no. 6365/12, *Ploni v. The State of Israel*. The main issue of the court ruling was the question of whether it is possible to apply the doctrine of "Joint Enterprise" in the performance of negligent offences, i.e., if it is possible to ascribe responsibility to one person who joined with another in the commission of a planned action, that he and/or the other person did not know that it might cause a prohibited consequence, though a reasonable person could and should have known it (negligence). The Supreme Court ruling's answer to that question was negative. It was decided that "negligence in regard to the possibility of realization of a prohibited consequence only, cannot establish criminal responsibility by the law of accomplice liability," and therefore the "Joint Enterprise" doctrine can be applied in mens rea offences only.

It is the purpose of this article to examine and critique that court ruling, especially the theoretical basis upon which it is built. The importance of the article lies not only in the opposing conclusion with regard to the main issue that was explored in the court's decision, but more particularly in the alternative theoretical grounds that lead to this divergent conclusion. In this article, I will stress the nature of "Joint Enterprise" as an **execution** doctrine, as distinguished from a mental one. By that definition, I will argue that this doctrine is connected to the factual element of the offence, and specifically to the element of Legal Causation — that constitutes in itself, as I will show, a part of the factual elements of the offence — as a **Normative Imputation Test** of an action to its relevant performers. On that theoretical basis, I will present an appropriate alternative to the incorrect conception that has been established in Israeli jurisprudence on these issues over approximately the last three decades.

Using this analysis, the article will point up the negative tendency of Israeli criminal law to convert and define many aspects of the factual element (its physical and/or normative aspects) of the offence, or to resolve problems in this area, by adopting, analyzing, or creating constructs from the realm of the mental element: an issue worthy of serious criticism. Finally, I will argue that the court ruling in the case of *Ploni* is but an additional expression of this most undesirable tendency.