

Institution: University of Reading		
Unit of Assessment: 18, Law		
Title of case study: The Abolition of Joint Criminal Enterprise		
Period when the underpinning research was undertaken: 2013–20		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Beatrice Krebs	Lecturer Associate Professor	01/09/2013 – present
Period when the claimed impact occurred: 2015–20		
Is this case study continued from a case study submitted in 2014? No		
<p>1. Summary of the impact</p> <p>Over the past 30 years, case-law on secondary liability has been developed by courts, resulting in wrongful convictions based on “foresight” of an accessory. When Krebs was acting as academic adviser to the appellants in the joint UK Supreme Court and Privy Council case <i>R v Jogee, Ruddock v The Queen</i> (2016), her research resulted in the overturning of 30 years of case-law and the abolition of the doctrine of parasitic accessory liability (PAL). [Text removed for publication]. In addition to the change in English law and Jamaican law (in the case of Ruddock), the research has also informed international doctrinal debates and will result in fewer wrongful convictions.</p>		
<p>2. Underpinning research</p> <p>Under JE (also known as parasitic accessory liability – PAL), an individual could be held liable for the criminal actions (crime B) of his/her associates-in-crime which did not form part of their common criminal plan or purpose (crime A), provided that the individual had foreseen (but, controversially, not necessarily intended) that these might be committed in the context of their agreed scheme. PAL has become particularly controversial in recent years, owing to the number of gang-related murders and consequent JE convictions.</p> <p>Krebs’ 2015 research [Section 3, ref 1] argued that the foresight test in PAL (where defendants can be convicted if they foresaw that serious violence/murder might take place) was indefensible and suggested replacing it with a modified version of the more rigorous rules on aiding and abetting (“ordinary accessory liability” – OAL), which require intention to assist or encourage serious violence or murder. She put forward two suggestions: that the courts could and should (a) abolish PAL and deal with all scenarios of assisting or encouraging via OAL; and (b) modify the notion of intention within OAL to accommodate instances where the accessory endorsed the principal’s crime. In other words, she argued for a middle ground between intention (as then understood) and foresight. The suggestion was to enlarge the OAL concept of intention to encompass incidents where the evidence suggests that the accessory foresaw and endorsed the perpetrator’s crime.</p> <p>The first suggestion is now reflected in the decision in <i>R v Jogee</i>, which overturned previous longstanding case-law on JE. However, the extent to which the second suggestion influenced the Supreme Court is unclear. What is clear is that Their Lordships left the precise meaning of intention undefined, leaving it instead to the jury to infer the presence of intent in the mind of the accessory from all the evidence presented at trial, including any evidence suggesting that the accessory must have foreseen that the principal offender might commit the offence. However, not defining intention is unlikely to be sustainable in the long run.</p>		

Krebs' subsequent research [ref 2] sets out how this approach creates a conflict between the general law of murder and how juries are instructed when assessing the liability for murder of principal offenders on the one hand, and that of accessories on the other. For principal offenders, the law is that juries must not infer that the principal acted with an intention to kill or cause serious injury unless the jury believes that the principal must have foreseen it as virtually certain to occur as a result of his/her actions. In the case of accessories, by contrast, there is no threshold requirement of "virtual certainty": Jogege permits juries to infer that an accessory intended to assist or encourage murder on the basis of evidence that s/he foresaw death or serious injury as a possible (not necessarily certain) consequence of the principal's actions. It is hoped that the appellate courts will in time pick up on the conflict between the liability thresholds for perpetrators and accessories and resolve it. In her 2018 paper [ref 2], Krebs argues that this could be achieved by re-interpreting the concept of intention in terms of "endorsement", inviting juries to consider, by looking at all the evidence, whether the accessory had not just foreseen, but had also endorsed the principal's wrongdoing.

Re-interpreting intention along the lines of endorsement would help streamline the courts' approach post-Jogege and prevent diametrically opposed results occurring that might otherwise flow from Jogege's undefined intention requirement. This is noted by Krebs in case notes [refs 3 and 4], which analyse the decisions by the Australian High Court and Final Court of Appeal in Hong Kong to re-affirm PAL for their own jurisdictions in the aftermath of Jogege. If juries are reluctant to infer intention from evidence of foresight in the degree of a mere possibility, it might in future prove very difficult to convict accessories. This fear led the Australian High Court to reject Jogege and keep PAL [ref 3]. By contrast, should juries prove quick to infer intention from evidence of foresight, it might still be substantially easier to convict accessories than actual killers (as feared by Hong Kong's top court, which therefore opted to retain its own PAL principles [ref 4]). This fear has been borne out by those historic PAL cases that have to date been re-examined by the Court of Appeal of England and Wales in light of the change of law in Jogege, which suggest that the Court has tended to uphold an inference from foresight to intention, as noted by Krebs in further case notes [Refs 5 and 6]. These notes highlight and explain the practical and theoretical difficulties in getting past PAL convictions overturned.

Krebs' research showed how PAL/JE as a legal doctrine was indefensible for accessories to murder. This research resulted in the overturning of a law which had been misinterpreted for 30 years. Her subsequent research highlighted that PAL/JE still makes it easier for juries to convict an accessory of murder than to convict the principal offender (where the inference of intention requires virtual certainty as opposed to foresight that the principal might kill).

3. References to the research

1. Krebs, B. (2015) 'Mens rea in joint enterprise: A role for endorsement?' *Cambridge Law Journal*, 74 (3). pp. 480–504. doi: <https://doi.org/10.1017/S0008197315000677>. The research is a main article published in one of the top doctrinal law journals in the UK, which supports it being at least 2* quality.
2. Krebs, B. (2018) 'Oblique intent, foresight and authorisation'. *UCL Journal of Law and Jurisprudence*, 7 (2). pp. 1–24. doi: <https://doi.org/10.14324/111.2052-1871.103>
3. Krebs, B. (2017) 'Accessory liability: Persisting in error (case comment)'. *Cambridge Law Journal*, 76 (1). pp. 7–11. doi: <https://doi.org/10.1017/S0008197317000150>
4. Krebs, B. (2017) 'Hong Kong Court of Final Appeal: Divided by a common purpose (case comment)'. *Journal of Criminal Law*, 81 (4). pp. 271–274. doi: <https://doi.org/10.1177/0022018317719800>
5. Krebs, B. (2018) 'Joint enterprise, murder and substantial injustice: The first successful appeal post-Jogege (case comment)'. *Journal of Criminal Law*, 82 (3). pp. 209–211. doi: <https://doi.org/10.1177/0022018318779644>

6. Krebs, B. (2019) 'For want of a shoe her freedom was lost: Judicial law reform and dashed hopes in R v Mitchell: R v Mitchell (Laura) [2018] EWCA Crim 2687'. *Journal of Criminal Law*, 83 (1). pp. 20–23. doi: <https://doi.org/10.1177/0022018319831847>
7. Krebs, B. (2020) 'Joint enterprise murder is dead - Long live joint enterprise manslaughter?' In: Krebs, B. (ed.) *Accessory Liability after Jogee*. Hart Publishing, pp. 107–131. This chapter is in a collection with leading authors and is published by one of the top academic law publishers.

4. Details of the impact

Research conducted by Krebs at Reading has informed a correction of law on PAL/JE and has underpinned a Supreme Court ruling that PAL/JE had been wrongly interpreted for over 30 years. Whereas, before this case, people on the periphery of events leading to someone's death could all be convicted of murder (and mandatorily imprisoned for life), they will now be convicted only if they can be shown to have intended to assist or encourage murder. Foresight is no longer sufficient for a conviction. This is a very significant change in law, which was widely reported in the media and which informed international doctrinal debate.

Critics of PAL/JE had referred to it as a "lazy law" because it led to guilt and imprisonment without producing evidence of intent. PAL/JE cases have become increasingly controversial over the years, owing to the large number of gang-related killings that have come to court. A large proportion of those convicted have been young men of colour, as reported by the Commons Justice Select Committee (2014). Krebs' work is therefore also important in terms of securing racial justice.

The change in case-law applies retrospectively as well as prospectively. It opens up opportunities for those convicted under PAL/JE to argue that they would not have been convicted had the standard for conviction been intention to assist or encourage all along. Therefore, the decision in *Jogee* has had an important impact on the practice of law and on individuals convicted of JE. For example, John Crilly was the first person to have his JE conviction quashed following the *Jogee* case. Whilst studying for a law degree in prison, he heard about the overturning of the JE law in 2016 and believed it would apply to his case. Since he had not appealed his conviction before, he was able to apply directly to the Court of Appeal for exceptional leave to appeal. This was granted and his appeal on *Jogee* grounds was successful. His murder conviction was quashed and a re-trial ordered at which he pleaded guilty to manslaughter. Now a reformed prisoner, he attended the Learning Together event (November 2019) in London where the London Bridge terror attack started. Crilly was praised for his brave actions in confronting the attacker and minimising further loss of life.

A correction of misapplication in law

From September 2015, Krebs acted as academic adviser to Felicity Gerry QC, lead counsel in the UK Supreme Court (UKSC) and Privy Council (PC) appeal hearing of *Jogee/Ruddock* [Section 5, source 1]. Krebs initially contacted Ms Gerry and sent her a copy of her 2015 CLJ paper [Section 3, ref 1], which led to this advisory role and the paper's citation in written submissions [source 3]. Julian Knowles QC (as he then was), lead counsel for Ruddock, also cited her 2015 paper in oral submissions [source 2]. Krebs was present throughout the hearing and on the day the judgment was handed down. The BBC described the event as "a moment of genuine legal history". The court's decision to abolish PAL and replace it with the principles of OAL concurred with what Krebs had argued in her research. Felicity Gerry QC describes Krebs' research as "instrumental in the presentation of both the above cases" and writes that "the impact of her input cannot be overestimated". Further, "in order to persuade the Supreme Court to correct the error of law ... Krebs' research, publications and knowledge were invaluable" [source 3]. Since then, Krebs has continued working with Felicity Gerry QC and has been involved in preparing submissions for "over a dozen cases on this topic in six (international) jurisdictions", with appeals including *R v Johnson (Asher)* and that of International Criminal Tribunal appeal of former Bosnian Serb leader Karadzic) [sources 5 and 3]. In Gerry's words, "Dr Krebs' published research has been invaluable in bringing about all of these outcomes" [source 3].

[Text removed for publication].

Informing international doctrinal debate

The change of law brought about by *Jogee* informed by Krebs' research has in turn created further international debate in the form of cases being appealed. In the wake of *Jogee*, both the High Court of Australia and the Hong Kong Final Court of Appeal gave permission to appeal in two cases brought on the basis of the UKSC decision, in which they reconsidered their positions on JE liability at length. Although both courts ultimately decided to keep their respective principles of JE/PAL, it is clear that Krebs' contribution to legal debate is now international in reach. She has further added to this international debate by editing a collection [Section 3, ref 7] which dissects the decision in *Jogee*, subsequent Court of Appeal decisions and case-law from other jurisdictions. With chapters contributed by scholars and practitioners from different jurisdictions, all experts in the area of complicity, the book provides the first comprehensive analysis of the implications of *Jogee* on practice and theory in this and other common law jurisdictions.

Practitioners – Influencing the application of the research in practice

Krebs' work has also informed practitioners. To date, she has published four case notes in the Cambridge Law Journal and the Journal of Criminal Law [Section 3, refs 3 and 6] on post-*Jogee* cases (domestic and international). Two of these have been extensively cited in the leading practitioner textbook Smith, Hogan, and Ormerod's Criminal Law (2018).

The law on PAL/JE was misinterpreted by courts for over 30 years. Krebs' research convinced the Supreme Court to correct this error. It has had significant impact on the practice of law and related decision-making processes of courts in England, Wales and Northern Ireland, where there is potential for the conviction of accessories to a murder. Krebs' ongoing research reveals the nuances in this area and highlights the difficulties faced by courts in making fair judgements with respect to intent and foresight. Her research has stimulated and informed practitioner debate, and impacted case outcomes on an international scale, making it difficult for courts to wrongfully convict accessories to a crime.

5. Sources to corroborate the impact

- [S1]** Letter from Mr *Jogee*'s solicitors citing Krebs' involvement and contribution to his SC appeal.
- [S2]** Supreme Court TV recording where counsel for Mr Ruddock, Julian Knowles QC, quotes extracts from Krebs' 2015 paper to the five-panel court ([UKSC Archives](#) for a fee).
- [S3]** Letter from F. Gerry QC describing the importance of Krebs' research on the legal outcome.
- [S4]** [Text removed for publication]
- [S5]** Request for leave to make submissions as *amicus curiae* and *amicus curiae* observations with respect to the case of *Prosecutor v Radovan Karadzic* (24 August 2017).