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CRIMINAL LAW

Over view on The United Arab Emirates Penal Law

Volume I

THE CRIME

Prof. Dr.

M. Shokry El-Dakkak

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PREFACE

It was to my pleasure and pride that I have been charged by the Judicial Department in the Emirate of Abu Dhabi to issue this book. I accepted, not only because of the honor it bestowed upon me - especially I have been lecturing in English Departments in Faculties of law in the International Islamic University in Malaysia, University of Alexandria and University of Mansourah in Egypt - but also because I consider it as a humbled contribution and a sacred duty towards the students of the English Departments as well as the practitioners in the United Arab of Emirates, such as lawyers, legal consultants, public prosecutors and judges. They may find it of assistance and that it will be useful for them.

In this occasion, it is adequate to express high appreciation and gratitude to His Highness Sheikh Mansour Bin Zayed Al Nahyan the Vice Prime Minister of UAE, the Minister of the Presidential Affairs, the Head of Judicial Department in Abu Dhabi, who availed me this occasion to contribute with my humbled effort in the Criminal jurisprudence field especially in English Language.

Finally, I pray Allah to help me to the right path.

Prof. Dr. M. Shokry El-Dakkak

PART I

GENERAL PRINCIPLES

Prelude

The Significance of Criminal Law

Criminal law is that branch of law, which deals with public wrongs of offences. It is divided into two parts, the substantive law and the law of procedures.

Substantive law treats the nature of crime, the competency of persons to commit it, the specific offences which are punishable, the necessary elements of these offences, the defenses which an accused person may legally employ, and many other principles of law, both general and special which apply to crimes.

Criminal procedures, on the other hand, treats the way and manner, by which criminal cases are prosecuted, including complaints, arrests, indictments, information, pleas, trials, evidence, verdicts, judgments, appeals, and punishments.

1. Criminal Law and Criminology

Criminal law is not synonymous with criminology. The former is the actual law relating to crimes and their prosecutions in any particular State or country. It deals, not in theories about crime in general, but with the alleged facts in specific criminal charges and with the legal evidence that is required to prove them.

Criminology is a study of crime as a social problem. It seeks to investigate the causes of crime and to eliminate these causes. It discusses the relation of criminals to society at large, economically and biologically. It deals with the personalities of criminals, their physical and mental traits, their habits, and their proper treatment and discipline in prison. It is accordingly largely philosophical and sociological. It views penal laws as a whole, comparing the system of one country with another and advocates reforms in the law itself and in its administration.

In short, by criminology we mean the science whose purpose is the study of the phenomenon called criminality, in its entire extent (this is theoretical or 'pure' criminology) whilst side by side with this theoretical science, and founded upon its conclusions, we have what is called practical or applied criminology. Criminology is an inductive science which, like other inductive sciences, observes the facts with the greatest possible exactitude, and endeavors with the aid of available methods to trace the causes of the phenomena coming to its notice (etiology). Vere scire est per causas scire-as Bacon has already taught us.

The subject-matter, therefore, of the science of criminology is criminality, i.e. the crimes which are committed and the persons who commit them; the juridical aspect of the problem, i.e. the legal formulation of the various crimes being at best a matter of indirect interest to the criminologist.

2. Criminal Law and immoral Conduct

The traditional attitude of criminal jurisprudence held that criminal acts are essentially immoral deserving punishment. From the point of view of legal theory, there is no necessary connection between the criminal and moral law.

In fact, the acts which criminal law sets itself to suppress are generally speaking, frowned on by public opinion, and contrary to the moral instincts of the individual. However, the criminal law in modern States would have no concern with opinions or intentions, however wicked, which do not express themselves in overt acts.

A man is not punishable by law because he has conceived the crime in his heart, so long as he never endeavors to realize his, ideas. Much therefore is wrong in a court of morals is not legally wrong. Again, many overt acts, which are condemned as immoral, are yet not objects of repression by the State. For example, lying, fornication, ingratitude which are morally wrong, are not legally punishable. Here again the moral law is broader than the criminal law. Nor as

regards acts that are condemned by both laws in the same proportion observed in the evaluation by the respective systems. A serious moral offence may meet with light punishment and a well-meaning man, sometimes finds himself held liable to heavy penalties.

Again, the criminal law, sometimes, forbids such conduct, which the community regards as innocent, or even perhaps as a religious duty. But such conduct, which is condemned by law, tends to be regarded as morally wrong. In this way, criminal law may be a powerful instrument for the enlightenment of the public conscience.

Criminal jurists distinguish two classes of acts, which fall under the condemnation of the criminal law. “Mala in se”, i.e. “Wrongs in themselves” are those wrongs which, independently of the law, are condemned by the moral sense of community, i.e. they are acts at once immoral and illegal, such as murder, theft, forgery, arson, rape, kidnapping. Adversely with these, we have “Mala Prohibita” i.e. “Wrongs prohibited”, which derive their wrongful character from the law only. The latter class includes several petty offences, some of which are dealt with in later article of our code.

It is almost superfluous to add that apart from the differences mentioned above, the degree of public disapprobation of all the countless prohibited actions varies very widely, and ranges from a minimum-as in cases of poaching or smuggling-to the height of moral indignation in some of the worst cases of manslaughter or murder.

If one asks oneself what actually constitutes the essence of an immoral action it becomes apparent that there are two sides to it: subjectively, i.e. from the individual's point of view, such actions go counter to moral sentiment; while objectively, i.e. from society's point of view, they constitute a danger to the interests of the community. Sociological (and, more especially, ethnological)

research does not leave any doubt upon this point: the term 'immoral' means- from the stand-point of the community, 'anti-social'.

Thus, the utilitarians erred when they imagined they could define morality as utility for the individual; but this view becomes correct when for the individual one substitutes the community; for the whole of our code of morals is designed for its benefit and protection. Man is extremely sensitive to that which might harm the community as a whole; and broadly speaking, this instinct has but rarely proved itself wrong (one instance of this being the persecution of witches). In such cases it was experience which acted as a corrective. In view of the absolute supremacy of society over the still growing and maturing individual the latter, as a rule, tends to accept without demur the moral code prevailing in his time.

An immoral action, therefore, is an anti-social action which is felt as such. A priori⁴ one cannot speak of any action as being either immoral or criminal per Se; there is, in fact, no such thing as a 'natural' offence. It all depends upon social conditions. Some actions, however, are so obviously hostile to the interests of any and every society that there was hardly ever a time when they were not prohibited, as in the case of theft, because of its parasitical character. Society is continually changing-and, especially in its present phase, very rapidly. Hence the great changes which take place in our conception of morality, and which are reflected also in criminal law. These, however, take time; and the tension between a rapidly-changing morality and a comparatively static criminal law can, at times, become very great.

Crimes belong to the immoral actions; but they only form part thereof. Generally speaking, one may say that they are the gravest; they form, as it were, the kernel, the grosser but fundamental part. One might compare moral and criminal laws, respectively, with two concentric circles, of which the former would be the larger. The difference in size between the two may vary considerably, according to time and place; sometimes the two circles cover each other

completely, whereas at other times their circumstances lie far apart. In the former case this is a bad sign; any society which threatens with punishment almost every transgression is internally weak.

Thus we come to the conclusion that a crime is a serious anti-social action to which the State re-acts consciously. This reaction, as is already evident from our formal definition, consists of punishment.

3-Substantive Criminal Law and Procedural Criminal Law:

Procedural law comprises the set of rules that govern the proceedings of the court in criminal lawsuits as well as civil and administrative proceedings. The court needs to conform to the standards setup by procedural law, while during the proceedings. These rules ensure fair practice and consistency in the “due process”.

Substantive law is a statutory law that deals with the legal relationship between people or the people and the state. Therefore, substantive law defines the rights and duties of the people, but procedural law lays down the rules with the help of which they are enforced. The differences between the two need to be studied in greater detail, for better understanding.

In order to understand the differences between the structure and content of substantive and procedural law, let's use an example. If a person is accused and undergoing a trial, substantive law prescribes the punishment that the under-trial will face if convicted. Substantive law also defines the types of crimes and the severity depending upon factors such as whether the person is a repeat offender, whether it is a hate crime, whether it was self-defense etc. It also defines the responsibilities and rights of the accused.

Procedural law, on the other hand provides the state with the machinery to enforce the substantive laws on the people. Procedural law comprises the

rules by which a court hears and determines what happens in civil or criminal proceedings. Procedural law deals with the method and means by which substantive law is made and administered. In other words, substantive law deals with the substance of the case, how the charges are to be handled and how the facts are to be dealt with; while procedural law will give a step by step action plan on how the case is supposed to proceed in order to achieve the desired goals. Therefore its procedural law that helps decide whether the case requires trial or otherwise.

Powers of substantive versus procedural laws:

Substantive law is an independent set of laws that decide the fate of a case. It can actually decide the fate of the under-trial, whether he wins or loses and even the compensation amounts etc. Procedural laws on the other hand, have no independent existence. Therefore, procedural laws only tell us how the legal process is to be executed, whereas substantive laws have the power to offer legal solution

Differences in Application

Another important difference lies in the applications of the two. Procedural laws are applicable in non legal contexts, whereas substantive laws are not. So, basically the essential substance of a trial is underlined by substantive law, whereas procedural law chalks out the steps to get there.

Example

An example of substantive law is how degrees of murder are defined. Depending upon the circumstances and whether the murderer had the intent to commit the crime, the same act of homicide can fall under different levels of punishment. This is defined in the statute and is substantive law.

Examples of procedural laws include the time allowed for one party to sue another and the rules governing the process of the lawsuit.

Chapter One

The Principle of legality

1. There will be no crime and no punishment except according to law:

Article (27) Of the Constitution of UAE (66 of the Egyptian Constitution) provides that: "There shall be no crime or penalty except by virtue of the law", by saying that no penalty shall be inflicted except by a judicial sentence. In this context "law," no doubt, means written law. The expression "penalty" only refers to criminal cases. A person can be sentenced to pay damages or other civil compensations, even though there are no statutory provisions on the subject. Criminal liability, however, requires authority by written law. Opinions may differ on how strictly this requirement should be construed; whether, for example, recourse may be had to extend interpretation of the law or to analogy. But in principle it is clear that the judge cannot impose a punishment for an act not covered by a statutory provision, even if he finds that the act well deserves punishment.

It is also certain that customary law cannot serve as authority for punishment. In this respect there is a marked contrast between Continental law, which requires written provisions as a basis for punishment, and the situation in England, some of the states of the United States, and other common law countries, where judge made law is recognized in the field of criminal law much as in other fields.

2. The significance of the principle of legality

The maxim, *nulla poena sine lege* (no punishment without a written law), stems from the period of enlightenment. In the first place, the principle must be seen as a reaction against the conditions which the writers of the period of enlightenment found in nearly all European countries: scattered, incomplete

and sometimes contradictory penal provisions, and an almost unlimited power for the judge to supplement or make exceptions to them. This situation directly conflicted with the basic principles of the political philosophy of the period of enlightenment. According to the principle of the sovereignty of the people, the authority to create binding rules of law rested with the people themselves and not with the courts. And the principle of separation of powers made it necessary to distinguish sharply between the legislative and executive powers in order to avoid arbitrariness and encroachments. It used to be the task of the court to simply apply legal statutes to concrete situations.

Today we are not so worried about giving the judge authority to make his own evaluations. We have also seen that it was an illusion by the writers of the period of enlightenment to believe that the law could be made so clear and exact as to subsequently permit adjudication by a purely mechanical application of its rules. It is not even certain that a judicial system built upon precedent need give the judges greater discretion than one based on written law.

Traditionally, however, the principle *nulla poena sine lege* is looked upon, in UAE, Egypt and in other Continental countries, as one of the basic guarantees of the rule of law. Article 11 No.2, of the United Nations' Declaration of Human Rights (1948) states that: "No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed." This is a recognition of the principle "*nulla poena sine lege*" in so far as it prohibits the judge from creating new offenses. The provision, however, does not require the conviction to be based on written law. If the act was a penal offense when committed, it makes no difference whether the offense was created by statute or by common law.

However, Islamic Sharia has laid down these principles through the Holy Quran more than 1400 years ago in Surat Al-Isaraa (17):

“We never punish until we have sent a messenger”

Allah also said in Surat Al-Baqarah (229):

“These are limits ordained by Allah, so do not transgress them. If any do transgress the limits ordained by Allah, such persons wrong”

The purposes of this principle are to enhance the certainty of the criminal law, provides justice for the accused, achieve the effective fulfillment of the criminal sanctions, prevent abuse of power and strengthen the rule of law. The impact of this principle is the specificity and prohibition of ambiguity in criminal legislation. Consequently, if such act violates any rule, other than criminal legislation, it would neither be characterized as crime nor be subjected to punishment.

The application of the Principles of Legality in criminal law brings about two results:

2.1.Incrimination and Penalization are prescribed in Criminal Legislation:

So long as customary law is not codified, the crimes and punishment would not be precisely clear. However, the customary rules may work to migrate punishment or even to relieve doers from criminal responsibility.

Consequently, the judge is prohibited from applying the rules of other branches of law such as civil law or administrative law. Otherwise, in case of conviction he would be violating the principle of legality, which is highly considered as a constitutional principle as provided in the UAE constitution .

2.2.Prohibition to Use Analogy in Case of

Conviction :

Technically, analogy means the extension of the value of original case to a new case on the ground that the latter has the same effective cause as the former. The original case is regulated by a given rule, and analogy seeks to extend the same rule to the new case. It is by virtue of the joint ground between the original case and the new case that the application of analogy is justified.

The High Federal Court of UAE as well the Egyptian Cession Court frequently held that analogy in case of conviction prohibited, on the ground of the significance of the principle of legality concerns the conviction rather than acquittal or exemption from punishment.

For example, the judge was not entitled to convict the person who

Relevant Provision:

Article (153):

"Shall be sentenced to term imprisonment, whoever knowingly aids or assists a prisoner of war or a detained enemy soldier ,citizen, agent, or any of them or provides them with shelter, food,

clothes, transportation means or through any other form of assistance or if he hides any of them after their escape from internment.

The penalty shall be life imprisonment if the person offering assistance resists the authorities in order not to re-arrest any of the aforementioned. The penalty shall be death sentence should the resistance result in the death of a person".

Article 153/1

"Shall be sentenced to life imprisonment every public servant in charge of guarding a war prisoner, or one of the incarcerated enemy citizens or agents,

who willfully facilitates his escape from the place of incarceration.

The penalty shall be prison for a period not exceeding five years in case the act resulted from negligence or failure of proper watching"

Before adding the article (153) bis, the in UAE was not entitled to convict and punish the public servant in charge of guarding a war prisoner, or one of the incarcerated enemy citizens or agents, if he willfully facilitates his escape from the place of incarceration, or if his act resulted from negligence or failure of proper watching, on the ground of analogy with the rule of the referred article (153).

Likewise in Egypt, the judge was not entitled to punish who eats or drinks in a restaurant and evade to pay, on the ground of analogy with the crimes of false pretenses or breach of trust provided by article (341) of the Egyptian Penal Code until this act has been penalized by criminal legislation (Enactments No. 136/1956) and has been characterized as independent crime provided by article 324 (added) in the Egyptian Penal Code.

3. The Interpretation of Penal Law

Penal statutes, like all statutes, must be interpreted in order to determine their precise meaning.

The starting point in the interpretation of a legal provision is the natural and common meaning of the language it uses. However, this often fails to provide a definite answer. The terms used may have more than one meaning. Does "foreigner" mean a person who is not a citizen or does it mean a person who does not live in UAE ? Even more important is the fact that most words have somewhat nebulous limits. What is "serious injury," "reasonable delay," "a substantial number of persons"? Words almost always have a border area where the meaning becomes uncertain. This is unavoidable since the reality, which the language seeks to describe usually has all kinds of transitional forms.

A philologist or a lexicographer may be satisfied with the conclusion that the usage of a language is uncertain and that different persons may mean different things by the same phrase. The lawyer cannot stop there. In jurisprudence, the borderline cases must also be solved. It is therefore necessary to make the scope of the law quite precise. Various elements of interpretation can come into play here:

- (1) The legislative history with its comments,
- (2) The relationship with other legal provisions,
- (3) Evaluations of what are the proper and reasonable solutions; and,
- (4) Last but not least, earlier judicial practice.

If judicial practice has chosen a certain interpretation, the judge will usually follow it.

3.1. Judicial Precedents

As we have seen, precedent cannot create a criminal offense. In reality, however, judicial practice will be an important factor within the penal law, because it so often determines how the law should be interpreted.

The clarification that continues at all times within judicial practice was illustrated by the post-war legal sanctions against those who had cooperated with the German occupation forces. Prior to that time, there had been no judicial practice with reference to the legal provisions on high treason and violations of the Constitution. Thus, there emerged a great number of important questions as to the scope of legal expressions such as “unlawfully assists the enemy. The most important questions were answered by the Supreme Court’s decisions in the first cases, and the other problems were later solved in great detail by thousands of decisions. Because of the unusual conditions, a process of clarification that normally extends over a long period of time was compressed into months and years. Also, certain problems within the Penal Code’s general part obtained a

richer illumination and a sharper definition than ever before. This applies, for example, to the concepts of intention and premeditation.

3.2. Conflict of interpretation

Interpretation can occasionally produce a result that is directly opposed to what a literal reading of the law would suggest. The reason for this might be an unfortunate legislative wording that fails to cover what was supposed to be covered. Or, the legislature may not adequately have considered the various possible situations, so that the judge must resort to restrictive or extended interpretation in order to obtain coherence and a reasonable result. It is impossible to distinguish clearly between those cases where the judge goes outside the wording of the law and those where he merely makes a clarification within the natural limit of the words. When we move out from the center of the meaning of the words toward the periphery, we do so with gradual transitions, and it is impossible to say at what precise point we are at the border of the words' semantic meanings.

When all means of interpretation are considered, the interpreter of the law is often faced with a choice between different reasonable solutions. As is well known, there can be differences of opinion even among the most learned lawyers. This may be due to disagreement on the conclusions to be drawn from the individual elements of interpretation, when viewed separately, e.g., the content of common word usage as to what the rational solution is, and how expressions in the legal history or judicial practice are to be interpreted. Or it might be caused by differences of opinion on the weight to be placed on the various aspects of interpretation: one lawyer may rely on the stated legislative purpose; another will place more emphasis on the words of the law; a third will emphasize a free evaluation of what the best result would be. We have no fixed rules of priority among the various rules of interpretation. "The style of interpretation" may vary not only from country to country and from time to time, but also somewhat from person to person.

3.3. The legislative function of the courts

Uncertainty as to the correct interpretation can become so great that it would be pure fiction to hold out a certain result as the law. The courts, and in the last instance the Supreme Court, have the last word in cases of doubt. In fact, the courts do have a legislative function. They not only apply established rules of law, but they also create new ones. It is nevertheless quite rare for the courts to admit the fact that they do create law in their decisions. The function of the court, according to the prevailing traditional ideology, is to apply existing laws. Thus, courts usually phrase their opinions so as to “find” a solution in prevailing law, even when its decision is the result of an independent evaluation. “Everything which the judge believes reasonable and suitable, he will politely ascribe to the actual or hypothetical will of the legislature.

3.4. Doubt must always be solved in favor of the accused:

decisions, that a doubt about the meaning of the law always must be solved in favor of the accused. In other It is often said, both in legal writings and in court words, it is argued that the principle in dubio pro reo, applies to the scope of the law as well as to the proof of facts.

However, the considerations, which support the rule in the one instance cannot support it in the other. If the court convicts even though there is doubt as to the facts, there is a danger that the accused will be convicted of a crime which he has not committed. If there is doubt as to the scope of the law, the situation is quite different. The question here is how the proven act should be judicially rated ?? A conviction in this case means only that after having weighed the arguments pro and con, the court has decided that the more severe interpretation is the correct one.

That no one shall be punished except when clearly provided for by law, may be considered a reasonable predisposition. If one were to argue this proposition consequentially, it would lead to much more than resolving all doubts in favor

of the accused. It would ultimately lead to a situation where the courts would refuse to employ means of interpretation not available to the public at large, e.g., expressions of legislative purpose, which did not favor the accused. This consequence, however, has not been acknowledged with us. The argument, which has been made in favor of strict interpretation, does not have as much weight as would at first appear.

Most people do not study the Penal Code; they have never seen it and are not at all worried about doubtful questions of interpretation. They achieve their knowledge of the penal law mainly from newspaper reports and comments on concrete cases. The Penal Code plays a more important role as an authority for the courts than it does for the public. The judicial discussions in the doubtful borderline cases are generally far too complicated for the average person. It should be a sufficient warning that a normal reading of the provision would create doubts about its meaning. People will then be enabled to arrange their affairs so as to be on the safe side. The facility of walking on the brink of the law is hardly worthy of protection. It is often quite clear that the act is morally wrong as well as unlawful, the only doubtful question being whether it is also punishable.

The situation may be different where legislation outside of the Penal Code is concerned. These rules may, e.g., concern the individual's right to carry on a trade, rules with which he could be expected to make himself familiar. If a new law encroaches upon a previously lawful trade, but there is doubt as to how far it applies, the tradesman cannot be expected to yield without a struggle for the most liberal interpretation. Our rules on ignorance of law give the court a possibility to reach Salomon decisions in such situations. As far as the scope of the enactment is concerned, the court may choose the solution which appears the best when all points of view are considered, whether it be in favor of the accused or not. In the latter case it may acquit the accused because of his ignorance of the law.

Thus, I do not believe that there should be a general principle resolving any doubt about the meaning of the law in favor of the accused; nor is any such principle followed in practice. It is perhaps reasonable for courts, when confronted with grave doubts about new laws limiting the previous freedom of action, to choose that solution which involves the least limitation. This conforms to the traditional rule that prior law is presumed to exist in the absence of reasons strong enough to consider it to have been changed. However, when the proposition that all doubts are to be resolved in favor of the accused is given as the reason for a holding in concrete cases, it normally seems to be used merely to support a result which would have been reached in any event. In this book we will discuss and take positions on many doubtful legal questions. But we will not rely on the principle that doubt should be resolved in favor of the accused.

3.5. Analogy and extended interpretation

As a general rule, the judge chooses that interpretation which he believes to yield the best justification. However, the question arises whether a judge has the same freedom in the penal law as he has in other areas of the law, or whether he is limited by the rule of the Constitution which provides that no one may be punished except according to law, i.e., written law. Must this be interpreted so strictly that the accused may be convicted only when the words of the law are directly applicable to his act? Or is there room within the penal law for analogy and extended interpretation? This question is related to the one discussed in the previous section, but it is nevertheless different. There can be doubt about the meaning of the law even if there is no question of an extended interpretation or analogical reasoning. On the other hand, the judge may be in no doubt that extended interpretation or analogical reasoning would be suitable if the rule of the Constitution could be disregarded.

It is often said that the Constitution permits enlarging interpretations but not analogy. However, this does not mean too much; there is no clear distinction between extended interpretations and analogical deductions. The further we

move away from the natural meaning of the words and the greater the difference between the situation directly covered by the law and the situation which we have for consideration, the more likely we are to speak about analogy; but no one can say definitely where the dividing line is to be drawn, and each author usually has his own definition of the difference. The terminology is just as uncertain in judicial practice; it seems that the courts will more willingly use the expression “analogy” when they discard the thought of going beyond a strict interpretation than when they accept it.

We shall therefore let these concepts rest and turn at once to realities: can the courts, without violating law, convict a person for an act which, even under a liberal interpretation, does not fall within the words of the penal law? And, if so, how far can they go in this direction?

Neither the words nor the purpose of the law give us any definite answer. Of course, we are in a sense outside the law as soon as we go beyond the literal meaning of the words “themselves”. But it can also be said that a conviction is in accordance with the law as long as the court applies common principles of interpretation. The purpose of the constitutional provision-to preclude arbitrariness and judicial uncertainty-would perhaps be best fulfilled if the courts were requested to stay strictly within the words of the law. But it is clear that a prohibition against extended interpretation and analogy is not the same as a prohibition against imposing punishment merely because the court finds that the act deserves to be punished. It is a difficult question to decide which construction of the constitutional provision will lead to the most socially desirable results.

3.6. Analogy in judicial practice

It must be said that whatever may have been the meaning of rules of the Constitution, it has not actually functioned as a prohibition against analogy. Rules might remind the courts to be hesitant about going beyond the language of a provision, but on

the whole I believe that in practice the law has developed as if there had been no such provision. The determining factor will usually be whether the courts find that there is a genuine need for extended interpretation or analogy.

It is not easy to lay down any fixed rules determining when such a need exists. One is on fairly firm ground when complete legal analogy exists, that is, when there can be no reasonable grounds to treat case B differently than case A, to which the law directly applies. In such a case, one must assume that the legislature also would have applied the rule to case B if it had thought about this situation. Thus, when the penal provision is given this extended scope, the intention of the legislature is given effect; one merely corrects an unfortunate editorship. An acquittal in such a case would seem to be an unreasonable formalism.

The problem becomes somewhat more difficult when we come to the incomplete analogy. Here, the case is very similar to case A, which the law has covered directly, but there are also differences, which might make a difference from a legislative point of view. In such a situation, one cannot safely build upon the intention of the legislature, as one could in the case of a complete analogy. Where the difference between case A and case B is small and the need for punishment seems clear, it should not be impossible to apply the rule to case B as well. But the further one moves away from the area to which the law directly applies, the stronger the reasons must be before the analogy can be accepted

Analogy in *favor* of the accused is not prohibited by the Constitution. Here the judge has the same freedom as in other judicial areas. The Egyptian Cassation Court has long ruled that “*Unlike the case of conviction, analogy in case of acquittal is permissible*”

Chapter Two

The Applicability Of Criminal Law

Existence of criminal provisions is not sufficient to enforce criminal law. The question is when and where the criminal rule could be operated. This question raises up two issues relating the scope of the criminal rule:

- 1- Applicability of criminal rule as to time.
- 2- Applicability of criminal rule as to place.

1.APPLICABILITY OF CRIMINAL RULE AS TO TIME:

1.1. General Rule:

Relevant Provisions:

. Constitution of UAE:

Article (27) of the UAE Constitution rules that “A person may not be punished for an act or omission committed before the relevant law is promulgated”

1. UAE Penal Law:

Article 12

“A crime shall be sanctioned according to the law in force at the time of its perpetration. This law shall be determined at the time at which the acts of execution have been completed regardless of the time at which the result has been realized”

Article 13

"If a law more favorable to the accused is enacted after the perpetration of a crime and before rendering a final judgment, it shall exclusive be applied.

If he law is enacted after rendering a final judgment, that makes an act or omission committed by a convict non punishable, the judgment shall not be implemented and its penal effects shall cease to exist, unless the new law provides otherwise. Should the new law provide only for extenuation of a penalty, the court that rendered the final judgment may, at the request of the public prosecution or the convict, review the sentence in the light of the provisions of the new law".

Article 14

"Excepting the provisions of the preceding article, if any law has been enacted rendering an act or omission a criminal offense or aggravating the prescribed penalty thereto, and provided that such law has been enacted temporarily for a short period or under fortuitous events, the expiration of the period specified for its effectiveness or the disappearance of the fortuitous events shall neither debar the prosecution of crimes perpetrated during such a period nor shall it preclude the enforcement of a penalty which had been imposed under such law".

Article 15

"The new law shall apply to any continuous or successive crimes perpetrated prior to its coming into effect or crimes which repeatedly reoccur during the effective period of this law.

Where the new law amends the provision concerning recidivism or plurality of crimes or penalties, it shall apply to any crime that subjects the accused to provisions of plurality or according to which he becomes a recidivist even if the other crimes have been perpetrated prior to its application"

The principle of temporal application of criminal rules (non-retroactivity) is laid down in the article (5) of Egyptian Penal Code which provides that: -

“Offences shall be punished in accordance with the law in force at the time at which they are committed. Provided that if a law more favorable to be accused comes into force, after the commission of the offence, but before final judgment, such law shall alone be applied”.

This principle is also approved by the UAE Constitution (in the above referred article 27) and also in the Egyptian constitution (art. 66) which reads:

“Penalty shall be inflicted only for acts committed subsequent to the promulgation of the law prescribing them”

1.2. The Retroactive Effect of the Penal Rule

The Egyptian Code, not only provides that penal provisions are not retroactive, but treats the criminal with even greater tenderness by providing that the one exception to this rule shall be that of penal provisions favorable to the accused. The exception does not appear as objectionable as the rule. There is every reason for mitigating penalties. Pain is a great evil, and we have no right to inflict more than is necessary for social defense. If therefore, a lighter penalty is though sufficient for the future, to make it applicable to offences committed in the past, but upon which sentence has not yet been passed, is not unreasonable.

It is sometimes difficult to decide which law is more favorable to the accused. Various criteria are possible. Some jurists favor the view that in case of doubt the difference in maximal should be the determining factor, but probably a low minimum penalty is really more favorable to the accused than a low maximum. But we adopt the opinion of Prof. Ramsis Behnam that the solution depends upon the interest of each delinquent in each case, especially concerning the application of punishment.

1.3. Problems of the Application of the Rule of Non-retroactivity:

- (1) The phrase “comes into force” must be interpreted with regard to the provision of the constitution. Laws are executed throughout Egypt from the moment when promulgation becomes known and it must be taken to be known thirty days after publication.
- (2) Article (27) clearly limits the exception contained in its second paragraph to offences which have not been subjected to final judgment before the new law came into force. Consequently, an offender who has been sentenced cannot claim any benefit arising under this paragraph through the passing of a new law. No such benefit could be claimed “as of right”.

However, the French scholar Garraud, in supporting the similar doctrine observes that the legislature should in such cases make special provisions so as to extend the benefit to criminals already condemned. And if it fails to do so, the head of the State should exercise his right to pardon on their behalf.

The code does not define “final judgment”. Presumably the term means a judgment which is not capable of being revised by a Court of Appeal or the Court of Cassation. If an appeal or recourse is pending when the new law comes into force, it is presumably the duty of the Appeal Court or the Court of Cassation to take the provisions of the new law into account so far as they are more favorable to the accused.

- (3) A further question arises in applying alterations in the laws of procedure. The French doctrine recognizes the retroactivity of such laws. The accused, it is argued, has no right save that of proving his innocence. Presumably the new rules are better fitted for this purpose than the former ones. In any case he can have no acquired right against the manifestation of the truth.

This applies, not only to alterations in the law of procedure within the Courts, but also to changes in the competence of the Courts to try cases. But

an exception is suggested and may be accepted where there has been already a judgment on the merits delivered in the case. To affect the accusers right of appeal, or to subject him to a previously non-existent liability to have an acquittal reversed on appeal, would be distinctly unjust. By the judgment he acquires a right to the maintenance of the status quo.

(4) A difficult question arises in applying alterations in the law of abatement to offences committed before the alteration was made. Laws of procedure are, as we have just seen, generally retroactive in their operation, and if we regard the rules relating to abatement as regulating a question of procedure solely, they also must be treated as retroactive, that is to say, that the law of abatement in force at the time of the trial should apply. However, some incline to hold that laws of prescription are laws dealing with the merits, which consequently fall within the general rule of non-retroactive operation and are subject to the exception stated in article (5) of Egyptian Penal Code, The laws of prescription should be applied from the date of their promulgation to offences not yet tried and to sentences not yet executed, if they are more favorable (than those previously in force).

We approve the last solution because article 66 of the Egyptian constitution, as well as article (5) of the Egyptian penal code have expressly cleared that the retroactive effect works only as to penalties but not to procedural rules.

2. APPLICABILITY OF CRIMINAL LAW AS TO PLACE:

Initially it is necessary to differentiate between two terms commonly used by lawyers: -

- (i) International Criminal Law, Which is laid down by the international community through international conventions held with several States. Therefore it relates to international law subjects rather than municipal law.
- (ii) Criminal International Law, Which concerns with the rules of the crimes

committed under the municipal criminal law, involving a foreign element such as the venue of the crime (as if committed in a foreign country) or the nationality of the victim or the offender. In such cases the criminal law comes into focus to deal with the problems of legal jurisdiction and to solve the conflict of laws that may arise between domestic and foreign criminal rules.

The latter conception is concerned with our study. UAE Penal Code treated the applicability of criminal rule as to territory as follows:

Relevant Provisions:

Article 16

"The provisions of this law shall apply to any one who perpetrates a crime within the territory of the State which shall consist of the lands and any place under its sovereignty, including territorial waters and air space there above.

A crime shall be considered perpetrated in the territory of the State if any of its constituent acts occurs therein, or if the result has been, or is intended to be, realized therein".

Article 17

"The provisions of this law shall apply to crimes that are perpetrated onboard warships and military aircrafts bearing the flag of the State wherever they are.

The abovementioned provisions shall apply to non military governmental vessels owned or operated by the State for non-commercial purposes and as such commercial aircrafts and vessels bearing the flag of the State".

Article 18

"Without prejudice to the agreements and treaties to which the State is a party, provisions of this law shall not apply to crimes perpetrated on board a foreign ship in any of the State's ports or in its territorial waters, except in the following instances:

- 1- In case the effects of the crime extend to the State.*

- 2- *If the crime by nature disturbs the peace or violates public morals or good order in its ports or territorial waters.*
- 3- *If the shipmaster or consul of the State whose flag is hoisted seeks assistance from the local authorities.*
- 4- *Should the offender or victim be a citizen of the State.*
- 5- *if the vessel carries materials or objects internationally banned from negotiation, possession or commercialization.*

This law, however, shall not apply to crimes perpetrated on board foreign aircrafts in the State air space unless the airplane lands in any of the airports after perpetration of the crime, or if the crime by nature disturbs the peace in the State or violates its public policy, or if the crime violates the State navigation rules and regulations, or if the aircraft pilot seeks the assistance of the local authorities, or if the offender or victim is a state citizen”

Article 19

"The present law shall be applied to whomever perpetrates an action outside the state rendering him a perpetrator or an accomplice in a crime occurring entirely or partially inside the state."

Article 20

"This law applies to any one who commits an act outside the state making him a principal or an accessory to any of the following crimes:

- 1. *A crime that violates the external or internal security of the state, its constitutional system or its legally issued financial securities or stamps or that involves forgery or counterfeiting of state`s instruments or official seals.*
- 2. *Forgery, falsification or counterfeiting of the state`s currency ,circulating or possessing same for the purpose of circulation,whether such acts are carried out within or outsidethe state.*
- 3. *Forgery. Falsification or counterfeiting of paper notes or minted coins awful circulated in the state, promoting such currencies and coins therein, or possessing same for the purpose of circulation".*

Article 21(1)

"This law shall apply to whoever is present in the state after being involved aboard as a principal offender or an accessory in an act of sabotage or impairment of international communication systems or in crimes of trafficking drugs or women or children or slavery or acts of piracy or international terrorism or money laundry."

Article 22

"A citizen, while in a foreign country, becomes involved in act which is considered a crime under the provisions of this law, whether as a principal or accessory, shall be sanctioned according to its provisions when he returns to the country, provided that such an act is punishable in accordance with the law of the country in which it is perpetrated. This provision shall apply to whoever acquires the nationality of the state after he perpetrates the act. For the purpose of applying this article, a stateless person shall be treated as a habitual resident in the country."

Article 23

"No criminal action shall be instituted against a person who perpetrates a crime in foreign country except by the public prosecutor. It may not be instituted against any person in whose favor a final acquittal or conviction has been passed by foreign courts and it is proved that he has served the sentence, if a criminal action or penalty against him has duly been forfeited or the competent authorities in such country have docketed the investigations.

In determining whether a judgment is final or whether a legal action, penalty or an investigation is foreclosed, reference shall be made to the law of the country in which the judgment has been rendered.

In case a sentence has not been fully served, its period should be completed. However, if a verdict of innocence has been rendered in a crime provided for in articles 20 and 21 and the said verdict is based on the fact that the crime is not punishable by the law of the said country, a criminal action may be brought against him before the courts of the state where the courts of the capital of the

federation shall have jurisdiction to examine the case".

Article 24

"In executing a sentence against a convict, the period, that he has served in custody, in detention under remand or in execution of the penalty in a foreign country for the crime for which he was convicted, shall be taken into account".

Article 25

"Without prejudice to the provision of the 1er paragraph of Article (1. this law shall not apply to persons who enjoy immunity under international agreements. international or domestic laws. within the territory of the United Arab Emirates State."

On examining the foregoing articles, we conclude the principles upon which the applicability of the criminal rule are based as Followa:

2.1. Territorial applicability of Criminal Law

The criminal rule is applied only within the territory

of State. The International law draws the parts and boundaries of such territory as follows: -

- (a) The land: which consists of the earth whether it was joined or separated, such as islands.
- (b) Water areas: which consist of internal areas such as rivers, lakes, and canals as well as external area including the territorial sea (12 miles far from the seashore).
- (c) Air and space: which covers up the foregoing areas of land and water.

The three mentioned parts constitute the territory of State within which the criminal rules are operated to the extent of the political boundaries of State. Hence, the national criminal rules should have no enforcement out of the boundaries of

these parts of the territory of State.

In addition, the merchant ships and airplanes are in principles submitted to their State jurisdiction, even if they sail or fly by in other State territory.

Nevertheless, according to the international seas Convention of 1982, to which UAE and Egypt adhered, there are three cases in which the merchant ships are submitted to the local State jurisdiction. They are: -

- 1- The case that the offence has been committed by or against a person not a member of the crew.
- 2- The case that the offence breach the peace and security of the receiving State, such as smuggling of drugs.
- 3- The case that the ship asks for the intervention or assistance of the local authority.

Consequently, any person whether he is national or foreigner shall be subjected to UAE criminal law provides that: -

- (b) The criminal act has been committed within boundaries of UAE State as cleared above.
- (b) The criminal act has been committed during the period of the criminal law enforcement.

However, there are some exceptions to the principle of territorial applicability of criminal law. These exceptions are either negative, i.e. does not cover some cases despite the crime is committed within the UAE territory, or positive, i.e. it goes far extending the UAE territory to cover some cases despite the crime is committed abroad.

2.2. Negative Exceptions to the Territorial Applicability of Criminal Rules (Criminal Immunity):

2.2.1. Foreign Heads of States:

It is acknowledged that the culpable acts committed by the foreign Head of State or by one of his family or his followers during their visit to a State, are covered by criminal immunity, and they shall not be accountable for their culpable acts before the national courts of the receiving State.

The rationale of the immunity of the Heads of States is the perfect equality and absolute independence of sovereign countries. Hence, the municipal courts are incapable conferring extra-territorial power.

If the Head of State has been disposed or replaced or overthrown or resigned, he is no longer entitled to privileges or immunities as a Head of State. However, he still been immune in regard of crimes he had committed when he was Head of State provided that the crimes were committed in his official capacity.

2.2.2. Diplomats:

The international conventions have been held adopting immunities for diplomats in the receiving State from the criminal jurisdiction thereof. But we draw attention that such criminal immunity confines to the procedural rules only but not substantial rules, by saying the wrong doer diplomat is immune against apprehension, search, interrogation and pretrial custody, criminal proceedings and trial. Hence, the immunity against such procedures will stand between the diplomat and application of substantial criminal rules upon him (such as the rules of crimes and punishment).

Consequently, if resignation or waiver terminates such immunity, the criminal rule shall be activated and he will be subjected to trial and punishment

for his criminal acts by the local authority of receiving State.

2.2.3. Foreign public and military ships and aircraft:

The criminal law of the receiving State is not applicable to them as these ships or aircraft represent the sovereignty of the guest State in the host state. Due to their public nature, they are considered solid moving part of the region guest country. Thus, they are completely immune. Moreover, they are treated as asylums and can receive refugees even though they are anchored at the ports of the Host State.

2.2.4. Foreign armed forces:

Despite the disputable legal situation of the criminal immunities, which are granted to the armed forces, there is an analogy with the situation of the military ship and plans as mentioned above.

2.3. Positive Exceptions to the Territorial applicability of Criminal Rules (The Transnational Effect):

Although jurisdiction in modern Criminal Law is based upon the territory within which the offence was committed, certain extensions of jurisdiction based upon the personality of the offender or the nature of the crime occur in many systems, and among others in the French, UAE and Egyptian systems. Many States, not content with the responsibility of maintaining peace within their borders, take upon themselves also the duty of punishing in certain cases crimes committed abroad. Of course it must be executed abroad. The punishment is pronounced in the State whose law has been broken and can only be executed if the offender comes within its territory. In fact, in most cases, the offence cannot be tried unless he is within the territory. The UAE Law on this subject is based upon French principles. Jurisdiction over offences committed abroad is claimed within wide limits.

The extension of the Criminal Law to acts committed outside the territorial

limits is based upon two principles, each of which finds its application in the French, UAE and Egyptian Codes.

Firstly, Criminal Law is regarded as furnishing a rule of conduct for the citizens of the State wherever they may be. The State not only seeks to keep order within its territory but to supervise the conduct of its own members in their travels throughout the world. This leads to the punishment of offences committed abroad by members of the State.

Secondly, the State must take steps for its preservation and for the maintenance of public order acts which injure its direct interest, e.g. treason, coining, are committed abroad, or when persons plot or abroad offences to be committed within its territory. leads to the punishment of certain offences against safety of the state committed abroad, even by foreigners to the punishment of persons, who, being outside territory, assist in the commission of offences within it.

These two classes of offences must now be considered in detail in connection with the Egyptian provisions on the subject.

2.3.1. Offences punishable when committed abroad by subjects of the State:

As per the forgoing rule in the UAE Penal law and article (3) of Egyptian penal law , local subjects, guilty of the commission outside UAE of acts that are classified as felonies or misdemeanors in the UAE Penal Code, are punishable in accordance with its terms on their return to UAE. But the condition is added that the act must be a punishable offence under the law of the country in which it has been committed.

Note that this condition simply requires that the act must be “punishable”. The identity of the punishment is not required.

One must suppose that the legislator allows this condition because he hesitates to impose upon his subjects a standard of conduct higher than that of the community in which they dwell.

2.3.2. Offences punishable when committed abroad by subjects of the State or by foreigners:

The UAE Penal Law provides for the punishment of two classes of persons. Subjected to the exceptions of Article 1, it applies to both natives and foreigners.

(a) The first sub-section applies to those who are outside UAE , do an act which makes them principals (auteurs) or accessories (complices) to an offence committed wholly or partially in UAE. The terms principals and accessories will be discussed later, and this provision must then be borne in mind. Note that this sub-section applies to all offences and is not, the rule is limited to crimes and misdemeanors. It is difficult to say when an offence committed “partly” in UAE.

The courts have not had to interpret the words. Certainly, if any acts constituent of the offence be committed on UAE territory, the offence would be regarded as “Partly” committed there.

In the crime of fraud (article 399) , if the acts of false pretence are made in UAE with a view to obtaining delivery of property abroad, or if false pretence are made abroad and the property obtained in UAE , in either case the offence of obtaining property by false pretences has been partially committed in UAE. Again, If a person bribes an UAE official when abroad and thereby secures the commission by him in UAE of some act contrary to his duty, the offence of corruption is partly committed in UAE . The position is more dubious when the offence has been completely executed abroad. Probably a thief who brings the stolen goods to UAE could not be prosecuted here under these rules, for theft consists not in the retention, but in the taking of the goods.

However when, an offence is a continuing one, it continues to be committed in every place to which the offender goes, so long as the conditions of the offence continue to be fulfilled. Abduction, which consists in the taking away of a child from its proper protection, though consummated by the removal of the child is prevented from returning. In an older decision the Court of Cassation of Egypt held that conspiracy was a continuing offence, and that consequently the place at which the conspiracy was entered into is immaterial. Any one of the conspirators who comes to Egypt with intent to carry out the criminal arrangement is punishable upon his arrival, even though he may have done no overt act in Egypt in pursuance thereof.

In the case of habitual offences (such as prostitution) it is a moot point whether acts committed outside the jurisdiction can be taken into account as forming part of the criminal habit. It may, however, be pointed out that the law in punishing a habitual offence is not punishing two or three acts together, but is punishing the criminal habit of mind, manifested by repeated commission. It is the criminal habit of life, which constitutes the offence. This being so, it would seem that evidence of similar acts committed abroad would be admissible to show the state of mind of the offender, prosecuted by reason of his commission of one similar act committed abroad would be admissible to show the state of mind of the offender, prosecuted by reason of his commission of one similar act committed within the jurisdiction.

(b) The second sub-section applied to those who are outside UAE are guilty of a certain offence against the public interest of the state, namely, those provided for by Article (20).

It appears that this provision only refers to acts done outside UAE. Therefore, if the act was in UAE, a judgment of a foreign Court would be no defense. The question as to what constitutes an acquittal presents several points of interest.

would seem to be requisite. To arrive at a conclusion in any particular case as to whether the dismissal of the complaint at the close of the foreign proceeding in question constitutes an “acquittal”, it is presumably necessary to take into consideration the view which the law of the national courts (*lex fori*) takes as to the effect of this dismissal. If a new prosecution upon the same evidence is barred, this dismissal would, to this extent, constitute an acquittal. If the dismissal is an absolute bar to proceedings for the same offence it would operate as an absolute acquittal in UAE. On the ground of insufficiency of proof is a bar to further proceedings, unless fresh evidence is adduced.

Presumably, a prosecution in UAE on the same evidence as that adduced before the French foreign courts would be barred by the by dismissing the case. However, such dismissal is not technically an acquittal. The case may be considered doubtful.

By Article 360 of the French C.I.Cr., *“toute personne acquittée le galement ne pourra plus être reprise ou accusée a’ raison due me’me fait”*. The French jurisprudence, interpreting the words *a’ raison du me’me fait*, has decided that an acquittal before a Cour d’Assise (Criminal) is not a bar to a prosecution upon the same facts under a different qualification before a Correctional Court. If the UAE Court adopted as a criterion of a definitive acquittal the view of the *lex fori*, and a UAE citizen , prosecuted for murder in France and acquitted, might be prosecuted in UAE on the same facts for unintentional homicide.

Chapter Three

Justifications

Relevant Provisions:

Use of Right:

Article 53

"There is no crime if the act takes place in good faith in the use of a right provided for in the law and within the limits set for such right.

The following shall be considered as a use of right:

- 1. Chastisement by a husband to his wife and chastisement of the parents, or whoever acts in their stead, to the minor children within the limits prescribed by Shari'a or by law.*
- 2. Medical surgery and acts of medical attendance, in accordance with scientific principles recognized by the licensed medical profession when done with the explicit or implicit consent of the patient, or his legal representative, or in cases where the medical intervention is necessary in emergency cases that require.*
- 3. Acts of violence taking place during performance of sport games within the limits approved for such game and with observance of the rules of due care and caution.*
- 4. Acts of violence against the author of a crime caught red-handed, with a view to arresting him, within the limits required for this purpose.*
- 5. The accusations exchange by the litigating parties during the verbal or written defense before the investigation authorities and courts, within the limits required by such defense and provided the doer is bona fide believing that the matters attributed to his opponent are true and that his belief is based on reasonable grounds".*

2. PERFORMANCE OF A DUTY:

Article 54

"There is no crime if the act is done in the performance of a duty imposed by the Shari'a or the law if the person by whom the act is done is legally authorized to do it".

Article 55

"There is no crime if the act is done by public employee or a person entrusted with a public service, in any of the following two circumstances:

First: if the act is perpetrated in execution of an order issued to him from a superior legally authorized to issue such order and who had to obey the order.

Second: if he performs in good faith an act in execution of a law order"

RIGHT OF LAWFUL SELF DEFENSE:

Article 56

"There is no crime in case the act is performed in the exercise of the right of lawful self-defense.

There shall be a right of lawful self-defense if the following conditions are met:

First: if the defender faces an immediate danger from a crime on his person, his property, or the person or property of another or if he believed in the existence of such danger and his belief is based on reasonable grounds.

Second: the defender has no possibility to resort to public authorities to avoid the danger in due course.

Third: the defender has no other means to repel such danger.

Fourth: the defense is necessary to repel the danger and commensurate with it."

Article 57

"The right of self-defense does not allow premeditated murder unless it is intended to repel one of the following matters:

- 1. An act which it is feared would cause death or serious wounds if such fear is based on reasonable grounds.*
- 2. Forced sexual intercourse with a female or indecent assault on any person.*
- 3. Kidnapping of a human being.*
- 4. Felony of arson, destruction or theft.*
- 5. Breaking by night into an inhabited dwelling or any of its appurtenances"*

Article 58

"The right of lawful self-defense does not allow resistance to one of the members of the public authority during the performance of an act in the exercise of his duties within the limits thereof unless it is feared that such act may cause death or serious wounds and there is a reasonable ground for such apprehension"

Article 59

"Exceeding the legitimate limits in good faith shall be considered an extenuating excuse and, a judgment of acquittal may be rendered if deemed appropriate by the judge".

The accuser's act is justified where he is bound or justified by law or where he is acting under circumstances in which the conduct in question is considered socially desirable and a greater social interest is furthered by allowing the defense.

Justifications affect and change the unlawful and punishable to a lawful and unpunishable act. Furthermore, the person in which justification operates is completely discharged from any legal responsibility be it criminal or tortuous.

Justifications include self-defense, consent, exercise of official exercise

of authority and compliance with superior orders and the exercise of rights and licensees.

I Self-defense

1. Significance of Self-defense:

It is a natural principle that one who is attacked has a right to defend himself, even to the extent of harming the aggressor. A person cannot be expected to accept an attack calmly and confine himself to holding the aggressor liable after the harm is done.

The law means that the act of self-defense is not only penalized, but also lawful, i.e. it does not constitute a violation of law, either criminal or tortious.

2. Conditions of Self-Defense

2.1. The attack

The type of self-defense that primarily comes to mind is self-defense against an attack upon the person.

2.2. Self defense to protect any type of legal right:

The right of self-defense applies regardless of the type of legal right attacked. A person has the right of self-defense not only to protect his person, but also to protect his property, his honor and his other legal rights.

The law does not distinguish between an attack on the defender or on a third party. If I witness an assault, I have the same right to ward it off as the offended party himself. This shows clearly that self-defense is a form of legal enforcement and not merely a subjective ground of excuse. Self-defense may also be asserted to protect public interests, as where, for example, I see a traitor or spy about to flee to the enemy with military secrets.

In practice, the issue of self-defense arises most often in cases of physical assaults. It is very common for an accused to assert that he was attacked or threatened by the other party, and therefore acted in self-defense. He must be

acquitted if there is a reasonable doubt on this issue. Here, as elsewhere, the doubt must be resolved in favor of the accused, who does not have the burden of proving self-defense.

“Attack” may form an act or omission. Occasionally there may be doubts as to what is meant by an attack. Generally it presupposes an active violation of interests. If a person refuses to fulfill a duty, e.g., to return an object or pay a sum of money, this is not what the law considers an attack, which would justify self-defense on the part of the person aggrieved. Exceptions can be imagined, however.

Self-defense may be employed against an unlawful omission. For example, where one who has imprisoned another refuses to release him, or that a person, in order to prevent a rescue, remains sitting in such a place that he obstructs the opening through which the rescue work would have to be performed. The same would be true in other circumstances where omission is equivalent to an act causing harm, such as where a guide refuses to rescue a tourist from a dangerous situation, or where a mother refuses to feed her child. This question of interpretation has no great practical significance. In such cases the law generally provides the basis for that compulsion or use of force which is necessary to ensure that the duty is fulfilled.

A more practical problem is dispute about the use of real property. A not too infrequent example is this: A and B are in constant dispute about a right of way which A claims he is entitled to on B's land. One day, B builds a fence across the road. A sees it and tears it down. If A has actually wed the road then the building of the fence must be regarded as an attack by B, even though he builds it on his own road. A then has the right of self-defense while the fence is being built. But once it is erected, a new situation is created, so that A would be guilty of an attack if he should tear down the fence. This does not solve the case, however, for it must be determined whether there is lawful forcible redress of a

wrong on either side.

The mere violation of a police regulation will not be considered an attack which provides the proper basis for self-defense. That would imply granting to private individuals extensive police powers over each other.

● **Attacks from animals**

It is generally understood, however, that there is no right of self-defense against an attack by an animal unless the animal is used as a tool by some human being. This is based on the proposition that the law is written for people, and not for animals; thus, an animal cannot act “unlawfully.” The authority for the defense here could only be (emergency). When a human being is attacked, the rules of emergency will generally suffice. But these rules are not completely satisfactory when the attack is directed towards another animal, or other types of property. According to article 45, necessity will serve as justification for another punishable act only in those instances where it protects a considerably higher value in comparison with the interests sacrificed by the act. If I have to kill my neighbor’s German police dog in order to prevent my small Pekinese from being harmed, this would be punishable unless the latter was a much more valuable animal than the former. Much could be said in favor of interpreting article 45 analogically, making the defensive act legal at least in all cases where the value which is saved is as great as or greater than the harm inflicted on the attacking animal.

2.3. Self-defense against an imminent attack

The law does not require that the attack should have begun or that it is imminent.

Self-defense can also be necessary against future attacks. The more practical example of preventive acts against a future attack is the setting up of trap guns and similar preventive measures which are directed toward an

indefinite group.

2.4. The attack must be unlawful

A condition for the right of self-defense is that the attack is unlawful (illegal). It need not be punishable, however.

Whether the act is unlawful depends on the rules of public and private law. As a starting point it can be said that every attack against a legally protected interest is illegal in the absence of any special ground which makes it legal, such as emergency, official acts of authority, and lawful forcible redress of a wrong. If such a special ground does exist, the assaulted party must accept the attack and has no right of self-defense.

According to prevailing jurisprudence, illegality is valued objectively. Even though the assailant acts in good faith so that he cannot be blamed, this will not preclude the right to self-defense but will affect only the question of how drastically the victim may react. But if there is time and opportunity, obviously the victim must try to clarify the matter before he resorts to defense measures.

The right of self-defense is not precluded by the fact that the assailant is not responsible for his acts because of insanity, for example. Attacks from animals. It is generally understood, however, that there is no right of self-defense against an attack by an animal unless the animal is used as a tool by some human being. This is based on the proposition that the law is written for people, and not for animals; thus, an animal cannot act "unlawfully." The authority for the defense here could only be based on emergency. Thus, in case of necessity, when a human being is attacked, the rules of emergency will generally suffice. But these rules are not completely satisfactory when the attack is directed towards the defendant by the offender's dog.

Special case: Self-defense, as justification, does not operate upon commotion the crime of Adultery:

Article 334

"Shall be sanctioned to term imprisonment, whoever surprises his wife, daughter or sister committing adultery and instantly kills her or the adulterer or both of them; he shall be sanctioned to detention in case of assault on her or him leading to death or disability.

Shall be sanctioned to term imprisonment, the wife who surprises her husband committing adultery in the conjugal domicile and instantly kills him or his female companion in adultery or both of them; she shall be sanctioned to detention in case of assault on him or his companion leading to death or disability.

The right of lawful self defense may not be used against the beneficiary of such excuse"

Unlike the Egyptian Penal Law, the adulterer in the UAE Penal law, does not benefit from the self-defense upon commission any crime against the husband, the wife, the parent, the brother . Hence, the act of the adulterer is not characterized as self-defense but an aggression forming any crime against any of them, and then he still held liable thereof.

We adopt the attitude of the UAE legislator when he deprived the adulterer from the excuse of self-defense to justify his reaction against the other party, this is because the act (adultery) is initially illegal. Consequently, the actions of both parties shall be punishable. The act of the husband from the one hand shall be penalized, (but the mitigating excuse shall operate in his favor as set in the article herein), and the adulterer shall be punishable on the other hand and he shall not benefit from the justification of self-defense.

However, the problem arises when the husband commits a crime against the adulterer- not characterized as a felony- but constituting a misdemeanor, such as simple battery or injury. The question which comes into focus, whether or not his act shall be punishable

as per article (339) of UAE penal Code which rules:

“Shall be sentenced to detention and to fine, whoever assaults by any means the body safety of others and the assault resulted in his illness or disability to attend to his personal business for a period exceeding twenty days.

The penalty shall be detention for a term not exceeding one year and to a fine not in excess of ten thousands Dirham, if the assault did not reach the degree of seriousness mentioned in the above paragraph.”

In such a case, there is no room for a further mitigating excuse in the favor of husband set by article (334) when he commit a simple crime of battery or injury against the adulterer as set in article (339), bearing in mind that both of the husband and the adulterer shall not stand on the same footing of punishment. Therefore we suggest that criminal legislator may cover the husband (and his synonyms) with exemption from punishment in this case.

2.5. The Standard of Proportionality

The act of self-defense must not go further than is necessary to prevent the attack. This applies both to the degree of force used and to the time when it is used.

The assaulted cannot shoot the aggressor in the heart if a shot in the leg would be sufficient to make him harmless. And it is not self-defense if I give him a good beating after I have prevented the attack.

Opinion has been divided on the issue whether the assaulted always may do what is necessary to prevent the attack no matter how small the violation of the law and no matter how hard the act of self-defense will affect the assailant. Should a certain proportionality be required between the interest which is endangered and the damage which will be done by the act of self-defense?

Such a requirement may cause the assaulted to submit to the violation because the only defense which he has is too powerful. The penal law takes a middle course. It does not recognize any absolute right of self-defense, but at the same time it gives the assaulted a rather large margin of safety. The defensive act is permissible provided it “does not exceed what is necessary; moreover, in relation to the attack, the guilt of the assailant and the legal values attacked, it must not be considered absolutely improper to inflict so great an evil as intended by the act of self-defense”.

It is evident from the provision 226 that the determining factor is not an evaluation of the objective values of the interest, which is attacked and the damage that is caused by the act of self-defense. That legality should not have to yield to illegality is an important consideration; it must not be possible for an aggressor to use force, relying on the victim having no right to use the only method by which he can defend himself. In this evaluation one must therefore consider whether the attack is made with criminal intent or in good faith, whether the attacker is a mature person, fully responsible for his acts, or a child or insane person, and whether the attack is unprovoked or brought about by the victim himself.

● **The possibility of escape**

The fact that the victim can avoid the attack by fleeing does not in itself preclude the right to self-defense. Fleeing is the opposite of self-defense, and nobody is required to behave cowardly. But on the other hand, in the adjudication of the act of self-defense we cannot always disregard the possibilities of escape. Here as elsewhere, there must be an evaluation of the concrete conditions compared with the directives, which the law has given. The question is whether it was absolutely improper for the attacked to choose defense instead of flight. Both the nature of the attack and the identity of the victim (his position as an official, for example) will be significant factors.

3. Self-defense against official acts

The right of self-defense under 248 also applies to illegal official acts by public authorities. Here, the act of self-defense will generally take the form of violence toward a civil servant or the prevention of the performance of his duties.

Self-defense against official acts creates, however, its own special problems. A factual or legal error by the civil servant cannot be considered in the same manner as a similar error by a private person.

If every official act which is based on a misunderstanding of the facts or on an incorrect interpretation of the law could be met with self-defense, this would lead to the dangerous consequence that a person who acted in the belief that such an error existed, would have to be acquitted because of a lack of the necessary intent. For example, a judicial decision is generally enforced by an administrative official. The person to whom the decision applies cannot oppose enforcement with the argument that the decision was incorrect. Therefore, one who resists the enforcement of a judicial warrant of arrest can be punished for violence against the police even though it is later decided on appeal that there was insufficient ground for the arrest.

However, article (58) gives the person under arrest the right of self-defense provided that he thinks on reasonable grounds that the civil servant will inflict serious injury on him.

4. Mistake of Self-defense

A person may make a mistake about the actual situation. He may wrongly believe that he is being attacked or misjudge the degree of danger. He may also be mistaken as to the effect of the defensive action; he intends merely to render the attacker unconscious, but kills him instead.

It is evident from Penal that the perpetrator in such cases cannot be

punished for an intentional offense if his action was justifiable according to his understanding of the actual situation. If he has shown carelessness in his evaluation of the situation, punishment for negligence can be applied penal.

Thus, if he kills the aggressor in such a situation, he can be punished for negligent homicide penal Code, article 237. If he only strikes the supposed aggressor, without causing any serious harm, he commits no criminal offense since the Code has no provision against negligent assault.

The solution is different if he is correct about the actual situation but makes an error as to how far he may go. This is an error of law which does not give him the right to an act of defense which the law finds. And accordingly, he will be accountable for his act.

5. Exceeding the limits of self-defense:

The rule gives the attacked another margin in addition to the one given by the law. But the provision promises only impunity; it does not make the excess legal.

This means that the act can be met with self-defense from the original attacker and that, under the Act on the coming into force of the Penal Code, there exists a basis for an apportionment between the two parties of the damage the act creates.

The rule applies to cases where the victim inflicts on his attacker a greater suffering than is necessary or proper, but hardly has any application to an excess with respect to time, such as where the victim has hit the attacker so that he falls to the ground, and then, in his excitement, starts to kick the fallen aggressor.

An excessive act of self-defense which is not due only to emotion or fear can lead to a decrease in punishment according to the degrees of criminal results.

II Official Exercise of Authority

Acts which would otherwise be punished are often committed in the exercise of official authority. The execution of a death sentence is legal killing, penal arrest and detention before trial and the imposition of a freedom-curtailling punishment are examples of lawful deprivation of liberty. Burglary can be legal during an official criminal investigation.

For the act to be legal, the proper procedure must obviously be followed, otherwise the official will be criminally liable (unless he can be acquitted on the ground that he acted in good faith). There are many special provisions against officials who abuse their authority. For example, illegal search and illegal

deprivation of freedom, Where such special provisions do not exist, the general penal provisions will be applied to the act.

In most areas the authority of public officials is carefully regulated by legal enactments. But this is not always so, and thus we have no special rules on the right of the police to use force to effect an arrest or to maintain peace and order. Often the necessary authority may be found in the provisions on self-defense and necessity. For example, acts committed for the purpose of executing a legal arrest or preventing prisoners in custody from escaping. But the police must also have certain rights to use force, even outside the situations covered by these provisions, when necessary to secure peace and order. The determining factor on the issue of criminal liability will generally be whether the individual official has acted reasonably.

1. Superior Orders

Another question is closely linked with that of the exercise of official authority. Is one who has committed an unlawful act under orders from a superior thereby unpunishable?

It is clear that in many cases punishment will be out of the question because the subordinate has acted in good faith. He must, in general, be able to rely on the assumption that the order which he follows is legal, and will thus not be liable for its execution.

This follows from the general rules concerning the effects of mistake of fact or law. But what is the situation if he knew that the act was illegal and nevertheless followed the order, what then?

According to article 63, a subordinate who has followed orders is free from liability unless he “understood, or clearly should have understood, that by executing the command he was cooperating in an unlawful act.” In other words, the paragraph protects only the subordinate who has acted in good faith. If he knew of the illegality, he will always be held liable.

However, is in a very difficult position. Under the circumstances, there may be an acquittal under Penal Code, article 47, because of necessity, or a decrease in punishment under article 56. And if he has only doubts as to the legality, he cannot usually be reproached for bowing to the opinion of his superior, but, if possible, he should make his doubts known to the superior.

Concerning punishment of foreign war criminals, article 5 expressly rules that necessity and orders from superiors are not grounds of impunity for those war crimes with which the law deals. But the courts can take such factors into consideration by decreasing the punishment.

Thus in case of the surrender of a chattel or the tearing down of an illegal structure, a judicial decree which is not so greatly deficient that it can be regarded as a nullity must be followed fully as long as it is not changed by a new decree of the same or a superior court. Even though the official who must execute the decision knows that it is wrong, he has neither the right nor the duty to stop the

execution.

2. Forcible Redress

The problem is more difficult when it concerns the re-establishment of an earlier condition, which has been changed against the will of the aggrieved party.

The first condition for the legality of the forcible redress is naturally that the actor has the substantive law on his side. Forcible redress is a form of private assertion of justice, and has a relation-ship to self-defense. The difference is that self-defense is a preventive, and forcible redress a re-establishing assertion of justice. The distinction between self-defense and forcible redress is at times rather difficult to draw. When a person mistakenly believes that he is in the right, his self-help cannot be objectively lawful, but it can be impunitive because of good faith, if it was justifiable according to his comprehension of the situation.

When there exists a conscious breach by the other party there is little hesitation in treating the forcible redress as justified. Even the direct use of force can be justified in such a case, as where I pursue a thief and take the stolen goods away from him. Code of Criminal Procedure, gives even private individuals the right to arrest

III Consent

1.The Legal Situation:

Initially, we point out that consent of the victim is not provided as independent justification in the penal code of UAE, but it is included in the Article (53/2) concerning of Use of Right which states that:

2.Medical surgery and acts of medical attendance, in accordance with scientific principles recognized by the licensed medical profession when done with the explicit or implicit consent of the patient, or his legal representative, or in cases where the medical intervention is necessary in emergency cases that require.

Occasionally, an otherwise punishable act is committed with the consent of the person who is harmed by it. This occurs especially where acts toward life or body are concerned, such as mercy-killing at the request of an incurably sick person, surgical operations (including sterilization and castration), dueling, and the use of violence in boxing, wrestling and other similar sports.

Consent may also exist, however, in many other categories of felonies, such as defamation, false accusation and forgery of documents. In all these cases the question arises as to what effect the consent should have.

From the Roman law comes the maxim “one who consents suffers no wrong”. Opinion is divided as to whether this maxim expressed a general principle that the consent of the victim precluded punishability.

According to the modern viewpoint, such a rule cannot be accepted. There are several reasons which may induce society to prohibit an act even though the one who primarily suffers from it consents. In especially serious crimes a concern for the consenter himself will be likely to cause society to deprive the consent of legal significance; society does not have sufficient confidence in the consenter’s

ability to make a correct evaluation of his own interests. In many cases, other people, such as the consentor's relatives, have an important interest in seeing to it that the act is not done. Purely moral considerations can also come into play, such as in the case of consent to homicide or sexual operations.

2. No general rule in the Penal Code

The UAE as well as Egyptian Penal Codes have no general rule on the significance of consent as it does on self-defense or necessity. The various situations are so different that rules must be made with the individual penal provisions in mind. It is impossible to establish any general principle. Thus, no rule can be based upon the contrast between alienable and inalienable legal rights. Whether such rights are inalienable or not depends on whether a person can make binding agreements to give them up, but this is not the same as the question of whether or not a previous consent has penal significance.

The integrity of honor and body are inalienable legal rights but, as we shall see, consent precludes punishability for defamation and assault.

Likewise, nor can any rule be based upon the distinction between acts which are unconditionally prosecuted by the authorities and those in which prosecution must be requested by the victim. The effect of a previous consent is one thing; but whether or not the victim's wishes on the question of instituting prosecution shall be respected. The owner's consent to the taking of an object precludes punishment for larceny. But once committed, larceny is subject to public prosecution, whether the owner presses charges or not.

When prosecution depends on the demand of the victim, the act is probably of so little interest that a previous consent by the aggrieved party renders it non-punishable.

The interpretation of the individual penal provisions is decisive. Such is

the case of the husband who consents to his wife's adultery. Thus, the solution to the problem must be found in an examination of the individual penal provisions. In some instances the law has expressly provided the answer. In other instances the answer may be more or less deduced from the wording of the provision involved. Where the wording gives no indication, the solution may be obtained by analogy to other cases and by a determination of what is the reasonable and sensible result. Whether or not the act has a reasonable and honest purpose will often be of great importance.

3. Surgical Operations

Consent is included as justification in the UAE Penal Law in order to cover the "Medical Operations such as Transplant which requires the consent of the donators as per the rules of the Federal law No.15/ 1993 on The Donation and Transplant of the Human Organs

Nevertheless, special questions arise as to surgical interventions which are accomplished for the purpose of health. Here, the act of surgery is justified to a greater extent than would be the case under the referred article (53/2). From an isolated point of view, the removal of an eye or amputation of a leg is a "serious injury" to a person's body (see 338 of UAE Penal Code), but of course it is not punishable when medically justified. And to justify the operation medically one can hardly require as great a necessity as emergency measures. Impunity can be based on the fact that a healing intervention is not a

bodily injury at all, or one can say that the healing purpose, together with the consent, justifies the injury.

At times, by the way, it may be necessary and justifiable to undertake an immediate operation without consent or even against the wish of the individual, as for example, after a suicide attempt has failed. Generally, however, it will not be lawful to force an operation on a patient against his will, even though the

operation is clearly justified from a medical point of view.

Where children are concerned, consent must generally be obtained from the parents. There are some doubts, however, as to whether a forced but medically justifiable operation can be adjudged as bodily harm or only as an encroachment of freedom (unlawful force).

PART II

THE LEGAL THEORY OF CRIME

Prelude

Definition of crime

A crime is the voluntary commission, by a person having criminal capacity of any act or omission, in violation of a public law either prohibiting or commanding it, and which is punishable by the offended government by a judicial proceeding in its own name.

From the foregoing definition, we may conclude the necessary conditions of the crime:

- 1- The existence of a rule of law prohibiting the act or omission. The French writers insist that there can be no offence unless there is a rule of law making it such, and this rule must be in force at the time at which the offence was committed. M. Garraud describes this condition as the “legal element” in an offence.
- 2- The manifestation of the will in some outward act, or the omission to do some outward act required by law. The law can only deal with external manifestations of will. In the case of every offence we find ourselves dealing with outward facts. One of the most difficult questions in this connection is the determination of the point at which the external acts have approached nearly enough to consummation of the offence to be termed “attempt” M. Garraud describes this second condition as the “material element” in an offence.
- 3- Responsibility on the part of some person for the act. The external act must be the expression of the will of the doer, acting under the guidance of knowledge and intelligence possessed by him. The determination of responsibility involves therefore an inquiry into the mental condition of the doer, (a) general-questions of sanity and maturity, etc.; (b) particular questions of intention, knowledge, etc.

M Garraud describes this third condition as the “moral element” in an offence. Some writers postulate a fourth element.

4-The absence of any right or duty justifying the doer. Such a duty exists in the case of an executioner, such a right in the case of a parent chastising his children. This so-called fourth element may, however, more conveniently be treated as one of the conditions of responsibility. The existence of a right is indeed a defense, even though the doer did not know it. But the ground upon which persons are exempted from the operation of the Criminal Law when acting in pursuance of a right is generally the absence of anti-social intention.

Chapter One

Classification of Crimes

The crimes could be classified according to several criteria. These criteria might be “the gravity” or the nature of wrong or as to its material or mental element.

1. Classification of Crime as to its Gravity:

Relevant provisions:

Article 1

"The provisions of the Islamic Shari'a shall apply to the crime of doctrinal punishment, punitive sanctions and blood money. Crimes and reprehensive sanctions shall be specified in accordance with the provisions of this code and the other penal laws".

Article 26

Crimes shall be divided into:

- 1. Dogmatic crimes.*
- 2. Punitive and blood-money crimes.*
- 3. Reprehensive crimes.*

Crimes are of three kinds: felonies, misdemeanors and Contraventions"

Article 28

"A felony is a crime sanctioned by any of the following penalties:

- 1. Any of the dogmatic sanctions or punitive punishments except drunkenness and slander.*
- 2. Capital punishment.*
- 3. Life imprisonment.*
- 4. Temporary incarceration"*

Article 29

A misdemeanor is a crime sanctioned by one or more of the following penalties:

- 1. Imprisonment.*
- 2. A fine in exceeding a thousand dirham.*
- 3. Blood-money.*

Article 30

A contravention is every act or omission sanctioned in the laws or regulations by one or both of the two following penalties:

- 1. Detention for a period not less than twenty four hours and not more than ten days by putting the convicted in special places reserved for this purpose.*
- 2. A fine not exceeding a thousand dirham.*

Article 9, 10, 11, 12 of Egyptian penal code have divided crime into categories as follows: -

1.1. Felonies

Which are punishable by death, perpetual servitude, penal servitude for a term, and reclusion.

1.2. Misdemeanors

Which are punishable either by imprisonment up to three year or a fine that exceeds 100L.E. or both together.

1.3. Contraventions

Which is punishable by a fine not exceeding L.E. 100.

2. Classification of Crime as to the Nature of the Wrong:

The classification of crimes as to the nature and character of the public rights against which offences may be directed varies more or less in the criminal codes and in treatises upon the criminal law. It is not a classification that is fixed by the Egyptian law, but rather a classification of convenience. Moreover, the same criminal act may violate more than one public right, and consequently, may be properly listed under more than one head.

A classification often employed, and which covers practically all offences is as follows: -

2.1. Crimes Against sovereignty, Public Peace and Political Crimes:

The term “sovereignty and public peace” is wider than term of “political crimes”. This is because the first term may include all offences against state relating to its existence, property and credit, and public peace that it maintains. While political crimes offences strictly include only those directed against political conditions. However, it is extremely difficult to find a satisfactory description of a “political offence”. The subject is one of much importance nowadays, owing to the disinclination on the part of most States to extradite political offenders.

The principal difficulty arises from the fact that common law offences, such as homicide and arson, are often committed with a political aim. Naturally a State is anxious to obtain the extradition of persons who have made an attack upon the life of the sovereign or some other important political person. Many of these attacks are at the present day the work of criminal anarchists, whose motive is lot so much hatred of the particular form of government represented by their victim, but of government in general. Thus their crimes are a menace to the security of State.

The recent views in criminal jurisprudence go to confine political offence

to the acts that target, at the end result, to overthrow the current regime, and rule out the other crimes against State even they were committed with a political motives such as riots and demonstrations against some security measures. That is to say that political nature not as to just disturbance of public peace. However, the characterization of political crime is still very controversial issue up to now.

2.2. Crimes against Public Decency and Mortality:

Bawdy houses; illicit cohabitation; notorious fornication; common gaming house; indecent public exhibitions; public obscenity; public drunkenness; public exposure of person; neglect to bury the dead; breach of the inviolability of the grave; vagrancy....etc.

3. Classification as to the breached interest

There are two types of interests which are subject to crime.

3.1. Crimes against public interest and Crimes against private interest:

Such as crimes against public function (e.g. corruption and its related crimes), crimes against public property (e.g. embezzlement, unlawful appropriation of public property and extortion), crimes against public trust (e.g. forgery and uttering of public instruments); and crimes against the safety and public security of the state (e.g. high treason, spying and terrorism).

Crimes against private interest are divided into crimes against persons (e.g. homicide, battery, affray and assault) and crimes against property (e.g. theft, false pretences and breach of trust).

4. Classification as to its structure

4.1. Simple Crimes and Compound Crimes:

Simple crime, which consists of a single act committed timely. This is the character of most offences, such as murder, rape, battery, theft and assault.

Compound crime, which consist of several acts either repeatedly such as prostitution which consists of several acts of fornication committed in separated times. It may also consist of several culpable acts committed together such as crime of robbery which consists of theft coupled with violence.

Article 385

"Shall be sentenced to term imprisonment, whoever perpetrates the crime of theft by duress or threat through the use of arm whether the purpose thereof s to obtain, keep it in his possession or run away with it"

4.2. Habitual crimes

Which consists of several illegal acts which are calculated together as on crime, such as prostitution and loaning with excessive interest rates (usury).

Article 368

Shall be sanctioned to term imprisonment, whoever habitually practices debauchery or prostitution

Article 412

Every physical person who habitually gives usurious loans shall be sentenced to imprisonment for a term not exceeding five years.

4.3 Continuous crime and momentary crime:

Where the crime takes place through a continuous and uninterrupted length of time. (e.g. Possession of illicit drugs or unlicensed weapons and receiving stolen property).

Article 33

A crime limited in time is when the punishable act occurs and ends by its very nature as soon as it is perpetrated.

A crime shall be considered transient when all the consecutive acts perpetrated in execution of a single criminal scheme are focused on one right without being separated by a period of time serving their link with each other.

If, however, the act is a continuous process that requires a renewed intervention of the perpetrator for a period of time, the crime is then continuous regardless of whether the crime effects have persisted after the perpetration of the crime as long as the effects remained present without the intervention of the perpetrator.

5. Classification as to the criminal result

5.1. Crimes of damage and Crimes of danger:

Where the offence is described as the causation of the harmful result (e.g. homicide, injury and theft)

Where punishment is imposed merely for creating danger, even though the harmful result does not occur (e.g. attempted crimes).

EXPOSURE TO DANGER

Article 348

"Shall be sentenced to detention and/or to a fine, whoever deliberately perpetrates an act that exposes the life, health, security or freedom of human beings to danger.

Without prejudice to a prejudice any more severe penalty prescribed by law, the penalty shall be detention in case the act results in a prejudice of any kind".

Article 349

Shall be sentenced to detention for a term not exceeding two years, whoever personally or through an intermediary exposes to danger a juvenile who did not complete fifteen years of age or a person unable to defend himself because of his health, mental or psychic condition.

The penalty shall be detention if the crime is perpetrated through abandoning the juvenile or the disabled person in a deserted place, or by one of the offender's ascendants, by a person in charge of his custody or of taking care of him.

Should a permanent disability result there from to the victim or unintentionally cause his death, the offender shall be sentenced to the penalty prescribed for the assault leading to permanent disability or to death, as the case may be. The same penalty shall apply if the exposure to danger occurs through deliberately depriving the juvenile or the disabled from nurture or care required by his condition whenever the offender is legally required to provide same"

Article 350

"Shall be sentenced to detention or to a fine not exceeding thousands dirham, whoever, personally or through others, exposes to danger a child, who did not complete seven years of age in a crowded place".

Chapter Two

Elements of a Crime

Every crime necessarily requires two elements or two component parts, one being physical the other mental. The physical element is the prohibited thing done or the commanded thing left undone, or what is called “the act”. The mental element is the state or condition of the doer’s mind (which accompanies the act) and the human will, otherwise known as “the intent”. The first element is called material element or Actus Reus while the second one is called mental element or Mens Rea.

I The Material Element (*Actus Reus*)

Criminal scholars, in general, agree that the material element of a crime consists of three components, they are conduct, criminal results or even and causation.

Relevant Provision:

Article 31

"The material element of a crime consists of a criminal activity of performing an act or forbearance there from when such performance or forbearance is criminal according to the law."

1. Conduct

The criminal conduct takes one of three forms. An omission (passive conduct), act (positive conduct) or an act followed by an omission: -

1.1. Criminal Omission (passive conduct)

1.1.1. Genuine non-action offenses

Genuine non-action offences are those crimes which are committed by mere omission. Many penal provisions are directed against a failure to act. A modern, highly organized society places a duty to act upon its members to a far greater extent than does a primitive society. The authorities require notification not only of the great events in a person's life-birth, marriage and death-but also of the lesser events a change of residence or employment, and the previous year's income. The businessman must keep books, the homeowner must eliminate fire hazards, the car owner must obtain insurance, the employer must enroll his employees into the social security system and deduct income tax payments. Usually, there is a threat of punishment behind the request in order to ensure its observance. Moreover, failure to fulfill private obligations is some-times made punishable. See, for example, Penal Code, chapter 41, which deals with misdemeanors pertaining to private employment. In all these cases, we speak of genuine non-action offenses, or pure omission offenses.

Of course, there are occasionally doubts as to how far such enactments extend. In principle, however, they do not create special difficulties of interpretation. This holds true whether the word omission is used or the law uses other expressions, such as neglect, default or fail to fulfill which connote the same idea.

Sometimes a penal provision will contain two or more alternatives describing the offense partly as an act, and partly as an omission. See for example, one who forcibly prevents a civil servant's performance of his public duty under Article 137 (bis). A of the Egyptian penal code. No special difficulties are created here either.

1.1.2. Commission by omission

Most penal provisions, however, define the offense in such a way that they seem to aim only, or at least mainly, at positive acts. They speak about the one who causes a result, removes an object, falsifies a document or forces another to do something. Here, the question arises whether these provisions can be violated by omissions as well as actions. And if so, how? This is the problem of commission by omission.

A question which has been widely discussed, is whether an omission can be the cause of anything. If a mother lets her newborn baby lie without food or care until it dies, has she then, by her failure to act, caused the death of the child? If I see a lighted cigarette ignite the underbrush of a forest, and yet fail to extinguish it, have I then caused the forest fire? Some answer no to these questions, basing their position on the proposition that an initiating force must set the process of cause and effect in motion. The proposition is often expressed by the Latin maxim *ex nihilo nihil* out of nothing, nothing is created. Others answer yes, on the theory that a cause means the same as a necessary condition. An omission is then the cause of an event if the event would not have occurred, had the omission not happened, that is, if a positive act had taken place instead.

1.1.3. The theory of legal duty:

Relevant Provisions:

Article 261

"Shall be sentenced to detention for a term not exceeding one year and/or to a fine not in excess of five thousands Dirharm, whoever was asked to testify before one of the judicial.bodies and he abstained to take oath or to give his testimony unless his abstention was Justified.

The offender shall be exempted from the penalty if he retracts his abstention prior to the issue of the judgment on the merits of the case".

Article 268

Shall be sentenced to detention for a term not exceeding six months or to a fine not in excess of five thousands dirham, whoever is legally asked to submit a writing or anything else useful to establish a fact submitted to the courts and abstains there from in cases other than those allowed by law

Article 270

The penalty provided for in the preceding Article (shall apply on every public servant or person in charge of a public service deliberately and unduly abstains from executing a judgment or order issued by one of the courts within eight days following the official warning to execute served upon him; whenever the execution of the judgment or order falls within his jurisdiction.

Article 272

Every public servant, in charge of detecting crimes or apprehending criminals, who neglects or remits reporting a crime that came to his knowledge, shall be sentenced to detention or to a fine.

Shall be sentenced to a fine, the public servant who is in charge of detecting crimes or apprehending criminals, if he neglects or remits reporting to the competent authority a crime that came to his knowledge while, or because of discharging his duties. there shall be no penalty in case the filing of the lawsuit, in the instances mentioned in the two preceding paragraphs is dependent on submitting a complaint.

Exemption from the penalty, provided for in the second paragraph of this article, may be granted in case the public servant is the spouse of the criminal, one of his ascendants or descendants, of his brothers or sisters or his in-laws who are related to him with a similar degree of affinity.

Article 273

Shall be sentenced to detention for a term not exceeding one year and/or to a fine not in excess of twenty thousand Dirham, whoever, during the practice of his medical or health profession, examines a corpse or gives medical assistance to a severely injured person showing signs that his death or injury is due to a crime or if it is revealed from other circumstances that there is a reason to suspect the cause of death or injury and fails to report this to the authorities.

Article 274

Shall be sentenced to a fine not exceeding one thousand Dirham, whoever came to his knowledge that a crime has been perpetrated and abstains to report this to the competent authorities.

May be exempted from this penalty, the one who abstained from reporting, should he be the spouse of the criminal, one of his ascendants, descendants, brothers or sisters or those considered as such from his in-laws a similar degree of affinity.

It has been customary to seek a general principle underlying the punishability of omissions. The dominant doctrine in German and Scandinavian theory is the legal duty doctrine. It holds that the failure to prevent a harmful result must be equalized with the active bringing about of the result wherever the person who failed to act had a legal duty to act. The formulation is primarily directed towards the offenses described as the causation of a harm, but the same principle is usually supposed to apply to all offenses of commission regardless of the expressions which the law uses. Such a legal duty would, according to theory, exist on three different grounds:

- (1) statute,
- (2) contract,
- (3) preexisting endangering acts.

This theory must be discarded for several reasons. First, it does not sufficiently take into consideration the fact that we are dealing with a question of interpretation which cannot be solved in any general manner. The description of the act in the various penal provisions may be more or less formulated in terms of activity. Some provisions are almost impossible to violate by an omission, while others have a more general formulation. Penal Code imposes punishment on one who “violates the rights of others”, such as the finder of missing or mislead chattels or animals who does not report to the authorities thereof.

On the other hand, it is not difficult to imagine omissions which fall within the Egyptian Penal Code, 122, penalizing any judge who, without any legal reason, refrains from deciding cases (denial of justice) or within Article 293, directed against anybody who “by neglect, maltreatment or similar conduct violates his duties toward spouse or children”.

Adversely, one can hardly imagine rape committed by omission, whereas incest may have been; the provisions here penalize the mere act of having intercourse with persons within the forbidden group, and thus apply, for example, to a woman who passively allows her brother or her father to have intercourse with her. For each penal provision a determination must be made as to whether, according to its language and purpose, it can be held to apply to omissions.

But even when limited to the genuine causation offenses, the doctrine is untenable. One cannot take it for granted that a legal duty in one area is applicable to another. According to Penal Code everyone has a duty to aid a person who is in apparent and immediate danger of death. There is, in other words, a legal duty to act in such a case, but this obviously does not mean that one who neglects his duty to help shall be held liable for the other’s death and thus be convicted of homicide. This everyone agrees about, and the doctrine of legal duty is often modified to the effect that a general duty to aid is not sufficient to impose liability for causation; a special duty is required. However, even where

such special legal duties are concerned, liability for omission may be limited to that which follows directly from those rules which impose the duty.

According to the common instructions to the nation's police, a policeman has many duties with reference to the prevention of danger and damage. He has to report fires and aid in extinguishing them; he must try to catch dangerous animals which have escaped; he must try to prevent accidents; he should take care of sick persons and those who need help, etc. If a policeman intentionally or negligently violates these provisions, he is guilty of a neglect of duty which is subject to punishment under Penal Code, and which may result in his dismissal, but there is hardly sufficient reason to impose upon him liability for causation of those results which he should have prevented.

Similarly, a doctor-including one with a private practice according to the Egyptian Medical Enactments, has the duty to give medical assistance in emergencies. If he refuses to do so, he may be punished under these enactments, and possibly under Penal Code, Article 238-3, as well, but he can hardly be held liable for intentional or negligent homicide if the sick person should die because of a lack of medical care.

Thus, a legal duty is not in itself a sufficient basis of liability for the omission as causation of a specific harm. A more scrutinizing test must be applied to the individual case. And, on the other hand, it cannot be supposed that a legal duty existing independent of the penal provision, is always a prerequisite to criminal liability. We can use willful abortion as an example. The woman who passively allows another to procure abortion of her fetus will come under Penal Code, Article 262.

Outside of the penal provision itself, however, one would seek in vain for a legal duty. Here we are in an area where the law's disapproval cannot be expressed in any other way than by the threat of punishment; if we eliminate that,

we are left only with the purely moral reprobation.

In speaking here about legal duty, we have meant a legal duty which exists independently of the penal provision in issue. And it is in this sense that the expression is used in the doctrine of legal duty. But it can be said, of course, that in so far as an omission is punishable, there is also a legal duty to act. In this manner, punishability and legal duty do belong together. In this sense, punishability is the primary matter; the existence of legal duty is merely an expression of the result of interpretation, not a prerequisite for it.

Omission to act may be tried if the person is charged by law to do an act, however he abstained. This abstention comes against law and may constitute a crime. Hence whenever the person is burdened with a duty set by criminal law, however he fails to respond to this duty, he shall be accountable for a crime committed by omission.

For example, concealing, or failing to disclose to the proper authorities, known facts concerning the commission of treason or felony became by statute a misdemeanor. In misprision of treason or felony one conceals only what he has seen or of what he has bare knowledge. He must not assent to the crime in any way, or aid or abet it by his presence, or receive or relieve the criminal after the crime is committed, for such acts would make him either a principal (in the second degree), or an accessory after the fact.

However, there are other crimes which are based upon omitted acts. A public officer may be guilty of nonfeasance in office. At common law, it is also a misdemeanor to refuse to serve in a public office to which one has been duly elected. The non-support of wife or family is made a crime by statute, and various public nuisances may be caused by an omission of legal duty.

In fact, some very serious crimes may be committed by an omission to

perform a legal duty One may by such neglect of duty render himself liable for manslaughter or even murder. Thus in the case of State V. O'Brien, a railway switch tender neglected to perform his duty, resulting in a train wreck and a passenger's death. In upholding a conviction for manslaughter the court said: "If the defendant's omission of duty was willful he was guilty of murder. Intent to take life, whether by an act of omission or commission, distinguishes murder from manslaughter. In order to make out against the defendant the lesser offence of manslaughter it was not necessary that it should appear that the act of omission was willful or on purpose.

1.2. The Act

The criminal law deals only with voluntary acts, things done in obedience to the will. Jurisprudence in Holland states that "it is concerned only with outward acts. Therefore, an 'act' may be defined as a determination of will, producing an effect in the sensible world."

Blackstone writes: -

"An involuntary act, has no claim to merit, and thus it can not induce any guilt. To make a complete crime covered by human laws, there must be both a will and an act. In all temporal jurisdictions, an overt act, or some open evidence of an intended crime, is necessary, in order to demonstrate the corruption of the will, before the accused is liable to punishment. To constitute a crime against human laws, there must be first a vicious will, and second, an unlawful act consequent upon such vicious will."

Since a crime is a violation of public law either prohibiting or commanding an act, it is often said that a criminal act may be an act of commission or an act of omission, but more accurately the latter should be described as a failure to act, a neglect to perform a legal duty, or an omission to act.

It is agreed that there must be a criminal act. A criminal act is usually

defined by statute, such as making the act of counterfeiting money a criminal act.

To be criminal, an act must be connected with the intended (or unintended) crime either wholly or partially.

1.2.1. The Overt Act

The term “overt act” is often used in the law to emphasize the need of an act external to the mental process. Likewise, in an attempt to commit a crime it is often said that an overt act is necessary, and it is provided by statute in some states that there must be an overt act to constitute the crime of conspiracy.

However, the terms “overt act” and “act” are synonymous, and there must be an overt act in every crime. Overt means “open”, “apparent”, “manifest”, and an overt act means that some outward act in manifest pursuance of a design or intent is necessary in order to constitute a crime. It may be done secretly, yet if it is subject to proof it is “overt” in the legal sense.

It has been said that conspiracy is the only crime, which does not require an overt act, the intent alone being sufficient.

The Relevant Provisions:

Article 172

"Shall be sentenced to term imprisonment or detention whoever participates in a criminal scheme whether for the purpose of perpetrating crimes provided for in this chapter or use it as a means to reach the objective of the criminal scheme"

Article 192

"Shall be sentenced to imprisonment for a maximum period of five years, whoever is party to an agreement aiming at the perpetration of one of the crimes referred to under Article 191 hereof, or using it as a means to reach the intended purpose."

Shall be sentenced to term imprisonment, whoever incites to reach such agreement or is in a position to manage its execution.

Nevertheless, if the purpose of the agreement is the perpetration of a specific crime or the use thereof as a means to realize its intended purpose, and if its penalty is less than that provided for in the two preceding paragraphs, the penalty shall be limited to the one prescribed for such crime. Shall be exempted from the penalties prescribed in the first three paragraphs hereof, any of the culprits who takes the initiative to inform the competent authorities of the existence of such an agreement and the participants thereto prior to the perpetration of any of the stated crimes".

This, however, is an error. The agreement itself of two or more persons in a conspiracy is an act, and the statutes which require an "overt act" in conspiracy merely require some additional act in carrying out, or in furtherance of, the agreement, such an additional act is not necessary.

In homicide cases involving self defense, an "overt act" on the part of the deceased which will justify such a plea means any act which would reasonably indicate to the accused a present intention to kill him or to do him great bodily harm. It may be a motion, a gesture, conduct, or demonstration.

In attempts, an "overt act" is an act done to carry out the intention, and is something more than mere planning or preparation. In a conspiracy, an "overt act", when required by the law, is an act done by one or more of the parties to effect the object of the conspiracy, something done in furtherance of the agreement, and, contrary to the rule in attempts, may be done in preparation to carry it out.

● Acts of Commission

References already made to an attempt and to a conspiracy indicate that

the commission of a criminal act may take place in various ways. It may be a full accomplishment of the act intended, or attempt to perpetrate it, or a solicitation of some other person to commit it, or it may be a conspiracy with one or more other persons to do the act. For instance, Z intending to murder P, shoots at P and kills him. The act is obviously accomplished. However, had Z when he shot failed to hit P he would have been guilty of an attempt to murder. Should Z persuade or try to persuade E to murder P, Z's act is still criminal even if nothing further is done, being a solicitation to murder. If Z and E agreed to murder P, even if they, or either of them, did nothing afterwards to carry out this agreement. Nevertheless, both of them would be guilty, at common law, of a criminal act, an agreement, or conspiracy to murder. In all of these instances there would have been a commission of a criminal act, some positive act being done.

1.2.2. Endangering acts

A normal and legal activity will often cause a danger, which the actor has a duty to neutralize by proper safety measures. It is often necessary to utilize danger-preventing measures before, or simultaneously with, the doing of a dangerous act. One who is blasting in a populated area must make certain that sufficient warning is given before the blast. If the act is done without the necessary precautions, liability can be based on the positive act; the setting off of the blast was negligent. In other instances, however, it is a subsequent neutralizing act, which is required. One who has been digging in the street must see to it that the hole is properly marked when it gets dark; one who has set a fire in the wilderness must make certain that it is extinguished before he moves on; a doctor who commences an operation must see to it that it is finished. Here, liability usually cannot be based upon the dangerous act, since it was not negligent. The liability must be based upon the ensuing omission.

The principle for judgment, however, will be the same; the determining factor is whether the acting person has followed through with those safety measures which general common sense would consider necessary. If he has

not done so, and harm occurs, he will be criminally liable, provided that the subjective conditions for punishment exist. In these instances, to regard the omission as the cause of the harm is also natural from a linguistic point of view. The act of adopting necessary safety measures is a normal and necessary part of the activity; if these measures are neglected, this neglect will be considered the explanation of the harm.

1. Causal Relationship:

Relevant Provision:

Article 32

"A person shall not be answerable for a crime that is not the result of his criminal activity. He may however answer for the crime if his criminal activity contributed with another cause, previous or contemporary or subsequent, in its occurrence whenever this cause is expected or likely to occur in the ordinary sequence of events.

Where this cause alone is in itself sufficient to produce the result of the crime, the person shall not in this case be answerable except for the act he perpetrated".

In the law of torts, before liability may be imposed there must be established to exist a causal relationship between the act upon which the liability is based and the damage for which compensation is demanded. The question of causation does not have the same importance within penal law. Most penal provisions do not describe the offense in terms of the causation of a certain result; instead, they speak, e.g., about "appropriating" or "carrying away" an object, "giving false testimony", and "using" false documents. The interpretation of the individual expressions of the penal provisions does not necessarily involve the concept of causation.

Nevertheless, a large number of provisions do involve this concept, especially those of which are directed against a physical harm inflicted on person or on property. At times, the law penalizes the person who "causes" a death or

harm (e.g., Egyptian Penal Code, Article 238 and 244), at times it uses other expressions, which mean the same. For example, it speaks about “injuring” another in body or health, “bringing about” danger, “destroying” an object. The same idea is present when the law increases the punishment because harm has become the “result” of an offense. Moreover, when the law refers to “forcing” or “inducing” someone to commit an act, causal relationship is required; but these terms also constitute a characterization of the act in question.

Thus, whenever a penal provision uses the term causation or a similar expression, a discussion of the meaning of causation becomes part of the interpretation of the provision. And since the question is involved in a large number of provisions, it is only natural to discuss it in the general part of the criminal law.

The importance of whether or not causation exists, however, is not the same in the penal law as it is in the law of torts. In tort law it is decisive on the issue of compensation; a person is responsible only for the damages which he (or his servants) has caused. It is different in the penal law. In the case of intentional felonies, causation is significant only in determining whether punishment shall be meted out for a fully completed offense or merely for an attempt. For negligent felonies and for misdemeanors, however, causation will have the same importance as it has in the law of torts, i.e., it will determine whether liability exists. In determining the content of the legal requirement of causation, the judge is in the same position as where any other question of interpretation is concerned. The starting point of the interpretation is the common meaning of the words of the law. However, this meaning can be made more precise and modified by other factors, such as the legislative purpose, the connection with other legal provisions, judicial practice and, by no means least, a determination of what the natural and rational solution would be.

There are several theories under criminal jurisprudence. We shall discuss

the following theories

2.1. Theories of Causation

2.1.1. The condition theory

The usual starting point in the condition theory is that every necessary condition is to be regarded as a cause. To determine whether or not a particular act is the cause of a particular harm, one thus asks: Would the harm have occurred if the act had not been committed? A kind of differentiation computation is made. The actual result is compared with what would have happened had there been no act; it is the difference for which the perpetrator must answer. According to this terminology, every act has an eternity of causes, both coordinate and successive. For example, two old enemies, A and B, meet on a road and start to quarrel. One word leads to another, and it ends with A stabbing B. If A had taken another road, or if he had left his knife at home, or if he had not originally been in a bad mood because of a quarrel with his wife, the killing would not have occurred. Had B, on the other hand, been out a little bit later, or had he controlled his tongue a little better, it would not have happened either. And each one of these causes itself has a long line of other causes of a more or less remote nature.

People are not that theoretical in the language of ordinary life. One would not say that the now deceased third person who originally introduced A's parents to each other caused B's death, even though it is quite clear that had they not met, A would never have existed and thus no killing would have occurred. When one questions the causes for something, it is for the purpose of obtaining an explanation. And we designate as causes that or those foregoing events that give us the explanation, which make us understand the occurrence. The answer often depends on the practical purpose, which one is seeking. The doctor determines the immediate cause of death: loss of blood due to stabbing. The judge asks who caused the death. The forensic psychologist goes back even further, to the motives of the murderer and to any other factor that may explain the act.

The fact that the condition theory goes further than common language usage in attaching causation to more distant factors, gives it a somewhat theoretical and distant aspect, but it is of little practical importance for the application of this concept of causation in law. The necessary limitation is created by other prerequisites of criminal liability, an unlawful act and subjective guilt. Thus, a broad formulation of the requirement of causation is not so dangerous. In the penal law, liability must be based upon an unlawful act (or omission). It then becomes decisive whether this act can be considered a cause; if other factors, for which no one can be made responsible, may also be described in the same way is without legal significance.

The formula *conditio sine qua non* can well serve as a point of origin in determining criminal liability for an unlawful act. When the causal relationship is not altogether clear, it is quite natural to ask what the situation would have been if the act had not been committed. But a closer analysis will show that this formula cannot be used without modifications and explanations, and that the determination will often have to be made by a subjective interpretation, where there might be reasonable differences of opinion as to the solution of the individual case. This is natural enough. Legal problems can rarely be solved by a simple formula. The limits can be fixed only through paraphrasing, explanations and exemplification. But the very formulation of the condition theory tends to create the illusion that the solution is easily obtained by a simple mathematical formula.

2.1.2. Theory of direct causation

This theory concerns the harm that is inflicted by one person alone. Hence, it does not speak about one who causes another's death, but about one who accelerates the death of another, or who brings about his death at another place or in another manner than would otherwise have been the case. It does not speak about one who destroys or damages another person's property, but about one who merely brings about a change in the mode of destruction. A choice must therefore be made; the change must either be considered a cause leading

to criminal liability for murder, or for destruction of property, or there must be a complete acquittal (or, in felony cases, punishment for attempt).

The main rule must be that every substantial change as to time, place or method, is deemed sufficient to constitute a causal relationship. It does not help the perpetrator to show that other causes would have interfered had he not committed the act. One who shoots and kills a traveler who is on the way to the airport is guilty of murder even though the plane on which the deceased was to depart crashes, leaving no survivors. This follows from a natural interpretation of the penal provision. It is directed against one who causes another's death, and this the murderer has done. Similarly, one who has set fire to a house has undoubtedly destroyed or damaged it, even though it is quite clear that it would have burned down anyway for other reasons. This issue was faced squarely in a case in the German Reichsgericht. While a house was on fire, the defendants had set fire to other parts of the house. It was clear that the house would have burned down anyway, but the defendants were nevertheless convicted of causing damage. This result would also have been reached under Egyptian law. Whether the fact that the fire was already burning should be taken into consideration in determining whether the damage is "substantial," is another question which may be of importance for the classification of the vandalism as serious.

Since the house was doomed at the time the act was committed, the damage was really nil from an economic point of view. Conceivably the change created by the act may be so insignificant that it would be unnatural to give it any legal relevance. If an error by a doctor or nurse shortens the life of a dying person by a few minutes or seconds, the error would hardly be punished as negligent manslaughter; on the other hand, when the acceleration is substantial, the fact that death was inevitable will constitute no defense. In many cases, one is faced with a question of opinion, where the condition theory gives no single answer.

2.1.3. Theory of the more effective cause

We shall now assume that more than one person is charged with responsibility for the same harm.

The usual case is where several persons have acted jointly. If A, B and C, acting together according to a common plan, assault and kill a fourth person, they are all responsible for the murder, and not merely the one who struck the fatal blow. And if one of them argues that the other two would have managed as well without his help, this will not free him from criminal liability for the murder. The situation is considered a joint act for which all participants are liable. The solution would probably have been the same even if the law had directed itself only against the one who causes the death of another. But, as a security device, the law, in its provisions against homicide, assault, vandalism, etc., has expressly mentioned complicity besides causation. A person can be penalized as an accomplice even though his participation was not necessary to the result. We shall return to this question under the theory of complicity.

Even in the absence of such intentional cooperation, there are times when the condition criteria fail.

(a) As a prerequisite, both causes must have been operative; if only one of them accomplished the result, liability for completed murder will attach only to that cause. A administers a deadly poison to the victim, but before the poison has had time to take effect, B kills the dying person with an axe. A can be punished for attempted murder, but B will be punished for murder. It is possible that A's act, instead of coinciding with that of B, coincides with a natural phenomenon or some other event for which no one can be held responsible. In the example of the signalman who was given a sedative, suppose that before the sedative began to take effect, a flood destroyed a bridge which he had to cross in order to perform his functions. At the critical moment he is unconscious, but under no circumstances would he have been able to perform his duties.

In such instances, the better reasoning would probably not hold A liable for inflicting the harm. Logically it might appear difficult to distinguish the coincidence of two attributable acts from that of one attributable act and one act of nature. However, there is this difference, that in the latter group of cases, the damage would have occurred even though no unlawful act had been committed at all. This argument is especially applicable where the damage question is involved. When two attributable acts coincide, the *conditio sine qua non* requirement must be disregarded, since it is obvious that compensation must be paid even though there are two persons involved in the causation of the damage. When the attributable act coincides with an act of nature, however, it is natural to reason that the act has not caused any greater damage than would have occurred in any case, and that compensation therefore should not be paid. There is hardly any reason to require a different solution in penal law. But where an intentional felony is involved, its perpetrator may of course be punished for attempt.

(b) Another combination is that which has been designated as excess of causes.

Suppose that five grams of poison is needed to kill a person. The victim's wife, the cook, and the chambermaid, not acting in concert, give him three grams each, for the purpose of killing him. None of the causes is sufficient in itself to produce death, but there is such an excess of them that one cause could be excluded without changing the result. Here, each individual must be deemed to have full criminal liability, even though the condition criteria have not been fulfilled.

(c) A third combination is also possible: two causal elements work together; one could have produced the effect by itself, the other could not have done so. The man who needed five grams of poison to die is given six grams by his wife and, independently, three grams by the cook. According to the condition criteria, the former has caused the death, not the latter. It seems more natural, however, to say that both participated in the causation, although in varying degrees. Such concurrence of unlawful and independent acts as we have

mentioned have little practical importance.

At times it is quite clear that either A or B has caused the harmful result, but it may be uncertain which one of them did. Both A and B have shot at the victim, but he was hit by only one bullet, and it is impossible to determine from whose gun it came. Whether such an evidentiary doubt should lead to joint liability of A and B in the law of torts has often been discussed. In penal law it is clear that the benefit of the doubt, here as always, must be given to the accused. As previously mentioned, if A and B have cooperated in the effort to kill C, they will both be deemed guilty. But, if they have acted independently of each other, as in the case above, they can be punished only for attempted murder.

2.1.4. The theory of adequate causation

The chain of events can develop so fortuitously that a comparatively innocent act may lead to drastic consequences. The question then arises, within both the law of torts and the penal law, whether liability extends as far as the causal connection. Already arrested held that there had to be a reasonable connection between the unlawful act and the harm.

The German author von Kries created the expressions adequate and inadequate causal connection, which have become common in modern theory. In one practical and important situation the requirement of adequate cause has obtained legal recognition and has at the same time been defined somewhat more precisely. Aside from this provision, there is no express legal authority to limit liability to adequate consequences, but the idea has been approved by most authors.

An analysis of what is meant by the requirement of adequacy can be divided into two parts.

- First, the act must entail a certain risk of harm; it must have a certain general

causative capability.

- Secondly, the danger must have been produced in a fairly normal manner. The following presentation concerns only the penal law and not the law of torts, where the problems are somewhat different, partly because subjective guilt does not play such a great role there as it does in the penal law, partly because the rules are less determined by written law, and partly because the law of torts deals with economic damage, while the penal law, as a rule, is concerned with liability for certain concrete harms, such as death and bodily injury.

2.1.4.1. General causative capability

We shall first discuss the requirement of the act's causative capability. This requirement has little significance in penal law as an independent condition of liability. The necessary limitation is generally to be found in the requirement of subjective guilt. If the act itself creates no risk of harm, then there is neither intent nor negligence in the event some harm should actually occur because of unforeseen circumstances. I stop a person on the street and speak to him; when he moves on, a falling brick hit him on the head. I persuade my uncle to take a cruise; the ship hits a mine and sinks with all hands aboard. Had I not interfered with the course of events, the other person would have escaped the accident. But I obviously cannot be held liable for these results.

However, the intent to harm may exist even though the risk is very small. The reason why I persuade my uncle to take the cruise is precisely that I hope he will die by an accident so that I will inherit his estate. Even though my wish actually comes true, I cannot be punished for murder. And, what is equally important from a practical point of view, I cannot be found guilty of attempted murder if the hope is not fulfilled. In such cases, freedom from liability follows from the fact that I have not committed an unlawful act. I am within the area of permitted and free action, where no one questions any motives.

But suppose that I induced him to take the trip by giving him false information. Then there exist both an unlawful act and the intent as to the consequences. If the risk is as small as it usually is under normal cruise conditions, I would hardly be sentenced for murder anyway (or even attempted murder). Here the adequacy concept comes into play. When the danger is so small that in practice it is not taken into account, the accidental result will be considered inadequate, even though a particular individual may have taken it into account. (The solution will be different if I knew of certain dangers, such as a plot to sink the ship, or the fact that it is not seaworthy.) The result must be legally justified on the ground that the law's threat of punishment against one who causes a person's death" cannot reasonably be interpreted to include such peculiar "acts of homicide." Not only will the degree of probability be considered, but also the nature of the act itself. If a person shoots at another with intent to kill, he cannot hope for an acquittal even if the distance between them is so great that there is very little likelihood of hitting the victim. If he misses, he will be guilty of attempt; if he hits and kills, he will be guilty of murder.

These are theoretical problems of little practical significance. However, the requirement of adequacy is of more importance in relation to those offenses where the punishment may be increased because of unintentional consequences. A typical example is Penal Code, Article 236-1 and 240-1, on assault, which substantially increases the punishment where the act results in death, or harm to body or health. The assault itself must be intentional, but the effect giving rise to increased punishment need not be. (If the effect is intended, then the act is either intentional causing of bodily harm or intentional homicide. Egyptian Penal Code, Article 234, states that the increased punishment in such cases applies only "where the offender could have foreseen the possibility of such a consequence or where in spite of his ability to do so, he has failed to prevent such a consequence after having become aware of the danger."

2.1.4.2. Breaking the chain of causation

Other acts or events may break the chain of causation. “Intervening acts and events” may occur before death. The question is, whether or not such acts or events broke the chain of causation.

• Unforeseen course of events

It may happen that the act is inherently dangerous, but that the damage occurs in a strange or unforeseen way. A shoots at B for the purpose of killing him; he misses, but B’s fear causes a fatal heart attack. Should A be punished for murder or merely for attempted murder? A is working with explosives in a grossly negligent manner, causing an explosion; B is hit by a stone fragment and receives a small injury but, since he is a bleeder, the flow of blood cannot be stopped, and he dies. Can A be punished for negligent homicide or merely for his careless conduct? B is injured by a reckless driver. The injury is not fatal, but it necessitates an operation, and B dies during the narcosis. Has the driver of the car negligently caused B’s death?

Such a deviation from the normal course of events is generally not a defense to a criminal charge. If A has tried to kill B and has succeeded, it is difficult to see any reason why he should be punished only for attempt, merely because the course of events was not the anticipated one. The same is true in the negligence cases:

A person has negligently caused danger to human life, and human life has actually been lost as a result of his act; there is hardly any reason to absolve him of criminal liability merely because it was difficult to foresee the precise manner, which the harm would occur. It may be argued that liability should not depend on mere chance. But the answer to this is that the difference between an attempt and a completed crime depends precisely on the chance of the result having occurred. For negligent felonies (and misdemeanors) the same chance determines the entire question of liability. If the harmful result does not

materialize, the perpetrator benefits from that fact; if it does materialize, he must be held liable.

● **The damage has no connection with the danger inherent in the act:**

Nevertheless, this principle cannot be followed completely. Von Kries mentions the following example in one of his treatises. A coachman falls asleep and his horse takes the wrong road; a bolt of lightning strikes and kills the passenger. The coachman's act has been negligent; if the horse and coach had fallen into a ditch, he would have been responsible for any injury to the passenger. And had the coachman taken the correct route, the passenger would not have been hit by the lightning. So far the causal connection is clear. The general sense of justice nevertheless rebels against convicting him of negligent homicide (or imposing upon him the obligation of compensating the survivors). The harm here has no connection with the danger inherent in the act. It could just as easily have happened that the passenger was saved from the lightning because of the detour. There is a great difference between this example and the previous ones where, despite the uncalculated course of events, it was nevertheless the dangers inherent in the act which were realized.

● **Remote and indirect causal connection**

These cases in which the harm has no connection with the inherent dangers of the act are clear. In practice, however, one would probably go somewhat further and exclude criminal liability even where there is a certain connection between the harm caused and the danger inherent in the act. Example: A, with intent to kill, strikes Bon the head with an axe. B recovers from the assault, but becomes somewhat deaf because of the blow. Later, but before A has been brought to court, B is hit by a car and killed because he did not hear the sound of the horn. If A had not attacked B, the latter would still be alive; thus, there is a connection between the assault and the death. A powerful blow on the head creates a certain danger of impairing one's hearing, and diminished hearing

leads to increased risk in traffic. Thus, there could also be said to be a general connection between the assault and the fatal accident. Nevertheless, A would most probably be convicted only of attempted homicide.

Another example: A woman is hit by a negligent driver and is seriously injured. She is recovering well but is still depressed when one day she sees her mutilated face in the mirror, and becomes so despondent over her lost beauty that she commits suicide. The motorist will probably not be found guilty of negligent homicide.

The foreseeability of events is hardly any less in these cases than in others where liability will be imposed. But the damage is remote and indirect. In English law there is a doctrine that remote causes cannot lead to liability. Such a rule cannot be set up under Egyptian law, but the remoteness of the causal connection can nevertheless be significant. In particular, where some time has elapsed after a damaging act, so that the situation has become stabilized (example 1), and then a new independent cause comes into play and brings about new consequences, the latter cause will dominate the picture so completely that it would be felt unnatural to extend the liability for the first act so far as to cover the consequences of the intervening act.

Older theory sometimes held that legally the causal connection is severed when the result is due to an intervening free act which breaks into the chain of events and which is due to the victim himself or to an independent third person (see example 2), so the proposition that only the person who commits the last act is liable for the further consequences cannot be accepted in its absolute form. But the obvious essence of this theory is that it is often felt unnatural to stretch liability for the first act that far; the intervening act is the one which dominates the picture of causation.

The requirement of adequacy may be regarded as a safety valve, which

permits a judge to exclude a liability, which he does not consider reasonable. Not only will the degree of probability be emphasized in attempting to solve the problem, but also such other factors as the degree of guilt, the closeness of the causal connection, and the nature of the surrounding circumstances.

2.2. Causation by omission

Keeping in mind what has been said concerning omission, the question that arises is whether or not the commission may cause a criminal effect.

The matters of real legal relevance are the terms of the law, such as “causing”, “effects” and other expressions of causation, the question will not create any difficulty in principle. Common language usage often recognizes an omission as a cause. No one hesitates to say that the failure of a railroad worker to give a signal or to throw a switch is the cause of the train wreck; that a doctor’s failure to properly dress a wound after an operation has caused his patient to bleed to death; or that the failure of a camper to extinguish his campfire has caused the forest fire. And the same language usage is encountered in the law. A number of expressions, such as “to cause” and “to bring about,” are used in many legal provisions which are expressly directed against non-action, or the law speaks in terms of a harm occurring as a result of an omission, or due to it. Moreover, the legislative history supports the proposition that omissions must sometimes be regarded as causes.

The condition for treating an omission as the cause of a harm is, of course, that the non-acting person had a chance to avoid the result. Language usage requires something more, however. An omission will be considered a cause only where, to a greater or lesser degree, one could have expected the person to act. Only under this condition can the omission give the explanation of the result. The stronger the expectations, the easier it will be to characterize an omission as a cause. No one will hesitate to say that a railroad worker, who failed to report an avalanche across the tracks, has caused the ensuing derailment. Such neglect

by a member of the patrol service is an essential factor in an explanation of the accident. If a third person saw the avalanche without reporting it, there will be more doubts, for, in general, there can be no well-based expectation that accidents will be prevented by the interference of third parties. Thus, the neglect will be a more secondary basis of explanation. The concrete application of the principle involved here creates many doubtful questions of opinion. In interpreting the law, clearly, one cannot rely exclusively on the purely linguistic meaning of words, which will often be rather vague, but must take additional considerations into account, such as the necessity for coherence in the law, and the desire to arrive at a reasonable result.

3. The Criminal Result

The criminal result comes as a natural consequence of the culpable conduct, provided that it must not break the chain of causation as discussed before.

The criminal result can take one of several forms, according to the guilty conduct. For example, it may take the form of a mere act, whereas the criminal result is accomplished upon the commission of the criminal act. For example, crimes of insult or defamation (verbal crimes). The criminal result is accomplished by mere uttering of the words and no other further act is required. Also any form of illegal possession such as possession of stolen things, drugs, weapons and explosives.

Relevant provisions:

Article 407

Whoever acquires or conceals property derived from crime, with full awareness of that, without necessarily being involved in its commitment, shall be subject to the penalty assigned for that crime, from which he knows the property has emanated. In case the perpetrator is not aware that the property is derived from a crime, but has acquired it in circumstances, which indicate its unlawful sources, the penalty

would then be imprisonment for a period not exceeding six months and a fine not exceeding AED 5,000 or either of the two penalties.

Article 54 (federal Law No. 3 of 2009 Regarding Weapons, Ammunitions and Explosives):

1. Anyone who possesses, carries, owns or gains a firearm or ammunitions or any part thereof or explosives, without license, shall be punished by either or both of imprisonment for not less than six months and a fine of not less than six thousand dirhams.

Other acts may take a form of physical injury. Hence, the criminal result is separate from the act. Such, crimes of battery, murder and manslaughter. In these crimes, the criminal result comes as a consequence of the act and is thus separate from it.

The same applies in crimes against property such as theft, damage and embezzlement.

In all these crimes, the judge shall abide by the penal law provisions that characterize and rule these crimes, otherwise he will be in violation of the principle of legality.

On the other hand, the criminal result may take the form of a complete crime or an incomplete crime (attempt). We shall approach attempt in more detail as follows.

Attempt

Relevant Provisions:

Article 34

"An attempt is the commencement of the execution of an act with the intent of perpetrating a crime whenever its effect is stopped or fails of consummation for reasons beyond the will of the perpetrator.

Shall be considered a commencement of execution, the perpetration of an act which is considered per se one of the constituent parts of the material element of the crime or immediate and directly leading to it.

Unless otherwise provided for in the law, shall not be considered an attempt to perpetrate a crime, neither the mere intention to commit it nor the preparatory acts thereto".

Article 35

"Unless otherwise provided in the law, attempt to perpetrate a felony shall be sanctioned by the following penalties:

- 1. Life imprisonment, should the penalty prescribed for the crime be the capital sentence.*
- 2. Temporary imprisonment, should the penalty prescribed for the crime be life imprisonment.*
- 3. Imprisonment for a period not exceeding half the maximal level of the penalty prescribed for the crime or incarceration if the penalty is temporary imprisonment".*

Article 36

"The law shall determine the misdemeanors in which the attempt is sanctioned by law as well as the penalty for such attempt".

Article 37

"The special provisions governing accessory penalties and the criminal measures prescribed for consummated crimes shall apply to the attempt"

Article 335

"Shall be sentenced to detention for a minimum period of six months and/or to a fine not in excess of five thousands Dirhams, whoever attempts to commit suicide. Shall be sentenced to detention, whoever abets another or assists him, in any manner whatsoever, to commit suicide, if it occurs thereupon"..

The criminal act, as previously said, may result in a completed offense or an attempt to commit it. However, even an attempt may constitute a crime. The law deems attempts to commit crime punishable offenses in themselves. One may fail to complete a crime began to commit. Yet, if he makes a beginning, he takes some step in its actual perpetration. Then, regardless of his failure to complete it, he is guilty of an attempt to commit a crime and is criminally responsible.

However, there is no attempt if the offender abandons his crime, regardless of his motives in his withdrawal from the commencement of his crime, as we will see later on.

In the following, we shall discuss the elements of attempt, which are the commencement of executive acts, the intent to commit the felony or misdemeanor and the failure.

1. The commencement of executive acts

The acts of an attempt, frequently called executive act, must directly tend to the execution of the criminal result. Hence, mere acts or preparation which are not close enough to consume the intended crime, are not sufficient for incrimination.

In this regard, we shall distinguish between preparatory acts and executive acts.

We draw attention that the crime may take the form of a mere act or omission, whereas the criminal result is accomplished upon the criminal commission or omission occurs. For example, crimes of insult or defamation (verbal crimes). The criminal result is accomplished by mere uttering of the words and no other further act is required. Also any form of illegal possession such as possession of stolen things, drugs, weapons and explosives. By sight to the nature of these crimes which are committed by mere act or omission, by saying that they either be committed as complete crime or not be committed at all.

1.1. Preparatory Acts

Preparatory acts are the first steps which the would-be offender takes towards committing his crime. They are often of an ambiguous character. That is to say, they are perfectly compatible with an innocent mind and are not usually sufficient for incrimination. For example, Z has a grudge against P. He decides to set fire to his crops. He begins to prepare for the offence when he buys the gasoline to burn the crops with or when he buys a railway ticket to P's village. These same acts may be, and are generally, done by persons of innocent minds and intention. But when these acts are done by a would-be criminal they are acts of preparation. Still, they are equivocal in character and are not sufficiently connected with the offence as to permit a punishment. Such acts, therefore, do not constitute the commencement of the execution of the offence.

However, some preparatory acts can be individually incriminated as independent crimes. That is they are preparatory acts to a certain crime, and in the same time they are crimes in themselves. For example, one who prepares to kill another by buying an unlicensed weapon. Such act constitutes an independent crime (possession of an unlicensed weapon). In the same time, it is a preparatory act to the crime of homicide, yet it has not yet reached the

degree of an executive act of an attempt.

Likewise, Article 381 punishes the counterfeiting and Article 323 punishes illegal entry into property of another. In each case, of course, it is necessary that a criminal purpose should be present if these acts are to constitute offences. However, they are punished, not because they are in themselves harmful but because they are necessary steps towards their commission of other offences.

In order to fall within the general incrimination by the law of acts leading to the commission of the crime, the act done by the accused must be such as to constitute an attempt. Attempt is thus defined in the Egyptian penal Code in

article (45):

“When the commission of a crime or misdemeanor is commenced with intent to commit the same, but completion thereof has been interrupted or has failed of effect owing to circumstances independent of the will of the party, then such crime or misdemeanor is said to be attempted.”

It should to be remarked that in order that acts done prior to the consummation of an offence to be punishable as attempts, the offender must have done more than merely prepare the way for its commission. He must have commenced its execution. This commencement of execution must have been accompanied by an intention to consummate the offence.

1.2. Executive Acts

This expression is to be found also in Article 2 of the French Penal Code, from which the Egyptian article 45 is derived.

This matter difficult question. At what point can the execution of an offence be said to have commenced?

It is certain that an offence may be regarded as commenced although none of its constituent acts has been done. Still, no precise formula has been put forward with an authority to determine the degree of closeness which must exist between the executive act and the intended consummation. There are several theories in this regard.

1.2.1. The Subjective Theory

It has been previously pointed out that a mere intent to commit crime is not indictable. Hawkins, writing in the eighteenth century, says: -

“The bare intention to commit a felony is so very criminal that, at common law, it was punishable as a felony where it missed its effect through some accident in no way lessening the guilt of the offender. But it seems agreed at this day that felony should not be imputed to a bare intention to commit it, yet it is very certain that the party may be severely fined for such an intention.”

Although these passages speak of a “bare intention”, it is evident that they are intended to mean what would now be described as attempts, that is, an intent manifested by some act (in order to prove the intent).

However, the doctrine that “the mere intent amounts to a crime” passed away long ago. In order to constitute an attempt to commit a crime, there must be something more than an intent to commit it. For there can be no intent, no matter how malicious, that can alone constitute an attempt, nor, on the other hand, will any act amounting to an attempt unless coupled with an intent to commit some crime. Both the intent and act must concur.

1.2.2. The Objective Theory

The tendency of the French jurisprudence has been to treat as an attempt any act which aims directly and immediately at the consummation of the offence. An attempt is proved to have been accomplished when the intention to consummate the offence is present. It was formerly held that breaking or climbing into a house did not constitute a commencement of execution to theft even though an intention to commit theft may be proved. However, the modern jurisprudence appears to be in favor of the contrary view. So again, it was formerly held that giving instructions to another to administer poison to a third person did not constitute an attempt to poison, even though the instructions were coupled with the delivery of the poison to be administered.

Yet, it has been held recently that there is an attempt to poison when the poison is handed to another by the poisoner with the intention that it be administered to the victim, even if the person to whom the poison is handed is not an accomplice in the offence.

In a peculiarly interesting case, it was held that the mere placing of combustible material in a chimney near to a thatched roof, with an intention to set the house on fire as soon as a fire was lighted below, constituted attempted arson.

Perhaps it is not possible to find a satisfactorily precise formula which will distinguish between preparatory acts and executive acts. However, one attractive test suggested is that we should treat an attempt as "any act which is of such a nature that it is, in itself, evidence of the criminal intention for which it is done". Probably any act which does clearly manifest the doer's criminal intention, and which tends directly towards the consummation of the offence may be regarded as an executive act. But the decisions appear to indicate that the Courts are prepared to treat as attempts any acts which tend directly to the actual execution of the offence, even though independent proof of the criminal

intention with which they were done is necessary. The act must be interpreted in the light of the intention.

On the other hand, there are some acts between preparatory acts and executive act which may constitute an attempt if the following two conditions are met.

- The acts must tend directly to the offence
- The acts must be done with the intention of carrying out the offence.

1.The Intent to Commit a Felony or Misdemeanor:

To constitute the crime of attempt, the wrongdoer shall intend to commit an intentional felony or misdemeanor. Therefore, contraventions are excluded from incrimination as attempts, as they are minor breaches of the law.

On the other hand, there can be no attempt in unintentional crimes such as killing by fault and crimes of negligence. This is because attempts require an intent.

2.1. Voluntary Withdrawal

The Egyptian penal code goes on to provide that a punishable attempt is only committed if the completion of the offence has been interrupted or failed due to circumstances outside and independent of the will of the wrongdoer.

After a commencement in the execution of the crime has begun, voluntary withdrawal of the attempted crime is therefore a defense that exempts the wrongdoer from punishment, regardless of the wrongdoer's motives be they noble or ignoble. This is because the legislator tends to reward the wrongdoer for his withdrawal whatever his motives in order encourage the abandonment of crime.

In requiring that the withdrawal should be voluntary, the Code intends to draw a distinction between cases in which the offender is met with obstacles which leave him no reasonable possibility of carrying out his crime, and those in which the possibility of completing his crimes still present. Only in these latter cases can the withdrawal be said to be voluntary.

Whether the wrongdoer withdraws out of fright (Ignoble Motive) or from sudden wake of conscience (Noble Motive), the withdrawal will none the less free him from punishment, so long as he was not interrupted against his will.

The more lenient view is justified by Mr. Gerraud on the ground that the punishment of the attempt as an offence can only have the effect of pushing on the offender to the consummation of the crime. If voluntary withdrawal frees from liability, a reason for repentance is afforded. That is, the withdrawal must always be voluntary. Thus, Z, after threatening to shoot P, pointed a pistol at him, but his hands were seized before he could fire. His hands were tumbling with the trigger. Z will be convicted of an attempt to shoot P.

2.2. Voluntary Withdrawal Distinguished from Repentance:

When the crime is completely consummated, the abandonment of the crime hereafter is not a defense as it is a repentance and not a voluntary withdrawal. For example, Z broke into P's house and stole his money and went away. Later, P issued an advertisement in the newspaper imploring the offender, Z, to bring back his money as it was allocated for his medical treatment. Z repents and decides to return the money. Upon returning the money, Z was arrested. In such a case, Z will not benefit from the defense of voluntary withdrawal because he returned the money after the completion of his crime. Yet, had he withdrawn from his crime while he was at P's home, stealing his money, the defense would have worked for his benefit.

However the problem of repentance may arise in the UAE penal Law, this

due to the general rule set by Article (1) which provides:

"The provisions of the Islamic Shari'a shall apply to the crime of doctrinal punishment, punitive sanctions and blood money. Crimes and reprehensive sanctions shall be specified in accordance with the provisions of this code and the other penal laws."

In Shai'a Law repentance (Tawba) exempts the guilty from the punishment - specially in the dogmatic crime such as highway robbery (Hadd of Haraba), likewise, voluntary withdrawal exempts the guilty from the punishment of attempted crime. Nevertheless, Tawba has distinguished rules differ from the voluntary withdrawal, hence the judge in UAE – upon hearing a case of Hudd succeeded with Tawba, he shall apply the rules of Shariah as to repentance specially per dogmatic crimes (Hudood) as set in the Islamic rules, meanwhile, he applies –in other crimes- the rule of voluntary withdrawal as set in positive penal law. therefore we demonstrate the differences herein as Follows:

1. Voluntary withdrawal is relevant only to crimes of attempt, while Tawba covers all culpable acts whether they constitute complete crimes or attempts.
2. Voluntary withdrawal is valid only during the period of commencement of execution of offence, while Tawba is valid in all stages even after completion of the crime.
3. Voluntary withdrawal operates only upon commission of intentional offenses, while Tawba covers offenses by mistake as well. For example whoever kills a person out of mistake, he should repent by giving blood money (Diyah) to his heirs.
4. Some crimes could not be withdrawn upon attempt, like verbal crimes (insult and defamation). Those crimes have either to be committed completely or not be committed at all, but Tawba may cover all these types of crimes.
5. In positive penal laws, voluntary withdrawal as excuse is applicable only to felonies and misdemeanors, but not to contraventions as simple offenses.

Also, it is not applicable to habitual crimes like prostitution, because such crime is composed of several separate acts committed habitually, but Islamic Shariah covers all crimes with repentance including these crimes.

Attitude of UAE penal law towards repentance as a defense:

Apart from the effect of repentance (Tawba) in Islamic Shariah which exempts the offender from the penalty of the highway robbery (Hud of Haraba), the UAE penal law adopted this attitude in other crimes. The UAE penal Code included several cases in which the offender shall be exempted from punishment if he repents his guilty acts which constituted complete crimes.

Also, apart from the theory of excuses which rules out the criminal responsibility, such as minority , insanity, involuntary unconsciousness or loss of perception , duress, necessity and coercion which exempt the wrongdoer from punishment, the UAE legislator adopted the doctrine of repentance as a defense in specific crimes in order to encourage the wrongdoers to abandon their criminal attitude.

Offender`s repentance may take various forms. Report lodged by a participant in some crimes is deemed repentance exempting him from punishment thereof. For example Articles (173/2) & (192/3) of the UAE penal Code exempt the offender who reports the official authorities with crime of conspiracy. Likewise as for crime of bribery (239) , (345) of kidnapping persons , (408) of concealing stolen properties , (326) of crimes violating religious creeds and rites , (210) of crimes of forging currencies and government securities , (201) of crimes in violation of the state internal security. They states that:

Article 173/2.

"The court may exempt from the penalty in case the reporting takes place after the perpetration of the crime but before the commencement of investigation, the court may as well commute the penalty in case the offender facilitates to

the competent authorities, during investigation or trial the arrest of one of the perpetrators of the crime"

Article 192/3

"Shall be exempted from the penalties prescribed in the first three paragraphs hereof, any of the culprits who takes the initiative to inform the competent authorities of the existence of such an agreement and the participants thereto prior to the perpetration of any of the stated crimes"

Repentance may also be formed in the abandonment of the guilty acts or omission such as giving false testimony or abstention from giving testimony. Hence, the offender would have been exempted from punishment if he retracted his false testimony and gave a fair testimony, also if he spontaneously proceeded to give his testimony, as set in the articles (260/2) & (261/2) as providing:

Article 260

"Shall be sentenced to detention for a term not exceeding two years and to a fine not in excess of ten thousands dirham, any litigant in civil case forced to give oath or, if reverted to him, has sworn contrary to the truth.

The offender shall be exempted from penalty if he goes back to truth after he has taken the untrue oath and prior to rendering the judgment the case in which oath was taken"

Article 261

"Shall be sentenced to detention for a term not exceeding one year and/or to a fine not in excess of five thousands Dirharm, whoever was asked to testify before one of the judicial bodies and he refused to take oath or to give his testimony unless his refusal was Justified.

The offender shall be exempted from the penalty if he retracts his refusal prior to the issue of the judgment on the merits of the case".

3. Failure of Effect

The same principles apply to the second case dealt with by Article 45 of the Egyptian penal code, which speaks of the completion of the offence being not only interrupted, but also “Failing of Effect” due to circumstances independent and outside of the will of the wrongdoer.

This brings us to the next stage in the history of the offence. We have now to suppose that the offender has performed the whole series of acts by which he expects to accomplish his crime. In ordinary cases, the offence will then be consummated according to his scheme. However, his scheme may not be realized, due to some failure on the part of the means used to produce the intended result. For example, the poison has been administered, but it has not been strong enough to produce death, the gun has been fired, but the bullet did not reach a vital part of the victim's body and he survived.

In such cases the French speak of the offence as *manque* or failed of effect.

Failure arising from the will of the party cannot be very common. An example in Egyptian law would be furnished by a poisoner who, after administering the poison, saves the life of his victim by giving him the antidote. In this particular case, the poisoner would indeed be guilty of poisoning because the offence of poisoning consists not of causing death by poison but of administering substances which can cause death.

Statutory Scope of Attempt:

Article 36

"The law shall determine the misdemeanors in which the attempt is sanctioned by law as well as the penalty for such attempt".

As general rule, all crimes of felonies are subject of attempt except those

could not be attempted like the crimes of mere act or omission. As per crimes of misdemeanors, the law selects- by provisions - certain crimes in which attempt is punishable. Hence, judge cannot decide punishment for any of attempted misdemeanor unless provided in Law.

Impossible Crimes

The consideration of offences which have failed of effect, due to circumstances outside and independent of the will of the party, introduces us to one point of considerable difficulty.

We must suppose that the offender has done everything in his power needed to complete the crime, and yet, in the event the crime was not consummated or the result has been the commission of a different crime than that intended.

This failure may be absolute, due to either a legal or physical impossibility, or it may be relative, due to intervening causes and empty pocket cases.

1. Absolute Impossibility

1.1. Legal Impossibility

An attempt to commit a crime is not legally possible when, for some legal reason, the intended purpose, even if accomplished, does not amount to a crime. For example, an attempt to bribe a city councilman to vote for one 's election to a city office which, unknown to the parties, no longer existed, having been abolished by statute is not a criminal attempt since it would not have been criminal if the councilman had voted for the person in question

Likewise, if under the law provides that abortion cannot be committed before the child quickens, there can be no attempt to do such an act prior to that time.

Also, if an accomplished act is a null and void, and is not capable of reaching the intended purpose, there can be no conviction of an attempt to commit it.

Thus, where the members of a county's governing board, in connection

with a county project, issued bonds in excess of the limit allowed by law, and were prosecuted under a charge of incurring obligations on behalf of the country contrary to the statute, it was held that they could not be convicted of that charge since the county had incurred no obligation, due to the fact that the bonds were void and the whole transaction a nullity. However, although the defendants could not be convicted of the crime as charged, yet they could be convicted of an attempt to commit it.

In another case, a defendant was convicted of an attempt to commit a forgery. He changed the figures on a check for 2.50 Pounds to 12.50 Pounds, but did not change the written words of the original amount. Moreover, the check was stamped "Ten Pounds or less". Since the change of the figures was immaterial, the written words governing the amount of the check, he could not be convicted.

Also, one who bought goods which he believed to be stolen and intended to buy such goods, but, as a matter of fact, the thief had returned the goods to the owner and later they were sold by authority of the owner to the defendant, to entrap him. The receiver could not be convicted because the goods were not "stolen goods" at the time he received them but were the property of the real owner. Despite his criminal intention, the consummated act was no crime and, therefore, he could not be convicted of an attempt to commit it.

The same principle was also applied in a case where a barn had been burned and defendant offered another one hundred Pounds to swear falsely that a certain person set it on fire. No one was being prosecuted for the alleged crime, and it was held that one could not be convicted of an attempt to suborn perjury when no case was pending in which the perjury could be committed.

1.2. Physical Impossibility

There may also be a physical impossibility to commit a criminal attempt. The most curious point on this subject is the question whether, if a man attempts to commit crime in a manner in which success is physically impossible as for instance if he shoots at a figure which he falsely supposes to be a man with intent to murder that man when it is actually a scarecrow, or if puts into a cup pounded sugar which he believes to be arsenic. Here, he has committed an attempt to murder, but in law, he has committed no offense at all.

It would seem that inability to commit an attempt on the ground of physical impossibility is but a phase of legal impossibility, and that if an attempted act is normally and absolutely bound to fail, either because the act could not possibly result in its intended accomplishment, or because inefficient or absurd means are used, then the act in such cases could not constitute an attempt. Thus, if a boy under the age of fourteen is conclusively presumed to be physically incapable of committing rape, it has been held that he is also incapable of the attempt.

Other cases have, however, held the contrary, and it has also been held that a man may be impotent and yet be guilty of an attempt to commit rape.

These contrary decisions are inconsistent, however, with the doctrine that one cannot be guilty of an attempt to do what it is legally impossible for him under any and all circumstances to accomplish. The case holding that a boy under fourteen is incapable of committing an attempt to rape involve a legal, as well as a physical, impossibility.

2. Relative Impossibility

2.1. Impossibility due to Intervening Cause

An important distinction, however, is made between utter and absolute impossibility on all like occasions and failure or impossibility on a particular occasion. If one employs suitable means to commit a crime but an unforeseen

obstacle, or the particular circumstance⁸ or situation prevents the intended result, then the act will constitute an attempt. Where the non-consummation of the intended criminal result is caused by an obstruction in the way, or by a want of the thing to be operated upon, if such impediment is of a nature to be unknown to the offender, who used what seemed appropriate means, the punishable attempt is committed.

2.2. Empty-Pocket Cases

Illustrative of this principle are the so-called “empty-pocket cases”. According to the early English cases, a would-be thief who thrust his hand into another’s pocket when the pocket was empty was held not guilty of an attempt to commit larceny, on the theory of the impossibility of the accomplishment of the act. This was the court decision failed to distinguish between impossibility in general and impossibility in particular due to an unknown intervening cause or condition.

The American cases, however, and also the later English cases, hold that such acts are attempts, despite the fact that a pocket or other places where money or valuables may reasonably be found happen to be empty. Among other decisions based upon the same principle may be cited *Hamilton v. State*, holding that there may be an attempt to rob although one had no money on his person.

In the empty pocket cases it is a failure or an impossibility in a particular case, and such cases are distinguished from absolute impossibility, and also from cases where an act, if committed, would not be a crime at all. It is sufficient if the thief supposes there is property in the pocket, trunk, or other receptacle, and attempts by some act adapted to the purpose to obtain it feloniously. In all such cases, the only safe rule is that the attempt is complete and punishable, when an act is done with intent to commit the crime, which is adapted to the perpetration of it, whether the purpose fails by reason of intervention or for other extrinsic cause.

II The Mental Element (Mens Rea)

1. The Significance Mental Element (Mens Rea):

In every crime there must be a mental element (Mens Rea), that is, such a state of mind state or condition of mind that makes the doer of a criminal act responsible for that act and, therefore, liable to punishment.

2. Forms of Mental Element:

Article (38):

The moral element of a crime consists of an intent or mistake the intent is present when the will of the perpetrator is directed towards the perpetration of the act or forbearance thereof, whenever this perpetration or forbearance is considered by law a crime, with the intent to produce a direct result or any other result penalized by law and which the perpetrator expected.

There is a mistake whenever the criminal result is achieved because of the mistake of the doer whether this mistake is due to negligence, carelessness, non precaution, recklessness, imprudence or non observance of the law, regulations, rules or orders.

2.1. Intent:

2.1.1 Willful Act or Omission and Negligence:

There is a mistake whenever the criminal result is achieved because of the mistake of the doer whether this mistake is due to negligence, carelessness, non precaution, recklessness, imprudence or non observance of the law, regulations, rules or orders.

In criminal law, mental element (Mens Rea) means a state of mind which willingly consents to the act that is done, or free will, choice, or volition in the doing of an act. It means that the act is voluntary, that it proceeds from a mind free to act in distinction from an act done without mental capacity to un-

derstand its nature, or under circumstances which sufficiently show that it was the result of involuntary forces and against the will.

It has been said that the term “voluntary act” does not describe the mental element required in crime but describes the act.

It might also be said that the phrases “voluntary muscle” or “automatism” do not describe the physiological action of the nerves but describes the muscle, but a voluntary act as well as a voluntary muscle means an act or a muscle under control of the will, and that is all the law means by “voluntary”, and every criminal act must be voluntary, either expressly or constructively. Some crimes require in addition to being voluntary certain other mental elements which will be mentioned later.

The mental elements of different crimes differ widely, but all crimes have one mental element in common; they must be voluntary, that is, must proceed from the will, from a mind free to act. It is in that sense that a criminal act may be properly said to be done with design, purpose, or intent, for an intent is a will to act in a certain way.

Components of Mental Element:

2.2. Guilty Knowledge

Guilty knowledge is continuously used, by some, in the sense of the intent to commit a crime, or, at least, an intent to do wrong, and with equal error.

It is essential that the criminal act, regardless whether the one accused knows it is criminal or not, be done voluntarily, and that comprises all the criminal intent in general that the law requires. To hold that one should be held responsible for an act that he did not do of his own free will and accord, regardless of any degree of compulsion, necessity, or mental incapacity; would, indeed be “intolerable tyranny”, but merely because one did not intend to commit a crime has

never been a defense in law.

2.3. Absence of Guilty Knowledge (Ignorance and Mistake):

Article 39

"If an act is committed under the influence of mistake in facts, the liability of the perpetrator shall be determined on basis of the facts he misconceived its presence should these facts deny or extenuate his liability, provided his belief is based on reasonable grounds and on basis of research and investigation.

In case the mistake that made the perpetrator believe that he is not responsible is due to negligence or non precaution, he shall be answerable for a non premeditated crime should the law penalize the act as being such"

Among matters which may affect responsibility for crime, since it has a direct bearing upon the mental element required in order to constitute a public wrong, is, ignorance or mistake on the part of the person committing the act. This is of two kinds, ignorance or mistake of law, and ignorance or mistake of fact. Ignorance of a fact may sometimes be taken as evidence of a want of criminal intent, but not ignorance of the law. The terms "ignorance" and "mistake" are often used synonymously, but there is a technical difference between them. Ignorance is passive and does not pretend to knowledge; mistake presumes to know when it does not. Mere ignorance on the part of a mentally competent person is seldom susceptible of proof, but mistake can be established by evidence. One may be ignorant, yet make no mistake. Mistake requires action, and usually results from ignorance or lack of perception.

In the present connection, ignorance of law is lack of knowledge that a certain act is a crime according to the laws of the land in which the act is committed, and this often occurs when one knows all the facts as they really exist, but is ignorant or mistaken as to their legal consequences; but mistake of fact is where one understands or believes a fact to be other than it actually

is. However, in many instances, mistake may involve matters both of law and of fact.

2.3.1. Ignorance or Mistake of Law:

Article 42

"Ignorance of the provisions of this law is not an excuse"

Although one may commit a crime, with no actual intent to break the law, and in ignorance that he is violating a law, his ignorance is no excuse for his offense. If ignorance of law were a defense to crime, the administration of justice would be impossible, since in almost every case the defense would be alleged, and an ignorant man would have more protection than a wise one.

The rule extends even to an alien, although his act is not an offense in his own country, and that one is advised by counsel that an act would not be criminal, yet if it is committed in consequence of such advice, and the act proves to be criminal, the legal advice is no defense.

The rule, however, has been subjected to some exceptions. Where the act done is *Mala In se* - i.e. condemned by its nature - or where the broken law is settled and plain, the rule will be strictly applied. Where, however, a special intent is a necessary element of the offense charged, then the fact of the wrongdoer's ignorance of the law is relevant to the question of his intent, and may be a defense in showing that he had no such intent. Thus, in the crimes of larceny and someone may be mistaken as to his legal right to the property concerned, and in perjury the willful and corrupt element of that crime is absent when one in good faith testifies to a matter which he believes is legally true although he is mistaken.

2.3.2 Ignorance or Mistake of Fact

Ignorance or mistake of fact arises when some fact which really exists is unknown, or some fact is supposed to exist which really does not exist. In

contrast with the rule relating to ignorance of law, a sincere and reasonable mistake of fact, which had it been true would have made the act lawful, usually constitutes a complete defense to a charge of crime. In other words, the law regards one as having acted in consequence of the fact he honestly believe to be true. The reason of this is obvious. Crime cannot exist unless the will concurs with the act, and when, says Black-stone, a man intending to do a lawful act, does that which is unlawful, the deed and the will act separately, and there is not that conjunction between them which is, necessary to constitute crime. A man in the nighttime kills one on his premises, under circumstances which furnish reasonable cause to apprehend that a burglary is being perpetrated, and kills in the honest belief that it is necessary to protect his life or habitation. The man who was thus killed was innocent of any criminal purpose, yet the slayer has committed no crime. No criminal intent existed.

Under a mistake of fact one is not guilty of larceny who carries away another's property when honestly believing it to be his own; or of assault and battery where a streetcar conductor in sincere but mistaken belief that a passenger has not paid his fare, ejects the passenger from the car; or of passing counterfeit money when reasonably believing it to be genuine; or of murder or manslaughter when one has reasonable although mistaken grounds to believe he is acting in self defense; or of murder where one kills a man in a reasonably believed act of adultery with the slayer's wife, although, in fact, no adultery was being committed; or of bigamy where the married person in good faith and on reasonable grounds believes that the former spouse is dead, although alive.

2.3.3. Limitations upon the Rule

There are certain limitations, however, in the application of this rule. In all defensible cases the mistake of fact must be reasonable, and a mistake based upon a pagan superstition does not, it seems, avail. The mistake or ignorance must also be honest and sincere, and not caused by the fault or negligence of the person who did the act. I "If one shuts his eyes to facts he should not be

permitted to plead his ignorance of them.” Moreover, a statute may absolutely prohibit an act, and in such a case ignorance or mistake of fact is no defense. Likewise, the general rule does not apply when one is engaged in a criminal act, or in an act not criminal if it is *malum i'n, se*.

2.3.4. Police Regulations (ignorance is not admitted):

The legislature, by virtue of its police power may absolutely prohibit certain acts deemed harmful to public safety, health, morals, and the general welfare. Such acts are, largely, in the nature of police regulations, and the acts prohibited are often called “public welfare offenses.” Such terms as “knowingly”, “intentionally”, “willfully” are usually omitted from these statutes, and it is generally held that since such laws are passed for the protection of the public, the legislature intended that ignorance of the fact mentioned by the statute should be no defense. It is the duty of the individual to know the facts, and his neglect to ascertain the facts, if he violates the law, furnishes all the intent the law requires. Conspicuous among these statutes are various motor-vehicle and other traffic acts; pure food regulations; and liquor and anti-narcotic acts. They have, however, been previously considered both with relation to the question of intent and the doctrine of ignorance of fact.

Coincidence of the Material and Mental Elements (*Mens Rea & Actus Reus*):

The mental element required in crime, or as usually expressed, the intent, must concur in point of time with the act. This, however, is only another way of saying that there must be an act and a mental element in every crime and the two must unite. Neither an act alone nor an intent alone can constitute a crime.

An actual intent to commit a crime may long precede its commission, but no predetermined intent is necessary for any length of time in connection with any crime, because if the will is coinciding with the act it is sufficient. The abandonment of an intent before any act is committed prevents the incurring of

criminal liability, and an intent originating after an act is done cannot relate back to it in order to make the act a crime. For example, in larceny, the intent to steal must coincide with the taking of the property and to deprive the owner from his ownership

3. Problems of Intention

The wrongdoer can mistake the victim, the means or the criminal result.

3.1.Mistake of the victim

Suppose Z shoots at P with the intention to kill him, but instead kills E. The result Z's criminal action was transferred from P to E. Consequently, Z's Mens Rea can be transferred from P to E. Hence Z will be liable for intentional homicide because has intended to kill a human being, irrespective of the personality of the victim.

The Egyptian Cassation Court holds that the offender will be held liable for two crimes and not just one. The first is the crime of intentional homicide of E, the second is attempted homicide of P.

3.2.Mistake of the means

The principle that the Actus Rea and the Mens Rea of offenses should coincide generally presents no difficulty. However, particularly in the case of homicide, there have been cases where there appears to be no coincidence. The problem usually arises where the offender believed that the victim of his initial assault to be dead but actually caused the death when attempting to hide his crime. For example, Z attempted to murder P by administering poison. The dose was insufficient and only caused P pass out. Z loads P into his car believing P was dead and throws him in the river. P dies drowned and not poisoned.

This case presents a controversial issue. We adopt the view that the offender commits two crimes. The first is attempted homicide because the first

attempt to kill was unsuccessful. The second is killing by fault because of the lack of the offender's knowledge that his victim was still alive upon disposing his body in the river.

3.3.Mistake of the criminal result

To punish as a murderer every man who, while committing an offense, causes death by pure misadventure is a course which evidently adds nothing to the security of human life. For example, The pickpocket knows that he is guilty of the offense of picking pockets. Unhappily, if Z attempts to take the wallet of P who has a loaded pistol in his pocket. The thief touches trigger, the pistol goes off and kills P. However, we cannot treat Z any differently than treating any other typical pickpocket who steals under the same circumstances, with the same intentions and with no greater risk of death in what they do. Thereupon, the Egyptian jurisprudence agrees with that opinion. Thus to say that Z will be liable for attempted theft and killing by fault, bearing in mind that Z will be punished with the graver punishment according to article 32-1 of the Egyptian Penal law.

Forms of Mental Element (*MensRea*)

There are three forms of Mens Rea. They are intent, quasi-intent (Veiled intent) and fault.

1.Intent

1.1Meaning of Intent:

The moral element of a crime consists of an intent or mistake, the intent is present when the will of the perpetrator is directed towards the perpetration of the act or forbearance thereof, whenever this perpetration or forbearance is considered by law a crime, with the intent to produce a direct result or any other result penalized by law and which the perpetrator expected.

Intent means that the offender willingly acts or omits with knowledge

that he is committing a crime. Our Penal Code, as distinguished from many foreign codes and drafts, has not tried to define the concepts of intention (with purpose and premeditation as special forms) and negligence. Their meaning must therefore be established by theory and practice

In everyday life, the expressions intention, purpose and premeditation are generally used haphazardly without any clear understanding of the differences between them. In penal law, however, each of these concepts has its own definite technical meaning.

In any close study of the precise meaning of intention, there are two basic viewpoints, either of which may be used as a foundation: the volition theory on the one hand, and the consciousness theory on the other. According to the volition theory, intention may be defined as the will to commit an act of a nature which the penal provision describes. According to the consciousness theory, it can be defined as the consciousness of committing such an act. The difference between the two interpretations, however, is more often one of expression than of reality. In the main, both formulas lead to the same results, and where doubtful borderline cases arise, the solution is not obtained merely from the basic principle, for both theories can be interpreted in various ways. The real problem is to distinguish between the most blameworthy cases which belong under intention, and those less blame-worthy, which belong under negligence. This cannot be done by a single formula; a combination of many factors may be required. The correct procedure is to deal with the various groups of cases and solve them by considering the natural meaning of the words in the penal provision, judicial precedent and expediency.

1.2. Special and General Intent

In addition to the mental element known as “the intent” which must exist in all crimes, some crimes require a further mental element known as the special intent. This is intent in the popular sense, a definite and actual purpose to

accomplish some particular thing. For example, burglary at law is breaking and entering in the nighttime the house of another with intent to commit some felony therein. This intent to commit a felony is a special intent.

To constitute the crime, each one of its elements must be willingly or voluntarily committed, and that is what constitutes "the intent", which in distinction from a special intent is often called "the general intent". But in addition to this general intent the state of mind which must accompany burglary requires another element and that is a special intent to commit some felony. The breaking and entering the dwelling house of another in the nighttime would not be burglary unless the special intent, or purpose or design, to commit a felony is also present. Likewise, in the crime of larceny there is a special intent, an intent to deprive permanently the owner of his property, technically known in the law as the intent to steal, i.e. the thief has a purpose to convert the ownership of the stolen property from the victim to his own use. Also, in a charge of assault, with intent to kill, there must be present all the elements, including the mental state, required in an assault, and also a special intent to kill, which would be a particular or special direction of the mind against the life of the person assailed. In most crimes there is no special intent, the general intent being all that is required, but, as previously pointed out, every attempt to commit a crime necessarily includes a special intent to commit that particular crime.

The crimes of quasi-intention, as the details will be discussed hereafter, contain no special intent and one may be guilty of murder without an intention of taking life, but in an attempt to murder the special intent to take life must be present.

The general criminal intent in crimes is presumed from the criminal act, and if the absence of any general intent is relied upon as a defense, such absence must be shown by the accused. A special intent is not presumed. Its existence is a matter of fact for the jury, and must be proved by the state just as

any other essential element. This may be shown, however, by the nature of the act, the circumstances under which it was committed, the means employed, and the motives of the accused.

1.3.Premeditation (Intensive intent);

Article 333

"Premeditation means the intended determination prior to the perpetration of the crime on any person and minutely arranging for the necessary means to perpetrate the act".

Premeditation exists when the crime has been committed as a result of a considered decision and not a spontaneous impulse. Generally, the determining factor will be whether the perpetrator had the time and the occasion for peaceful contemplation. But even if he had, no premeditation will exist unless he actually weighed the matter, and not, for example, when he was in a state of emotional excitement, precluding any peaceful premeditation. Purpose may exist without premeditation. A person who, immediately upon seeing another take out a wallet, gets the sudden impulse to strike him to the ground and rob the corpse, acts with purpose but not with premeditation. On the other hand, premeditation can exist without purpose. The owner of a house who sets fire to it so that he can collect the insurance money, even though he realizes that the tenant's family will probably burn to death, acts with premeditation but not with murderous purpose.

It is said that the offender commits his crime with premeditation if he: -

- a) Plans to commit his crime and prepares the means required for its accomplishment in a tranquil mode.
- b) Planning must take a considerable period of time before committing the murder.

These two conditions must be met, otherwise, the offender will not be tried

with aggravation. The question of the existence of the conditions of premeditation is left to the judge's discretion. However, this differs from case to case

1.4. Intention with respect to probable consequences (*Dolus eventualis*):

Article 32

"A person shall not be answerable for a crime that is not the result of his criminal activity. He may however answer for the crime if his criminal activity contributed with another cause, previous or contemporary or subsequent, in its occurrence whenever this cause is expected or likely to occur in the ordinary sequence of events."

Where this cause alone is in itself sufficient to produce the result of the crime, the person shall not in this case be answerable except for the act he perpetrated.

Intention also exists as to undesired consequences, if the perpetrator considered them certain or preponderantly probable. A person sets fire to his house in order to collect the insurance is an intentional murderer if he thought it certain or preponderantly probable that the tenant would burn to death. The fact that he may regret the death does not free him from full liability, since he foresaw what would occur as a result of his act. Of course, it is not the actual degree of probability which matters, but the probability which the perpetrator deems to exist.

These propositions can be regarded as established by judicial practice. What is doubtful is the degree of probability required. Does "preponderantly probable" refer to the borderline of certainty, or is it enough that the harm more likely than not is going to materialize? Or does the concept lie somewhere in between these points? It is difficult to give a definite answer to this question.

It could be said that whether mere possibilities in connection with other factors can be sufficient to hold the wrongdoer's responsibility. When the

determination of whether intention exists rests entirely on the actor's opinion as to probability, it must at least be required that he thought it more probable than not that the offensive result would occur.

The most doubtful case happens when the offensive result is neither desired nor considered certain or preponderantly probable, but has merely presented itself to the perpetrator as more or less possible. What is said in the following about future results of the act applies similarly when the uncertainty is related to other elements of the crime.

It is generally agreed that intention exists in some of these cases -the term *dolus eventualis* is often used here but not in others. There is less agreement on where the borderline is to be drawn.

The psychological situation of the perpetrator can be different in these cases. The perpetrator may have decided that he desires the act done even though the unfortunate consequence should follow. In a way he has accepted the result in his mind. Suppose a second-hand dealer is offered some silver objects for sale. He reflects on the possibility that they are stolen goods, but decides that even though this may be so, it shall not prevent him from making a good buy. It is often said that the perpetrator has accepted the result as part of the bargain, an expression which is a bit dangerous since it is also used differently in other contexts. There is general agreement that intention is present here. But it is of no great practical significance, since it rarely will be possible to prove the thought of the perpetrator.

1.5. Motive, Goal and Criminal Purpose:

Motive and Goal :

Article 40

"The motive of perpetrating the crime shall not be taken into consideration unless the law otherwise provides"

It is held in the criminal jurisprudence and judiciary that while neither motive nor purpose have an effect on the intention, intent remains an element of the crime. Hence, whether the offender commits his crime with a good or bad motive or to attain a noble or ignoble goal, he will be liable for his offense, regardless of his motive or goal. For example, the case of mercy-killing, the doctor kills the patient with a noble motive which is to end his pain. However, he shall be liable for intentional homicide although he had a good motive, which is mercy, as well as a noble goal, which is to relieve his patient's pains.

On the other hand, he who kills to get money in order to buy drugs does have a bad motive (addiction) and committed the crime to attain a bad goal (to quench his desire for drugs)

However, the judge may take into account such motive to raise or reduce the punishment within the range between the minimum and the maximum punishment as provided in the penal code. However, the motive is not a component of intent like *Mens Rea*. The motive may aggravate or mitigate the crime of homicide. For example, in the case of mercy killing, the wrongdoer (doctor) commits homicide with a good motive in order to relieve the patient from his pains upon the patient's own request. Nevertheless, he will be responsible for intentional homicide as set in the penal code, but the judge, under article 17 of the penal code, may be lenient with him when he takes his good motive into account.

Likewise, purpose, in principle, either noble or ignoble, has no effect on criminal responsibility. Thus the offender shall be held liable for larceny whether his purpose was to spend the money on his own desires or to help the poor.

However, the purpose might be taken into account in some cases as an aggravating circumstance of punishment, such as killing for the purpose of terrorism as provided in the Egyptian penal code. Also the UAE penal law takes

purpose into in some crimes like kidnapping with purpose to draw profit, revenge, rape of the victim, disgrace him, injure him or have him perpetrate a crime.

Article 344

"Shall be sentenced to imprisonment, whoever illegally kidnaps, arrests, detains or deprives from freedom, a person by any means whatsoever and whether by himself or through the intermediary of others.

The penalty shall be life imprisonment in the following instances:

1

6. *In case the purpose of the act is to draw profit, revenge, rape of the victim, disgrace him, injure him or have him perpetrate a crime."*

1.5.1.Crimes require specific purpose:

In some instances, the law is not satisfied with intention, but requires a definite purpose. Here the law generally requires this specific purpose in addition to an intention which covers the objective elements of the act. Penal Code of UAE includes some crimes require specific purpose:

Article 267

"Shall be sentenced to detention for a term not exceeding one year or to a fine not in excess of five thousand dirham, whoever conceals, destroys or misappropriates a writing, instrument or anything else submitted to one of the investigation authorities or in any lawsuit filed with any judicial authority with intention to mislead the judiciary or the investigation authority.

This sentence shall apply even if the writing or deed or the thing was left in the possession of the person who submitted it until requested"

Like wise, article (102/b) of the Egyptian Penal Code , provides punishment for anyone who obtains explosives *"with intent to commit a felony thereby"*, also article 203, refers to anyone who possesses counterfeited money *"with the intent of putting it into circulation."* In these cases it is the additional purpose which

gives an otherwise harmless act its offensive character. The most important offenses where a definite purpose has significance are the offenses for gain, in which the act must have been committed for the purpose of obtaining an unlawful gain for oneself or others. It is not necessary, however, that this purpose be actually attained in order for the offense to be complete.

2.Quasi-Intention (Veiled intent):

Relevant provisions:

Article 336

"Shall be sentenced to imprisonment for a period not exceeding ten years, whoever assaults the body safety of others, in any means without intention to kill him but the assault resulted in the death of the victim.

Should any of the circumstances mentioned in paragraph two of Article (332 be available, this shall be considered an aggravating circumstance.

Without prejudice to the provisions of Article (332 be available, this shall be considered an aggravating circumstance, perpetration of the act by the offender under the influence of intoxication or Stupefaction".

Article 337

"Shall be sentenced to imprisonment for period not exceeding seven years, whoever deliberately causes to another a permanent disability. The occurrence of any of the circumstances, stated in paragraph two of Article (332, shall be considered an aggravating circumstance.

There is a permanent disability if the injury results in severance or dismemberment of an organ or its partial amputation or the loss or diminution of use thereof, or to permanent total or partial failure of the functioning of any senses.

Any serious deformity which is not likely to disappear shall be considered as a disability".

Article 338

"Without prejudice to the provisions of articles 60 and shall be sentenced to imprisonment for a term not exceeding five years, whoever assaults by any means the body safety of others and the assault results in unintended permanent disability.

The penalty shall be imprisonment for a term not exceeding ten years should any of the circumstances stated in paragraph two of Article (332 be present, or if the

offender be under influence of intoxication or stupefaction".

Article 339

"Shall be sentenced to detention and to fine, whoever assaults by any means the body safety of others and the assault resulted in his illness or disability to attend to his personal business for a period exceeding twenty days.

The penalty shall be detention for a term not exceeding one year and to a fine not in excess of ten thousands Dirham, if the assault did not reach the degree of seriousness mentioned in the above paragraph.

In case the assault is perpetrated on a pregnant woman resulting in abortion, this shall be considered an aggravating circumstance".

Article 340

"Shall be sentenced to detention for a maximum period of one year and/or to a fine not in excess of ten thousands Dirhams, any pregnant woman who deliberately aborts herself by any means whatsoever.

The penalty shall be detention for a minimum period of two years or to a minimum fine of ten thousands Dirhams the person who deliberately aborts a pregnant woman, by any means whatsoever, with her consent.

Should the person causing abortion be a physician, surgeon, pharmacist, midwife or a technician, the penalty shall be imprisonment for a maximum period of five years, without prejudice to a more severe penalty provided for in any other law.

Shall be sanctioned to imprisonment for a maximum period of seven years, whoever willfully aborts a pregnant woman without her consent.

The attempt to perpetrate any of the acts provided for herein shall be sanctioned to half the penalties prescribed therein".

The perpetrator either acts quickly and impulsively, without any thought of the consequences, or else his ability to think is curtailed by excitement or fear. There can also be cases of psychological self-elusion, where the perpetrator

veils the character of the act for himself, and thus commits the crime in a sort of semi consciousness. Clear consciousness is not required; the concept of intention also includes the half-clear, veiled intention. But there are reasons for exercising a certain care in evaluating the proof. Injustice may easily be done by a judge who supposes that a person who acted impulsively or in excitement has actually conceived everything which he would have conceived in quiet contemplation.

This form of Mens Rea includes two criminal results:

- i- Intent to commit the lighter crime.
- ii- The intentional act goes beyond to cause a graver criminal result (Death) by recklessness or negligence.

It is laid down that an intent to commit any unlawful act is a sufficient Mens Rea to commit the lighter crime. For example, if Z throws a stone at P and kills him. Z is liable for involuntary manslaughter. In such a case, Z has intentionally committed the lighter crime of assault, the brought about the graver criminal result of death due to his recklessness and/or negligence. Therefore, it must be proved first that Z did not intent to kill P from the outset, and that his intent is confined to injury only. Therefore, it is said that Z has committed a crime of manslaughter with quasi-intent, i.e. assault that conduced to death. Thus, Z will be liable, not only for the lighter criminal result (injury) but also for the graver one (death).

It must also be proved that his unlawful act is likely to cause the graver crime under the expectations of the reasonable person. Hence, if an unforeseen event intervenes and breaks the chain of causation between the act of the lighter crime and the result of the graver crime, Z will be liable only for the lighter crime. For example, Z throws P with a stone causing a serious injury. E arrives at the scene and stabs P to death. In such a case, Z will be liable for intentional assault

and E will be liable for intention homicide.

3. Fault (Mistake):

Article 38

"There is a mistake whenever the criminal result is achieved because of the mistake of the doer whether this mistake is due to negligence, carelessness, non precaution, recklessness, imprudence or non observance of the law, regulations, rules or orders."

Fault is an unintentional conduct that causes a criminal result. It has two forms: - Negligence on one hand, which is in turn divided into uncautious negligence and cautious negligence (recklessness) and violation of laws and bylaws on the other hand.

3.1. Negligence

It is disregarding a risk which the wrongdoer would have recognized if he had exercised proper caution. The imputability arises from the neglect of the civic duty of circumspection.

Negligence is thus, an essentially objective question. However, it requires that the wrongdoer would have recognized the risk if he had exercised the due care.

Negligence is often classed as a species of Mens Rea on the basis that it is a state of mind where the wrongdoer fails to recognized the consequences of his actions. For example, it is held that negligence may be great enough to support a conviction for driving without due care and attention which is dangerous to the public.

3.1.1. The negligent offense also requires an intentional

act:

As a general rule, the negligent offense also requires an intentional (consciously willed) act or omission. But this is not an absolute rule. A negligent omission may be due to a person's failure even to think of the necessity of acting; in other words, he does not make any decision one way or the other. As far as acts are concerned, the negligence may be due to the fact that the actor did not exercise the necessary control over his movements. A doctor who is performing an operation, for example, may sever a muscle because of lack of attention or carelessness. He undoubtedly wanted to do an act, but not such an act as he actually has done

In contrast to the intentional offense, here, even though the act itself is generally intentional, the intention does not encompass all elements of the act. It is sufficient if intention is lacking even as to a single element. The essence of the concept of negligence is that the actor has failed to behave as a knowledgeable and reasonable person would have done. However, this is nothing more than a starting point which must be considered in detail later.

3.2. The distinction between conscious negligence (Recklessness) and unconscious negligence:

In theory, there is a distinction between conscious (advertent) and unconscious (inadvertent) negligence. The former exists when the perpetrator knows that he is exposing his surroundings to danger; the latter exists when the possibility of danger is not in his mind at all. A motorist who speeds in order to catch a train, with his heart in his throat for fear that there might be an accident, acts with conscious negligence or better said as "Recklessness". If, however, he sits behind the steering wheel so engulfed in his own thoughts that he does not react fast enough when a small child runs out into the street, his negligence is unconscious. The term conscious negligence is used whenever the actor knows of the danger created by the act, even though he does not himself consider the act as negligent, but as reckless.

The two forms of negligence are psychologically very different. To employ a figure of speech, it can be said that conscious negligence is a lack of consideration while unconscious negligence is a lack of attentiveness. The latter may be caused by excessive strain (a guard falls asleep on duty), or an improper diversion of attention (a scientist is so engrossed in his problem that he is blind and deaf to the dangers of the traffic). It is not easy, however, to distinguish between conscious and unconscious negligence in practice, and the negligence provisions of the Penal Code treat both forms the same way. The code, however, has many special provisions against the intentional causing of danger. These provisions apply to behavior which, with respect to the harmful result, constitutes conscious negligence. The fact that the mere creation of a danger may be punished is significant in that punishment can be imposed even though the harmful result does not occur.

The difference between conscious and unconscious negligence does not coincide with the difference between gross and ordinary negligence. Conscious negligence will generally be more aggravated than unconscious negligence, but the former can be very excusable, and the latter very serious. As the Egyptian Cassation Court expresses it:

“The reckless character of a man who causes harm is often demonstrated by the fact that he does not bother to think about the interests of others”. Some penal provisions require gross negligence, but the degree of negligence is otherwise significant only for the measure of punishment.”

3.3. The evaluation of negligence

Even though conscious and unconscious negligence are treated the same way in practice, it can be helpful to build on the distinction for purposes of analysis.

(a) Conscious negligence borders on intention. The lower limit of intention is also the upper limit of negligence. Therefore, we can refer here to the presentation above.

Beneath negligence, on the same graded scale, is the guilt-free (objectively legal) act. An act is not negligent merely because the actor knows that it entails certain dangers. An apprehensive motorist may be painfully aware of the danger that a small child may suddenly dart into the street. Should an accident occur, his awareness that it might happen will not make him liable if he drives with moderate speed, and according to the rules. Here, see again the concept of permissible risk. The actor's own judgment of his act is of no significance. If he is of a thoughtful and especially careful nature, and blames himself where no one else would find any faults, he will not be liable merely because of that. And conversely, if he is of a very bold and aggressive nature, and thinks it permissible to take more chances than general opinion would accept, this does not relieve him of liability.

The greatest practical difficulties arise in the appraisal of unconscious negligence. No difficulties of delimitation arise in relation to intention. When the actor has not even thought of the possibility of the harmful result, intention can never exist. But the difficulties are great in determining the boundary in relation to the impulsive act. Here relatively little of a general nature can be said; the difficulty lies in determining whether negligence exists in the concrete case.

In many areas of life, rather definite norms of evaluation are created, such as norms about how a motorist should drive, how a doctor should dress

a wound, how a miner should blast and how a carpenter should do his job. In other situations, there is nothing to fall back upon except a judgment as to how an ordinary reasonable man- a bonus pater familias - would have acted. Such differences as may exist because of employment, education and position must be considered, however. An expert may be able to detect a danger which a layman would not have thought about. A farmer has a different area of experience than has a city dweller, a laborer's experience is different from that of a white collar worker. This is significant when they are faced with dangers outside of their trade. No single set of norms will suffice; many must be used.

3.4. Negligence according to the law of torts and penal law:

Not every departure from the norm is negligence, creating criminal liability. And the requirements of the penal law are different from those of tort law. The question in torts is who is to bear the burden of the damage, the innocent victim or the person causing it? Here it may be reasonable to be satisfied with a lesser degree of negligence. It is an entirely different matter when a question of punishment is involved. "It is absolutely clear, in reality," says the Penal Code Commission, "that just as the law sometimes does not punish the unintentional breach at all, there will, in other instances, be good reasons to limit the imposition of punishment to the more serious cases of carelessness, foolishness or thoughtlessness. To go so far as to punish each and every attributable negligence is an aimless waste of a measure which, above all else, should be used moderately and with care". It often happens in legal practice that a person who is acquitted of criminal negligence is nevertheless required to pay damages.

A finding of negligence must always be made on the basis of the individual situation. For example, if an automobile accident is involved, it is not enough to ascertain the speed at which the car was travelling, and how the driver operated it. One must also consider such circumstances as the width of the road, general visibility, light conditions and whether the road was slippery. A factor which must

always be considered is whether or not the actor had sufficient time to act. An error committed in a difficult situation must be judged in a different manner than one committed where there was sufficient time for calm contemplation.

3.5. Subjective or objective judgment of negligence:

Whether the determination of negligence shall be subjective to the extent that it considers the individual peculiarities of the actor is a completely different question. Should the intelligent person and the foolish person, the thoughtful and the careless, the calm and the nervous be treated differently? The question is extremely complicated, and little thought out in legal literature. And judicial practice is generally not very illuminating, for the courts hardly ever give any detailed explanation of the general viewpoint which lies behind the decision in the concrete case. The problem cannot be solved by any general formula, e.g., that an objective standard is applied in tort law, but a subjective one in penal law. Here, there is room only for some guiding points.

It should be clear from the above that the basic requirement for liability is that the act conflicts with the objective norm of justifiable behavior. If the actor keeps within the norm, no inquiry is called for as to whether he could have done even better by exercising some special ability possessed by him. Therefore, the issue whether a subjective standard should be used as a basis for decision will have its greatest importance in the form of the question whether subjective grounds for excuse can lead to an acquittal even though objectively a wrong has been committed. But it is necessary to remember that when factors such as knowledge of local conditions or of the actual situation are given significance, no normal measure can be set up. The individual must be judged according to his actual knowledge, unless he can be blamed for not obtaining such knowledge.

If the objectively wrongful act is caused by a lack of attentiveness, then the scale is the same for all. It will not help a person to claim that he is a notoriously careless person, and has shown the attentiveness which he usually does. The

purpose of imposing liability for negligence is to enforce attentiveness. On the other hand, an especially attentive person will not be held liable for failing to live up to his usual standard if he has nevertheless fulfilled general reasonable requirements. As a rule, it is also unimportant to know the reasons for the lack of attentiveness; whether, for example, the absent-minded motorist was pondering over life's great questions, or whether he was thinking of his adventures last night.

However, the rule as to the objective measurement scale can hardly be maintained to its fullest extent. It is often natural to impose stricter requirements of attention on one who acts in an area where he has no knowledge and experience than on one who is able and experienced. A person lacking knowledge and experience must compensate for this, so to speak, by an increased amount of care. Similar rules apply to one who, because of a defect of sight or hearing, is more likely than others to cause damage. On the other hand, there are good reasons for relaxing the requirements where young persons are concerned. There is no reason to punish a sixteen-year old for failing to show the same care as an adult. The degree of maturity must be considered in determining his carelessness in the tort law as well, where the question has been especially important in the field of contributory negligence.

However, if the error is due to a lack of intelligence, experience, calmness, physical strength, etc., the scale of measurement will be subjective in principle. The actor is not punishable if he did the best he could. The general sense of justice makes a distinction between what the perpetrator "can help" and what he "cannot help." It is only the former which forms the basis for reproach and thus, for a judgment of guilt. We blame a person because he exhibits carelessness, recklessness or a lack of consideration, but not because he is stupid, color-blind or easily frightened. The judgment of negligence in criminal law builds on this general way of thinking. But the distinction becomes more problematical upon closer analysis. Is not the carelessness of the perpetrator the outcome of

heredity and environment, just as his other qualities are? From a deterministic point of view, it is unreasonable to say that a person can help one trait more than another. But the distinction may have another justification. The purpose of legal rules is to influence human behavior. To threaten punishment for a lack of attentiveness has the practical effect of inviting greater attentiveness; to threaten punishment for stupidity, color-blindness or a lack of mental ability, however, has no rational purpose, for such matters are not under the control of the will, and thus cannot be influenced by threats of punishment.

Nevertheless, the arguments in favor of an objective adjudication of negligence in the penal law are by and large those which can be voiced in favor of criminal liability independent of subjective guilt in general. It is easier to determine the existence of an objective error than to analyze the reasons why the error was made. By cutting off subjective reasons for defense, the rules of liability could be made easier to apply and acquittals due to difficulties of proof could be avoided. This argument is not strong enough to justify ignoring the individual inferiority of the actor, but it cannot be denied that the question as to which individual weaknesses should be considered in the determination is filled with many problems, both theoretical and practical.

Those cases where a person voluntarily engages in an activity which requires special knowledge or special skill, such as driving a car, mining, and conducting physical and chemical experiments, must be discussed separately. It may be that it is negligent of him even to begin this activity with the inferior capacity he may have. A person practices medicine without education; someone drives a car without a license or while over-tired; a color-blind person takes a job which requires perception of color, etc. He will then be liable if he makes a mistake. But if the individual cannot be blamed in this respect, he can hardly be held liable merely because his knowledge, talents or other abilities are not up to par. The doctor who has passed his exams must be permitted to act on the assumption that he has that knowledge which is necessary for general practice;

one who has been given a driver's license is entitled to consider his abilities good enough for ordinary traffic. If, for example, the motorist's ability fails in a difficult situation- in confusion, he steps on the gas instead of on the brake- he cannot be held criminally liable. We have had a case where a locomotive driver in an unexpected situation became so confused that he drove directly against a red light. No matter how serious the mistake is from an objective point of view, the result in a criminal case must be an acquittal if the accident cannot be blamed upon inattentiveness, but upon the fact that the locomotive driver froze into paralysis. The result may be different in tort law. In that area, there is more reason to use the risk & viewpoint as a foundation.

3.2. Violation of Laws and Bylaws

It goes without saying that the violation of laws and bylaws includes negligence and recklessness. However, this aspect comes into focus in the cases of professional fault. For example, in traffic offenses, the drivers are obliged to follow the traffic regulation, either in acts or omissions, whereas any violation thereof that causes death will constitute the offense of killing by fault. The E.P.C has expressly cleared this form of fault in articles 238 and 244 as it provided that violation of laws and bylaws forms an unintentional crime.

Chapter Three

Participation in Crime

Relevant Provisions In UAE Penal law:

Article 44

"Whoever perpetrates alone a crime or acts as a direct accomplice shall be considered a perpetrator of the crime. An accomplice is a direct one in the following instances:

First: if he perpetrates the crime with another person.

Second: if he participates in its perpetration when it consists of several acts and he deliberately commits one of its constituent acts.

Third: if he sub-serves another person by any means to execute the criminal act and the latter is not criminally responsible for this act for any reason whatsoever."

Article 45

"A person shall be considered an accomplice by causation:

First: if he instigates to commit a crime that was perpetrated as a result of this instigation.

Second: if he conspires with others to perpetrate a crime that occurred as a result of this conspiracy".

Third: if he gives the doer a weapon, tools or anything else used in the perpetration of the crime of which he had knowledge; or if he willfully assist the perpetrator, by any other means, in the preparatory acts or those facilitating or completing the perpetration of the crime.

The accomplice shall be equally held liable whether he was in direct contact with the perpetrator or through an intermediary.

Article 46

"An accomplice by causation who was found at the scene of the crime with the intent to perpetrate it shall be considered as a direct accomplice in case the crime is not committed by other than him."

Article 47

"Whoever participates in a crime as a direct or causative accomplice shall be sanctioned by its penalty, unless otherwise provided by the law".

Article 48

"Where an accomplice is not subject to the penalty on grounds of one of the causes of legitimacy or for the lack of criminal intent or for other particular reasons concerning him, the other accomplices shall not benefit there from".

Article 49

"Where the material circumstances are inherent to a crime or constituent of one of its acts that will aggravate or extenuate the penalty, the effects thereof shall apply to any one directly or causatively participating in its perpetration regardless of whether he had, or not, knowledge thereof.

However, existing personal aggravating circumstances that may facilitate the perpetration of the crime shall not apply to other than its author unless the other person had knowledge of it.

As to the other circumstances, whether aggravating or extenuating, the effects thereof shall apply only to the person concerned these circumstances."

Article 50

"In the presence of personal excuses exempting from, or extenuating the penalty as concerns one of the accomplices, whether he be direct or by causation, their effects shall only apply to the one concerned by such excuse.

Material excuses exempting from or extenuating the penalty shall produce their effects on whoever participated directly or by causation in the perpetration of the crime".

Article 51

"The accomplice in a crime, whether direct or by causation, shall be sanctioned by the penalty appertaining to the crime perpetrated even of it is not the one he intended to perpetrate as long as the committed crime is a probable consequence of the occurring complicity".

Article 52

"Should the characterization of a crime or a penalty change according to the intent of the author of the crime or his knowledge of its circumstances, the accomplices in the crime, direct or by causation, shall be penalized in accordance with their intent or knowledge".

When two or more persons are thus jointly concerned in the commission of an offence there is said to be participation. A distinction is drawn between participation in the actual commission, all persons co-operating being termed principals, and the furnishing of assistance or encouragement, the persons interested in this manner being termed accessories. As the term itself indicates, persons who participate are sharing something in common. When it is said that several persons are participators in an offence, this implies that each is related in some. Their way to some offence common to all.

Participation must be built upon some common intention. Unity of offence is therefore a characteristic feature of participation. Consequently, principals and accessories are all through the share liable for the same offence, which each took if the offence may be different and the degrees of liability may also differ.

1. PRINCIPAL PARTICIPATION

Consequent to the above, we may infer the following conclusions:

- 1- In the first place, since the liability of the accessory arises from the connection of his act with an offence committed by the principal, in which he has taken a part, there can be no accessory liability an offence has actually been committed, unless an offence has actually been committed. It is not the act of the accessory itself which subjects the act of the accessory in itself him to criminal liability, but that act considered in relation to an offence committed by the principal. If there is no such offence, there cannot be accessory liability. It is impossible to frame an idea of an adjective Independent of that of the substantive which it is to qualify.
- 2- Again, the principle of the unity of the offence entails a combination of material acts to produce a particular criminal result, without participation.

A strikes Z with a club and leaves him unconscious on the road. H coming up later, and finding Z lying senseless, rifles his pockets and steals his purse. A is guilty of wounds and blows and H of theft, but A is not liable as an accessory to H's theft.

It is true that H would not in all probability have committed the theft but for A's action, but this only connects A with H's offence objectively, not subjectively. There was no common intention, and in the absence of this, unity of the offence does not exist. But if A had knocked Z down in order that H might rifle his pockets, and in accordance with a previous agreement, he would have been a co-principal in, or at least an accessory to, H's theft.

Many other examples might be given. A chemist sells to Z a bottle of poison, but carelessly fails to label it as such. Z gives this bottle to P who is ill,

and advises him to take a dose, which he does, and dies. The chemist may be guilty of homicide by negligence, but though Z may have given the bottle to P knowing that it contained poison, the chemist is not liable as an accessory to murder, though his negligence has facilitated the murder. People are not liable as accessories merely because their thoughtlessness has made crime possible.

1.1. Consensus or Meeting of Minds

If Z acted without P's knowledge or connect, and his act was committed without aiding or abetting or counseling with P, it is said the Z and P are not participants, neither in the form of principals or accessories because their minds met on committing a crime. Therefore, each of them will be accountable for the crime individually.

1.2. Who can be principals

A person is concerned as a principal in the commission of an offence

- (1) Who commits such offence, whether alone or in conjunction with others; or
- (2) Who in the case of an offence consisting of two or more acts, knowingly participates in such offence by doing one or more of such acts. Provided that where circumstances personal to any principal are such as to modify with respect to such principal either the character of the offence or the penalty, the effect of such circumstances shall not extend to the other principals concerned in the commission of the offence.

The events, of which the act which constitutes legally the offence is but one, must be treated as a whole, and, as has been laid down in an Egyptian case, all those persons are principals whose participation was necessary for the execution of the act constituting the offence. For example, Z and E agree to murder P; while P is driving, E stops his car while Z shoots him. Both are principals in the murder, though the act of killing was committed by Z alone.

In the case of housebreaking, French opinion adopts the view that the person breaks the fastenings so as to make entry easy no less a principal than the person who actually enters and steals, since the breaking is constituent part of the offence of housebreaking.

In a recent Egyptian case, the Court of Cassation decided that a person who prepared sweets to be given to the victim was a principal, although the sweets were actually given to the victim by another person who knew them to be poisoned.

It has been already remarked that an act may be commencement of execution of the offender's though it does not form part of the legal definition of the offence. The same criterion may be adopted here. An act cannot probably be regarded as the act of a principal unless, taken in itself, it would be at least a commencement of execution of the offence.

2. Secondary Participation (ACCESSORY)

1.1.Necessary Elements of Secondary Participation:

2.1.1. Material Element (*Actus Reus*)

A person is concerned as an accessory in the commission of an offence :-

- (1) Who abets the offence, provided that the act is the consequence of such abetment ; or
- (2) Who is a party to an counsel having for its object the commission of the offence, provided that the offence is the consequence of such counsel; or
- (3) Who knowingly supplies weapons or other implements or means commission of the offence, employed in the or in any other or principals manner aids the principal concerned in the offence in the preparation, facilitation, or commission thereof.

Causation: It is necessary that there will be a causal relationship linking the act or omission, as afore said, with the criminal result in the form of the crimes of felonies and misdemeanors.

2.1.2.Mental Element (*Mens Ria*):

It is required that the abetment, counseling or aid be directed to the commission of the act constituting the offence, by saying that the accessory intends the crime.

2.2. Participation in unintentional crimes

It is sometimes said that it is impossible to be accessory to an offence which does not involve criminal intention. If the offence is an intentional one, abetment or agreement to commit it is possible, but there cannot be abetment or agreement to do injury by negligence. Yet there may be abetment or agreement to the commission of negligent acts for which, owing to the resulting damage, criminal liability is incurred.

Negligence is not indeed often a ground of criminal liability for accessories, but some jurists admit that liability, when it serves as such, those who favored and encouraged the negligent conduct are accessories to the offence which is committed if injury has followed. Thus a motor driver who drives the car at an improper speed by the orders of his master, and consequently runs over and kills a foot passenger, is himself guilty of homicide by negligence and the accessory who abated the negligent conduct is liable also, either as an accessory, or as a co-principal, the negligence of each having contributed to the accident.

But in such cases there is participation in the offence, or rather in the conduct, of which the act constituting the offence is the probable consequence. The case is different when there is no such participation. In the absence of such participation the person who is negligent may be guilty, e.g. of homicide by negligence, if death has resulted, but he could not be prosecuted as being accessory to the act of a third party. Thus, if negligently permits a person not responsible for his actions to obtain command of a dangerous weapon, and the weapon is used so as to result in the death of some other person, A might be convicted of homicide by negligence, if the circumstances showed that this result was the probable result of his negligence, but he could not be said to be accessory to a principal act committed by the child or insane person.

In conclusion, this view admits liability in negligent crimes only in the form of abatement

2.3. Conviction of accessory and acquittal of Principal:

Indeed, Article 42 makes accessories liable, even though by reason of the absence of criminal intent on the principal's part the principal is not liable. To obtain a conviction under Article 40, it is of course necessary to show that an offence was committed as a result of the arrangement, but the offence needs not be the one intended, provided that it is the probable result of the arrangement (Art 43).

The third paragraph of Article 40 retains the special mention of the supply of weapons, etc..., as a form of accessory conduct, not because such mention is necessary, but to avoid any mistake which might arise if the words were omitted.

It is under this heading, as concerned in preparing or facilitating the commission of the offence that the accessory usually falls. The assistance rendered at the time of commission may indeed be accessory but in that case the abettor is more frequently a co-principal. As a rule, accessory assistance is given before the offence is committed. It is impossible to classify the acts which may thus make a person liable as accessory. But there must always be active, assistance rendered in view of the commission of the offence.

Mere knowledge that a crime is to be committed does not of itself suffice. An innkeeper who supplies food to persons whom he knows to be engaged in crime is not for this reason alone an accessory to their crime. To make him accessory it must be shown that the food was supplied in order that the crime might be committed. It is not of course necessary that the accessory should expect to derive any advantage from its commission.

2.4. Subsequent Acts of the Accessory

Persons who have assisted the offender after the commission of the offence are not accessories. Their acts may constitute substantive offences, such as those of assisting escape or of receiving stolen goods.

However, it has been suggested that, a in the case of theft, the person who helps the thief to convey the goods from the place of the theft to a place of safety is liable as an accessory. But this extension of the idea of accessory conduct does not seem necessary. A person who lends his car to the thief before the theft for this purpose is indeed an accessory for though the car is not used till after the commission of the theft; the assistance was rendered before commission with a view to facilitating the offence. But if the promise to provide a car was not given before the theft, the offence of which the carrier is guilty is that of assisting the offender to escape from justice.

2.5. The Foreseeable Crime

The probable result of participation An accessory shall be liable to the penalties prescribed for the offence actually committed, although such offence may be different from the one him, provided that the offence actually committed was the foreseen result of the abetment given, of the arrangement entered into, or of the assistance rendered by such accessory. It is laid down in the article 43 Egyptian P.Code of the Penal code that a participant is responsible for the natural and probable consequences of his acts may form another foreseen crime, and hence he shall be held liable for the latter crime. It is presumed that the accessory had a criminal intent for the concerned crime as well as for the consequences thereof. Thus if E describes P to Z and abets him to murder P, E will be accessory to the murder of (say) H. whom Z murders under the impression that he is P.

The article is of special interest in cases in which criminal acts have been committed by members of a band or gang formed for some unlawful purpose. If three men agree together to beat a fourth, and one of the three actually inflicts the beating, the others are liable as accomplices. And if the victim dies as the result of the beating, the two accomplices will be liable if the death was a foreseen result even though they did not intended consequence of the offence which they agreed to commit.

Again, if several persons armed with weapons attack another with intent to rob, and one of them kills the victim in execution of the common purpose, the others will be liable for the homicide.

Conversely, if the homicide was not committed in execution of the common purpose, only he who did the act which caused death will be so liable. If several people quarrel and fight, and one of them is killed, the person who struck the fatal blow will alone be liable. Similar considerations the accessory has furnished arms or facilitated otherwise the commission of the offence. If A lends Z a crowbar wherewith to break open a box belonging to a third party with intent to steal the contents, and Z uses the hatchet to murder M, A is not accessory to the murder of M.

2.6. The Effects of Circumstances Related to the Principal and Accessory:

Article 41 provides that, except in cases where the law specially provides otherwise, an accessory to an offence shall be punishable by the penalty prescribed by law for the offence.

Nevertheless: -

- (1) The effect of circumstances personal to the principal, which are such as to modify the character of the offence, shall not extend to an accessory who had no knowledge of such circumstances; and
- (2) When the character of the offence varies according to the knowledge or intent with which it has been committed, an accessory shall be punished by the penalty which he would have incurred if the principal had acted with the same knowledge or intent as that of the accessory.

The general principle followed in allotting punishment to an accessory is that the legal liability of the accessory is the same as that incurred by the principal

This view is based upon the notion that the crime committed by all parties is the same. There is unity of the offence, and consequently all involved must be regarded as equally punishable. The Court's discretionary powers enable it to make such distinction in the punishment actually inflicted as the circumstances demand.

2.7. Exceptions From the Responsibility of the Accessory:

Article 41 provides two exceptions to the rule of identity of liability.

- 1- The first exception is similar to that rule under Article 39. But it is to be observed that it is that only of the circumstances personal to the principal which modify the character of the offence that he escapes liability for them.

In the case of co-principals, provided in article 39, each is liable separately for the offence which he has committed, so far as that offence may be altered by circumstances personal to each; yet an accessory will be liable to the same extent as the principal, when circumstances personal to the principal modify the principal's guilt, and these circumstances are within the accessory's knowledge. If the accessory had no knowledge of these circumstances, there will be no communication.

- 2- The second exception is again similar to that provided for in Article 39, but the aggravation extends only to the accessory. Thus, if A abets B to slap C, knowing that C has a weak heart and is likely to die from the act, he will incur the penalties of battery conducing to death while the principal is only liable of battery.

The distinction between modifying the character of the offence and modifying the penalty referred to in Article 39 is not repeated in Article 41. We are not, however, to conclude, because Article 41 only mentions circumstances modifying the character of the offence, that therefore all other personal

circumstances are communicated from the principal to the accessory.

So far from this being the case, the contrary is true. The accessory will not be liable to heavier penalties because his principal is a recidivist, or get off more lightly because his principal is a minor whether he knows of the fact or not.

On the other hand, if a father is accessory to the rape of his daughter, the actual violation would not incur the severe penalties on the principal like those provided for the father.

Also, accessory shall be liable to the penalties prescribed by law, even though the principal may be exempt from all penalty by reason of some ground of justification or by reason of the absence of any criminal intent on his part or by reason of any other circumstance personal to himself.

Thus, the principle in participation is that neither an excusing nor a mitigating nor an aggravated circumstance shall extend from one party to another.

2.8. The Rationale of the Accessory's Responsibility

The accessory is not punishable if no punishable offence has been committed by the principal on the grounds that the accessory's liability is regarded as derived from that of the principal.

However, where the principal's exemption from punishment is due to some personal circumstance, which does not indeed an offence prevent the act itself being there is little difficulty in holding that the benefit such circumstance will not be communicated to the accessory. The fact that the so-called principal, a child under seven, or an insane person, is not available as a defense for the accessory, nor would the fact that the principal in theft was ascendant or descendant of the victim.

The difficulty is, however, greater where the done by the principal is not an offence at all, either an innocent act or even one performed in the exercise of a right. Where the material committed by the so-called principal is not one which is punished by the criminal law, the accessory's conduct to it is not punishable. It offence to abet suicide, or to assist in seducing a girl over eighteen however morally offensive such conduct may be.

Again it is clearly not criminal to advise or facilitate an act which is performed in exercise of a right, to advise a father, for example, to whip his child, or to facilitate the performance of his duties by a police officer. These acts are rightful. But if the police officer oversteps the limits of his powers, any person who was accessory to his conduct would become punishable, even though the policeman himself were exempt from penalty. Suppose that a policeman, sent with a warrant to arrest A, is misled by false information given by M and, arrests Z by mistake . The policeman is protected by the provisions of Article 63 The protection cannot, however, be extended to M. If M acted innocently there would be no offence on his part because no offence is committed by the policeman. But if M acted with guilty knowledge he will be punishable as an accessory, even though the principal is exempt from penalty.

In this accordance, we adopt the opinion which views that the legislator was not correct when he remained the criminal responsibility concerning the accessory despite the existence of justifiable reasons in the party of the principal as provided in article 42. This is simply because justifications, unlike excuses, completely remove any legal responsibility whether criminal or not. Therefore, the justifiable act committed by the principal does not form any crime, i.e. it is a lawful act. Hence, the accessory who aids or counsels or abets that principal shall not be consequently accountable for his participation according to the principal mentioned before, which rules that the accessory's liability is derived from that of the principal.

Aggravated Circumstance for The Accessory:

Article 335

"Shall be sentenced to detention for a minimum period of six months and/or to a fine not in excess of five thousands Dirhams, whoever attempts to commit suicide. Shall be sentenced to detention, whoever abets another or assists him, in any manner whatsoever, to commit suicide, if it occurs thereupon.

Should the victim of suicide be below eighteen years of age or partially incapacitated, in his will or discernment, this shall be considered an aggravating circumstance.

The instigator shall be sentenced to the penalty prescribed for deliberate murder or attempt thereto, as the case may be, in case the person committing suicide or attempting thereto has totally lost his free will of choice or discernment"

2.9. Withdrawal of the Accessory:

Where D has counseled E to commit a crime, or is present, aiding E in the commission of it, it may yet be possible for him to escape liability by withdrawal before E goes on to commit the crime.

An effective withdrawal will not, however, affect any liability he may have already incurred for incitement, or conspiracy, or, if the withdrawal took place after E had done more than a merely preparatory act or attempt, to commit the crime.

Mere repentance, without any action clearly leaves D liable, because he had Mens Rea when he did the act of counseling or aiding.

What is an effective withdrawal may depend on the mode of D's participation in the contemplated offence. If it consisted only in advising or encouraging E to commit the crime, it is enough for him to tell E to desist. If E then commits the crime he does so against E's advice and without his encouragement. It may be that E would never have committed the crime if D had not put it into his

head in the first place; but then D may be properly and adequately dealt with by conviction of incitement. If D has counseled more than one person, then it seems that he must communicate his countermand to all of those who perpetrate the offence, for otherwise his counseling remains operative.

To be effective, the communication must be such as “will serve unequivocal notice upon the other

party to the common unlawful cause that if he proceeds upon it he does so without the further aid and assistance of those who withdraw.

The position might be different where D has supplied E with the means of committing the crime. Arguably, D must neutralize, or at least take all reasonable steps to neutralize, the aid he has given. If E ignores D’s countermand and uses the thing or information with which D has supplied him to commit the crime, he has in fact been aided by D in doing so. Aid may be less easily neutralized than advice. where D2 handed D1 a knife so that he could use it on anyone interfering in a burglary, D2 did not make a sufficient communication of withdrawal when, on the appearance of P, he said “Come on, let’s go,” and got out through a window. Something “vastly different and vastly more effective” was required and, possibly, nothing less than physical intervention to stop D1 committing the crime would be required.

If the question is whether D has done his best to prevent the commission of the crime, the answer does not depend on the reasons for the failure. It may be argued that, where D has failed to communicate, he can escape only by going to the police.

Where D does give timely warning to the police, the effect ought in most cases to be that the crime will be prevented; but this may not always be so and, even where it is, there remains D’s potential liability for abetting E’s attempt,

if E has gone beyond mere preparation. Surely, however, efforts to prevent the commission of the crime by informing the police ought to be an effective withdrawal, whether D has or has not attempted to persuade E to desist. Apart from being the best evidence of repentance, it is conduct which the law should and does encourage.

Withdrawal, as previously mentioned, must be voluntary. If D is arrested, he can hardly be said to have “withdrawn”. His arrest does not undo any aid, advice or encouragement he may have already given and therefore does not absolve him from any potential liability he has already incurred. Of course, it usually precludes any future secondary participation by him; but in this section we are concerned with absolution from the potential liability arising from D’s past acts.

It is sometimes suggested that withdrawal is effective only if there is a genuine “repentance”. English courts are generally reluctant to go into questions of motive. D may have seen the light, or he may be acting out of malice against his accomplices or because of fear of detection or because he has decided that the risks outweigh the possible rewards. It is submitted that it should make no difference.

PART III

Case Study

As per the United Arab Emirates Penal Law

Case Study

As per the United Arab Emirates Penal Law

Case 1:

Merits:

- 1- A who Lives in UAE incited B to kill C, who lives in London.
- 2- In London, B shot C to death.

To what extend does the criminal law apply to this case??

The legal issue raised:

- 1- The principle of territorial applicability of UAE criminal law.
- 2- The liability of the participant as accessory.

The application of the legal principle to the Merits:

The UAE Penal Law shall be applied to this crime if it was committed partially in UAE . If one or more of the components of the material element have been committed in UAE (criminal act, result, or causation). Furthermore, the participant shall be responsible for this crime if one of the participant's acts were committed abroad, such as enticement, aiding, or agreement. Hence, the participant will be responsible as accessory despite that one of the material elements' components was attained in UAE.

However, in this case, the participant shall not be accountable for this crime as accessory if he committed one of the participant's acts in UAE.

Case 2:

Merits:

- 1- A sent an injurious letter from London to B, who lives in Abu Dhabi.
- 2- A was arrested upon his arrival to Abu Dhabi.

Does the UAE law apply to A??

The legal issue raised:

The UAE criminal law states that it covers the crimes if they are committed totally or partially in UAE. (Partially like above).

The application of the legal principle to the Merits:

In such a case, A had committed a part of the material element of the crime of injury abroad by sending from London an injurious letter to B, who lives in Abu Dhabi. Hence, the criminal result has been attained in UAE when this letter injured B.

If A is a UAE citizen, he shall be accountable for his crime according to UAE criminal law because the conditions of such a case have been fulfilled. Which are as follows:

- 1- He committed the crime abroad (either totally or partially, by sending an injurious letter to B).
- 2- Being a UAE citizen
- 3- The act is criminalized as a felony or misdemeanor in both England and UAE..
- 4- He was not tried in England for his act.
- 5- He returned back to UAE.

Case 3:

Merits:

- 1- A spied on the UAE armed forces.
- 2- A is being tried in UAE for his crime.
- 3- A claims that the act never took place in UAE.
- 4- A claims that he has been already tried for the same act by an American court that acquitted him on the grounds that the act is not incriminated by American law.

Are these arguments legally acceptable???

The legal issue raised:

The legal issue that is raised is the principle of reality, which states that the UAE criminal law is applied regardless of the place of the crime or the person of the guilty doer. So long as the committed crimes is one of the serious crimes against the major interests of states.

Whereas spying is one of the major crimes against the external security of the state, therefore it is covered by the principle of reality. Hence, this crime shall be triable in UAE , despite that it was not punishable in America, where the crime was committed.

The application of the legal principle to the Merits:

On applying the principle of reality on this case, we find out that his first argument shall not be admitted because the crime that he has committed (spying on armed forces) is one the major crimes against states' interests as provided in the UAE criminal law.

As for the second argument, The acquittal which he obtained in America for this crime, (on the grounds that the act is not incriminated in America), shall not be recognized also because the principle of reality takes the nature of the crime into account, regardless of any other considerations. That includes the acquittal in the foreign state for such act.

Case 4:

Merits:

- 1- In UAE, A stabbed B, causing him serious bodily injuries.
- 2- B was transported to England to receive medical treatment where he dies.
- 3- A claims the inapplicability of UAE criminal law.
- 4- A argues that the crime was committed outside the UAE territory.
- 5- A argues that he was not an UAE national at the moment of the crime.

The legal issue:

The principle of the territorial applicability of criminal law is brought up. According to this principle, the UAE criminal law shall be applicable if the crime is totally or partially committed in UAE . The crime is partially committed in UAE if one or more of the components of the material element is committed in UAE , such as the criminal act or result or causation.

The application of the legal principle to the Merits:

In such a case, A committed the criminal act on the UAE territory by stabbing B. While the criminal result took place in another territory (England).

- 1- A's first argument shall be rejected because A has committed the criminal act as a part of the material element on the UAE territory, which is sufficient to prosecute and punish him according UAE criminal law regardless of the place of the criminal result.
- 2- A's second argument shall also be rejected because the act is committed on

UAE territory. Hence the guilty doer shall be punished according to the UAE criminal law, whether or not he is a UAE citizen.

Case 5:

Merits:

- 1- A is charged with possessing illegal documents.
- 2- The punishment for his crime (a misdemeanor) is imprisonment not exceeding 6 months.
- 3- During interrogation, a new law has been enacted, raising the maximum to 12 months and at the same time allowing suspending the sentence if the judge sees it appropriate.

Which law shall be applied to him???

The legal issue:

The applicability of criminal law as to time is brought especially the principle of retroactivity of the rule more favorable to the accused.

One of the favorable aspects of the criminal rule is when the new rule allows suspending sentence if the judge sees it appropriate, provided that the new rule comes into force before the final and irrevocable judgment.

The application of the legal principle to the Merits:

In such a case, despite that the old rule punishes with imprisonment not exceeding 6 months while the new rule, which came into force before the final judgment raised the maximum punishment up to 12 months, but the latter one is more favorable to the accused because it allows suspending sentence.

Consequently, the new law shall be applied to the accused as a more favorable rule, because it allows suspending sentence, although it increased the

maximum punishment. This is because the judges normally use this privilege of suspending sentence in favor to the accused.

Case 6:

Merits:

- 1- A is charged with a felony with detention ranging from 3 to 5 years.
- 2- A new law has been enacted during his trial, punishing the same act with imprisonment not exceeding 7 years.
- 3- The court applied the new law to him.

Is the judgment a sound application of Egyptian criminal law???

The legal issue:

The applicability of criminal law as to time is brought up, especially

The principle of retroactivity of the rule more favorable to the accused. One of the cases in which the new law is more favorable is when the new law converts from felony punishable with detention into a misdemeanor punishable with imprisonment regardless of whether or not the deal of punishment of imprisonment is higher or lower, so long as the characterization of the crime is modified to a lighter crime in the category of crimes.

The application of the legal principle to the Merits:

In such a case, imprisonment is more favorable rather than detention, regardless of the increase of the punishment to seven years because the new law has modified the characterization of the act from felony to a lower category as misdemeanor. Consequently, the imprisonment as a punishment of misdemeanor is more favorable than detention as a punishment of felony.

Case 7:

Merits:

- 1- A has been irrevocably convicted for theft and received a 3 year imprisonment.
 - 2- A new law has been enacted that shortened the maximum of the punishment to two years.
 - 3- The convicted served two years.
- Can he be released???
 - Would it be different if the new law has instituted a defense of necessity applicable to similar facts??

The legal issue:

The applicability of criminal law as to time is brought up, especially

“The principle of retroactivity of the rule more favorable to the accused”.

The UAE criminal law states that one of the important conditions of application of the principle of retroactivity of criminal rule is that a final sentence is not yet issued. In other words, if a final sentence has been decided before the promulgation of the new law, this law would have no retroactive effect even if it was more favorable to the accused. Accordingly, the accused shall serve the complete punishment (3 years) under the old law, even if it was harsher than the new law.

On the other hand, if the new law brings an excuse to the criminal act (such as case of necessity) or justification (such as self-defense), the criminal shall benefit from this excuse or justification under the new law, even after the final sentence and he shall be released from detention, if he was serving the punishment sentenced by the final judgment

Application of the legal principle to the Merits:

- 1- A shall not be released because he was convicted with a final sentence under the old law and before the promulgation of the new law. Therefore, he shall serve full punishment sentenced by the final court.
- 2- A shall be released because he benefits from the new law, which instituted a new defense as an excuse to his act in the form of a case of necessity.

Case 8:

Merits:

- 1- A is charged with using a false document, a misdemeanor punishable with fine.
- 2- During his trial, a new law has been enacted providing for imprisonment instead of the fine.
- 3- It was proved that the accused was then still using the same forged paper.

Which law shall be applicable to him?

The legal issue:

The applicability of criminal law as to time is brought up. The Egyptian criminal law states that in case of the continuous crime, the new law shall be applied to the criminal act from the moment of its promulgation, even if it was less favorable to the accused. This is due to the nature of this crime, in which the act is still culpable during the period, which extends for a long time. The accused shall be subjected to punishment from the beginning of the criminal act up to the time of the discovery of this crime. Hence, if this crime is discovered under the new law, it shall be covered hereby, despite the act has begun under an older law.

Application of the legal principle to the Merits:

So long as A was still using the same forged documents, he shall be

charged with a continuous crime and shall be subjected to the new law, despite that crime first begun during the enforcement of an older law. His act shall be punishable under the new harsher law.

Case 9:

Merits:

- 1- A has planned to steal property belonging to B.
 - 2- A neighbor seizes A while he was trying to open the out door with a false key.
 - 3- The neighbor hands A to the police.
-
- What is the charge that can be brought against him??
 - Would it be different if he had been arrested while trying to draw a sketch of the house??

The legal issue:

The attempted crime requires three conditions:

- 1- The commencement of an executive act.
- 2- The intent to commit a felony or misdemeanor.
- 3- The failure of the criminal result against the will of the offender criminal result.

The preparatory act does not constitute a crime in itself a crime in itself, and shall not be punished for.

Application of the legal principle to the Merits:

In the first case, A shall be accountable for attempted crime because the conditions of attempted crime were fulfilled in his behalf as follows:

- 1- He commenced an executive act by trying to open the outdoor with a false key.

- 2- He intended to commit a crime of burglary (a felony).
- 3- The criminal result did not take place, not due to his voluntary desistance, but due to the intervention of the neighbor, who caught him in the scene of the crime and handed him to the police.

But if A was caught while trying to draw a sketch of the house, he shall not be held liable for his act because his act is characterized as a preparatory act, which is not sufficient to constitute an attempted crime.

Case 10:

Merits:

- 1- A planned to kill B.
- 2- A entered B's house by force to kill him.
- 3- B was planning to shoot at A.
- 4- A was fast enough to shoot at B, thus causing his death.
- 5- A maintained that he was in self-defense before the court.

How good is his argument???

The legal issue:

In order to accept the argument of self-defense, certain conditions must be accomplished. They are as follows:

- 1- The appearance of a material aspect of aggression against the victim.
- 2- Defense against an unlawful character.
- 3- Imminent or present danger.
- 4- No possibility to ask public authority's help.

If these four conditions were achieved, then the act of shall be characterized as an act of self-defense. If one of these conditions doesn't exist, then there shall

be no claim of self-defense.

Application of the legal principle to the Merits:

As A's argument shall not be accepted in court because one of the conditions of self-defense has not been accomplished, which stipulates the defense against the unlawful aggression. This is because B's act against A was lawful as he was defending his life while A was defending himself against a lawful act (self-defense). Therefore, A shall be subjected to punishment for the crime of murder.

Case 11:

Merits:

- 1- A succeeded in pick pocketing.
- 2- The passenger followed him, when he threw away the passenger's belongings.
- 3- The passenger fired at A, thus causing him serious injuries.
- 4- The victim claims that he only exceeded the limits of self-defense and the court agreed.

What is your comment???

The legal issue:

In order to accept the argument of self-defense, certain conditions must be accomplished. They are as follows:

- 1- the appearance of a material aspect of aggression against the victim.
- 2- Defense against an unlawful character.
- 3- Imminent or present danger.
- 4- No possibility to ask public authority's help.

If these four conditions were achieved, then the act of defense committed shall be characterized as an act of self-defense. If one of these conditions doesn't exist, then the act shall not be characterized as self-defense.

Application of the legal principle to the Merits:

The court's decision was wrong because the exceeding the limits of self-defense presumes the existence of self-defense first as justification.

In such a case, the lawful self-defense was over when A threw away the belongings of the passenger. Hence, the passenger would have no right to practice self-defense against A and he should be held responsible of intentional crime of injury.

Case 12:

Merits:

- 1- A stabbed B, with the intent to kill him in an altercation.
- 2- B was transported to hospital due to the slight injuries caused by A.
- 3- C used unclean instruments while operating on B, which led to his death.

What are the charges that can be brought against A and C?

The legal issue:

The crime is based on two elements:

- 1- Material element (actus reus), which consists of three components (Criminal act or omission + Criminal result + Adequate causation between the act and the result).
- 2- Mental element (mens rea). It either takes the form of intent or negligence

On the other hand, the attempted crime requires three conditions:

- 1- The commencement of an executive act.
- 2- The intent to commit a felony or misdemeanor.
- 3- The failure of the criminal result against the will of the offender criminal result.
- 4- The crime due to negligence is committed when the criminal fails to recognize the consequences and does not take the precautionary actions to evade the criminal results. Therefore, it takes the form of unintentional crime.

Application of the legal principle to the Merits:

On applying the forgoing elements to this case, we can recognize the responsibility of both A and C:A's responsibility:

A shall not be responsible for complete crime of murder due to the absence of the causal relationship between his criminal act and the criminal result. This is because the chain of causation has been broken between his act (injuring) and the result (B's death) by the intervention of C's act, which caused B's death. Therefore, A shall not be responsible for the death of B.

However, A is still responsible for attempted crime of because he fulfilled the conditions of the crime of attempt as:

- 1) He has committed the executive act by injuring B,
- 2) By the intent to kill him.
- 3) The failure of the criminal result. This is because B's death was the direct result of the intervention of C's act, which broke the causal relationship between them.

C's responsibility:

C shall be responsible for crime of killing by negligence as its elements were met. C's act was culpable when he operated with unclean instruments without taking the medical precautions in to account, which led directly to B's death.

Case 13:

Merits:

- 1- A planned to commit a burglary in a bank
- 2- He found nothing to steal, and desisted from opening the rest of the cases.
- 3- A hit a guard and struck him on the face
- 4- A claims that he desisted voluntarily from stealing
- 5- A claims that he was in self-defense

The legal issue:

The attempted crime requires three conditions:

- 1- The commencement of an executive act.
- 2- The intent to commit a felony or misdemeanor.
- 3- The failure of the criminal result against the will of the offender criminal result against the criminal's consent (absence of voluntary desistance).

The intended crime by its two elements: mental and material element.

In order to accept the argument of self-defense, certain conditions must be accomplished. They are as follows:

- 1- The appearance of a material aspect of aggression against the victim.
- 2- Defense against an unlawful character.
- 3- Imminent or present danger.
- 4- No possibility to ask public authority's help.

If these four conditions were achieved, then the act of defense committed shall be characterized as an act of self-defense. If one of these conditions doesn't exist, then the act shall not be characterized as self-defense.

Application of the legal principle to the Merits:

Despite that A has committed an attempted crime when he commenced the executive act of burglary in a bank by opening one of the cases by force (intended as a crime of burglary), and the criminal result has not been attained when he desisted to open the rest of the cases. This is because the failure of the criminal result was due to his voluntary desistance, which is rewarded by the legislature with exemption from punishment. Therefore, A shall not be punished for the crime of attempted burglary.

However, A shall be responsible for the crime of injuring the guard. His argument of self-defense is rejected on the grounds that the conduct of the guard did not constitute an aggression, but an official duty, which shall not be met by self-defense

In conclusion,

- 1- A shall be exempted from the punishment of attempted crime of burglary.
- 2- His argument of self-defense is rejected and he shall be responsible for the intended crime of injury.
- 3- A will be also responsible for the damage of the empty case.

Case 14:

Merits:

- 1- A, B, and C agreed to steal jewels from D's house.
- 2- C stood to watch A and B while stealing the house.
- 3- A broke the front door.
- 4- D noticed the presence of B and tried to throw a chair at him.
- 5- B stabbed D to death and escaped with A.

What are the crimes that might be attributed to A, B, and C???

The legal issue:

The conditions of the responsibility of all participants (principals or accessories) for the foreseen crime are held as follows:

- 1- Material element (actus reus) committed by one or more participants, consists of three components:
 - a- Criminal act or omission committed by some of the participants
 - b- Criminal result of the first crime in addition to another foreseen crime
 - c- Adequate causation between the first crime and the foreseen crime.
- 2- Mental element (mens rea). It takes the form of intent of commission of the first crime, in addition to reasonable expectation of the occurrence of the foreseen crime.

The attempted crime requires three conditions:

- 1- The commencement of an executive act.
- 2- The intent to commit a felony or misdemeanor.
- 3- The failure of the criminal result against the will of the offender criminal result.

Application of the legal principle to the Merits:

A, B, and C's responsibilities for the attempted crime of burglary:

- 1- The first is attempted crime of burglary, which they have previously planned with C. The conditions of this crime have been fulfilled in their behalf. They have commenced the executive act of burglary by the intent to steal D's house (felony). The criminal result has not been attained because of the intervention of D, who prevented them to complete the crime.
- 2- C shall also be responsible for this crime as principal, despite that he didn't take part in their acts inside the house. His responsibility is based on his

effective role in the scene of crime as he was watching the area and alerts them if needed.

A, B, and C's responsibilities for the crime of murder as a foreseen crime:

B shall be directly responsible for this crime, when he stabbed D to death. A and C shall also be responsible as a principal for this crime, despite that they didn't plan with previously to kill D, but their responsibility shall be based on the rule of foreseen crime. That's to say the crime of murder was an expected crime as a consequence of the crime of burglary according to the expectation of a reasonable person. This is because it is normally expected that the inhabitants of the house shall resist the crime of burglary and such resistance may conduce to the crime of death, especially one of the participant was armed with a knife. Hence, the crime of murder came as a reasonable consequence to the crime of burglary (as a foreseen crime). Therefore, all participants shall be responsible for the crime of murder, including C, because C had an effective role in the first crime of burglary and he has to expect the commission the second crime of murder.

Case 15:

Merits:

- 1- A planned to steal important documents from B's house.
 - 2- He forced the door open but a police car showed up.
 - 3- He left and left the door open.
 - 4- C was planning to kill B, who knew nothing of A's plan.
 - 5- C was aiming a gun at B.
 - 6- One of B's sons intervened and prevented C from shooting.
-
- What are the crimes that can be imputed to A and C?
 - Would it be different if A knew C's plan and forced the door open to facilitate

C's institution into the house???

The legal issue:

The attempted crime requires three conditions:

- 1- The commencement of an executive act.
- 2- The intent to commit a felony or misdemeanor.
- 3- The failure of the criminal result against the will of the offender criminal result.

One of the aspects of the material element of participation as accessory in the crime is giving aid to principal to commit the crime, In addition to the mental element (the intent to commit a felony or misdemeanor). Provided that the criminal result is attained as a result of the aid of accessory. Hence, the accessory shall be responsible for any criminal act committed by the principle so long as the crime has been attained as a result of the accessory's aid.

However, if the criminal without knowledge with others committed the crime, there will not be participation, but just a meeting of minds. Accordingly, every person is solely responsible for his own act.

Application of the legal principle to the Merits:

What are the crimes that can be imputed to A and C ?

Because of the absence of agreement between A and C, A shall be solely responsible for attempted crime of burglary as he fulfilled the three conditions of this crime as he commenced the executive acts by forcing the door of B's house by intent to steal it. But the burglary failed against his will because of the appearance of a police car.

On the other hand, C shall be solely responsible for the attempted crime of murder against B, as he fulfilled the conditions of attempted crime. he

commenced the executive act of killing by trying to shoot B with the intent to kill him. However, the criminal result failed to take place, against his will, due to the intervention of D, who prevented C from killing his father B.

This crime does not bring up the issue of participation because of the absence of agreement between A and C. They just met in minds to commit different crimes against B. Therefore, each of A and C shall be responsible individually for their own crimes

Would it be different if A knew C's plan and forced the door open to facilitate C's intrusion into the house ??

Yes, it would be different. Both A and C shall be responsible as participants for the crime of attempted murder, C, as a principal and A as Accessory because the conditions of secondary participation are fulfilled as follows:

- 1- A, as accessory, knew C's plan to kill B and helped him to commit his crime by forcing the door open
- 2- A has the intent to participate in this crime
- 3- The attempted crime of C came as a result of the aid of A.

Therefore, C shall be responsible as a principle for the attempted crime of killing B and A will be responsible as an accessory in this crime.

Case 16:

Merits:

- 1- A, B, and C have agreed to commit a robbery in D's house.
- 2- A and B went to D's house.
- 3- C met D in the street and simulated an altercation with him aiming at delaying his return so that A and B could easily do their job.

- 4- A and B took possession of the valuables and left the house.
- 5- D met them, after getting rid of C, but was stabbed by A.
- 6- D was transported to hospital and died in an ambulance crash.

For what crimes are A, B and C liable for??

The legal issue:

Responsibility of all participants (principals or accessories) for the foreseen crime is held if the following conditions are met:

- 1- Material element (actus reus), which consists of three components:
 - a- Criminal act or omission committed by some of the participants
 - b- Criminal result of the first crime in addition to another foreseen crime
 - c- Reasonable causation between the first crime and the foreseen crime.
- 2- Mental element (mens rea). It takes the form of intent to commit the first crime and a reasonable expectation of the occurrence of the foreseen crime.

The attempted crime requires three conditions

- 1- The commencement of an executive act.
- 2- the intent to commit a felony or misdemeanor.
- 3- The failure of the criminal result against the will of the offender criminal result.

Application of the legal principle to the Merits:

A and B shall be responsible for a complete crime of theft, as well as C, who has an effective role in the scene of the crime when he simulated an altercation with D, aiming at delaying his return so that his associated could easily do their jobs.

A shall be directly responsible for his crime, when he stabbed D, causing him serious injuries.

B and C shall also be responsible for this crime, despite that they didn't plan with A previously to stab D, but their responsibility is based on the rule of foreseen crime. That's to say the crime of attempted murder was an expected crime as a reasonable consequence of the crime of robbery. This is because the reasonable person normally expects that D shall not allow them to take his belongings away without resistance, which may conduce a foreseen crime of murder, especially A, who was armed with a knife. Therefore, A and B shall be responsible for the crime of attempted murder, including C, because C had an effective role in the crime of robbery and he has to expect the commission the second attempted crime of murder.

However, A, B, and C shall not be responsible, as participants, for the death of D due to the absence of the causal relationship between their criminal act and the criminal result. This is because the chain of causation has been broken between A's act (stabbing) and the result (D's death) by the intervention of an unexpected event (the crash of the ambulance), which caused D's death. Therefore, they are still responsible as participant just for attempted murder.

Case 17:

Merits:

- 1- A and B agreed to beat C.
- 2- They beat C till death.
- 3- A had an intent to kill the victim but did not inform B of it.

State the crimes for which each of them shall be liable...

The legal issue:

The elements of the crime is divided into two elements:

- 1- Material element (actus reus), which consists of three components (Criminal act or omission, Criminal result, Adequate causation between the act and the result).
- 2- Mental element (mens rea). It either takes the form of intent or negligence

One of the aspects of the mental element of participation as accessory in the crime is aiding to principle to commit the crime, In addition to the mental element (the intent to commit a felony or misdemeanor). Provided that the criminal result is attained as a result of the aid of accessory. Thus, the accessory shall be responsible for the crime committed by the principal.

However, If there is no agreement between the participants in the commission of the crime, there will not be participation, but meeting of minds. Accordingly, every person is solely responsible for his act.

Application of the legal principle to the Merits:

B shall be responsible for the crime of beating as principal because he had a previous intent to commit this crime.

However, B shall not be responsible for the crime of murder because he had no intent or previous knowledge or agreement with A to commit the crime of murder.

Thus, A shall bear the liability of the crime of murder, which have met the material element (willful act causing death), as well as the mental element (in the form of intent to kill D).

Case 18:

Merits:

- 1- A, while driving his vehicle, knocked down B, a pedestrian who was crossing the road.
- 2- A transported B to hospital to receive treatment.
- 3- C promised D to give her a sum of money if she gave B a lethal injection, which she did.

What are the charges that can be brought against A, C, and D???

The legal issue:

- 1- The offender is held liable for an unintentional crime due to negligence, if the criminal fails to recognize the consequences and does not take the precautionary actions to evade the criminal results.
- 2- The secondary participation is one of the aspects of the material element of participation of accessory in the crime is enticement to principal to commit the crime, In addition to the mental element (the intent to participate in a felony or misdemeanor). Provided that the criminal result is attained as a result of the enticement of accessory.

The elements of the crime is divided into two elements:

- 1- Material element (actus reus), which consists of three components (Criminal act or omission, Criminal result, Adequate causation between the act and the result).
- 2- Mental element (intent), which consists of criminal knowledge and will.

Application of the legal principle to the Merits:

- 1- A shall be responsible for injuring B by negligence, as he was not cautious during driving his vehicle, which caused the injury to B.

- 2- C is responsible as accessory by enticement to kill B as he enticed D to give B a lethal injection and the crime of murder was committed as a result of this enticement.
- 3- D shall be responsible as a principal in the crime of murder when she responded to C's enticement by committing the criminal act (lethal injection), with knowledge and will to kill him (intent), then death came as a result of D's act (injection).
- 4- A shall not be responsible for B's death because of the intervention of both D and C's criminal acts, which broke the chain of causation between the accident and B's death.

Terminology

competency	اهلية
Customary Law	قانون عرفي
Compensation	تعويض
Constitute	يكون- يشكل
Conviction	ادانة
Common Law	العرف
Characterization	تكيف قانوني
Criminal Procedures	الأجراءات الجنائية
Concept	مفهوم
Commit to trial	يحيل الى المحكمة
Court of Cassation	محكمة النقض
Criminal proceedings	الدعوى الجنائية
Complaint	شكوى
Consensus	اتفاق في الارادات
Counsel	المستشار القانوني
Conflict	تنازع
Constitution	دستور
Construe	يحلل- يفسر
Conduct	سلوك- سيرة
Conspiracy	مؤامرة
D	
Defense	وجه دفاع
Damage	ضرر
Discretion	حريه تقدير
Drastic	عنيف
Dismissal	أستبعاد
E	
Enhance	يؤكد
Evidence	دليل

Eliminate	تخلص من
Exercise of Authority	ممارسة السلطات
Endangering act	السلوك الخطر
Employ	يوظف
F	
Fulfillment	توافر
False pretence	(نصب) جريمة النصب
Forcible redress	العنف التلقائي من الموظف
Foreseeable crime	الجريمة المحتملة
G	
Guarantee	يضمن- ضمان
Genuine non-action offence	جرائم الامتناع المجرد
Gesture	حركه عضلية
Guilty knowledge	العلم بالفعل غير المشروع
H	
Homicide	قتل
H	
Immoral conduct	سلوك منافي للأخلاق
Investigate	بحقق
Interpretation	تفسير
In so far as	حيث انه
Impact	أثر- مردود
Incrimination	تجريم
Immunity	حصانة
Irrevocable judgment	حكم بات
Imminent attack	خطر حال
Impunitive	غير معاقب عليه
Implements	ادوات

Ignoble motive	باعث خسيس
Intention with respect	القصد الاحتمالي
to probable consequences	
I	
Judgment	حكم
Jurisprudence	فقه
Judicial	قضائي
Justification	مبرر- أسباب الاباحة
Justifiable	مشروع- مبرر
J	
Legislation	تشريع
Lawful	قانوني
Legal	شرعي
K	
Mitigate Punishment	يخفف العقوبة
Municipal law	القانون الداخلي
Mala prohibita	الأعمال المحظورة قانونا
Motive	باعث
L	
Noble Motive	باعث نبيل
M	
Omission	حذف
Offence	اساءة
Obstruct	يعترض
Overt act	الفعل الظاهر
N	
Punishable	معاقب عليه
Prosecute	يحقق

Principle of legality	مبدأ الشرعية
Provision	نص قانوني
Prohibition	تحريم
Precisely	بدقه
Penalization	عقاب
Promulgation	اصدار
Physical Assault	الأعتداء البدني
Prescribed	مقرر
Proportionality	تناسب
Perpetrator	الجاني
Procedure	اجراء
Pleas	دفع- طعن
Prove	يثبت
Prison	سجن
Penal Law	قانون العقوبات
Penalty	عقوبة
Political	سياسي
Preventive	اجراء وقائي
Pursuance	بناء على
Principal	فاعل أصلي
Preparatory act	الأعمال التحضيرية
Premeditation	سبق الاصرار

O	
Repentance	التوبة
Real property	اموال عينية
Relative impossibility	الاستحالة النسبية
Relieve from responsibility	يعفي من المسؤولية
Retroactive effect	الأثر الرجعي
P	
Synonymous	مترادف
Solicit	يلتمس
Superior orders	اوامر رئاسية
Subsequent act	الأفعال المتتابعة
Supply	مساعدة
Scarecrow	خيال المآة
Significance	مضمون
Substantive rules	قواعد موضوعية
Sentence	حكم
Statute	تشريع
Sanction	عقوبة
Subjects	رعايا
State	دولة
Statutory	تشريعي
Supplement	تكميلي
Sovereignty	سيادة
Q	
Triable act	فعل يخضع للمحاكمة
Tortuous act	عمل غير مشروع
Traitor	خائن
R	
Venue	مكان للمحاكمة

Violation of law	مخالفة للقانون
Victim	مجني عليه
Voluntary withdrawal	العدول الاختياري
Verdict	قرار المحلفين
S	
Wtillful ac	السلوك الارادي
Wrongdoer	المجرم

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