

محاضرات القانون الجنائي باللغة الانكليزية

طلبة المرحلة الثالثة

الفصل الدراسي الثاني

اعداد

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Introduction to the study of Criminal law

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By

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Introduction to the study of Criminal law

- **definition of criminal law**

Criminal law defines as a body of rules that created and enforced by legislator for the welfare, safety and public interest. So the government prosecutes on behalf of people and executes penalties that paid or served to the public.

Criminal law usually deals with conducts regarded as crimes by legislator and the moral principles of criminal responsibilities.

- **General purposes of criminal law**

- 1- Discourage and deter people from committing crimes.
- 2- Protect society from dangerous and harmful people.
- 3- Punish people who have committed crimes.
- 4- Rehabilitate and reform people who have committed crimes.

- **General limitations on criminal law**

-State has the authority to enact criminal laws, the later must not violate rights of individual that protected or granted by constitution.

- Legality: that is to say (no crime and punishment without a law), legality is a basic principle in modern legal systems that means no one can lawfully punished for his or her conducts unless it has been clearly constitute a crime by law.

-if the legislator enact a crime and enforce the law that creates this crime, the later could not be punished conducts that occurs before its enforcement.

- **the distinction between criminal law and civil law**

There are basic differences between criminal law and civil law in many levels

-Civil wrong (tort) differ from criminal wrong (crime), civil wrong is a private wrong done to a person or propriety, while criminal wrong is in which the state and the public have declared an interest.

-When a civil wrong occurs only the injured party may seek civil redress and initiate legal action against the accused, in criminal wrong, when crime committed the state initiate action against the person accused of the crime.

-Civil wrongs and crimes may be distinguished in terms of remedies too; in criminal cases the state may seek any of the following: imprisonment, capital punishment or affine payable to the state or restitution to the victim, in torts action the court may order the wrongdoer to pay monetary damages to the victim.

-The criminal law differs from civil law in which court the case in heard and the procedural rules that applicable.

- **Sources of criminal law:**

The sources of substantive criminal law are:

- 1- Most criminal law is found in the statute of penal code.
- 2- Criminal law can also be found in commercial, health, financial and tax laws and administrative regulations that have criminal sanctions.

- **Definition of crime :**

Crime can be defined as any conduct (act or omission) in violation of criminal law committed without defense or justification, and sanctioned by the state.

- **Characteristics of crime:**

Some element should be occur to be brought within the definition of crime or criminal act, those element are the following:

- 1- The first requirement of crime is that the conduct should constitute a harm or danger to social interest.
- 2- The conduct must be legally forbidden.
- 3- There must be intent to invade protected public right or interest.
- 4- Causal relationship between conduct and legally forbidden harm.

- **Elements of crime**

Crime in general constitutes of two elements:

- Substantial element (act or omission)
- mental element (the state of mind)

-Substantial element (act or omission)

A person may not be punished for his or her thoughts, action must be taken. In some cases, words may be considered conducts as in treason or in assisting another to commit a crime, in those cases it is argued that some action has been taken but

an individual cannot be punished for thinking about committing a crime if no action has been taken.

Substantial element constitute of three parts, conduct, causation and result.

Conduct is a voluntary act or omission made by human being in order to achieve specific aim, act is a bodily movement while omission is the absents of that movement, both should be voluntary, some crimes can be only committed by means of omission, such as murder or manslaughter can be committed by someone who fails to feed his child.

Causation is the relation between the conduct and the criminal result, man can be responsible only for direct consequences of his conduct.

Criminal result is the social harm as an outcome to the crime or the change in the world that made by the criminal.

- **Mental element**(intent, *mens rea*):

An act alone is not sufficient to constitute a crime; the law requires intent, this element is extremely important to establish the criminal responsibility.

The term *mens rea* means evil intent or criminal purpose which is also used to indicate the mental state required by the crime charged, whether that be specific intent to commit the crime or criminal negligence.

- **Type of criminal intention**

Criminal intention can be divided into two types

Direct intention: a consequence is said to have been directly intended if the person aimed at achieving it and believed that he was likely to succeed.

When A fire a pistol at B in order to kill him, the intention in this case takes the direct form.

Indirect intent: the intent is said to be indirect when the consequence was foreseen to a person as a probable but not certain.

- **Proving the criminal intention:**

Proof of mental element may be made by

- 1- Showing the acts of the defendant and the circumstances that existed at the time of the crime.
- 2- Producing evidence to show the statement of the defendant at the time of the crime as well as statement after the crime.

- **Classification of crimes**

Crimes can be classified as the following

- **Felony and misdemeanor**

This distinction is made primarily in terms of sentence that may be imposed; usually felony is a crime for which a person may be sentenced with death or long prison term, while misdemeanor is a less serious offense for which a fine or short prison term may be imposed.

- ***Mala in se and mala prohibita crimes:***

Mala in se crimes are those crimes that evil in themselves such as murder, rape, robbery and assault, there is general agreement that such acts are criminal. In contrast mala prohibita crimes are considered evil in some states such as public drunkenness, these acts were criminal because they were prohibited but there was no general agreement that they were criminal per se.

- **The motive to commit a crime**

Motive and intent are sometimes thought of as being one; however, in the law there is a clear distinction between the two.

1- Intent is the mental purpose or design to commit a specific act or omission, whereas motive is the cause, reason, inducement, or why an act is committed.

2-Intent is an essential element of many crimes and must be proved beyond reasonable doubt. Motive is not an element of any crime and the state does not have to show why a person commits a crime.

3-Motive however is always relative evidence that, if available, can be used to show why the person committed the crime. In this sense, motive can be used to help to prove intent, motive alone would not be sufficient to convict.

4-although motive is not relevant to the issue of guilt or innocence, it can be a factor in sentencing.

- **Attempt**

A person is guilty of an attempt to commit a crime when he engages in conduct which tends to effect the commission of such crime, but mere preparation to commit a crime is not attempt.

There are two element of attempt

- 1- Intent to engage in criminal conduct.
- 2- Conduct constituting substantial step towards the commission of the substantive offense which strongly corroborates the actor's criminal intent.

- **Criminal participation:**

The law determines categories of parties to the crime as the following

- 1- The principal of the crime is a person who actually committed the crime.
- 2- A principal in the second degree is a person who was present at the commission of the crime and he aided or abetted in the actual commission of the crime.
- 3- An accessory before the fact is a person who knowing that a crime was to be committed, aided in the preparation for the crime but was not present at the time the crime was committed.
- 4- An accessory after the fact is a person who knowing that a crime had been committed and give aid or comfort to the person who had committed the crime.

Neither the accessory before the fact nor after the fact could be tried until after the conviction of the principal of the crime.

- **Different kinds of crimes**

Theft and robbery:

Theft: theft occurs when someone unlawfully obtain the property of another with the intent dispossess that person of the property, the intent required can be merely to dispossess, or to convert the property to his own use , or to another's use, as long as the intent is to deprive an owner of use

Robbery: is depriving an owner of his personal property against his will by use of force or threats of force; therefore it must be committed in the presence of the owner.

Assault and battery:

Assault: is action of threatening an unpermitted physical contact.

Battery: is the unlawful contact with another person, such contact can be direct or through an instrument such as weapon.

Assault is an attempt to commit a battery, an assault can and often occurs without battery, but battery necessarily includes an assault.

Homicide:

Homicide is committed when a person is killed as result of conduct or omission by another person.

There are varies type of homicide

Murder: is unlawful killing of human being by another with malice forethought.

Manslaughter: is usually divided in to two categories

Voluntary Manslaughter: is applicable in situations where the death of another was intentional but where special circumstances existed such as crime of passion.

The key element to separate between murder and Voluntary Manslaughter is that in the latter case the defendant did not have time to consider ramifications of his action, in murder there is time for the defendant to consider and plan the death of another, thus the longer period of time that elapses between the provocation and act of killing, the more likely the charge will be murder.

Involuntary Manslaughter: it occurs when person is responsible for the death of another because of gross and extreme negligence or recklessness and without the intent to kill.

The difference between negligence and recklessness is that negligence is treated as extreme carelessness, whereas recklessness involves a total disregard for others, although both are type of Involuntary Manslaughter, the penalties are more sever for recklessness homicide than for negligence homicide.