

In the Name of God All Merciful All Compassionate

**Iraqi High Tribunal
Second Criminal Court
Baghdad – Iraq
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Date: 2007 June 24**

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- B. Genocide means to premeditatedly impose certain living conditions as deprivation from food or medicaments, aiming to eradicate part of the inhabitants.
- C. Slavery means conducting any or all appropriated authorities over ownership's rights, against a given individual, including the practice of such authority for the purpose of slave trafficking, especially women and children.
- D. Coercive dislocation or deportation of inhabitants means to move given group of people, coercively, from the area where they legally reside, via expulsion or any other compulsory act, without any justifications authorized by International Law.
- E. Torture means causing severe anguish and suffering deliberately, whether physical or mental, against an individual under detention or under the convict's control, acknowledging that torture does not include pain or suffering resulting from legal penalties or any relevant reasons.
- F. Oppression means severe and deliberate prevention from basic rights in a way which contradicts with the International Law due to the ethnicity of a given group or people.
- G. Compulsory concealing of individuals means arresting, detaining, or abducting individuals by a state or political organization, whether via an authorized permission, support, or turning a blind eye followed by a deny ...

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... to admit preventing those individuals their freedom or to provide information identifying their fates or whereabouts, aiming to segregate them from law protection over a considerable period of time.

Third: War Crimes

Article [13] means war crimes related to this law as follow:

First- Serious violations of Geneva Conventions dated 1949 August 12, specifically any of the below listed acts committed against individuals or protected properties as per the appropriated Geneva Convention.

- A. Premeditated murder
- B. Torture or inhuman conduct, including implementation of biological tests
- C. To cause, intentionally, severe suffering or inflicting serious physical or mental damage.
- D. To cause a large-scaled demolition of properties, followed by confiscation, without a justifiable military necessity, in a way which contravenes the law abusively.
- E. To force a prisoner of war [POW] or protected individual to serve in hostile forces.

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- F. Deliberately prevent a POW or protected individual from his right to have fair, regular trial
- G. Illegal detention
- H. Illegal dislocation or relocation
- I. Seizing hostages

Second- Other serious violations of laws and customs that should be applied over International Armed Conflicts, in the steady course of International Law, and specifically any of the following actions:

- A. Deliberately directing attacks targeting civil inhabitants, in their current description, or against individuals not involved in acts of war.
- B. Deliberately directing attacks against civil targets including locations which do not consist military targets
- C. Deliberately directing attacks against employees, establishments, vehicles or units' equipments used in humanitarian aid or peace keeping according to U.N. Charter, as long as these duties are worth the granted protection for civilians or civil targets, as per International Armed Conflicts Law
- D. Deliberately launching an attack, acknowledging that such raid will result in successive casualties as well as injuries among civilians, or causing...

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... excessive civil damages, compared to the total sum of expected concrete and direct military gains

- E. Deliberately launching an attack, acknowledging that such assault would result in a large scaled, long termed damage for the Natural Environment, and foreseen as excessive and obvious damage compared to total sum of expected concrete and direct military gains.
- F. Attack or bombing, via any mean whatsoever, targeting cities, villages, residences, or buildings which do not hold defenses and are not considered military targets.
- G. Eliminating or injuring a fighter who already abandoned his weapon or has no more self defensive tools and completely surrendered
- H. Misusing the truce flag, enemy flags, military insignias or uniforms, U.N. flags, insignias or military uniforms, as well as special slogans correlated with Geneva Conventions which might cause the death and serious injuries among individuals.
- I. Carrying out dislocation, directly or indirectly, by Iraqi Government or any of its systems (including, as to clarify, any system of the Arab Socialist Ba'th Party), moving part of the civil inhabitants to any seized territory, or to dislocate or deport some or all of the seized territory's inhabitants, within the given area or outside.

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- J. Intentionally carrying out attacks against buildings, which are considered as non-military targets, appropriated for religious, educational, artistic, scientific, charitable, or archaeological purposes, as well as hospitals, and patients or centers for injured and patient's gathering.
- K. Submitting people affiliated to any country, to physical deformation or any other type of medicinal or scientific tests which are not identified as medical, dentistry or hospitalized treatments, the thing that may lead to the death of the individual or exposing his health to harsh danger.
- L. Murdering or injuring any of a hostile state or army's member in a perfidious manner.
- M. Declaring that no one remained alive
- N. Destroying or seizing hostile side's civil properties, unless the act had been justified as a war necessity.
- O. Declaring the cancellation, suspension, or prohibition of referring back to law as to deny the hostile party from demanding their rights.
- P. Coerce hostile side's nationals to be involved in war operations against their state, even if they were serving the hostile country way before the war broke.
- Q. Looting any town or place, even if it had been occupied by force
- R. Usage of toxicities or toxic weapons.

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- S. Usage of suffocating or poisonous gases, or any other gases, substances or identical items.
- T. Usage of bullets which expand or flatten inside the human body like those with a hard cover that do not contain the whole bullet's body, or the nicked ones.
- U. Assaulting individuals' dignity especially by a despised treatment
- V. Rape, sexual slavery, compulsory prostitution, forced pregnancy, or any other kind of sexual violence, on that level of dangerousness.
- W. Exploiting the presence of some civil individuals or others protected, to render some positions, areas, or military forces reinforced vis-à-vis military operations.
- X. Intentionally carrying out attacks against buildings, medical units, transportation means, and individuals who use recognized signs correlated to Geneva Conventions as per International Law.
- Y. Intend to make civilians starve as a tool of war, preventing them from vital nutritional elements required to survive, as well as hampering relief supplies, as stipulated in the International Law.



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Z. Recruiting or registering children less than 15 years old in the national Army Forces or using them to participate effectively in hostile acts.

Third: Cases of armed conflicts, of any type, from the bellow acts committed against individuals uninvolved in acts of war, including armed forces' members who laid down their guns, or those who turned unable to carry on the fight due to an illness, injury, detention, or any other reason.

A. Using violence against lives and civilians, especially all types of murder, deformation, extreme conduct, and torture

B- Assaulting individuals' dignity especially the despised treatment

C- Taking hostages

D- Issuing sentences and carrying out executions without previous judgment issued by a regular court guaranteeing all acknowledged judicial rights which can't be put aside.

Fourth: Other main laws and customs' violations regarding non-international armed conflicts, within the steady course of international law, specifically any of the following acts:

A- Intention to carry out attacks against civil inhabitants, in their current description, or against civilians who did not directly participated in acts of war.



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- B. Intend to carry out attacks over buildings, materials, medical units and transportation medical units, and against people abiding by Geneva Convention's recognized signs, as per International Law.
- C. Intend to carry out attacks against employees, establishment, materials, units, or vehicles used for humanitarian aid and peace missions correlated to U.N. Charter, as long as these missions deserve the protection granted to civilians or civil targets as per International Law for Armed Conflicts.
- D. Intend to carry out attacks over buildings appropriated for religious, educational, artistic, scientific, and charity purposes, as well as historical sites, hospitals, and patients and injured regrouping centers, as long as all the aforementioned places are non-military targets.
- E. Looting any town or place even if it had been taken by force.
- F. Rape, sexual slavery, compulsory prostitution, forced pregnancy, or any other kind of sexual violence at this level of dangerousness.
- G. Recruiting or registering children less than 15 years old in armed forces or groups, or using them for effective participation in war acts.
- H. Issuing orders to deport civil inhabitants for reasons affiliated to the conflict, as long as it is not due for the security of the concerned inhabitants or necessary military purposes.
- I. Murdering or injuring one of the hostile side's fighters.



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- J. Declaring that no one remained alive
- K. Subduing people affiliated to the authority of the other side in the conflict, to physical deformation or any other type of medicinal or scientific tests which are not identified as medical, dentistry or hospitalized treatments, the thing that may lead to the death of the individual or exposing his health to harsh danger.
- L. Destroying or seizing hostile side's properties, as long as such act was not directly imposed by war necessities.

Fourth- Personal Criminal Responsibility:

Article [15] – First: the individual who committed a crime within the court's jurisdiction is considered responsible for such act, as his personality, subjected to punishment as per appropriated law.

Second: the individual is considered responsible as per this law and Penal Code, if he perpetrated the following:

- A. If he perpetrated the crime as an individual, contributory or via a third party, turning a blind eye on whether the third party is criminally charged or not.
- B. If he ordered committing a crime and had occurred, legislated it, enticed for it, or urged it.



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- C. Contributing, instigating, or providing assistance, in any mean, in order to facilitate or attempt the crime, as well as providing the tolls of its implementation.
 - D. Contributing, in any other way, with a group of individuals, aiming at a contributory crime, committing or commencing it, as long as such contribution is premeditated and holds:
 - 1- Either to support the criminal activity or group's criminal purpose, if these two were enclosed in a crime committed within the court's jurisdiction.
 - 2- Acknowledging the intention to commit this crime, by the aforementioned group.
 - E. Direct and public abetment to commit this crime by virtue of genocide.
 - F. Attempt to commit a crime, starting by an act of intention, even though the crime did not occur yet, for reasons that the offender has nothing to do with, but will exonerate the latter from penalty if he tried to stop the crime. The offender won't be prosecuted if he willingly abandoned the whole idea.
- Third: The official status that a convict may have will not count as a suitable reason to exonerate him from penalty or to diminish the sentence's degree, even if the convict was a head of a state...



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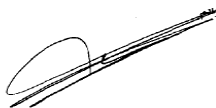
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... head or member in the Revolutionary Command Council, head or member in the Cabinet, or a member in the Ba'th Party command. Remonstrations of immunity is not permitted to get rid of charges for crimes enlisted in Articles [11, 12, 13, and 14] of this code.

Fourth: The Supreme official will not be exonerated of criminal responsibility over offenses committed by officials operating under his command, if this person in charge acknowledged or had reasons to identify such acts, or even if the commanded was going to perpetrate crime and the commander did not act as to prevent the occurrence of such action, or did not lift the case to appropriated authorities to endure an investigation and trial.

Fifth: In case any convict carried on the orders issued by the government or president, regarding the perpetration of a crime, this will not exonerate him from charges, though it may be taken into consideration while prosecuting if the court foresees in that an application of justice.

Six: Amnesties, issued before the implementation of this law, do not include any of the convicts accused for perpetrating one of the stipulated crimes.



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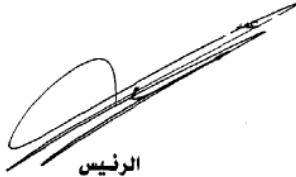
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Article [406] of Iraqi amended Penal Code No [111] for the year 1969

Article-406: 1- Will be sentenced to death any one who premeditatedly murdered a soul, in the following cases:

- a. If the murder is considered as preconceived malice.
- b. If the murdered occurred due to the usage of poisonous, exploding, or popped substance.
- c. If the aim of murder was dirty or in exchange for money, or if the offender referred to savage manners while perpetrating his crime
- d. If the murdered is an offender's relative.
- e. If the murder occurred against an employee, or authorized a public service, during performing his job or service, or as result of that.
- f. If the offender intended to kill two persons and more, and this took place in one act.
- g. If the premeditated murder had been linked to another crime of premeditated murder or attempt to.
- h. If murder had been carried on as a proem to a crime or misdemeanor sentenced to not less than one year imprisonment, either as to facilitate, execute, render possible, or contribute in the escape or avoid punishment.
- i. If the offender had been already sentenced for life imprisonment, charged for premeditated murder, and committed another one or commenced it, within the sentence's period of time.



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- 2- Sentence will be execution or life imprisonment in the following cases:
- A. If the offender intended to murder one person, but his act lead to the killing of two or more individuals.
 - B. If the offender was sentenced to life imprisonment in another case [not that mentioned in Clause [1-(I)] of this Article], and perpetrated a premeditated murder during the sentence's period of time.

((Explanation))

By explaining the text is meant to illustrate its real meaning and reveal its content in a way that facilitate a safe adaptation on real tangible events for which law had been legislated. However, the explanation differs as per adaptation of legal texts on facts that are enclosed within penal code. The judge is cautious adopting a verdict which did not occur in the legislator's mind, because he does not search outside the legal texts, defining what is mentioned without adding a thing, or filling a blank. This is the meaning of narrowing down the documents explanations without stretching outside the legislator's will. The originality in criminal texts is that they constringe the explanation, the thing that impose a pause on each term, understanding its meaning as it is, without getting deeper into the spirit and content of such expressions if the opposite leads to a wide explanation contradicting the incriminatory texts, because the latter are none but restrictions shaping the individual freedom, as an exemption from the general rule "The root of everything is permission". And if this narrow explanation is a general rule in respect to "Crimes and Penalties' Legitimacy" , but this do not prevent reviewing and investigating the legislator's intention, as per modern life necessities...


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On the other hand, it doesn't prevent elaboration if the purpose was to determine ways to exonerate from charge or notify a penal prevention, if the judge found out that the case is not illustrated in the text or if he doubted in explaining the text, transforming the confusion into a plus for the offender, deciding to declare him innocent, for any equivocation in a legal text must be taken for the convict's benefit.

Crimes' Legal Description:

The legal description is a main problem in implementing the task of criminal justice. Moreover; the adaptation [description] is the first step that any criminal justice operation should carry, from the moment a crime will be acknowledged. Therefore, legal text must be known to incriminate and sentence the act which we had been sure of his occurrence. If not matching description is found, we will be obliged, as per "Crimes and Penalty Legitimacy", to drop down legal charges. Furthermore, what we are concerned about is legal adaptation per which the trial process must carry on. This adaptation is highly important for, based on it, the convict's fate will be defined. It is true that referral decree includes a description of the crime, as well as the investigative report, but the tribunal is not obliged to follow such description, as it is possible that new elements show which were anonymous in the preliminary investigations which will change the whole course of action. From the other side, we must realize that the tribunal does not decide convict's innocence until all legal aspects had been considered. If it had been identified that his act is not enlisted under any Article, and could not be incriminated as in terms of law, then this court could not but release the convict, if he was not wanted for another crime. It is worth mentioning that the tribunal ...



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... could change the legal description of a crime, even if no new evidences had been represented through pleading, alleged that it was not convinced by the description handed by the investigative judge.

Crime's concept:

Most of penal legislations did not encourage providing a specific definition for the crime, since the crime's content is variable depending on the crime's understanding, time and place, even if the tribunal intellectualism had included terms for each given crime, these definitions had changed from a legislator to another. Indeed, the best way to define crime, which can contain all the different terminologies and match up with them, as well as being identical to the principle of legislation, is "act or abstention incriminated by law which defined a sentence if carried by a responsible person"

Crime's Basics:

To say that there is a crime, specific basics should be available. Moreover; crime is categorized in two, the first constitutes the general basics of a crime pertaining to all crimes, differentiating between legal and criminal act in general, as the second is dedicated to special basics pertaining to each crime aside.

1st Principle – Tangible Basics:

Tangible Basics mean external behavior indicated as a crime, defined by what is relevant to senses. That's the reason why whatever crosses the minds of thoughts and desires, as long as it remained veiled (did not show in the tangible world) is not to be considered as a tangible basic. Article [28] of the Iraqi Penal Code identifies crime's tangible basic as "criminal behavior by committing an act which had been incriminated by law or abstaining of action ordered by law"



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The tangible basic has three elements: Criminal Behavior (action) – Criminal Result – Causative Relationship linking the behavior to the result (harmful).

1st Element – Criminal Behavior:

This means external tangible action constituting the crime (Action). No crime without criminal behavior. As we mentioned before, the law doesn't punish only for intentions and desires as by describing it (Behavior) tangible activity, it will differ from a crime to another. It's defined in murder as putting an end for a human soul, and in robbery it is the seizure of others wealth. The criminal conduct is described as tangible activity (positive) when the offender exercise an action prohibited by law, which is the main principle in all crimes framing the criminal action as activity (negative) applied when the offender refrain from doing an activity imposed by law, such as a witness abstain from standing in a court of law.

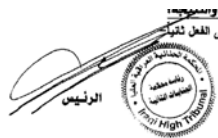
2nd Element – Harmful Result (Criminal Result):

It means the consequences that resulted from the criminal behavior materialized by the aggression that hits a right or interest which the legislator estimated the necessity to be criminally protected. It is worth mentioning that the criminal or harmful result, as a tangible basic in a crime, doesn't always play a role in defining a crime, as well as basing the sentence on it. It is possible that the "harmful result" absent from a crime, but still the crime is considered occurring by law, such as the conventional crime where it is only necessary to agree upon the execution of a crime to incriminate all participant or contributory parties.

3rd Element – Causative Relationship between Action and Result:

- Binding the action to convict, as a first step, and then binding the result to the action, as second step.

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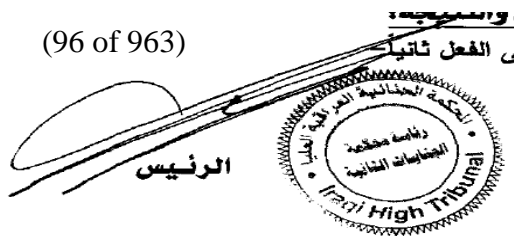
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So that criminal responsibility be attained, in a crime with result from the tangible side (like murder), the action committed by the offender must be a cause in the harmful result's occurrence. If the act was a crime than it is not enough to frame an action on behalf of the convict, from one side, and a harm hitting the one being aggrieved from the other, rather and above all both action and result must be linked. If this was not possible as by identifying a causative relationship between action and result, the convict in the previous example won't be asked then about the reasons of death but his responsibility will be limited to commencing a murder, as this description is the suitable for such scenario. Therefore, while identifying total damage's criminal responsibilities; it is vital to link the action to the offender, as a first step, and then linking the action to the result meaning that the action of the offender delivered such result. All this is when the offender is operating in solo, without the contribution of other external factors in reinforcing the damages. But what would be the solution if other external factors (previous, contemporary, successive) contributed, along with the convict, in causing harm in way which renders it hard to say that only the offender's action was the cause of such harm?

Examples:

Zayd stabs Bakr using a knife intending to kill him. Usually, the stab is not deadly but the victim was diabetic or suffering from a weak heart, he ended up dead (previous factor). The victim is transferred to the hospital for surgery but the ambulance vehicle, transporting him, crashes against a truck and the wounded died (present factor). The victim stays at the hospital for medical care and treatment but a fire erupted followed by thunderbolt turning the injured to ashes (successive factor). In all these scenarios, death did not occur due to the first offender only, but rather due to contributory factors (previous, contemporary, successive)...

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... which helped reaching such end. Here, it became necessary to search for the convict activity within these factors, extend of his responsibility over the end result. To resolve such dilemma we must tackle it from two sides: the first is theoretical while the second legislative. But, first of all we must start by identifying the meaning of "availability of causative relationship" as well showing the meaning of "Causative Relation Outage" and the effect of that in criminal responsibility, briefly.

Causative Relationship Provision

It means that the real harm is a result of the committed action or, in other words, the offender's action is the cause of such harmful result. The more provisionary this causative relationship, between action and result, is the more it became easier to completely charge the offender. So, if the result is "death" then it is a premeditated murder if the offender has the intention to commit murder, or it is a falsified murder, that's if the intention was not to carry on the action. If a permanent disability resulted, then the convict will bear full responsibility, whether it was premeditated or not, as per the degree of mistake commanding the attitude.

Outage of the Causative Relationship

It means that the real harm is not the result of the committed action linked to the convict. In other words, the action carried by convict was not the reason behind the caused harm rather external factors contribute to the convict's action delivering such result and then cut back its presence. When the causative relationship between action and result is cut back, due to the contribution of other factors, the convict won't be charged for caused damage. If it was death or a permanent handicap, the injury will be linked to either the action or factor which caused it, However, the convict will not completely get away but rather remains responsible according to the flagrance of its action. If he stroke or stabbed aiming to kill and the victim died due to a third different factor, the convict won't be charged other then for commencing a murder.

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First: Causticity from Theoretical aspect

Lawmakers argue whether the convict's action is suitable to be considered as a cause of death, simply for being one of the contributory factors leading to death, or that such act must be contributory as well as effective in the harm's occurrence to consider it as a reason of putting an end to the victim, or getting injured.

To answer what's been mentioned, two theories emerged. We will summarize its content and what includes of ideas and legal interceptions.

A) Equal Causes Theory

This theory aims to equalize among all factors contributing to the occurrence of criminal act; in other words, the causative relationship considerably exists between action and result whenever the criminal behavior was proved to be one of the factors that contributing to its occurrence even if in small percentages (each contributory activity created the result). Whenever it's proved that the convict contributed in any manner in carrying out the death, it would become legal to say that he caused such consequences, without referring back to contributory elements. As elaboration, it would be sufficient to prove that death would not be able to happen without the intervention of the convict, to build up a link between action and cause, meaning between the victim's death and offender's action, which would never had occurred if not for offender's action. The caliber upon which such theory is settled will be clarified when answering the following question:

If we supposed that the convict did not commit his action, would death or injury have hit the victim? If the answer came affirmative then a causative relationship between ...



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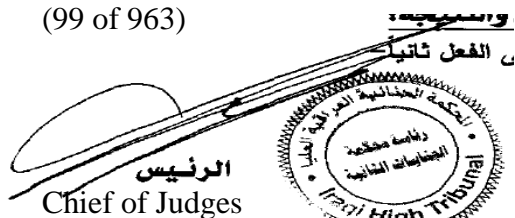
... death, injury and action. If the answer came negative then, in contrary, it means providing causative relationship between action and actual result such as death or injury. Accordingly, the causative linkage exists in the aforementioned examples even if the victim didn't die due to a chronic disease, ambulance crash, or an erupted fire in the hospital. Whereas every action is considered an equivalent to the other actions, so every cause is responsible for murder. The explanation is that general contributory activity, for all factors, change whole of the end result, while in such general contribution each factor lose its individuality, preventing to say that each factor delivered the whole result. If the convict injured another person to kill him and the latter was transported to the hospital where a fire erupted leading to his death, the convict will be charged for a full murder as by the following: If it was not due to the injury, and if it was not for the action exercised by the convict against the victim, the injured would not be turned to ashes. [We thing this theory is righteous and abide to justice, especially that it pull the apron strings around convict's neck so not to get away with crime]

B) Direct Causticity Theory or Suitable Cause (Sufficient)

It briefly means that some of the factors which join and contribute might be direct reasons (sufficient) for the resulted harm while others stand as indirect. Whenever it's decided, according to experience, that the convict's action was a direct reason for the result, the causative relationship will be attained between them. Whenever it's recognized that the aforementioned action was an indirect reason, the causative relationship cut down and then the convict will not be asked for more then commencing murder despite whether his will was devoted to aggression or towards putting an end to the victim's soul.

Second: Causticity from a legislative side (Iraqi Penal Code Stance from Causticity Linkage)

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The contemporary legislator did not want to leave criminal causticity to juridical efforts or intellectualism confusion; rather he foresees a set of special and specific disciplinary texts, clear and straightforward, as Article [29] of Iraqi Penal Code in its 2 Clauses, as follows:

1. No individual is to be prosecuted for a crime that was not a result of his criminal behavior, but he is to be prosecuted for a crime that had already involved his criminal behavior along with prior intentions or present motives even if he is not totally aware of it.
2. Yet if the cause only is sufficient for such crime then the offender will be prosecuted only over the action he perpetrated.

The law text presented above is comprehensible based on the principal defined by Causes Equality theory a the causticity linkage is available even if a previous, current or successive factor intercepted the convict's action as per Article [First] of the aforementioned code, where all contributing factors are considered even and equal as per importance and influence, as well as the convict's action. In other words, each reason can be referred to as a cause without a distinction whatsoever. Therefore, the other factors do not veil the relationship between the offender's action and caused result, giving total responsibility to the offender as the text states "the offender will be asked about the crimes, if he contributed via his criminal behavior in its occurrence, even if an external previous, current or successive factor had been overlapped.

The purpose of causticity is negated after the interception of foreign cause (external) where, in this case, the offender will be asked only on the act he perpetrated. This means that the foreign factor which contain (far enough) the cause's events (without convict's action) will lead to a cut down in the causticity relation between action and result which rely on nothing but the foreign factor. In other term, the causticity linkage between action

...



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... and current results, if sufficient reason contributed specifically to implement the result and was independent, based on efficient grounds, this means two conditions must be met to link between the result and foreign cause. These conditions are:

1. Adequacy of the reason itself to produce an outcome.
2. Independency of the foreign reason from the convict's action, not to be related to such action consequences. In other words, if overlapped actions with convict's actions are obviously important, to an extend rendering some invalid though not enough to attain the result, the perpetrator will not be charged for the crime which will be appropriated to the sufficient and valid reason's applicant, rather this insufficient reason's applicant will be asked about what have caused his action of consequences only, as per Clause [second] of Article [29] previously mentioned.

2nd Principle – Morale Basic (Psychological) or (Intention)

It is necessary, when acknowledging a crime, to identify the morale basic (or psychological), in addition to the other basics. Therefore, a crime can not be affiliated to an individual if this latter did not bear the intention to commence or perpetrated it – a vicious intention – as long as it is directed toward illegal acts which by logic and law implement that the applicant will be able to carry it, able to frame the criminal concept to commit such crime, via his understanding and planning, the matter which imposes an awareness as well as a freedom of choice in committing a crime or letting it go.

In this mean, the intention or as some call it, the will is none but the strength residing in the soul containing both awareness and freedom of choice. If an individual directed his will or intention toward committing a crime, this intention or will is considered vicious. Therefore it must be incriminated as per what had been committed. For that same reason, some describe the morale basic as a penal responsibility or ...



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... penal responsibility's basic capacity, therefore, to attain the moral basic, the following conditions should be available:

- 1- Awareness and distinction:** meaning the readiness or ability of an individual to understand the nature of his acts and estimate the consequences.
- 2- Freedom of choice:** meaning the ability of an individual to focus his will over a given act or abstain.

Where as the elements of the criminal responsibility are the pillars of moral crime's basics, its existence is not factual unless relying on two elements: Awareness and Freedom of choice. If any of these two, or even both, drop down the whole principle will fade away.

This is what made questioning individuals with mental problems or kids under distinction age [7 years old] difficult, due to the lack of mental competency or the ability to form a criminal concept, following their limited mental awareness, the matter which if does not suspend all its legal legitimacy, largely diminish its efficiency. The same conditions are applied on who had coercively committed a crime, or forced by certain conditions. He is not responsible for committing it due to the lack of freedom of choice in his case, leading to dropping down the morale principle as well as the whole crime.

From all that had been presented, it became clear that to mention a tangible principle, the convict must be fully aware, by his freedom of choice, as well as acknowledging what he is doing as criminal act, aiming at it to execute his crime, the thing that must be expressed both scientifically and willingly.

Moral Basics Figures

When committing different crimes; the moral element is described as follow:

First: Premeditation – or (Premeditated act)



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In this figure, the actor, while committing his criminal acts, desired the action which constituted a crime as well as his will to attain a criminal end. In other terms, a premeditated crime is equivalent to the actor's will plus the result's will. It is worth mentioning that premeditation, or criminal aim, may be (simple), which is the case where no drastic conditions are correlated, and can be (descriptive) when being affiliated to preconceived malice as per Article [33/(Q)3] of Iraqi Penal Code when stating (pre-decisive thought in committing a crime, before its perpetration, far away from temper of anger or psychological agitation)

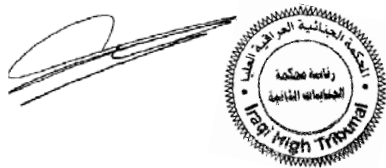
Second: Mistake or (Unintentional mistake)

It is the second figure where morale is headlined, where the actor wanted to perpetrate the act of crime but did not desire its result. The situation is similar to someone who points a rifle to hunt an animal but accidentally shot a human being; he, the actor, wanted to commit the action (hunting) but did not desire the consequence. Therefore, the actor is unintentionally responsible. Iraqi Penal Code defined the unintentional figures in Article [35] stating "the crime is unintentional ... whether it was due to negligence, frivolity, inattention, lack of precaution, or non adherence to law, regulations and orders".

On this occasion, the criminal meaning (intentional), as well as the mistake, could both be canceled if neither the actor nor the result were desired, as example:

If someone sit down while holding a rifle in his hand, and a wall or person fell on him, a bullet, mistakenly, gets away and hits an individual. Therefore, the intention of perpetrating a crime is dismissed leading to the fall of the morale basic.

Third: Possible Intent



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It is the 3rd and last figure which bears morale characteristics. By it, is meant to focus the actor's possible intent to commit the action constituting the crime, as well as his expectancies of the result, adding up his acceptance to take the risk in committing it, as example: an individual is driving his car, at a high speed, in a narrow, crowded alley, careless of people lives, accepting what may result out of his attitude. Accordingly, the Possible Intent elements are:

- A. The offender's will to commit the act.
- B. Expectancies of the result which occurred.
- C. Accepting the risks while perpetrating.

In the above figure, he (the offender) is very close to the intentional (premeditated) crime. Therefore, Iraqi Penal Code considered it (possible Intent) similar to premeditated intention, as Article [34] provisioned "the crime is premeditated if the criminal intention of the actor had been proven". A crime is considered intentional if the actor expected such criminal results for such action and committed it.

The Original Actor and the partner

To distinguish between the original actor and the partner, in committing a crime, it is essential to come briefly across two needs. The first is the original actor and his definition, while the second being the contribution in a crime:

1st: The original actor in a crime

Article [47] of Iraqi Penal Code provisioned that it is "considered actor in a crime) any individual who:

- 1. Committed the act alone or with another.
- 2. Contributed to the perpetration, if it (the crime) is consisted of many actions, and premeditatedly carried on at least one of the actions.



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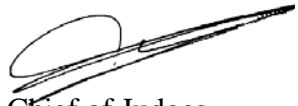
3. Pushed an individual, via whatever mean, to commit the act constituting a crime, if the aforementioned individual is not legally responsible, for any given reason.

The text frames 3 patterns of original actors:

The first includes the one who commits the crime alone, for, as example, while perpetrating the crime's tangible basic three individuals contributed to robbing a house, each one carrying a defined task like putting the money in a car prepared for this purpose. As for the second pattern, it includes those who contributed to the crime, without getting involved in the tangible basic. However, they execute acts which lead for the instigation of the crime. These acts, although not considered as part of the crime, is correlated to it, leading directly to the result. As example: An individual stopped a car and his comrade murdered its driver. The first, even though he did not commit murder by stopping a car, his act directly led to instigate the crime (harmful act), committed by the comrade.

The third pattern is that which law intellectuals call "Morale Factor". In other words, it is the person who compels an individual, not subject for prosecution, to commit a specific crime. It is similar to pushing an insane or child to commit a specific crime. The original actor, in such case, is the instigator as the insane and child are none but tools exploited to commit the given crime.

As specified by Article [49] of the same Code, a fourth pattern in induced concerning individuals, considered as original actors, who contributed by setting up the crime scene while perpetration (of the crime or any act leading to it). Perhaps the main difficulty regarding the contributory partner ...


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... is when considering him an (original actor) for setting up the crime scene, whereas his presence is a sufficient indicator of his desire of the result, as a sign of his wish to go an extra mile rather than contribute to the crime.

Second: The Partner in Crime

Article [48] of Iraqi Penal Code stated "is considered a partner in crime" who:

- 1 – Provoked it as it occurred based on such provocation.
- 2 – Agreed with another to perpetrate it as it occurred based on such agreement.
- 3 – Provided weapons, tools or anything else used to carry on the crime, while being fully aware, or if the provider helped the actor, in any way [Prepared or facilitative tools] , in accomplishing the task.

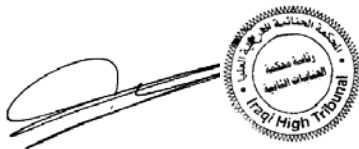
From the text, it becomes clear that the partner is he who does not directly participate in implementing tangible actions of the crime yet participated indirectly using ways stated within the mentioned text which can be grouped as follow:

- 1 – Provocation in implementing a crime
- 2 – Agreeing to commit a crime
- 3 – Assist in committing a crime

The penalty is applicable for those who participate in committing a crime, provided it was actually perpetrated in the aforementioned ways or in mere (agreement) even though the crime was not carried on. This occurs when the agreement is dangerous by nature, which is called "Criminal Agreement".

Criminal Responsibility Preventions

- Legal Content



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We stated in accordance with what was presented, that the criminal responsibilities could not be applied in confronting the committer, unless he has a certain awareness and freedom of choice which both constitute the criminal responsibility factors. In the case of denial of either or both privileges, his case became impracticable criminally for his actions; therefore, we can say that what makes criminal responsibility unfeasible:

These are cases which do not compete with application of criminal responsibilities as when both awareness and freewill are affected. These cases are even self originated related to the status of the committer as in case of minor age or mental - psychological abnormalities, or externally originated affecting elements of responsibility, especially freedom of choice, as in case of necessity or coerce. Hence, the grounds on which hindrance of responsibility are of a personal nature, which means correlated to the committer's personality and not his actions. Therefore, the action remains a crime yet the committer is not subject to questioning. It is not viable in accordance to this that the committer be questioned by (criminal court) but by (civil court) to compensate for damages resulting from his actions. Yet it is pointed out that this pardon does not go without questioning other contributors in a given crime as per Article [52/1] of Iraqi Penal Code, stating "if personal excuses, exempt from penalty, were provided ... against a contributor, committer or partner in crime, do not exceed other than those directly affected".

• **Description of Criminal Responsibility Impediments**

Presented within Articles [60-65] of Iraqi Penal Code, illustrated specifically for cases where law prohibited the committer to be liable for crimes he commits, as example if a case falls within this category such as, seeking new criminal responsibilities...



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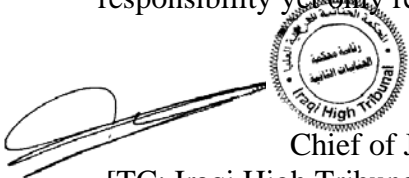
... agreed upon, unable to persecute due to the lack of evidence (availability of cause) where cases may arrive that lead to the loss of perception of choice. It is not illustrated within the law in-order to limit scale of incrimination (such as Hypnotism) despite the fact that the law does not consider this an impediment amongst the impediments of responsibility which may be considered a guideline in cases where the provided loss of will due to it's relation to the cause.

Illustrations of Responsibility Impediments within the above articles are:

(a) Mental Disability (Insanity)

Article [60] of Iraqi Penal Code stated "Legally not liable for questioning is he who at the time of the crime was unconscious or unwilling, due to insanity or mental illness, or because he was in a drunken or doped state, resulting from alcohol or drugs, given to him coercively or without his acknowledgement, or for any other reason proved by science that is a fair reason to lose conscious or will. However, if the aforementioned do not apply and is based only on partial absence or weakness or conscious and will, at the time of crime, the penalty will be lowered only".

It is noticed, from the previous code, that it is not taken into consideration in the case of mental sickness due to being of mental or psychological nature, for if both illnesses lead to unawareness and lack of will then they are both considered equivalent to mental disorder. To apply the text's articles, it is conditioned that the individual lose his ability to perceive or chose, at the time of crime perpetration, to evade liability of criminal responsibility, only if that was the genuine reason from mental disorder, alcohol or drugs, provided it was (forced) upon him or given without his (awareness). It is noted that the mental disorder or doping substances led to his lack of awareness and freewill, it does not avert criminal responsibility yet only reduces it. In ...



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... which case a (reduced justification) is applied on the perpetrator in event where mental disorder was the reason for non-liability for criminal responsibility as long as the individual was unaware of its reformatory nature and purposes in which case precautionary measures will be taken and he shall be sent to a mental asylum for public safety to protect the society from his danger.

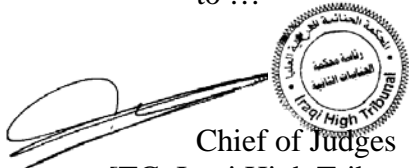
(b) Coerce

Article [62] states "shall not be legally questioned who had been coerced to commit a crime, whether materialistic or moral force which he could not resist". From the aforementioned, it becomes understandable that coerce is of two categories: Tangible and Moral

- **Tangible Coerce**

Is a materialistic, tangible force, evident and tackling an individual's will, taking its freedom of choice away, as example: an individual holding a pistol pointed at another's head forcing the latter to sign a document or he will be killed. The coerce individual is lacking the will to decide which, and due to such circumstances alone, one of the responsibility's factors is dropped down. However, it is worth mentioning that forces caused by nature or animals, known as "unpreventable forces", as example: if a storm threw a man hitting another, causing his death, or someone riding a horse fell on a passing-by individual, hurting him. In both cases, the individuals are not responsible due to unpreventable forces which could not be prevented.

It is, in all cases, conditioned, to preventing responsibility of the committer due to Tangible Coerciveness in which the individual was left with no freedom of choice to anticipate reason of such coerce and inability to ...



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... resist the power imposed upon him. If it had been proven that one or both of the aforementioned conditions are invalid, the actor will be considered responsible vis-à-vis the law, due to the lack of coerces as a factor.

Moral Coerce:

Moral or psychological coerce is defined as threatening a person by vicious acts, or create a stance feared by the given individual, obliging the latter to cooperate coercively, as example: threatening a mother to kill her infant if she did not surrender sexually. Therefore, the female is not responsible for adultery. Examples are many regarding this issue, however, in all cases, it is conditioned, to deny the actor's charge due to morale coerce, that the latter be unable to resist the motive – threat behind committing a crime, as well as his unawareness to be exposed to such threats.

(C) Necessity

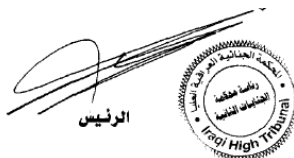
Article [63] of Iraqi Penal Code states (not be legally questioned he who committed a crime being compelled to by a self protective necessity or other like his money or that of others, as well as imminent tremendous danger which he didn't premeditatedly caused, and could not be able to prevent in any other way. All this is affiliated to the condition that such act, constituting a crime, is compatible with the danger to be wary of, as it is not considered, in necessities, his duty to confront the danger by law).

We extracted from the abovementioned text that for a necessity case to be considered, instigating the application of its verdicts, two conditional categories must be available:

First: correlated to the danger facing the compelled to commit the given crime.

Second: correlated to the obligatory act executed by the compelled.

Conditions Correlated to Danger



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- 1- If there is a danger threatening the committer's life and wealth or that of others, hence this person couldn't find a way out avoiding the perpetration of crime, or else he and his wealth will be endangered, as example: A person pulling a burned material away from his car ending up in burning another.
- 2- When the danger is tremendous, imminent and actual not only expected to happen, for instance when a person throw his friend from the boat predicting the possibility of a storm after an hour, claiming that the boat will not hold two persons at the time.
- 3- The committer should not be legally obligated to face the danger therefore a person in-charge of carrying an execution over the convict is not supposed to facilitate his way out by allegation of protecting the convict from being killed.
- 4- The committer should not be the one behind the danger. In other words, the actor who intends to create a certain danger will not be exempt from criminal responsibility as per necessity, as example: if an individual sinks a ship then found himself forced to kill someone who rushed in front of him to take the surviving mean.

Conditions Correlated To Necessity

- 1- When necessity is the only way to avoid danger where the sacrificed interest is less valuable and important than the interest sacrificed for it. Otherwise, justifications of sacrifice will be annulled as well as the necessity.
- 2- The necessity must be proportional to the danger, as aforementioned

(D) Juvenile



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Article [64] of Iraqi Penal Code states "No prosecution must be carried against individual who at the time of perpetration were less than 7 years old". This is the same text of Article [Second] of Juvenile Law No [64] for the year 1972. For a child not to complete 7 years old is a fair reason to drop charges for doings considered as crimes by law. Maybe this is directly justifiable by the cancellation of one of the two elements related to responsibility which is "lack of awareness", as the child, due to his mental immaturity, is foreseen as consciously weak to a certain limit where he could not comprehend things in a way to make him fully aware of the nature and value of things, the thing that render his legal questioning inefficient.

It is worth mentioning that the aim from dropping down charges due to minor age is affiliated to defining (proving) the condition (minor age) via official documents, or medical ways when the first are not trustworthy, or even not available, excluding the fact that some minors do have a level of intelligence fair enough to be fully aware of criminal acts.

Impediments restricting and reducing responsibility

Actually there is a penalty for each crime according to the value of its judicial responsibility, defined by the legislator, which in its turn is defined via a criminal penal pattern based as per the crime committed by the offender. The penalty increase whenever the mistake imputed to the convict was grosser and more dangerous. In the contrary, we find consequences that, if were correlated to the act, will decrease the level of penalty. These responsibility's diminutive or increased factors, some are subjective affiliated to the circumstances of committing the crime while others, or even the same, are personal related to the status of the actor.

1- Restrictive Impediments:



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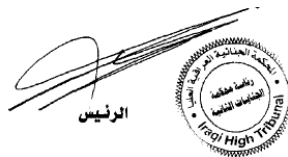
The restrictive impediments are known as "the reasons stated by law which put the committer at critical situation leading to increase the penal terms against him", as example: someone who commits rape must be sentenced as per penalty defined by law. However, if he committed the act coercively, like using violence, the case is considered as restricted impediment and the related penalty will be more severe. It is worth mentioning that such cases could be special defined by special legal penal articles such as coercive theft, robbing a residential place, or raping a relative. On the other hand, restricted impediments could be general not pertaining to a given character neither in the committer [personal] nor in the crime [subjective], meaning it imposes an increased penalty against any individual as long as such impediments are provided.

Acknowledging, Article [135] of Iraqi Penal Code defined the general restricted impediments when stating "it is considered as restricted impediments the following":

- (A) Commit the crime by vile motivation
- (B) Commit the crime exploiting the chance of a victim's weak awareness, or his inability to resist, or under circumstances which do not permit the victim to defend himself
- (C) Use savage ways to commit the crime or mutilate the victim
- (D) convict's abuse of his position as an employee to perpetrate the crime or misusing his power or influence which both are due to his job.

2- Reductive legal excuses

These are situations stated by law imposing on the judge to abide down below the decreed bottom line pertaining to a given crime as per regulations and limits clarified in Article [130] of Iraqi Penal Code stating ...



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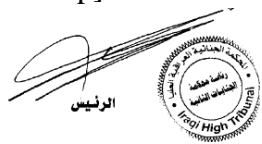
"If a reductive excuse was provided in a crime which sentence is death, the penalty will be dropped down to life or permanent imprisonment, then could be reduced to not less than 6 months imprisonment, as long as the law did not state differently", as per Article [131] of the same Code, stating "if, in a misdemeanor, a reductive excuse has been provided, penal reduction will be a follow":

If the penalty already has a minimal, the court will not abide by it while estimating the penalty. Therefore, if the sentence is both imprisonment and fine, the court will sentence by either one. However, if it was unconditioned imprisonment (no minimal), the court will verdict a fine instead.

It is worth mentioning that reduced excuses could be special or general; the general reduced excuses are those including all crimes as soon as it is actually provisioned, as example: commit the crime motivated by honored intention or under dangerous provocation by the victim. On the other side, special reduced excuses are enclosed in certain crime or sect as mentioned in the Penal Code's Articles [407] and [409]

3- Reduced and exempted from charges' legal excuses

Exempted legal excuse: is a circumstance, stipulated by law allow, which acquit the actor totally from punishment complying with the reduced excuse as both are defined by law and oblige the judge to apply them. The difference among them is that the reduced excuse confined on reducing the penalty while the exempted excuse extend to full acquittal from the deserved charge, as example: the amnesty stated by Article [218] of Iraqi Penal Code, or anyone who anticipated a crime, threatening the national security, and informed the government, or amnesty decreed in Articles [59], [3\273], [311], [462], and [462 (R) – Kidnap]



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A) Reductive Impediments and Circumstances:

Reductive impediments get along with reductive circumstances as both imply, while being applicable, a reduced sentence against the executor of a crime.

However, the juridical circumstances differ from reductive impediments, as the first (circumstances) are evaluated by the authorized judge, who derive them (evaluations) from subjective and personal case circumstances foreseen as contributory in formulating the actor's will, pushing him to commit the crime. The judge is free, while applying the reductive impediments, in forming his own ideology in prosecuting as no restrictions are imposed on him by the cassation court.

Therefore, the reductive impediments are recognized for being not exclusively defined by law, as well as not obligatory vis-à-vis the judge, from where came its appellation "Reduced Juridical Circumstances" in contrast to what have been identified as reductive executions characterized as being applied by law under the condition of being identified exclusively, as well as obligatory vis-à-vis the judge at the time of application.

Contributors' Responsibilities as of Crime's Possible Results

Legal text [(M) 53 of Iraqi Penal Code] "punish the contributor in a crime, actor or partner, as per the sentence of the crime itself, even if it was not the one intended to execute, whenever the perpetrated crime is a possible result of the contribution which occurred".

The principle in contributory responsibilities is that he is only questioned for the crime he contributed to, as an actor along with another, partner in inciting, by accepting or helping [(M) 48], but what is the verdict if the crime that the actor did is a possible result of the crime contributed to. As example: if two individuals participated in raping a girl, then one of them intended to ...

[Translator Comment (TC): Probably (SATTS M) means Article)]



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... murder her, aiming to hide the crime's features. Do both of them have to be questioned about the last crime? The Iraqi legislator paid attention to this issue and laid down Article [53], enclosing the solution that must be applied. Indeed, the act of the actor must be reviewed; if it was a possible result of the crime, the contributor is considered responsible, else only the actor is to be questioned. The results are considered possible if it was potentially expected to happen and normally the participant is supposed to expect all results that may happen in accordance with the flow of such situation. It's enough for results to be self expected, regardless if the contributor expected it or not, to question him over possible results, even if his intention was unlimited, as example: someone instigated his friend to take revenge, on his behalf, from another one. The friend went and stabbed him until death. In this situation, he will be incriminated for premeditated murder, not neglecting the fact that the general principle includes all contributors to a crime, not only the partners, stretching over to contain actors with others, as it is worth mentioning that for the contributor to take by the principle of responsibility over possible results is bound to the availability of criminal contributory conditions, as the affiliate contributor, for example, do not inquire the possible results of a crime perpetrated by the original actor unless he, from the beginning, premeditated (within the crime) leading to the occurrence of the aforementioned results considered as possible results for the crime he already approved on. However, the contributor in an illegal act, upon which a criminal result is imposed, will not be legally questioned.

The Condition when the Offender's Intention is Difference from other Contributors' Intention

Legal text [(M) 45] states that if one of the contributors' – actor or partner - intentions differed from that of other participants, each one must be prosecuted as per his intention. The principle established in this text is based on the rule which said that every contributor to a crime is not punished unless per his intention from the crime. As it becomes understandable, this principle is not related only to real actors, but includes all partners in a given crime, as the intention of a certain contributor may differ from that ...

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... of the original actor, leading to a difference in intention, as well as in describing the crime (severe or light). As example: the real actor purposely intends to murder the victim, where as the partner did not have a previous set up (for the crime). Therefore, this strict situation is not applicable and the real actor get receive death penalty [(M) 406] and the partner will be charged of levity premeditated murder by lifetime or temporary imprisonment [(M) 405].

Status of Difference between offender and other contributors' acknowledgement of crime's occurrence

Legal text [(M) 45] states "if one of the contributors' intention (actor or participant) differed, or his acknowledgement following the intention of other contributors, or even the acknowledgment of that other contributor, each one must be prosecuted as per his intention and acknowledgement".

It's presumed when crime occurs such as hiding robbed items, that one of the offenders participating in the hiding operation be aware of the robbery, at the first places. That person must be punished strictly as the others, who were unacquainted with the first offense, must be punished lightly.

As example: if Zayd incited Khalid to hide items which had been robbed and the latter concealed them in his house, not knowing that these items are forcibly robbed, he will be penalized less than Zayd who knows about the whole robbery. (Review Articles [461] and [460] of Iraqi Penal Code).

3rd Principle – Legislative Basic

No Crime if not stipulated in a Text

Article [1] of Iraqi Penal Code stipulated "no punishment over an act or refrain, unless based on a law which stipulates its incrimination at the time of occurrence, as no verdicts or precautionary measures must be signed unless laid down by law".

[Translator Comment (TC): Probably (SATTS M) means Article]

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رئاسة المحكمة
الديناميات القانونية
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Following such meaning, the legislative basic is the legal text which specifies the criminal violations (crimes) and appropriated sentences which must be applied, conditioned that the offender is defined as responsible. From this, it becomes understandable that the legislative basic's elements are:

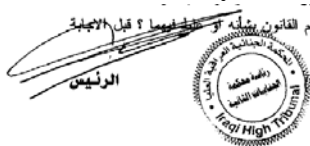
1. Matching between penal legal text and action.
2. None provision of any of the conditions permitting such act.

It is worth mentioning that a legal intellectual side foresees that the legal text [which is the legislative basic], must not be considered as a principle in crime, because the legal text is the one who defined the crime, writing down the law following this aim. In other words, the legal text is not one of the bases in a given crime but rather a condition of its existence. If it's so, as they say, meaning the legal text is a condition of crime's existence rather than a pillar, such adaptation headlines the text as the creator of a crime's tangible and morale basics, giving it a more importance than the basics of which the legal text was the reason for their (Basics) existence.

**Do Ignorance (or mistake) in Law and Facts
Constitute a Reason for Tribunal Responsibility Refraining?
(Ignorance or Mistake's Principles are the same)**

What ignorance means?

Ignorance means not to know something. It may be partly and occurs when an individual completely overlooked it or when he could identify some parts among others. By mistake, it is intended to draw another picture totally different from truth so that the individual believes what he sees, though the truth is bloody different. So what is the effect of ignorance or mistake? What is the solution if the actor ignores the act's (he committed) reality or the law verdict? Before answering ...



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... these questions, we must notice that ignorance might be included by law or in facts. Sentences differ depending on those variables tackled as follow:

1. Ignorance in Law

Legal text [(M) 45] states "No one can allege by his ignorance facing a verdict or any other sentence".

All jurists agree, usually, that ignorance of law does not lift the criminal responsibility, whether it was related to premeditated or unintentional crimes and it is explained by " No one is considered a law's ignorant". The reason behind is that acknowledging the law is obligatory on each citizen. Therefore, law's ignorance is not acceptable meaning what it includes of articles, starting from the date of validation. Despite the fact that this basic principal is vital in the criminal law, the Iraqi legislator, to emphasize, clearly mention it in the indicated Article where he considered everybody knowledgeable of penal codes from the date of publication, in the official gazette, as well as the date of validation, as such publication is considered a legal presumption, as per the acknowledgement of everybody of the aforementioned laws, a final presumption that does not bear doubts.

• Unintentional Responsibility's Explanation despite Laws' Ignorance

Violating the duty of being informed about state laws, trying not to get acquainted with know what articles are included, is considered, in fact, omission or incaution identifying, with no doubt, the individual's unintentional responsibility, for ignorance, by law, is due to personal negligence as the latter is a vital cause in such cases.

• Intentional Responsibility's Explanation despite Laws' Ignorance


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