

**Crimes against terrestrial environment
in
Egyptian Environmental Law
" Elements & General principles "**

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Introduction: Environmental offences and environmental criminal law in historical perspective:-

1-1: Origins of environmental criminal law "A comparative perspective" :-

In the broader global context, the emergence of the environmental criminal law and, hence, that of the notion of environmental crime , is directly linked to the very appearance of environmental law.

In other words, environmental crimes and environmental criminal law were initially by-products of environmental regulation as legislators relied primarily on criminal law for the enforcement of newly established standards of environmental protection.

This early and intimate connection between environmental and criminal law is not a uniquely European phenomenon, but existed equally in other Western jurisdictions, such as the United States.

The early environmental crimes had two specific features : They only occupied a marginal place in domestic criminal law systems; and, within the European continental administrative law traditions with a structural reliance on criminal law for the enforcement of the environmental crimes were initially limited to penalizing non-compliance with administrative obligations (regulatory crimes).

This structural reliance on criminal law in order to ensure the smooth operation of administrative law, however, came at a price.

First of all, the instrumentality of criminal law for environmental law enforcement led to a piecemeal approach in the definition of specific environmental offences.

As a consequence, these would typically appear scattered throughout different pieces of environmental legislation and lacked (at least originally) the systematicity needed for a cohesive enforcement strategy.

Secondly, a further aspect worth mentioning is the uneasy position that novel environmental offences were to have within the traditional categories of the criminal law.

Due to the instrumentality of these offences for the enforcement of environmental standards, crucial definitional elements thereof are frequently contingent upon the decisions of administrative authorities (e.g., authorizations that specify environmental standards in a concrete situation).

This feature of so-called 'blank' environmental crimes is nevertheless at odds with the strict principle of legality in criminal law.

Thirdly, not entirely unrelated to the previous, the environmental crimes have commonly been perceived as less serious offences across European jurisdictions.

Notwithstanding different perspectives and cultural sensitivities in different countries, environmental crimes have been critically regarded by European prosecutors and judges as difficult to define, identify and use effectively.

These legislative developments were also matched with parallel debates in academia.

The outlined interactions between criminal law and environmental law enforcement attracted the attention not only from legal scholarship, but also from criminologists.

Green criminology emerged as a strand of criminological scholarship over the decade of the 1990s, emphasising more generally ‘the importance of engagement with the bio-physical and socio-economic consequences of various sources of threat and damage to the environment’.

It advocated for a move from environmental crimes towards the environmental harms.

Especially critical green criminology contributed to shifting the focus beyond state-based definitions of the crime, towards more comprehensive understandings of the social and environmental harms deriving from human activities, whether legal or illegal.⁽¹⁾

At least a number of European legislators drew conclusions from the aforementioned experiences.

Especially in the 1990s, environmental offences were being gathered in criminal codes or special statutes.

In addition to regulatory crimes (mala prohibita), these new instruments would feature at least some offences giving rise to criminal liability when specific thresholds of environmental harm were reached (mala in se), even in the absence of specific administrative obligations.

(1) M Faure, ‘The Development of Environmental Criminal Law in the EU and Its Member States’ 26 *Review of European, Comparative & International Environmental Law* 139; M Faure, ‘The Evolution of Environmental Crime Law in Europe: A Comparative Analysis’ in A Farmer, M Faure and GM Vagliasindi (eds), *Environmental Crime in Europe* (Hart 2017), 2017, p:267.

- DM Uhlmann, ‘Environmental Crime Comes of Age: The Evolution of Criminal Enforcement in the Environmental Regulatory Scheme’ ,4 *Utah Law Review* , 2009, p:1223.

- Faure, ‘The Development of Environmental Criminal Law in the EU and Its Member States’ (n 15), at 140 , 2014 ,p:65.

- M Faure and K Svatikova, ‘Criminal or Administrative Law to Protect the Environment? Evidence from Western Europe’ , 24 *Journal of Environmental Law* , 2012, p:253.

- E Fasoli, ‘Environmental Criminal Law in the United Kingdom’ in A Farmer, M Faure and GM Vagliasindi (eds), *Environmental Crime in Europe* , 2017,p: 243.

At the same time, managerial approaches and law and economics approaches, developed within the legal scholarship in order to cope with pervasive enforcement deficits of environmental law.

These approaches were advocating for a smarter, more nuanced, incremental and effective compliance and enforcement strategy for the environmental law, in which the criminal law and the environmental crimes were to have a much more limited, yet crucial, role as sanctions of last resort.

The insights gained from these approaches contributed to a new ‘toolbox approach’ for the environmental law enforcement in many European countries.

1-2: The transnational and European dimension of environmental criminal law :-

This succinct historical overview of the origins of the environmental criminal law and associated scholarly debates would not be complete without acknowledging the impact of increasingly complex networked and organised structures of the transnational criminality that have brought about an increased trend towards the criminalization of the global enforcement strategies associated to key international of the treaties regarding of the environmental protection.

Multilateral environmental agreements (MEA) facing pervasive compliance challenges through emerging black markets in environmentally-sensitive commodities have adopted a strategy of coordination and cooperation to increase their respective effectiveness.

This process has led to the gradual criminalization of illegal trade and the emergence of the notion of the transnational environmental crime.

The influence of the transnational environmental enforcement networks in this drive towards criminal law has been particularly relevant in the context of the ozone regime.

However, their ascendancy has also intensified the degree of the criminal law and justice response to illegal shipments of waste and, above all, illegal wildlife traffic.

In Europe, the first attempt for a coordinated approach towards common standards for common approaches and standards for the environmental protection through the criminal law were adopted under the aegis of the Council of Europe, with the signature of the 1998 Convention on the Protection of Environment through Criminal Law. ⁽¹⁾

The Convention was eventually overshadowed by the approximation of the environmental criminal law, within the institutional setting of the EU and failed to gather the required ratifications for its entry into force.

(1) Lorraine Elliott, 'Criminal Networks and Illicit Chains of Custody in Transnational Environmental Crime' in Lorraine Elliott and William H Schaedla (eds), Handbook of Transnational Environmental Crime, Edward Elgar, 2016, p: 74.

- A Cardesa-Salzmann, 'Multilateral Environmental Agreements and Illegality' in Lorraine Elliott and William H Schaedla (eds), Handbook of Transnational Environmental Crime, Edward Elgar, 2016, p: 143.

- L Elliott, 'Fighting Transnational Environmental Crime' (2012) 66 Journal of International Affairs 87; L Elliott, 'Cooperation on Transnational Environmental Crime: Institutional Complexity Matters', 26 Review of European, Comparative & International Environmental Law, 2017, p:107.

- G Pink, 'Environmental Enforcement Networks: Theory, Practice and Potential' in M Faure, P De Smet and A Stas (eds), Environmental Enforcement Networks. Concepts, Implementation and Effectiveness, Edward Elgar, 2015, p:13.

-N Liu, V Somboon and C Middleton, 'Illegal Trade in Ozone Depleting Substances' in L Elliott and W Schaedla (eds), Handbook of Transnational Environmental Crime; E Clark, 'The Montreal Protocol and OzoneAction Networks' in L Elliott and W Schaedla (eds), Handbook of Transnational Environmental Crime, Edward Elgar 2016, p: 322.

- L Bisschop, 'Illegal Trade in Hazardous Waste' in L Elliott and W Schaedla (eds), Handbook of Transnational Environmental Crime, Edward Elgar 2016, p:155.

- Rosaleen Duffy, 'The Illegal Wildlife Trade in Global Perspective' in L Elliott and WH Schaedla (eds), Handbook of Transnational Environmental Crime, Edward Elgar 2016, p: 68.

Indeed, regulatory disparity between Member States regarding to the environmental crimes and the increased international pressure to address transnational environmental criminality triggered EU legislative action.

After the Council Framework Decision 2003/80/JHA, which was eventually annulled by the Court of Justice of the European Union, the European Parliament and the Council enacted the 2008 Environmental Crime Directive (ECD).

For the purpose of this literature review, a significant aspects of the ECD should be kept in mind:

The ECD approximates the laws of the Member States regarding to the typical elements of the specific environmental offences, but leaves aside of the determination of the type and level of associated criminal penalties.

It merely states that Member States shall adopt ‘effective, proportionate and dissuasive criminal penalties.’

This regulatory approach was the result of the CJEU’s rulings , in the dispute between the Council and the European Commission regarding to the legal basis and the extent of the EU’s competence in the field of criminal law.

At the time, the Court held that the EU lacked the powers to do so.

While the latest amendments of the EU treaties provides in principle this kind of competence, no steps have been taken so far in order to harmonise criminal sanctions in the area of environmental offences.

Nevertheless, even under the EU (Withdrawal) Act 2018, the ECD will arguably keep some residual relevance, as it has shaped current environmental and wildlife offences in EU legislation and provides benchmarks for the coordinated implementation and compliance with the international obligations that states had undertaken as parties to several MEAs for combating transnational environmental crime.

2: Typology of environmental offences :-

The Egyptian environmental law providing a minimum common denominator **regarding to the** environmental offences.

While commonly classified according to sectoral (e.g. waste, water, air pollution offences) **or** geographical criteria (purely domestic vis-à-vis transnational environmental crimes), **environmental crimes remain difficult to typify.**

In this academic material we shall map out and classify the environmental offences **in the** Egyptian environmental law provisions **according to the** criminological assessment **of the** associated socio-environmental harms.

The Egyptian environmental law criminalizes certain behaviors **that cause harm for** the environment, **among them:** illegal shipments of waste, illegal trade in endangered species and the illegal production, importation, exportation **and** placing on the market or use of ozone-depleting substances, clearly belong to this latter category.

All other offences, in contrast, require the causation (or likelihood thereof) **of** death **or** serious injury to persons, **or** substantial environmental damage.

These are defined in as follows:

(a) The discharge, emission **or** introduction **of a quantity of** the materials **or** ionizing radiation into air, soil or water, **which causes or is likely to cause** death or serious injury **to** any person **or** cause substantial damage **to the** quality of air, **the** quality of soil **or the** quality of water, **or to** animals **or** plants;

(b) The collection, transport, recovery **or** disposal **of** the waste, **including the** supervision **of** such operations **and the** after-care of disposal sites, **and including** action **taken as a dealer or a** broker (waste management), **which causes or is likely to cause** death **or** serious injury **to any** person **or** substantial damage **to the** quality of air, **the** quality of soil **or the** quality of water, **or to** animals **or** plants;

(c) the operation of a plant in which a dangerous activity is **carried out or in which** dangerous substances **or** preparations

are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of the air, the quality of the soil or the quality of the water, or to animals or plants;

(d) the production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of the air, the quality of the soil or the quality of the water, or to animals or plants;

(e) the killing, destruction, possession or taking of specimens of protected wild fauna or flora species.

(f) any conduct which causes the significant deterioration of a habitat within a protected site.

3: The type of required liability in environmental law:-

Environmental offences are nearly always strict liability offences i.e. there is no need for the prosecution to prove mens-rea or negligence and the accused can often be convicted in circumstances where they are not, in the normal sense of the word, blameworthy.

3-a : Strict Liability:-

An *exception* to the requirement of a criminal intent element is strict liability .

Certain crimes do not require *proof of a mental state element*. This means that a *defendant may be convicted even if their intentions were innocent*. Strict liability may be appropriate when the interest of the *public in preventing or punishing certain behavior trumps* the moral concern over punishing someone *who did not intend to cause harm*. So , **strict liability offenses have no intent element , so it means crimes that do not need a mens-rea requirement, convict purely on actus-reus , involves malum prohibitum conduct , conduct that is wrongful only because it is prohibited (e.g., motor vehicle laws). Punishment usually minor , monetary fine or very short jail sentence.**

Strict liability offenses, usually *violate public welfare offense threatens the safety of many persons*.

This is a **modern statutory trend**, which abrogates the **common-law approach** that **behavior is only criminal** when *the defendant commits acts with a guilty mind*.

Sometimes the rationale for strict liability crimes is **the protection of the public's health, safety, and welfare**.

Thus **strict liability offenses** are often *vehicle code* or *tax code violations*, mandating *a less severe punishment*.

With a **strict liability crime**, the prosecution has **to prove only** the *criminal act* and possibly *causation* and **harm** or *attendant circumstances*, depending on **the elements of the offense**.

- Example of a Strict Liability Offense:-

Some *liquor laws* may impose *strict liability*, such as a ban on *selling alcohol to minors*.

A **vehicle code (Traffic code)** provision makes it a crime to "travel in a vehicle over the posted speed limit."

This is a **strict liability** offense. **So if** a law enforcement officer (traffic officer) captures radar information that indicates **Suzy** was traveling in a vehicle five KM per hour over the posted speed limit, **Suzy** can probably be convicted of speeding under the statute. **Suzy's protests that she** "didn't know she was traveling at that speed," **are not a valid** defense. **Suzy's knowledge of the nature of** the act is irrelevant.

The prosecution only needs to prove the **criminal act** to convict **Suzy** because this statute is strict liability **and does not require** proof of criminal intent.

So, strict liability is applicable only to statutory offences **and is usually applicable in** circumstances **where the offence is** one which society particularly wants to deter and wants to be able to prosecute easily.

Strict liability then is, however, contrary to the basic liberal **Rule of Law principles which suggest that a** person should **only be** criminally guilty of an act **for which they are**

responsible, **in the sense of having intended to carry out the act.**

However, proponents of the doctrine, as well as emphasising the ‘crime control’ benefits, would argue that such injustice is negligible, given that, in their view , most strict liability offences are regulatory in nature, less serious than common law crimes, attracting less social disapproval and only wrong because a statute has deemed them to be so. This, in turn, has prompted observers over the years to blame this implied status of the environmental offences (at least in part) for the way, in their view, that these offences are rationalised, minimised and rendered somehow ‘less serious than other offences dealt with by the criminal justice system, leading to inadequate sentences. In strict liability the doctrine, however, is that:

(1)The prosecution must prove simply that the accused carried out an active operation, the natural consequence of which is that pollution occurred ,

(2)Negligence, mens-rea, or knowledge on the part of the accused need not be established; and

(3)In terms of causation, natural forces, the act of a third party or an act of God, may create factual conditions whereby the accused will not be held to have ‘caused’ the event.

That last point was narrowed somewhat in the English case of Empress Car Company (Abertillery) Ltd v National Rivers Authority, when it was held that the defendant had caused pollution when diesel fuel entered controlled waters because an unidentified third party had opened an outlet tap which crucially could not be locked and the oil had been breached a bund which, again significantly, had been rendered ineffective by the defendant.

The opening of the tap was not regarded as a novus actus interveniens, because the defendant had created the conditions under which a spill could happen and the action of the third party was not an extraordinary one, which had it been so,

would have broken the chain of causation and the defendant would not have caused the pollution.

The offence of strict liability can simply defined as : "every conduct of a particular thing as itself so undesirable as to merit the imposition of criminal punishment on anyone who does or does not do that thing irrespective of that party's knowledge, state of mind, belief or intention ".

This involves a departure from the prevailing canons of the criminal law because of the importance which is attached to achieving the result which Parliament seeks to achieve.

Absolute strict liability environmental offences are, however, rare **and** most offences ameliorate **the potential unfairness of the strict liability by** providing statutory defenses.

Despite such defenses prima facie transferring a persuasive burden of proof to the accused, this is often removed or ‘read down’ either by the application of case law or statute.

However, the defenses are construed narrowly to avoid negating the very principle of the strict liability itself.

Despite the absence of fault being irrelevant to establishing whether an offence has been committed, it is however relevant at the sentencing stage, and is regularly pled in mitigation.

3-b : Vicarious Liability:-

Vicarious liability transfers a defendant's responsibility for the crime to a *different defendant*, on the basis of a *special relationship*.

Under a theory of vicarious liability, the defendant does not need to commit the criminal act supported by criminal intent.

The defendant just has to be involved with the criminal actor in a legally defined relationship.

As in civil law, vicarious liability is common between employers and employees.

Corporate liability is a type of vicarious liability that allows a corporation **to be prosecuted for** a crime apart from its owners, agents, and employees.

This is a modern concept that did not exist at early common law. **Although** corporations cannot be incarcerated, **they can be fined**.

-Example of vicarious liability :-

Shaker hires **Fahmy** to work in his liquor store. **Fahmy** is specially trained to ask for the identification of any individual who appears to be under the age of thirty and attempts to buy alcohol. **One night, Fahmy** sells alcohol to **Asmaa** and does not request identification because **Asmaa** is attractive and **Fahmy** wants to ask her out on a date. **Unfortunately, Asmaa** is underage and is participating in a sting operation with law enforcement.

Certain statutes could *subject* **Shaker** to criminal prosecution for selling alcohol to an underage person like **Asmaa**, even though **Shaker did not personally** participate in the sale.

Because Shaker is **Fahmy's** employer, he may be vicariously liable for **Fahmy's** on-the-job conduct in this instance.

3-b-1 : Vicarious Liability in environmental crimes " the permissibility in environmental crimes ":

One of the legal required condition for initiating the criminal charge for all types of the crimes , **is that the perpetrator must** commits a certain prohibited conduct, **and the perpetrator could be punished only** for his /her personal act , **no more**.

The question has been raised regarding to **the possibility** for establishing criminal responsibility **without** personal prohibited conduct in environmental crimes, ie, **the criminal responsibility in such case, shall consider "material responsibility" based upon the** perpetrator's prohibited conduct, **regardless of** his/her guilty mind ?

The importance of such question is it raises another question **regarding to** whether "material liability" **could be applied in** environmental crimes, **or do these crimes** require responsibility to be **based upon the** availability of guilty mind?

This question was raised particularly in the case of examining the possibility of the existence of the "vicarious liability", as such responsibility is no more than a form of "material responsibility".

The general rule is a "Legal relationship" between the crime and the defendant whom carry its criminal responsibly.

The offender must contributes in occurrence of the crime by his/her personal conduct - either commission or omission - , and there must be a causal link between the criminal's act and the criminal prohibited result.

3-b-1-a : The unconstitutionality of the "vicarious liability": While Egyptian Civil Code approved and established rules for "vicarious liability", and in accordance with these rules there is a possibility for compensating the damage that arises from the act of the third party, based on "vicarious liability" , but this type of liability has no place in the scope of penal law, because penal law only recognizes the personal responsibility, so, it is not conceivable that any person would be accused or convicted for a crime in which he/she was not its perpetrator or an accomplice.

So, there is no responsibility in penal law for the conduct of third party "vicarious liability".

However, the application of such principle raised a degree of difficulty, as many special legislations approved the "vicarious liability" , such as the labor law, in which the employer obliges to pay the fines imposed on its managers or his/her subordinates that resulting from their violations of these laws.

And if this is the plan of some legislations, but other legislations have explicitly stipulated that this type of liability is considered purely civil, for example the French legislator which explicitly stipulates in Article 260-1 of the Labor Law ,

that the employer is only civilly responsible for its managers or his/her subordinates violations of these laws.

The Egyptian legislator, in many forms of laws approved the "vicarious liability", in that a person may considered criminally responsible for another person criminal conduct .

For example , the Egyptian legislator stipulated in Article 58 of Decree Law No. 95 of 1945 regarding to catering affairs, provided that the owner of the shop is responsible with the manager of the shop or whom in charge of its management for all violations that occur in the shop of the provisions of such decree. And if due to absence or impossibility of monitoring, the manager were unable to prevent the occurrence of such violation, the penalty shall be fine which stipulated in Articles 50 to 56 of this Decree Law.

It is the same as stipulated in Article 15 of Decree-Law No. 63 of 1950, and what was also stipulated in Law No. 371 of 1956 regarding public shops, regarding the determination of the responsibility of the shop owner, its manager and its supervisor for the crimes that occurs in the shop .

Another example , is what was stipulated in Article 195 of the Penal Code regarding the determination of the criminal responsibility of the editor-in-chief , for what is published in the newspaper.

Responsibility for others conducts is based, in fact, on a kind of assumption. In essence, it is a assumed or hypothetical responsibility based on the fact that the perpetrator is considered responsible, regardless of his/her guilty mind - either mistake or intentionality - , as the legislator considered that the guilty mind is available and considered in such case, regardless of proving of the guilty mind.

A part of the jurisprudence tried to defend of such type of responsibility, as they believed that in cases that the legislator stipulated such type of responsibility, the responsibility – in such case - is not considered an assumed responsibility, as it

requires the availability of certain conditions **that ensure a** clear identification of the prohibited conduct **for which the** person is responsible, **so it must be proven that** one of the employees or subordinates of the defendant **committed a crime,** **and it must be proven also that** the crime already occurred.

The owner of the facility's mistake -in such case- , **is his/her violation of his/her duty of supervising** his/her employees.

And if the owner of the facility has proven the impossibility of his/her monitoring, the responsibility of the store's owner shall not available in such case.

A part of the Egyptian jurisprudence believed that such responsibility **based on the** failure of the manger to supervises or monitor his/her subordinates conducts **which led to** the occurrence of the crime, **and it is consider a** independent responsibility **form** his/her subordinates responsibility , **no matter if such refrain were** intentional or by negligent.

In our estimation, this point of view is invalid -even if they tried to establish responsibility on breaching the duty of supervision or monitoring- **because the aforementioned Articles do not** lead to such interpretation or give any legal value or support **for** such point of view , **because** these Articles had been established the criminal responsibility **even if the offender proves that he/she did not make any** neglect of his/her duty of supervision or monitoring , **and if he/she proves that he/she already did his/her duty** in the right way .

The opinion of the Egyptian Supreme Constitutional Court: **The Egyptian Supreme Constitutional Court ruled that** , **“The criminal penalty in personal in nature”** , **and it must be** proportd with the crime .

The Constitutional Court also ruled that the general principle **is there is must be a "Legal relationship" between the** crime **and the** defendant whom carry its criminal responsibly.

The offender must contribute in occurrence of the crime **by** his/her personal conduct - either commission or omission - , **and there must be a causal link between** the criminal's act and the criminal prohibited result.

The Supreme Constitutional Court also ruled - based on these reasons - **that the** text that establishes the criminal responsibility **of the** editor-in-chief **for what is** published in his/her newspaper **is unconstitutional.**

It also ruled that the criminal liability **of the** head of the political party **for what was published in** his/her party's newspaper **is unconstitutional.** .⁽¹⁾

According to such principle that established by the Supreme Constitutional Court, **in our estimation there is no place for** approving the vicarious Liability in penal law , **and what the legislator stipulated in various laws is** threatened with nullity **because of its** unconstitutionality.⁽²⁾

The question arises whether the legislator has stipulated the determination of the "vicarious Liability" **in the Environment Law, or did such law did not define** this type of responsibility? **And in the case of approving of the Environment Law of such type of** responsibility, **the question arises about the** fate of these Articles **and the** extent of **its compatibility with the** provisions of the Constitution , **in light of the rulings issued by the Supreme Constitutional Court that aforementioned?**

(1) The Supreme Constitutional Court, session of February 1, 1997, Case No. 59 of the year 18 Constitutional Judicial Court, set of rulings of the Supreme Constitutional Court, Part 8, p. 86.

(2) The Supreme Constitutional Court, session of July 3, 1995, Case No. 25 of the year 16 Constitutional Judicial Court, set of rulings of the Supreme Constitutional Court, Part 7, Rule No. 2, p. 45.

3-b-1-a-1 : The situation before the law of 2009:-

The legislator stipulated in Article 72 of the Environment Law that:

"Taking into consideration provisions of Article (96) of this law, the person in charge of managing the establishments, mentioned in Article (69) of this law, discharging in the water environment, shall be held responsible for any acts committed by his employees in violation of provisions of the said article, if his full knowledge of such violation is proven and if the crimes was committed due to negligence of his duties, in which case he shall be penalized as per Article (84 Bis) of this law".

This text is subject to criticism, because of its approval of "vicarious liability", that contradicts with the certain constitutional fundamentalist rule , " The criminal responsibility is personal in nature ", also its contradiction with the provisions of the Constitution and what the Constitutional Court ruled .

3-b-1-a-2: The amendment of Article 72 of the Environment Law to avoid its unconstitutionality:-

The legislator tried to avoid the previous criticism, by amending the text of Article 72 of the Environment Law by the law No. 9 of 2009, that provide - in such amendment - specific rules and conditions required for the "vicarious Liability" .

The legislator requires for the determination of criminal liability of the director of the facility , that he/she must be in charge with the actual management of the facility , whose wastes are discharged into the water .

It means that it is not sufficient that the defendant were only represents or manages the legal person for his/her criminal responsibility of the prohibited conducts aforementioned , but the defendant must be in charge of the actual management or were entrusted with a part of it.

On the other hand, the legislator required the knowledge of the person who were in charge with the actual management, of the prohibited conducts of his/her subordinators - according to stipulated in Article 69 of the Environment Law - .

The legislator also required that the crime must occur as a result of the perpetrator's breach of his/her job duties.

The prohibited conducts for which the legislator acknowledges the responsibility for the others' conducts "vicarious Liability" of the manager of the establishment, is throwing or discharging untreated materials, wastes or liquids that may cause pollution in the Egyptian beaches or the water adjacent to them - whether it was intentionally or recklessly or negligently- (Article 69 of the Environment Law).

In our estimation, the legislator has done well to amend the text that determined the responsibility for the others' conducts "vicarious Liability", as the aforementioned rules conform and are compatible with the constitutional and legislative principles and the constants of criminalization and penalty .

However, despite of this amendment, the legislator left the text of Article 69 of the Environment Law without any modification which criminalizes the non-intentional discharging or dumping waste into the sea , if it was committed by one of the facility's workers or subordinates , that causes the responsibility of the facility manager for this non-intentional conduct , despite its contradiction with the provisions of the Constitution.

We have previously criticized such approach.⁽¹⁾

(1) Dr. Ashraf Shams Eldeen , the criminal protection of the environment, Dar Ehnahda Elarabia , Cairo , 2012 , p: 144.

Dr. Mahmoud Taha , the criminal protection of the environment, Ashraf Abdallah company , 2012 , p: 263.

3-c : Antecedent liability:-

The following qualification of the rule that muscular or bodily movements performed in a condition of automatism do not result in criminal liability:

For example, if the defendant knows that he suffers epileptic fits or that, because of some illness or infirmity he may suffer a "black-out", but nevertheless proceeds to drive a motor-car, hoping that these conditions will not occur, while he is sitting behind the steering wheel, but they nevertheless do occur, he cannot rely on the defense of automatism.

In these circumstances he can be held criminally liable for certain crimes which require culpability in the form of negligence, such as negligent driving or culpable homicide.

His voluntary act is then performed when he proceeds to drive the car while still conscious. We describe this type of situation as "antecedent liability".

4: The main environmental offences will be provided, as defined in the Egyptian environmental law No. 4 which issued in 1994 :-

1) Land :-

In respect of Land in the Egyptian environmental law, one of the most important principals regarding to providing protection for Land, is the definition of the "Environmental Protection" as :

"Protecting and promoting the components of the environment and preventing or reducing their degradation or pollution .

These components encompass air, seas, internal waters, including the river Nile, lakes and subterranean water, land, natural protectorates, and other natural resources ".

Also defined " Coastal zone " , as:-

" The area extending from the coasts of Arab Republic of Egypt encompasses the territorial sea, exclusive economic zone and continental shelf, and extending landward to areas of active interactions with the marine environment for that not exceeding 30 km in the desert areas, unless major topographical features interrupt this stretch, while in Nile Delta would extend up and contour (+3m)" .

Each of the coastal governorates shall define their coastal zone according to its physical conditions and environmental

resources, **not in any case less than "10 km" landward from coast line.**

Article 27 of the Egyptian environmental law No. 4 which issued in 1994 stipulated that :

An area of not less than one thousand square meters of state-owned land shall be allocated for the establishment of an arboretum for the cultivation of trees in each district and in each village. The output of these arboreta shall be available to agencies and individuals at cost price.

The competent administrative authorities to whom these arboreta are affiliated shall lay down guidelines for the cultivation and protection of these trees.

The EEAA shall participate in financing the establishment of these arboreta.

Article 47 bis 1 , of the Egyptian environmental law No. 4 which issued in 1994 stipulated that :

A supreme council for the protection of the river Nile and waterways from pollution shall be established within the Premiership, and shall chaired by the Prime Minister with membership of relevant ministers: (Minister of Water Resources and Irrigation, Minister of Environmental Affairs, Minister of Health, Minister of Industry, Minister of Agriculture and Land Reclamation, Minister of Local Development, Minister of Housing, Utilities and Urban Communities, Minister of Tourism and River Transportation Authority)

The council shall take the necessary procedures to protect the river Nile and water ways from pollution. The powers of this council specified by Prime Minister's Decree.

The council shall meet at least once every three months , to follow up the conditions of the Nile.

2) Air :-

In respect of Air in the Egyptian environmental law , one of the most important principals regarding to providing protection for Air , is the definition of the " Air " as :

" The mixture of gases constituting air in its known percentages and natural properties, and in the provisions of this Law, it is the ambient air, air within the work places, and air in closed or semi-closed public places " .

Also defined " Air Pollution " , as :-

" Any change in the properties and specifications of the natural air that results in hazards to human health or to the environment, whether resulting from natural factors or human activities, including noise and offensive odors " .⁽¹⁾

Also defined " Environmental Protection" , as :

" Protecting and promoting the components of the environment and preventing or reducing their degradation or pollution. These components encompass air, seas, internal waters, including the river Nile, lakes and subterranean water, land, natural protectorates, and other natural resources " .

Also defined the " Environment " , as :

" The biosphere which encompasses living organisms together with the substances it contains and the air, water and soil that surround it, as well as the establishments set up by man " .

Also defined " Closed Public Place " , as :

"A public place which is in the form of an integrated building that receives no incoming air except from designated inlets.

Vehicles for public transport are considered closed public places " .

Also defined " Semi-closed Public Place" , as :

"A public place which is in the form of a non-integrated building with direct access to the ambient air and which cannot be completely closed".

(1) Substituted by Law No.9/2009 issued in the official Journal- issue No.(9-Bis) on 1/3/2009.

3) Water :-

In respect of providing protection for water in the Egyptian environmental law , one of the most important principals

regarding to providing protection for water , is the definition of the "Water Pollution " as :

"The introduction of any substance or energy into the water environment, whether intentionally or unintentionally, directly or indirectly, which causes damage to living or non-living resources, poses a threat to human health or hinders water activities, fishing and tourist activities or impairs the quality of sea water so as to render it unfit for use, diminish the enjoyment thereof or alter its properties".

Also defined " The environment " , as :

" The biosphere which encompasses living organisms together with the substances it contains and the air, water and soil that surround it, as well as the establishments set up by man ".

Also defined " The environmental Protection " , as :

" Protecting and promoting the components of the environment and preventing or reducing their degradation or pollution. These components encompass air, seas, internal waters, including the river Nile, lakes and subterranean water, land, natural protectorates, and other natural resources ".

Also defined " The water Polluting Substances " , as:

"Any substance whose discharge into the water environment, intentionally or unintentionally, leads to a change in its properties, or contributes to such change directly or indirectly to an extent that can harm man, natural resources, sea water or marine tourist areas, or which interferes with other legitimate uses of the sea ".

These substances include:

A- Oil or oily mixtures.

B- Harmful and dangerous wastes as determined in the international conventions to which the Arab Republic of Egypt adheres.

C- Any other substance (solid, liquid or gaseous) as determined in the executive regulations of this law.

D- Untreated industrial waste or effluents from industrial establishments.

E- Toxic military containers.

F- Substances listed in the Convention and its annexes.

Also defined " The Unclean Balancing Water (Unclean Ballast Water) " , as:

" Water in ship-borne tanks if its oil content is greater than 15:1,000,000 " .

Also defined the "Reception Facilities" , as:

" Installations, equipment and basins designed to receive, filter, treat and dispose of contaminated substances or ballast water, as well as installations provided by companies working in the field of shipping and unloading petroleum products; or other administrative agencies supervising ports and waterways " .

Also defined the " Discharge " , as:

"Any leakage, effluence, emission, draining or disposal of any kind of pollutants into the river Nile, watercourses, territorial waters, or the exclusive economic zone, or the sea; taking into consideration the limits and pollutants loads determining certain substances pursuant to the executive regulation of this law, and what is determined by the Egyptian Environmental Affairs Agency EEAA in coordination with relevant authorities without violating the rules of this law and its executive regulation" .

Also defined the " competent Administrative Agency Concerned with the Protection of the Water Environment", as:

Any of the following agencies, each within its field of competence:

- A-** The Environmental Affairs Agency (EEAA)
- B-** The Egyptian Authority for Maritime Safety.⁽¹⁾
- C-** The Suez Canal Authority.
- D-** Port Authorities in ARE.
- E-** The General Egyptian Organization for the Protection of the Coast.
- F-** Egyptian General Petroleum Corporation. (EGPC).
- G-** General Department of Surface Water Police.
- H-** Tourism Development Authority.
- I-** Other agencies designated by a Prime Ministerial Decree.

4) Waste :-

In respect of waste in the Egyptian environmental law , one of the most important principals regarding to waste principal provisions , is the definition of the "hazardous waste" as :

Waste of activities and processes or its ashes which retain the properties of hazardous substances and have no subsequent original or alternative uses, like clinical waste from the medical treatments or the waste resulting from the manufacture of any pharmaceutical products, drugs, organic solvents, printing fluid, dyes and painting materials.

And also defined the "Water Polluting Substances", as :

" Any substance whose discharge into the water environment, intentionally or unintentionally, leads to a change in its properties, or contributes to such change directly or indirectly to an extent that can harm man, natural resources, sea water or marine tourist areas, or which interferes with other legitimate uses of the sea " .

These substances include:

A- Oil or oily mixtures.

B-Harmful and dangerous wastes as determined in the international conventions to which the Arab Republic of Egypt adheres.

C-Any other substance (solid, liquid or gaseous) as determined in the executive regulations of this law.

D-Untreated industrial waste or effluents from industrial establishments.

E-Toxic military containers.

F-Substances listed in the Convention and its annexes.

Also defined the " oil Substances waste that polluting the environment" , as :

" Crude oil and its products in all forms, including any kind of liquid hydrocarbons, lubricating oil, fuel oil, refined oil, furnace oil, tar and other petroleum derivatives or waste".

Also defined " Waste Management " , as :

"Collecting, transporting, recycling and disposing of waste".

Also defined " Waste disposal " as :

"Processes which do not extract or recycle waste such as composting, deep subterranean injection, discharge to surface water, biological treatment, physio-chemical treatment, permanent storage or incineration ".

Also defined "Waste recycling " , as :

"Processes which allow the extraction or recycling of waste, such as using it as fuel, or extracting metals and organic materials or soil treatment or oil re-refining".

Also defined " Dumping " , as :

"**A-**Any deliberate disposal of polluting substances or waste from ships, planes, platforms or other industrial establishments and land-based sources into the territorial sea, the exclusive economic zone or the sea.

B-Any deliberate dumping by ships or industrial or other establishments into the territorial sea, the exclusive economic zone or the sea.

Taking into consideration provisions of International Conventions to which the Arab Republic of Egypt is party thereto; **placing any** substances , **such as** cables, pipes, instruments of scientific research **and** monitoring **and** other devices **in the** sea for purposes **other than** disposing of them, **shall not be** considered dumping ".

According to article 5 of the Egyptian environmental law No. 4 which issued in 1994 :

The Environmental Affairs Agency formulates the general policy **and lay down the** necessary plans **for the** protection **and** promotion **of the** environment **and follow up the** implementation **of** such plans, **in coordination with the** competent administrative authorities.

The Agency have the authority **to implement** some pilot projects.

The Agency consider the national authority **responsible for** strengthening environmental relations **between the ARE and** other countries **and** regional **and** international organizations.

The Agency also recommend **taking the** necessary legal procedures **to adhere to** regional **and** international conventions **related to the** environment **and prepare the** necessary draft laws **and decrees required for the** implementation **of such** conventions.

For the fulfillment of its objects, the Agency may:

-Participate in the preparation **and implementation of the** national program **for** environmental monitoring **and make use of** the data **provided thereby.**

5: Environmental offenders :-

A practical, operational definition of the environmental crime, is a commission or omission that directly or indirectly causes harm or poses a risk of harm to the environmental and which is prohibited and punishable by the relevant law, can be relatively easily sketched but the environmental criminals are less easily characterized.

The two most common serious environmental crimes in Egypt are breaches of the waste regime and the water regime and it has been argued that offenders perpetrating each of these crimes may have a different mens-rea and that this and other factors play a part in the attitudes of regulators and courts to them.

Many serious waste offences are involved with something more than a failure to comply with the conditions of a permit.

Instead, those who commit them may be seeking to operate entirely outside a regulatory regime, thus avoiding the strictures of a license or permit and the costs associated with compliance.

They argue that, in these cases, the conduct involved may be said to be truly “criminal”.

Such conduct is not inadvertent or accidental or even negligent, instead representing a deliberate attempt to flout the law.

Commercial scale fly tipping, where it relates to the unregulated, large-scale dumping of waste by persons who have been paid to legally dispose of the material in their capacity as a waste collection business is a prime example.

They argue that the deceit involved, the profits made and the potentially harmful consequences to the environment, makes those who commit such offences fully deserving of the most severe punishments, including imprisonment.

The companies often have strong economic incentives to break the law.

Illegal activities often make good business sense.

The assumption behind this is that firms are rational economic actors.

Accordingly, businesses generally pursue activities which are likely to lead to economic gains and avoid those which may lead to losses.

A business may therefore be tempted to pollute the environment if the expected gain (increased profit or investment postponed) is greater than the anticipated loss (fine, confiscation or civil penalty) .

The likelihood of the conviction is an important factor in our view.

If the probability of prosecution is small, the likely sentence would have to be very substantial to function as an effective deterrent, otherwise the risk of a financial penalty could simply be regarded as one of the unavoidable costs of doing business .

In contrast, serious water regime contraventions, typically releases of silage or manure/slurry effluent by agriculture or release of waste water , is consider more easily characterised as inadvertent, careless or negligent.

However, while there is no obvious immediate financial gain to be made by committing these offences, the financial gain may well be indirect, related to attempts to contain operating costs or postponement of investment decisions regarding to infrastructure or process improvements.

The adversarial nature of the criminal justice system, especially the plea in mitigation before sentencing, also brings out some of the issues inherent in environmental crimes .

Since the majority of the environmental offences do not require the prosecution to prove mens-rea, this strict liability acts as a cloak for many accused, leaving defense counsel plenty of room to deny culpability in order to mitigate the penalty .

This strategy often takes the form of trivialising the offence, blaming misfortune and third parties for the offence or asserting that, given that the offence was not deliberate, enforcement was an unreasonable restriction on the right to trade; all drawing on preconceptions of environmental crime as not being real crime and that the balance between encouraging economic development and protection of the environment has swung too far in favour of the latter.

In fact , the seriousness of the environmental damage is reflected in the high upper limits for fine and sentence in the courts , but that lay judges and members of the professional judiciary who do not subscribe to the view that environmental crime is serious and continue to distinguish the environmental offences from the activities of ‘true criminality’ will not consider high penalties to be appropriate.

The strict liability nature of the offences, coupled with the particular approach to causation in the environmental cases and accompanying arguments in mitigation from the defense, may also influence the courts in their sentencing.

There has long been a body of opinion that claimed that perceived low sentences for environmental (and wildlife) crimes could at least partly be addressed by the creation of a specialist environmental Egyptian courts , with a criminal jurisdiction.

The main driver for this view , was that the small number of such cases coming before the ordinary criminal courts meant that the judiciary were unable to build up both expertise in the technicalities of the offences and a firm grasp of the seriousness of the harms perpetrated by these crimes.

The lay judges encounter barely any cases of the environmental crime, amongst their routine business.

Furthermore, the environmental cases can also be extremely complex and technical, often involving the evidential material on industrial processes, pollutants and pathways, which together with their unfamiliarity, cause problems for judges.

It was also felt that most cases are best heard in the ordinary courts rather than a centralized specialist court, may give the public and the press the wrong impression that they are not real crimes , once again raising the issue of the extent to which environmental and wildlife crimes are mala in se.

6: Wildlife offences in historical perspective:-

"Rene Descartes" (1596-1650) held that non-humans were automata that did not possess souls, minds, or the ability to the reason. As such, non-humans could not suffer or feel pain.

"John Locke" (1632-1704) and "Immanuel Kant" (1724-1804) conceded that cruelty to animals was morally wrong but only because of its effect on human morality.

"Kant" said that 'he who is cruel to animals becomes hard also in his dealing with men'.

"Jeremy Bentham" (1748-1832) began the move towards contemporary thinking about animals in philosophy and law.

The day may come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny.

What else is it that should trace the insuperable line?

Is it the faculty of reason, or perhaps, the faculty for discourse?... the question is not, can they reason? nor, can they talk? but, can they suffer?

Bentham's view that humans have a responsibility to ensure animals do not experience unnecessary suffering continues to be a foundational principle of animal protection law.

Bentham ensured that the issue of animal protection would no longer be seen from a solely anthropomorphic point of view, but also (at least partly) from a biocentric one which considered the protection of animals for their own sake because of their inherent value.

The Cruel Treatment of Cattle Act 1822 was the first animal protection statute in the UK (and the world) , followed by the Cruelty to Animals Act 1849 , and the Protection of Animals (Scotland) Act 1912.

This, and subsequent legislation, sought to minimize pain and distress suffered by animals, which were from the outset regarded as human property. This legislation, however, did not apply to wild animals.

Well into the 20th century, the need to protect wildlife was not founded on animal welfare; it was perceived (especially by those with wealth) as being essentially economic; preserving game and quarry species, and protecting areas in which to hunt them.

Not until 1947, and the publication of the Ritchie Report , was a specialist national (UK) nature conservation body established and national habitat protection measures instigated .

While no longer being solely economic, the motivation underlying such protection was still firmly anthropocentric, with the scientific importance of conservation to humans at the forefront.

However, as science and modernity's perceived failure to deliver their promise began to affect public opinion in the 1960s and 1970s, protection and conservation of wildlife took on a new rationale; nature began to be valued on aesthetic, cultural, social and wider economic grounds.

Events such as the publication of Silent Spring and the Tragedy of the Commons , Apollo 8's first pictures of Earth from space , the founding of Greenpeace and Friends of the Earth and the UN Conference on the Human Environment moved (at least influential) public opinion to take conservation of nature more seriously , and the government policy changed accordingly.

However much the attitude to wildlife in law has evolved its basis, however, is still utilitarian and anthropocentric.

6-a: Typology of wildlife offences:-

While not the main thrust of wildlife law, there is some legislation to prevent cruelty or unnecessary suffering to the wild animals, all of which explicitly make intentionally inflicting unnecessary suffering (and a number of related actions) on the specified animal a criminal offence. However, the emphasis on conservation and protection at the species level persists. Much of bird and animal conservation legislation has welfare as an incidental outcome e.g. it is an offence to injure a wild bird and many wild animals, while the main thrust is conservation.

7 : The required intent element :-

Criminal Intent "Mens Rea" " The Guilty Mind":-

The physical act represents one element in the commission of a criminal act while the guilty mind represents the second key element.

The knowledge form of a guilty mind means that the accused must have *knowledge* of the *specific circumstances of the crime*.

The phrases "*knowingly*" or "*knowing*" are commonly used here to *indicate a specific type of knowledge*.

For example, to knowingly lie to a judge or jury is called perjury and is a criminal offence but to give false evidence unknowingly is not a *criminal offence*.

Mens-rea is an *element of criminal responsibility*, a guilty mind; a *guilty* or *wrongful purpose*; a criminal intent.

A fundamental principle of Criminal Law is that a *crime consists of both a mental and a physical element*.

Occasionally mens-rea is used synonymously with the words *general intent*, although *general intent* is more commonly used to describe criminal liability when a defendant does not intend to bring about a particular result.⁽¹⁾

(1) Dr. Mahmoud Taha, the criminal protection of the environment, Ashraf Abdallah company, 2012, p: 263.

The criminal law generally conceives bad thoughts as the desire to harm others , or violate some other social duty; or disregard for the welfare of others or for some other social duty.

One can manifest a “guilty mind”, or "mens-rea" , by implementing an ignoble desire, or by acting uninfluenced by a noble desire, such as concern for the safety of others.

-Every element of the actus-reus must adhere to a requirement of mens-rea.

Although there are exceptions that are discussed shortly, **criminal intent**, or **mens-rea** is an essential element of most crimes.

Under the common law, all crimes consisted of an act carried out with a guilty mind.

In modern societies , criminal intent can be the basis for *fault*, and punishment according to intent is a core premise of criminal justice.

Crimes grading is often related to the criminal intent element. **Crimes that have** an “*evil*” intent are **malum-in-se** and subject the defendant to the most severe punishment.

Crimes that lack the intent element are less common and are usually **graded lower**, as either **misdemeanors** or **infractions** .

Statutes vary in their approach to **defining** criminal intent, and each jurisdiction describes the criminal intent element in a criminal statute, or case.

If a statute specifies a mental state or a particular offense, courts will usually apply the requisite mental state to each element of the crime.

Moreover, even if a statute refrains from mentioning a mental state, courts will usually require that the government still prove that the defendant possessed a guilty state of mind during the commission of the crime.

7-a : Common-Law Criminal Intent:-

The common-law criminal intents ranked in order of culpability are **malice aforethought, specific intent, and general intent** .

Statutes and cases use different words to indicate the appropriate level of intent for the criminal offense, **so what follows is** a basic description of the intent definitions adopted by many jurisdictions.

The defendant should intend the act , **with which he/she is** charged, **or that it was** the necessary or foreseeable consequence **of some other** felonious or criminal act.

-For attempts (*non-complete offenses*) , the prosecution must prove purpose (*that the defendant was aware of the situation & purposely intended it to happen*).

-For “Knowingly” & “Purposely” there is a presumption that people know the natural consequences of their actions.

7-b :General Intent:

General intent is less sophisticated than specific intent. **Thus general intent crimes are** easier to prove and can also result in a less severe punishment.

A basic definition of general intent is the intent to perform the criminal act or actus-reus.

If the defendant acts intentionally but *without the additional desire* to bring about a certain result, **or do anything other than** the criminal act itself, **the defendant** has acted with general intent.

General intent only blameworthy state of mind needed; **intent in the** broad/culpability sense of mens-rea

For Example: battery is “unlawful application of force upon another.”

“Unlawful” means act must be committed **in a morally** blameworthy manner, **but nothing** specific in mind needed.

7-c :Then What's the General Intent Crime?

A general intent crime only requires that you intend to perform the act. **That is don't need any** additional intention or purpose. **For example**, assault is usually a general intent crime. **You only need to** intend your actions, not any particular result. **General intent crimes are** easier to prove because it is not necessary to show that you had some particular purpose.

Most crimes require general intent, meaning that the prosecution must prove only that the accused meant to do an act prohibited by law.

Whether the defendant intended the act's result is irrelevant. **This terminology makes** battery a general intent crime. **The intent element** is satisfied if the defendant intends to cause harmful physical contact and actually causes it, **it doesn't matter whether** the defendant actually intended to hurt or seriously injure the victim.

So, if Ahmed punches Omar in the eye after **Omar** calls her an "idiot," he has probably committed a battery. **The prosecutor** has to show is that **Ahmed** intentionally punched **Omar**.

The prosecutor doesn't need to show that **Ahmed** intended to hurt **Omar** , the law assumes as much.

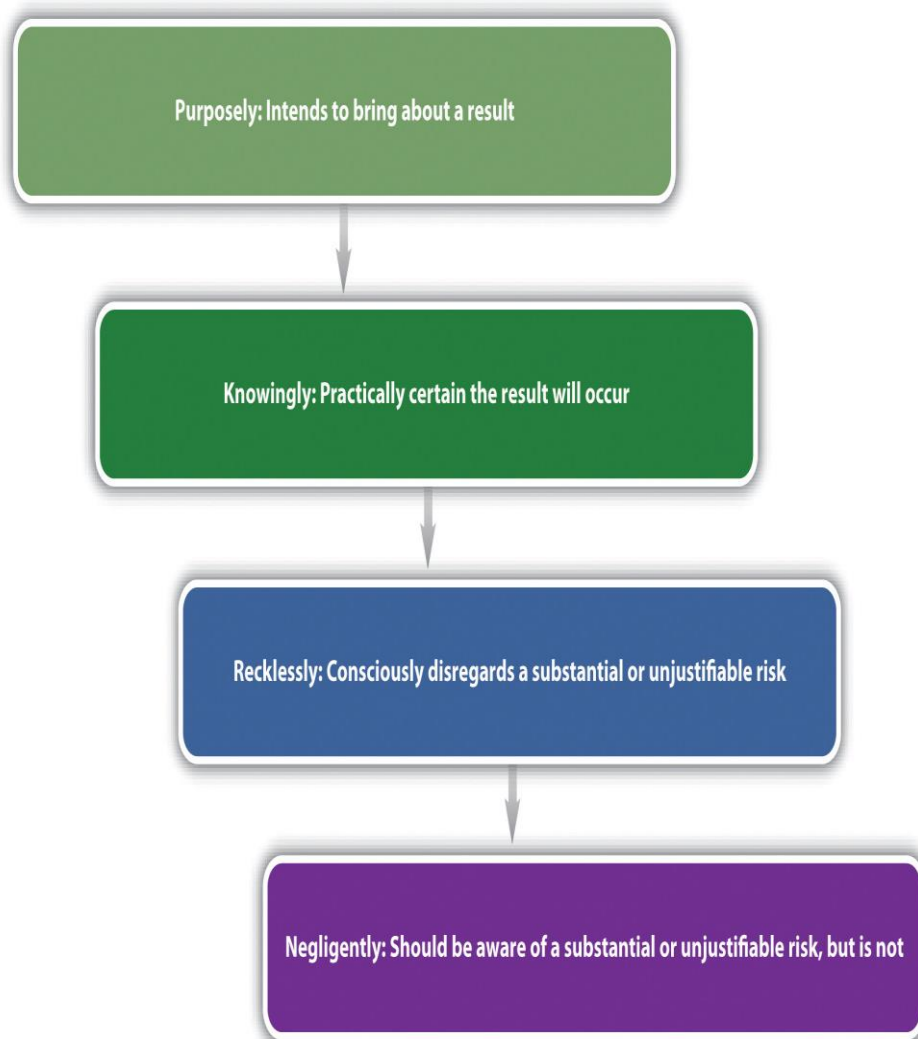
7-d :How Does Any of this Make a Difference?

The distinction between specific and general intent crimes can make a huge difference as a defense.

If you are charged with a specific intent crime, the **prosecution** will have to prove that you had the purpose that is included in the definition of the crime.

In other words, the **prosecution** will have to prove another element in order to convict you.

If you didn't have the specific intent required, then you have a defense and cannot be convicted.



7-e :Inference of General Intent :

Intent is a notoriously **difficult element to prove** , because it is **locked inside the defendant’s mind**.

Ordinarily, the only direct evidence of intent is a defendant’s confession, **which the prosecution cannot** forcibly obtain.

Witnesses who hear the defendant express intent are often unable to testify .

However, many jurisdictions allow an **inference** of general intent based on the **criminal act**.

- Example of a General Intent :

A statute defines battery as “intentional harmful or offensive physical contact with another”

This statute describes a general intent crime.

To be guilty of battery under the statute, the defendant must only intend the harmful or offensive contact.

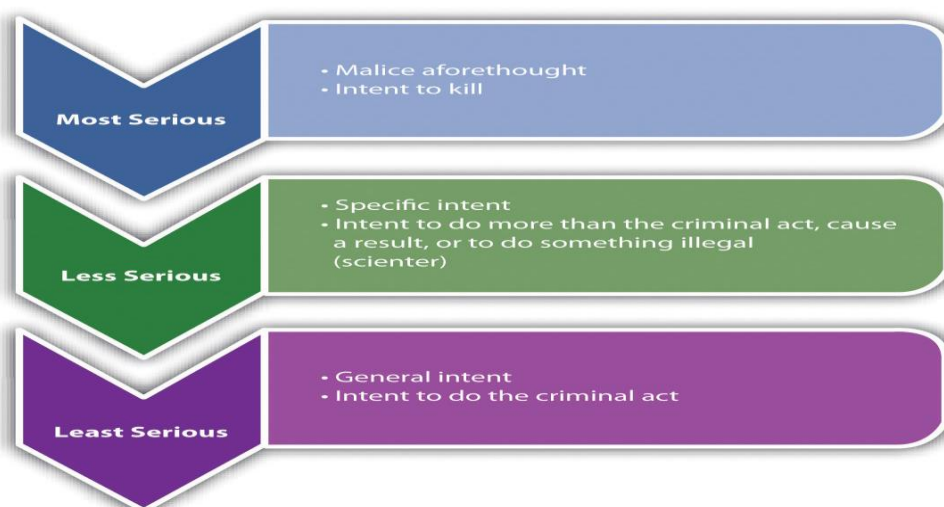
The defendant does not have to desire that the contact produces a specific result, such as scarring, or death; nor does the defendant need scienter, or awareness that the physical contact is illegal.

If Afaf balls up her fist and punches Eman in the jaw after Eman calls her a “stupid idiot” , Afaf has probably committed battery under the statute.

The prosecutor could prove that Afaf committed the act of harmful or offensive contact , using Eman’s testimony and a physician’s report.

The judge could thereafter be instructed to “infer intent from proof of the act.” If the judge accepts the inference and determines that Afaf committed the criminal act, the judge could find Afaf guilty of battery without additional evidence of intent.

Figure : Common Law Intents



7-f :Motives:-

Intent should not be confused with **motive**, which is the *reason of committing* the criminal act or actus-reus.

Motive can generate intent, support a defense, **and be used to** determine sentencing.

However, motive alone does not constitute mens-rea **and does not act** as a *substitute* for criminal intent.

- Example of Motives :-

Soha, a housewife with no criminal record, sits quietly in court waiting to hear the **judge verdict** in a trial for **the rape of** her teenage daughter by **Gamal**.

Gamal has been convicted of child rape in three previous incidents.

The judge foreman announces the decision finding **Gamal** not guilty.

Gamal looks over his shoulder at **Soha** and smirks. **Soha** calmly pulls a loaded revolver out of her purse, and then shoots and kills **Gamal**.

In this case, Soha's motive is revenge for the rape of her teenage daughter, **or** the desire to protect other women from **Gamal's** conduct.

This motive generated **Soha's criminal intent**, which is malice aforethought or intent to kill.

In spite of Soha's motive, which is probably understandable under the circumstances, **Soha** can be found guilty of murder because she acted with the murder mens-rea.

However, Soha's motive may be introduced at sentencing and may result in a reduced sentence , **such as** life in prison rather than the death penalty.

In addition, Soha's motive may affect a **judg's** decision to seek the death penalty at all .

7-g :The distinction between motive & intention:-

Intention must not be confused with the motive for committing the crime.

In determining whether defendant acted with intention, the motive behind the act is immaterial .

For this reason defendant is guilty of **theft even though he steals from the rich in order to give to the poor.**

A good motive may at most have an influence on **the degree of punishment.**

If it is clear that defendant acted intentionally the fact that **his motive was laudable or that one may have sympathy for him, cannot serve to exclude** the existence of intention, **as where he/ahe administers a fatal drug to his ailing father to release him from a long, painful and incurable illness .**

Furthermore, if the defendant had the intention to commit an unlawful act or to cause an unlawful result, the fact that he did not desire to commit the act or to cause the result , in no way affects the existence of his intention.

7-h :Categories of Criminal Intent:-

Criminal intent divided into four states of mind listed in order of culpability:

- **purposely,**

- **knowingly,**

- **recklessly, and**

- **negligently.**

7-h-1 :Purposely:-

Intentional/Purposely , Defendant not only knew what he was doing, **but intended it** to happen (*Best standard for defendant*).

A defendant who acts purposely intends to engage in conduct of that nature and intends to cause a certain result.

Purposeful criminal intent resembles **specific intent** to cause **harm**, which was discussed previously.

The person acts purposely with respect to a material element of an offense , **when the element involves** the nature of his conduct or a result thereof, **it is his conscious object** to engage in conduct of that nature or to cause such a result.

Purposely or intentionally , can be **narrow**, but ordinarily **involves conscious object to cause result** acts **with knowledge** that conduct virtually certain to cause result.

For Example:

D plans bomb in plane to kill A, others die also; D intentionally killed A and B (virtually certain that **B** will die as result) .

Intent can be inferred from circumstances . **So, purposely means conscious** object to engage **in conduct is aware of existence of** attendant circumstances , **or** believes or hopes that they exist.

- Example of Purposely :-

Review the example of Specific Intent to bring about a bad result", where **Ibtsam** takes out a razor and slices **Galal's** cheek. **In this example, Ibtsam** is aware of the nature of the act (slicing someone's cheek with a razor).

Ibtsam also appears to be acting with the intent to cause a specific result, **based on** her statement to **Galal** .

Thus Ibtsam is acting with **specific intent** or **purposely** and can probably be convicted of some form of aggravated battery **or** mayhem in most jurisdictions.

7-h-2 :Knowingly :-

Knowingly indicates that the defendant is aware of the nature of the act and its probable consequences.

Knowingly differs from purposely in that the defendant is not **acting to cause** a certain result but is acting with the awareness that the result is *practically certain* to occur.

Knowingly can defined as :

A person acts knowingly with respect to a material element of an offense when , **he is aware that** his conduct is of that nature, **if the element involves** a result of his conduct, **he is aware that** it is practically certain that his conduct will cause such a result .

Some common law crimes require knowledge of attendant circumstance:

a. aware of fact

b. correctly believes that it exists

c. suspects that it exists and avoids learning it (aka willful blindness).

knowingly with attendant circumstances or conduct, **one acts knowingly if** he/she **is aware that** his conduct is of that nature or that such attendant circumstances **shall exist , as a result of** his conduct, **one acts knowingly if** actor is aware that it is practically certain that his conduct will cause result.

Knowingly require that Prosecution to prove that **the defendants knew** what they were doing , **and/or the existence of the required circumstances** , and/or **that the result** would occur.

For Example: kasem consciously desires to kill **Ahmed** , and does so by putting a bomb on board a plane that contains **both Ahmed and Basem** , **kasem** purposely killed **Ahmed** but knowingly killed **Basem** .

-Example of Knowingly:-

Fahmy brags to his wife **Tagred** that he can shoot into a densely packed crowd of people on the subway train without hitting any of them. **Tagred** dares **Fahmy** to try it.

Fahmy removes a concealed weapon from his waist-band and shoots, aiming at a group of people standing with their back to him.

The shot kills Monica, who is standing the closest to **Fahmy**.

In this case, Fahmy did not *intend* to shoot **Monica**.

In fact, Fahmy's goal was to shoot and miss all the standing subway passengers.

However, Fahmy was *aware* that he was shooting a loaded gun (*the nature of the act*) and was also *practically certain* that shooting into a crowd would result in somebody getting hurt or killed. Thus Fahmy acted knowingly according to the **Egyptian Penal Code** , So Fahmy has most likely committed murder in this case.

7-h-2-a :Knowledge as an element of intention , must cover all the requirements of crime :-

We have already pointed out that intention consists of two elements, namely knowledge and will.

It is necessary to explain the knowledge requirement or the cognitive element in more detail.

7-h-2-b :Mistake (Fact & Law):-

In order to have intention, defendant's knowledge must refer to all the elements of the offence except the requirement of culpability , Such knowledge must refer to:-

(1) The act

(2)The circumstances included in the definitional elements, and

(3) The unlawfulness of the act .

The defendant must be aware of all these factors.

Let us now apply this rule to a specific crime, namely common-law perjury.

The form of culpability required for this crime is intention.

The elements of this crime are the following:

(1) Making a declaration, (2) Which is false,

(3) In the course of a legal proceeding.

(4) Unlawfully and, (5) Intentionally.

If we now apply the rule presently under discussion to this crime, it means the following:

The act and definitional elements are contained in the elements numbered (1) to (3).

An application of the present rule means, firstly, that the defendant must know (*be aware of the fact*), that he is making a declaration (*element no (1)*).

Next, he must know that this declaration is false (*element no (2)*).

Furthermore, he must know that he is making the declaration under oath (*element (4)*).

If he is not aware of this (*where, for example, he thinks that he is merely talking informally to another*), a material component of the intention requirement for this crime is lacking, and accused cannot be convicted of the crime.

Intention in respect of the element numbered (3) of the crime means that the defendant must know that he is making the statement in the course of a legal proceeding.

If he is unaware of this (*where, for example, he thinks that he is making the statement merely in the course of an administrative process*), a material component of the intention required for this crime is likewise lacking.

Intention in respect of the element numbered (4) of the crime means that the defendant must know that his conduct is unlawful, that is, not covered by a ground of justification (*such as necessity, which includes compulsion*).

It is not necessary to enquire into intention relating to the element number (5) of the crime, as this element is the culpability element itself, and an "*intention in respect of an intention*" is *obviously nonsensical*.

One may illustrate the rule that intention must relate to all the elements of the crime graphically as follows:

7-h-2-c: Intention had to be directed at the circumstances included in the definitional elements :-

By saying that intention must be directed at the circumstances included in the definitional elements, we mean that the defendant must have knowledge of these circumstances.

This principle applies particularly to formally defined crimes, because in these crimes the question is not whether defendant's act caused a certain result, but merely whether the act took place in certain circumstances.

The following are examples of the application of this principle:

(1) In the crime of unlawful possession of drugs the object that the defendant possesses must be a drug , and the defendant must accordingly be aware of the fact that what he possesses is a drug.

If the defendant is under the impression that the bottle the some one has asked him to keep contains talcum powder, whereas in fact it contains a drug, the defendant lacks intention.

(2)The most common form of theft takes the form of the removal of another's property.

This is a form of theft where the thing that is stolen must belong to another , and

the defendant must therefore know that the thing he is appropriating belongs to another, and must not, for instance, labor under the mistaken impression that it is his own.

When we say that the defendant must have knowledge of a circumstance or a fact, it means the following:

-the defendant need not be convinced that the said circumstance exists (eg, *that the object he possesses is a drug, or that the thing he is handling belongs to another*).

- In the eyes of the law, the defendant will also be regarded as having the knowledge (*ie the intention with regard to such circumstance or fact*) , if he merely foresees the possibility that the circumstance or fact may possibly exist, and reconciles himself with that possibility.

In such a case his intention with regard to the circumstance exists in the form of dolus eventualis.

It follows that the definitions of the different forms of intention in formally defined crimes (*ie crimes which do not deal with*

the causing of a result) , differ only slightly from the definitions of the forms of intention in materially defined crimes.

The only difference is that all references to ``*causing a result*'' are replaced by the words ``*commit an act*'' and (where applicable) ``*circumstances exist*''.

B- Intention with regard to unlawfulness:-

As far as the intention with regard to unlawfulness is concerned, the principle which has been explained above, also applies.

Knowledge of the unlawfulness of an act , is knowledge of a fact, and is present not only when defendant in fact knows (*or is convinced*) that the act is unlawful, but also when he merely foresees the possibility that it may be unlawful and reconciles himself to this.

His intention with regard to unlawfulness , is then present in the form of *dolus eventualis*.

When we say that knowledge of unlawfulness is required for the defendant to have intention, it means that the defendant must be aware that his conduct is not covered by a ground of justification, and that the type of conduct he is committing is prohibited by law as a crime.

The mistake as a doctrine , can apply only to those elements where there is a mistake:

1. Mistake of Fact :

The defendant thought , For example : The defendant thought that the umbrella was his.

2. Mistake of Governing Law:-

For example : The defendant thought that he/she could take any umbrella (*He didn't realize it was against the law*).

3. Mistake of Non-Governing Law :-

Mistake of a law that is not the main law in question. (E.g. *Knew about the law against theft of umbrellas, but didn't know about law that made all umbrellas property of the state*).

7-h-2-d:Mistake of Fact:-

If mistake of fact were reasonable, then the accused shall not found guilty of general intent crime, but if mistake of fact were unreasonable, then he/she shall consider acted with culpable mind (mens-rea).

Depending of definition of offense, persons who acted exactly the same may be treated differently under mistake of fact.

On another hand the accused shall not found guilty of specific intent crime , if the mistake of fact negates specific intent portion of crime , reasonableness shall not consider an issue here , but unreasonableness related to mistake , court can disbelieve honest mistake if really unreasonable.

As result of mistake, felon may be found guilty without a morally blame-worthy state of mind.

Sometimes, courts may convict the accused , even if mistake of fact negates intent , if the accused's conduct is immoral even under facts as believed by her/him .

Mistake of fact not consider an affirmative defense for strict liability crimes. Sometimes, courts will convict even if mistake of fact negates intent , if felon's conduct is immoral even under facts as believed by felon .

7-h-2-d-1:Types of Mistakes in Fact:

1. Mistake in ID of victim (e.g. *thought he was shooting a ghost*) .This is a valid mistake of fact in some certain statutes like Germany , In the US it is no excuse, where mens-rea means only intent to kill a person – not the specific one.

2. Mistake in the effect of the action (e.g. *poison apple meant for wife kills daughter*).

3. Mistake in ID of prey (e.g. *kills wrong passerby, but was intending to kill the person he was shooting at*). This type of mistake of fact doesn't work anywhere.

7-h-2-d-2: Mistake of Fact as a defense :

If the defendant proves that, because of a mistake of fact, he/she **didn't possess** the mens-rea, **then he/she will not be** guilty.

This is an affirmative defense in that it allocates **the burden of production** (not proof) to the defendant.

7-h-2-e:- Mistake of Law:-

Mistake of law generally does not relieve an actor of liability **for the commission of** a criminal offense (Certainty of law).

Sometimes, courts ruled that will not found guilty , **if the mistake of law** negates intent. **Almost always, the accused's** mistake or ignorance of law **will relate to a law other than** the offense for which he is being charged (i.e., I was mistaken about another law).

7-h-2-e-1:-Mistake of Non-Governing:-

In the case of mistake of Non-Governing Law , the court may dismiss the charge , **on the ground** that the prosecution **had not proven** that the defendant did so intentionally.

7-h-2-e-2:Mistake of Governing Law:-

We had to distinguish between two different situations:

(1) **That in which the defendant lacks the mental state** required for commission of the crime , **and thus has** **a valid defense;** and

(2)**That in which the defendant still had** whatever mental state, **is required for** commission of the crime, **and only claims** that he/she is **unaware that such conduct was proscribed by** criminal law, which isn't usually **recognized as a defense.**

The defendant can't avoid prosecution by simply claiming that he hasn't brushed up on the law.

Ignorance of the law ordinarily **does not give immunity** from punishment for a crime.

There is no way for upholding affirmative defense upon **Ignorance of the law “governing law”** for **ignorance the definition of the offense committed.**

But , the defendant may be acquitted for ignorance that conditions specified in the definition were present; but may not be acquitted merely because he/she didn't know that such conditions constituted defining elements of a proscribed offense.

7-h-2-e-3:"Ignorance or Mistake":-

Ignorance or mistake as to the penal law is not defense.

-Ignorance or mistake as to a matter of fact or law , is a considered a defense if it negatives a mental state required to establish a material element of the crime.

-But if the defendant would be guilty of another crime had the situation been as he believed, then he may be convicted of the offense of which he would be guilty had the situation been as he believed.

-Absence of words in a statute requiring a certain mental state does not warrant the assumption that the legislature intended to impose strict liability.

Some varieties of ignorance & mistake should not be a defense, those which indicate that the defendant still indicated to do what constitutes a legal or moral wrong.

(A guilty mind should suffice for the imposition of penal sanctions) .

In considering the defense, we must distinguish between:

(1) Where the defendant lacks the mental state required for commission of the crime and thus has a valid defense, and

(2) That is which the defendant still had whatever mental stated is needed for commission of the crime & only claims that he/she was unaware that such conduct was proscribed by law, not a recognized defense.

(To allow an ignorance-of-the-criminal-law defense would allow it to be a shield for the guilty, because it's hard to refute & would require far-reaching inquiries.

7-h-3:Recklessly:-

Where the defendant knew there was a risk & took it anyway.

Recklessly is a lower level of culpability than knowingly, and reckless intent crimes **are not as common** as offenses criminalizing purposeful, knowing conduct.

The *degree of risk awareness* is key to distinguishing a reckless intent crime from a knowing intent crime.

A defendant acts recklessly if he or she consciously **disregards** a substantial and unjustifiable risk that the bad result or harm will occur.

This is different from a knowing intent crime , **where the defendant must be “practically certain”** of the bad results.

The reckless intent test is two pronged.

First, the defendant must **consciously disregard a substantial risk of harm**.

The standard is subjective; the *defendant* must know of the substantial risk.

Second, the defendant **must take an unjustifiable risk**, meaning that no valid reason exists for the risk.

The standard for this prong is objective; if a *reasonable person* would not take the risk, then the defendant’s action in taking it is **reckless**.

The risk must be of such a nature and degree that its disregard involves a gross deviation from the standard of conduct that **a law-abiding person** would observe in the actor’s situation” .

Recklessness means, **consciously disregards** a substantial or unjustifiable risk of which he is aware; **that the material element exists or will result from** his conduct.

Unlike negligence, requires actor to be subjective aware of unjustifiable risk.

-Example of Recklessly:-

Review the "Example of Knowingly", where **Fahmy** shoots into a crowd of subway travelers and kills **Monica**.

Change the example, and imagine that the subway train has only three passengers. **Fahmy** easily shoots in between them, **yet** the bullet ricochets off one of the seats and strikes **Monica**,

killing her. **Fahmy** would be acting with **reckless** rather than **knowing** intent in this situation. **Fahmy's** knowledge and awareness of the *risk* of injury or death when shooting a gun inside a subway car containing three passengers is probably *substantial*.

A reasonable, law-abiding person would **probably not** take this action under **these circumstances**.

Thus Fahmy might be charged with a lower-level form of criminal homicide like **manslaughter** in this case .

7-h-3-a :Recklessness in Egyptian penal law:-

Although reckless conduct is not expressly defined **as such in** the Penal Code, **it gives rise to** criminal liability in various contexts.

Under article 244, personal injury resulting from an error **that is caused by** an offender's "*gross breach of duties*" carries a penalty of up to two years in jail and a £E 300 fine.

The same provision lists two other types of wrongdoing that give rise to liability if personal injury results:

(a) using liquor or narcotics and

(b) refraining from assisting a crime victim or other person in need when asked and able to assist.⁽¹⁾

That behavior is thus implicitly defined as criminally reckless per se.

(1) SCC Case No. 20, Judicial Year 15 (1 Oct. 1994).

Moreover, the Court of Cassation has defined criminal causation to include foreseeable consequences of actions taken with disregard for potential harm to others and has thus endorsed criminal liability for recklessness generally.

7-h-4:Negligently:-

In Negligence defendant should be aware that conduct creates substantial and unjustifiable risk, : “**a gross deviation from the standard of care that a reasonable person** would observe in the actor’s situation”

Defendant should have been aware (*as a reasonable person would have*), **doesn't need to prove mens-rea.**

“actor’s situation”: allow courts to inject more subjectivity into deciding what standard should be used.

for example : D drives car at high speed is negligent , **but if** in order to save a person’s life, then risk may be justifiable

Negligent intent crimes are less culpable than reckless intent crimes and are also less common.

The difference between reckless and negligent intent is the defendant’s *lack of awareness.*

While defendants committing negligent intent crimes are also faced with a **substantial** and **unjustifiable** risk, they are *unaware* of it, **even though** a reasonable person would be.

Thus the first prong of the reckless intent test is simply **changed from** a subjective to objective standard.

The person acts negligently, when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct.

- Example of Negligently:-

Review the Example of Knowingly", where **Fahmy** shoots into a crowd of subway travelers and kills **Monica.**

Change the example, and imagine that the subway train has no passengers.

Fahmy brags to **Tagred** that he can shoot a crumpled napkin on the floor. **Tagred** challenges him to try it.

Fahmy shoots at the napkin and misses, and the bullet ricochets three times off three different seats, travels backward, and strikes **Tagred** in the forehead, killing her instantly.

In this case, Fahmy may be *unaware* of the bullet’s potential to ricochet several times and actually **travel backward.**

However, the prosecution can determine that a “reasonable person” would be aware that shooting a gun inside a small subway train could result in injury or death.

This would be a finding that **Fahmy** acted **negligently**, under the circumstances, and then **Fahmy** could be found guilty of criminal homicide in this case.

7-h-4-a :Negligence in Egyptian penal law:-

Like reckless conduct, negligent conduct is not expressly defined in the Penal Code but can give rise to criminal liability.

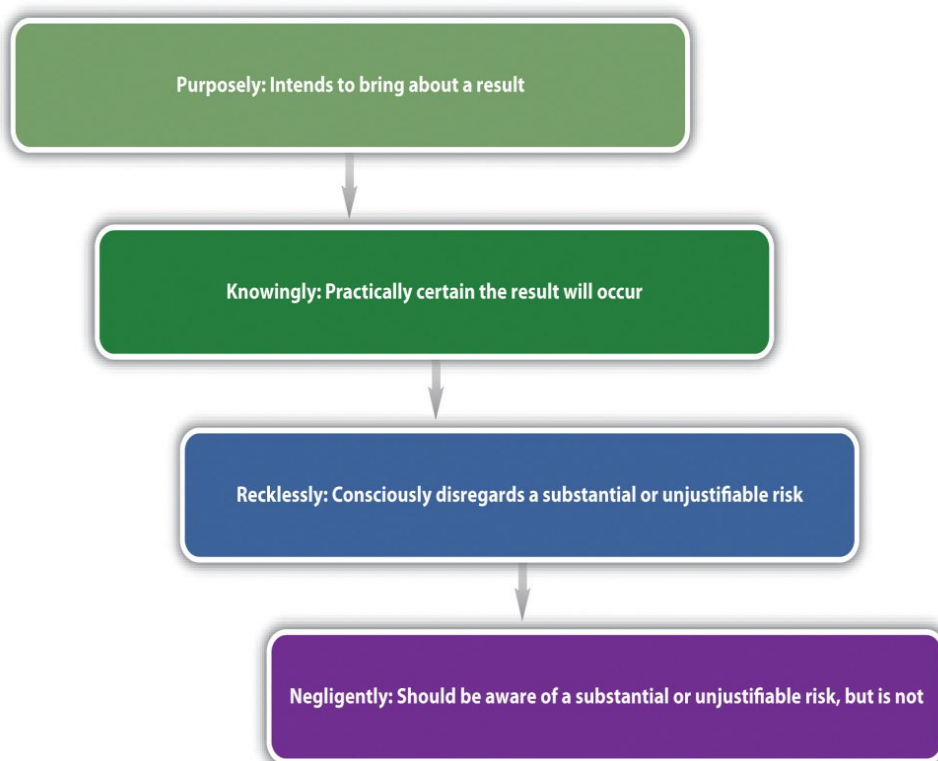
The Code provision that criminalizes reckless personal injury also criminalizes personal injury that is caused by an offender’s “*neglect, imprudence, carelessness, or non-observance of the law,*” and deems it punishable by the lesser penalty of up to one year in jail and a £E 200 fine.

Many other crimes in the Code sound in negligence, with liability triggered by “*neglect,*” “*carelessness,*” or “*error*” in a variety of circumstances:

for example, mismanaging public funds or property (*Arts. 116(bis-A)–116(bis-B)*), permitting an arrestee to escape (*Art. 139*), caring for a mentally infirm person who is in one’s custody (*Arts. 377/3, 378/8*), and repairing or maintaining chimneys and other places where fire is used (*Art. 378/2*).

A series of Code provisions also define the crime of “criminally negligent bankruptcy” (*Arts. 330–333*), which carries a penalty of detention for up to two years (*Art. 334*).

Figure :Criminal Intent Ranked from Most Serious to Least Serious



7-I :Elements and Criminal Intent:-

Occasionally, *different* criminal intents support the various elements of an offense.

If a crime requires more than one criminal intent, **each criminal intent must be** proven beyond a reasonable doubt for each element.

Under the common law, every offense has just *one* criminal intent.

In some statutes , every offense has one criminal intent *unless* a statute specifies otherwise.

When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, **without** distinguishing among the material elements thereof, **such provision shall** apply to all of the material elements of the offense, unless a contrary purpose plainly appears.

- Example of a crimes that requires more than one criminal intent:-

A statute defines burglary as “breaking and entering into a residence at nighttime , **with** the intent to commit a felony once inside.”

In this statute, the elements are the following:

- (1) Breaking, and**
- (2) Entering,**
- (3) Into a residence,**
- (4) At nighttime.** Breaking and entering are two **criminal act** elements.

They must be committed with the *specific intent*, or *purposely*, to commit a felony once inside the residence.

The elements of residence and nighttime are two **attendant circumstances**, which most likely have the lower level of *general intent* or *knowingly*.

Thus this statute has four separate criminal intents that the prosecution must prove beyond a reasonable doubt for conviction.

7-j :Malice Aforethought:-

Malice aforethought is a special common-law intent designated for only one crime: *murder*.

The definition of malice aforethought is :“intent to kill.”

Society considers intent to kill the most evil of all intents, so malice aforethought crimes such as **first-** and **second-**degree murder generally mandate the most severe of punishments, **including** the death penalty in jurisdictions that allow for it.

Nolo’s Plain-English Law Dictionary defined Malice Aforethought as , the state of mind necessary to prove first-degree murder.

The prosecution must prove that the defendant intended to cause death .

Any intentional killing that does not involve justification, excuse, **or** mitigation is a killing with malice aforethought.

When a crime is committed with “malice aforethought,” this means that the perpetrator held malice for the victim.

Put another way, malice aforethought can be defined as a crime being *planned in advance*, with the intention to kill or grievously harm another individual.

Originally, proof of malice aforethought was a requirement in certain jurisdictions , in order to convict someone of first-degree murder.

What is Malice then:-

The term “malice” refers to a person’s intent to injure or kill another person. Malice can either be “expressed” or “implied.”

Malice is expressed when someone deliberately intends to take someone else’s life.

Malice is implied when a person is killed, yet no proof exists that the killer was provoked.

Implied malice may also exist when a crime is committed by someone who is said to have a “depraved” or “malignant” heart.

In several types of cases, the element of malice must be proven in order to convict a defendant.

For instance, malice is often an element in crimes involving arson , this is because arson is a deliberate crime, in that the perpetrator intends to start a fire.

Malice becomes an important element to prove , if the fire causes the death or injury of someone else.

In civil cases, significant damages , can be awarded if the element of malice is successfully shown.

7-k :Intent to Kill:-

“Intent to kill” is another way of saying malice aforethought, or mens-rea.

Mens-rea is a Latin term that refers to a defendant’s intention to commit a crime, as opposed to the actual crime itself.

Mens-rea is concerned only with the defendant's mindset, not with his ultimate actions.

An intent to kill does not need to be specifically expressed by the killer , **It can be inferred based on** the killer's actions. *For example, malice aforethought can exist* if someone **shoots another person** with a gun.

However, just because someone shoots another person, that does not mean that he necessarily had an intent to kill.

Perhaps he was just trying to defend himself, or to stop the person he shot from harming someone else, and he accidentally killed that person in the process.

It is up to the court to decide , whether **there is enough evidence to support** the theory that a defendant **had an intent to kill.**

Proof of intent to kill may lie in the *type of bullets* the killer used, or even the accessories that can *attach to a gun*, such as *a silencer.*

7-1 :Depraved-Heart Murder :-

A depraved-heart murder is a killing that occurs as the result of the killer showing an extreme disregard for human life.

For instance, someone can be charged with a depraved-heart murder if he, in a fit of rage, shot at the ceiling of his apartment, **killing someone** on the floor above him.

While he didn't intend to kill anyone, he acted with such disregard for human life that he **can be convicted of a depraved-heart murder.**

The depraved-heart murder concept is often seen being argued in cases , involving driving while intoxicated ("DWF"), or driving under the influence ("DUI").

The argument is that the driver was too intoxicated to form an intention to kill anyone, so an intent to kill therefore does not exist.

7-m :Specific Intent Crimes:

Under the common law there is a distinction between specific and general intent crimes.

The basic difference between the two is that *specific intent* crimes require the individual who commits the crime *to have a certain intent or purpose when the crime was committed*, where as general intent crimes don't .

Some jurisdictions have done away with this distinction.

Specific intent is the intent with the highest level of culpability for crimes other than murder.

Unfortunately, criminal statutes rarely describe their intent element as “*specific*” or “*general*” and a judge **may be required to define** the level of intent using the common law **or a dictionary to explain** a word’s ordinary meaning.

Typically, specific intent means that the defendant acts with a more **sophisticated level of awareness.**

Natural and probable consequences inference: intends consequences of voluntary acts.

7-n: What's a Specific Intent Crime?

If you are accused of a specific intent crime, the prosecution must prove that when you committed the crime you had the requisite intent or purpose.

This intent will be listed in the statute that defines the crime.

If you didn't act with this intent or purpose, then you cannot be convicted of the crime.

The best example of a specific intent crime is theft, most every theft statute requires that when you take something that you take it with the intent to deprive the owner permanently.

For example, auto theft requires that you intent to deprive the owner of the car permanently.

If you don't have this intent, then you cannot be convicted of theft. **Specific intent crimes** typically require that the defendant intentionally commit an act **and** intend to cause a particular result when committing that act.

In that regard, merely knowing **that a result is** likely isn't the same as specifically intending to bring it about.

- **For example Burglary: breaking and entering** w/intent to commit felony; **Actus-reus is** breaking and entering;

Mens-rea is not part of actus-reus; **crime of burglary** doesn't dep Burglary: breaking and entering w/intent to commit felony; actus reus is breaking and entering;

Mens rea is not part of actus-reus; **crime of burglary doesn't depend on** whether there was felony, **but** crime is incomplete **unless** there was intent to commit felony.

- **End on whether there was** felony, **but crime is** incomplete **unless** there was intent to commit felony.

- **Also Larceny: taking and carrying away** of property of another , **with intent to** deprive owner: **no crime unless** actus-reus is committed **with mens-rea** to deprive owner.

- **Also Receiving stolen property** with knowledge it is stolen: **actor must be aware of** (Burglary: breaking and entering w/intent to commit felony; **actus-reus** is breaking and entering; **mens-rea is not** part of actus-reus; **crime of burglary doesn't depend on** whether there was felony, **but crime is incomplete unless** there was intent to commit felony.

- **End on whether there was** felony, **but crime is incomplete unless there** was intent to commit felon have knowledge) **of the attendant circumstance that it was stolen.**

Crimes that require specific intent usually fall into one of three categories: -

- **Either** the defendant **intends to cause a certain bad result,**

- **The defendant intends to do something more than commit the criminal act,** or ,

- **The defendant acts with knowledge that his or her conduct is illegal,** which is called **scienter.**

Deadly-weapon rule: infer intent if defendant directs deadly weapon against vital part of human body.

-Example of Specific Intent to Bring about a Bad Result:-

A statute defines mayhem as “physical contact with another, inflicted with the intent to maim, disfigure, or scar.”

This statute describes a specific intent crime. To be guilty of mayhem under the statute, the defendant must inflict the physical contact with the intent of causing the *bad result* of maiming, disfigurement, or scarring.

If the prosecution cannot prove this high-level intent, the defendant may be acquitted (or *charged and convicted of a lower-level intent crime like battery*).

So if Ibtsam says, “It’s time to permanently mess up that pretty face,” and thereafter takes out a razor and slices Galal’s cheek with it, Ibtsam might be found guilty of mayhem.

On the other hand, if Ibtsam slaps Galal while he is shaving without making the comment, and the razor bites into his cheek, it is more challenging to prove that she *intended a scarring*, and Ibtsam might be found guilty only of battery.

-Example of Specific Intent to do more than the criminal Act:-

A statute defines theft as “a permanent taking of property belonging to another.”

This statute describes a specific intent crime. To be guilty of theft under the statute, the defendant must intend to do more than “*take the property of another*,” which is the criminal act. The defendant must also *intend to keep* the stolen money and the intent to deprive the victim from **his stolen personal properties .**

The defendant must also has the intent to do an unlawful property permanently.

So if Hassan borrows Galal’s book, Galal has “taken the property of another,” but he has not committed theft for the simple reason that she intends to return the property after use .

- Example of Scienter:-

Although the terms **mens-rea** and **scienter** are sometimes used interchangeably, **many jurisdictions define scienter as** knowledge that an act is *illegal*.

Scienter can be the basis of **specific intent** in some statutes. **So a statute that makes it** a crime to “*willfully file a false tax return*” may require knowledge that the tax return includes false information *and* that it will be *unlawful* to file it.

If the prosecution fails to prove beyond a reasonable doubt that the defendant knew his or her conduct was *illegal*, **this could nullify** scienter, and the prosecution cannot prove specific intent

7-0 : Transferred Intent:-

Occasionally, the defendant’s criminal intent is *not directed toward the victim*. **Depending on** the jurisdiction, this may result in a *transfer of the defendant’s intent from* the intended victim **to the** eventual victim, *for the purpose of fairness*. **Although** this is a legal fiction, it can be necessary to reach a just result.

Transferred intent is only relevant in crimes that require a bad result or victim.

In a case where intent is transferred, **the defendant could** receive more than one criminal charge, **such as** a charge for “**attempting**” to commit a crime against the intended victim.

For Example : Transferred intent specifically, an intents to shoot **B**, but kills **C** instead; guilty of intentional murder; **only difference is** the identity of the victim.

A person “purposely” or “knowingly” causes a result , **if the result differs only** “in the respect that a **different person** or...**property is injured or affected.**”

- Example of transferred intent:-

Badr and his brother **Ramy** get into an argument at a crowded bar. **Badr** balls up his fist and swings, aiming for **Ramy's** face. **Ramy** ducks and **Badr** punches **Amany** in the face instead. **Badr** did not intend to batter **Amany**.

However, it is unjust to allow this protective action of **Ramy's** to excuse **Badr's** conduct.

Thus Badr's intent to hit **Ramy** transfers in some jurisdictions over to **Amany** . **Badr can also be charged with** attempted battery, which is assault, of **Ramy**, resulting in **two crimes** rather than one under the **transferred intent** doctrine.

7-p :Concurrence of Act and Intent:-

Another element of most criminal offenses is the requirement that the criminal act and criminal intent exist at the same moment. **This element is called concurrence.**

Concurrence is rarely an issue in a criminal prosecution **because** the criminal intent usually generates the bodily response (criminal act).

However, in some rare instances, the criminal act and intent are separated by time, **in which case** concurrence is lacking and the defendant cannot be convicted of a crime.

- Example of a Situation Lacking Concurrence:-

Sheren decides she wants to kill her husband using a handgun. **As Sheren** is driving to the local gun shop to purchase the handgun, **her husband is** distracted and steps in front of her car. **Sheren** slams on the brakes as a reflex, **but unfortunately** she is unable to avoid striking and killing her husband.

Sheren cannot be prosecuted for criminal homicide in this case. **Although Sheren** had formulated the intent to kill, **the intent to kill** did not exist at the moment she committed the criminal act of hitting her husband with her vehicle.

In fact, Sheren was trying to *avoid* hitting her husband at the moment he was killed. **Thus this case** lacks **concurrence** of act and intent, and **Sheren** is not guilty of criminal homicide.

7-Q: The required intent element in the environmental crimes:-

There are two types or forms of the intent element " Mens-rea" in the environmental crimes:

The legislator may require for some environmental crimes to commit intentionally, but some of these offenses can be committed recklessly or negligently .

It also raises questions about the rules which regulate its criminal responsibility , and the possibility of creation the responsibility in the case of committing the prohibited conducts by the others.

The critical problems regarding to the intent element in the environmental crimes is that :

One of the most important constitutional principals "Principal of legality", " no crime and no penalty without law". Also , in the case of absence of intent element the criminal charge could not be held .

The required intent element in the environmental crimes , in its forms "purposely, knowingly, recklessly, negligently ", raises some critical problems .

These critical problems are :

- In on the one hand, some provisions which criminalized certain conducts in the Egyptian environmental law , did not determined the type of the required intent element .

- On the other hand, there are many challenges concerned with proving or inference such element , because acts of pollution may be committed in many forms away of the perpetrator, and it may be difficult to ascertain whether or not the perpetrator intended to pollute the environment, and the indictment authority may be unable to prove such intention.

In addition, the indictment authority may not be able to rely on the assumption that the accused already has knowingly category of intent "known and will " and directed his/her will to commit the prohibited conduct that cause bad result to the environment, because it already contradicts with the Constitutional principals , particularly "principal of legality" , which require the existence and proving either and Act or intent element .

7-Q-1: Elements of criminal intent in Environmental offenses:

Criminal intent exists if the offender were aware of his/her prohibited conduct and the certain required conditions and the required attendant circumstances and the crime's elements, and that his will is directed for committing prohibited conduct and causing the bad result – if it were required - .

Knowledge that must be required in the criminal intent must include within its scope the elements of the crime. As for what departs from these elements , it must not be included in such regard .

Regarding to "knowledge of the law", in general it is assumed, so the offender could not rely his/her defense on the ground that he/she were not aware of such criminalization, but he/she could rely his/her defense on the ground that he/she has a mistake of facts , if such mistake acutely affects on his/her knowledge , if there are reasonable causes for such mistake .

-Knowledge of the subject matter of the right being protected:

The offender's knowledge must include within its scope the right protected by the law , so he/she must know that his/her conduct - either commission or omission- shall cause the environmental pollution.

For example , in transporting or handling a dangerous substance, the offender must know that what he/she is handling or transporting is a prohibited dangerous substance , that cause prohibited harm to the environment.

Also , in the case of killing a wild animal or bird , in one of the places specified by the law , the offender must know the nature of the animal or bird on which his/her act had been committed , and that it was a wild animal or bird , and it is prohibited to kill , hinted , traded, or possessed, and that he/she were know that his act shall -factually & legally- cause the certain bad result , that stipulated and criminalized by law .

The offender must also be aware that the place where he/she commit his/her prohibited conduct is a natural reserve or one of the places where hunting is prohibited , due to the presence of endangered animals, which were determined by a decision of the Minister of Agriculture or the competent governor.

Also , the offender must know that his conduct would increase the radiation level beyond the permissible limits , so, if he/she were believe -based upon reasonable grounds - , that this rate is within the limits of the prescribed rate, then this mistake shall consider a mistake of facts , that shall negates the criminal intent, but ouns of proof in such regard shall falls on the offender him /herself.

Also , in the case of usage machines, engines, or vehicles that produce exhaust which exceeds the prescribed limits, the offender must know the nature of machines, engines, or vehicles , which he/she already use, and must also know that these machines or vehicles produce exhaust that exceeds the prescribed limits.

The knowledge must also include the career or position of the offender that required by law for charge ,such condition is required in certain cases stipulated by the legislator in certain articles of the Environment Law .

For example, the obligation of the manager of the public facility to take the sufficient measures to prevent smoking in closed public areas , as well as the obligation of the owner of the facility to take the necessary precautions to prevent the leakage or emission of air pollutants.

7-Q-2: Ignorance and mistakes and its consequences on environmental crimes:

As we mentioned before , ignorance of the law is not acceptable.

As for ignorance or error in a non-punitive rule or article , it - in general - leads to the denial of criminal intent , if it is focused on a fundamental fact which the perpetrator should know.

But if such mistake were in an incident or fact outside the structure of the crime's elements , the required conditions or the attendant circumstances , in such case such mistake shall not be considered and also shall not affect on the availability of the criminal intent.

A part of the jurisprudence believes that laws that involve with new or modern crimes and have not yet settled in the public conscience - including environmental crimes – , the mistake of law related to it must take into consideration and accepted as a defense of ignorance or mistake of law , as a reason of precludes its responsibility.

Upon to this opinion there is a possibility for relying the defense on the ground of ignorance or mistake of the environmental law as a nonpunitive law, So the ignorance or mistake of any provision of the environmental law, is consider an ignorance or mistake of a nonpunitive law, so such ignorance or mistake is a compound between fact and a nonpunitive law, which leads to the absence of the criminal intent.

However, the applies of such rule requires that the accused must provide evidence that he/she were conducted a sufficiently investigation , and that he/she were reasonably believes that he/she were carrying out a legitimate work, and that his belief were based upon a reasonable grounds.

We believe that the pervious opinion is not correct, because it confused between the firmness or deep-rootedness of belief of the importance of the criminalization of the environmental crimes in the public conscience, and the absence of the criminal intent in the case of a mistake of law, while both of them is totally different , and there is no link or relationship between them.

The distinction between natural crimes and artificial crimes "crimes by law" , no longer receives support or acceptable in the punitive jurisprudence, although it still has some importance in criminology and penology , but the Egyptian legislator did not take into consideration such distinction , its effects or its consequences.

In addition, there is no reasonable criteria could be used for conducting such distinction .

On the other hand, it is not acceptable to say that the environmental crimes is not deep-rootedness in the public conscience , because many of the environmental crimes causes damage and direct spoilage to the environment and its various elements, that is rejected by the public opinion.

Human nature could not accept the pollution of water, air, or soil in any way , which caused harm either to human health or integrity , this idea is included in the idea of "corruption of the universe" in its broadest sense, that is the original idea which extends to the roots of the human nature and seems to be pervasive and entrenched in it.

Therefore, in our point of view, it is not correct to say that environmental crimes are artificial crimes , and not yet settled in people's conscience.

On the other hand, there is no point for creating a legal link between the previous idea **and** the idea that the a mistake or ignorance of the environmental law **is consider** ignorance or a mistake in a non-punitive law, **and then leads to the** denial of the criminal intent, **because** a part of the environmental law **is consider in** general a punitive law.

In such regard , we had to determine the nature of each article or provision of law **if it consider** punitive or not , **and not describing the** entire law punitive or not .

Because it is permissible for a non-punitive law **to include** punitive articles, **for instances** in the Civil and Commercial Procedure Law, **and it is also permissible for the** Penal Code **to include** non-punitive articles, **such as** texts that related to certain procedures.

Such principles also applied in the environment law , **as such law contains** punitive articles side by side with non-punitive articles .

It doesn't matter , if the environment law **includes** provisions regulates the administrative organization, specializations of some agencies, **and the** duties of some persons and entities.

Therefore, it is not acceptable to say that the entire environmental law consider a non-punitive law, **and then the** mistake or ignorance **of its** provisions **consider** mistake or ignorance in non-punitive law, **that negates** the criminal intent.

Otherwise such point of view shall leads to violations of the public interests which protected in the Environmental Law, **in addition it would lead to** impunity for the perpetrators **based upon their** ignorance of the provisions of the Environmental Law.

In addition, there are certain criteria and conditions for affirmative **refuting or defense of** ignorance or mistake of a non-punitive provision or law , **one of its conditions is** proving that the defendant conducts accurate and sufficient investigations , **and also proving that there are** reasonable reasons **for his/her** ignorance or mistake.

7-Q-3: Specific intent in environmental crimes :

The common principle is the motives have no effect in general **for existence** of the criminal intent , **also not consider a part of either act or intent element . The motive, is the goal** sought by the perpetrator .

In certain cases, the legislator may consider the motive a part of the criminal intent , **in such cases** the motive is called "specific intent" , **which must distinguish from the motive that not consider** a part of crime's elements .

If the legislator requires the existence or availability of a specific intent in the crime, **in such case** the non-fulfillment of the such specific intent , **shall results the absence of the crime's elements also the charge , unless the legislator stipulated such conduct under another** criminal description.

Environmental crimes in general **did not require** a specific intent, **only require the general intent , which consists of** knowledge and will.

However, in certain cases the legislator **required that the offender must intend to** achieve a specific goal **by his/her** conduct .

For example, Art. 31 of Egyptian environmental law which stipulated that, it is forbidden to construct any establishment for the treatment of hazardous waste without a license issued by the competent administrative authority after consulting the EEAA. Disposal of hazardous waste shall be in accordance with the conditions and criteria set forth in the executive regulations of this Law.

The Minister of Housing shall - after consulting with the Ministries of Health and Industry and the EEAA-, designate the disposal sites and determine the conditions of the license to dispose of hazardous waste.

Such article require specific intent, is that the purpose of construction **of the establishment is the** treating hazardous waste.

Note that , the specific intent locates in the perpetrator's deep mind , **therefore** its proving **may be surrounded by** some difficulties, **but it could be inference from** the evidence accompanying the act element , **such as** seizing tools used in the treatment of these wastes in the facility, **or** seizing some of these dangerous materials in the establishment **before** obtaining the license.

7-Q-4: Limited and unlimited intent element in Environmental crimes :

In the limited intent the offender's will directed **for** achieving one or more specific criminal result , **under** a specific manner **and** conditions **determined by law**.

While in the unlimited intent, offender's will **tends to** achieve the result **without** determining or specifying its subject, **in another meaning** whatever were its subject .

The distinction between limited and unlimited intent , does not have any legal importance **or** consequences , **because it is sufficient regarding to the legislator , if the offender were already expected** the prohibited bad result **and** he/she already **directed** his/her will **to achieve it or not**.

As for the prohibited bad result and the direction of the offender's will **to achieve** such result **is not consider** a part of the criminal intent.

In most environmental crimes, **the legislator suffices to** require the unlimited intent, **in which the** offender's will **is directed to** pollute the environment, **does not matter whether** this pollution has affected one person or more , **rather the intent shall be considered** even in the case of not proven that the offender **has directed his will** to cause harm for anyone, **as long as he /she were able to** foreseen or expect such result.

Therefore, the intent **shall be considered if the offender** puts a polluted substance in the drinking water **leads to** the death of one person or more - as a result of such act - , **because** the offender in such case **were able to** expect such result .

Also, in killing or hunting wild birds or animals, it does not matter in the case of establishing a trap by the offender, if the he/she intent were to hunt a specific animal or bird or one or more animal or bird, as a purpose of his/her conduct.

7-Q-5: Direct intent & probabilistic intent in environmental crimes:

Criminal intent in such regard has two types:

Direct and probabilistic intent.

The direct intent assumes that the offender's will certainly directed to violate the protected interest by law.

The direct intent - in such regard - required the defendant's certain knowledge of the crime's elements particularly bad result, and the required knowledge of bad result required that knowledge that such bad result inevitably follows the prohibited conduct.

While the probabilistic intent, means that the offender only expects the bad result as a probable consequence of his/her conduct, and he/she accepts such expectation.

So, the probabilistic intent shall be considered in cases where the perpetrator was not sure that the result would be achieved or take place as an consequence his/her conduct, but he/she only were aware of its probability occurrence and accepts and desires such expectation.

Examples of probable intent include: the perpetrator's failure to equip the ship with means for preventing pollution, or failure to observe the permissible limits of the concentration for radioactive materials, if such conducts cause the death of any person or cause victim's permanent disability.

Then in the first case, the charge shall be violating or breaching the duty of equipping the ship with means of preventing pollution, as the defendant already expect that his/her conduct would cause the victim's death, but he/she did not care for such result. While in the second case, if the perpetrator conduct cause the exceeding of the permissible

amount of radiation, **which leads to** a permanent disability as a result of victim's exposure to such radiation , **in such case also the perpetrator already** expect that his/her conduct **would cause** such result , **but** he/she did not care for it.

A part of jurisprudence believes that , the probabilistic intent exists in handling hazardous materials without a license crime , **as the defendant** expects that his/her conduct **shall cause** environmental pollution, **or he/she could** expect, **but he/she did not** care for it.

In our point of view, such point of view is incorrect, **as such crime** does not require the necessity of existence any result, **as it is one of the** formally **not** materially crimes , **that does not require the** occurrence of bad result **as a consequence of the** prohibited conduct.

Thus, the pollution shall not consider one of the crime's elements , **so either the expectation of** its occurrence or absence **has no** legal value.

7-Q-61: The required conditions of the probabilistic intent in the environmental crimes:

As we mentioned above , the probabilistic intent build around the possibility of expectation of the bad result **as a possible effect or consequence of the** prohibited conduct , **and accepting** such expectation , **in another meaning , the offender engage in the criminal conduct** with a purpose to cause a certain specific bad result, **but such conduct** causes **another result** that **may be more dangerous than the first, while the offender could or should expect it.**

The idea of probabilistic intent assumes that the offender had a direct intent to cause bad result , **as he/she engage in the conduct** with a purpose to cause such bad result.

It means that the probabilistic intent **does not exist** independently **without being based upon** existence a direct intent **that must be** available at first, **so, verifying of the** availability of direct intent **is** obligatory.

So, in the case of absence of the direct intent , the probabilistic intent shall not be exist or available , and therefore there is no charge shall be held .

So , the Egyptian Court of Cassation ruled that, if the victim's injuries which cause his/her death occurred as a result of an increasing of the radioactivity level and the concentrations of radioactive materials in the air beyond the permissible limit, in such case in order to carrying the criminal responsibility and holding the charge , probabilistic intent at least must be existed and proved , which based upon the existence and proving of the direct criminal intent first , it means that it must prove that the defendant's intendent to increase radioactivity as a result of his/her willful act , by refraining from performing his/her legal duty that either imposed by the Environment Law or the Law of Regulating Radioactive Materials which issued by Decree Law No. 9 of 1960.

7-Q-7: The unintentional prohibited conducts in the environmental crimes:

The unintentional prohibited conducts represents the second form of the intent element in unintentional crimes.

The interest of unintentional crimes has increased after the scientific and technical progress , which led to the use of many devices, tools and means that require specific care in their use, because of its danger either of the lives, safety or human integrity.

- What is the unintentional prohibited conducts?

unintentional prohibited conducts is the breach of the offender's duty of vigilance and caution that imposed by the law, accompanied with the failure to expect bad result , and his/her failure to prevent its occurrence, while he/she were able and had a duty either for expecting and preventing its occurrence.

So, unintentional conduct – in such regard - is also exist , when the defendant expect the occurrence of bad result , but although his/her was not directed towards it and he/she was unwilling to do so, he/she relied on his/her skill or experience to prevent it , which were not sufficient to prevent the occurrence of such bad result .

So, the unintentional prohibited conducts has two elements:
The first: It is a violation of **the offender's legal duty of vigilance that imposes by law for human behavior .**

The second: **Failure to expecting bad result , and the failure to preventing its occurrence, while the defendant were able and had a duty either for expecting and preventing its occurrence , relying on insufficient precaution to prevent its occurrence.**

The first element presupposes taking action or precaution, which may be a commission or mere omission , despite the perpetrator's knowledge of its danger to the rights protected by law.

While the second element assumes a psychological relationship between the perpetrator and bad result, such relationship takes one of the following two forms:

The first form , the perpetrator does not expect the occurrence of the bad result, while in the second form, the perpetrator expects the occurrence of the bad result .

7-Q-8: The importance of distinguishing between intentional and unintentional conducts :

Such distinction carries two aspects:

The first aspect: **some crimes may not be punished by legislation, unless the criminal behavior is committed intentionally.**

The second aspect: **the penalty prescribed for the crime differs according to whether the crime were committed intentionally or unintentionally .**

There is no room for examining the availability of unintentional conduct unless proving the absence of the intentional intent .

The intentional intent requires effective , sufficient and complete control of the will over all crime's elements. **While in unintentional conduct partial control is sufficient . Among the examples of the non-intentional forms, the case when the defendant does not take the required precautions for handling the hazardous materials .**

8:The required Causation and Harm element in the environmental crimes:-

The difference between formally and materially defined crimes:-

Crimes may be divided into two groups according to their definitional elements, namely formally defined crimes and materially defined crimes.

In the case of formally defined crimes, the definitional elements proscribe a certain type of conduct (*commission or omission*) irrespective of what the result of the conduct is.

Examples of crimes falling under this category are *rape, perjury* and the *possession of drugs*.

Let us consider the example of rape: here the act consists simply in sexual penetration.

The result of this act (for example, *the question whether or not the woman became pregnant*) is, for the purposes of determining liability for the crime, irrelevant (*although it may be of importance in determining a fit and proper sentence*).

In the case of materially defined crimes, on the other hand, the definitional elements do not proscribe a specific conduct but an conduct which causes a specific condition.

Examples of this type of crime are murder, culpable homicide and arson.

Let us consider the example of murder , Here, the act consists in causing a certain condition, namely the death of another person.

In principle it does not matter whether the perpetrator stabbed the victim with a knife, shot him with a revolver or poisoned him.

The question is simply whether defendant's conduct caused victim's death, irrespective of what the particular conduct leading thereto was.

This category of crimes is sometimes concisely referred to as ``result crimes''.

Materially defined crimes are also known as ``*consequence crimes*''.

Note that in both formally and materially defined crimes, there must be an act.

In materially defined crimes, the act consists of for example, stabbing a knife into victim's chest (*which causes victim's death*), or firing a shot at him which causes his death.

So, causation and harm can also be elements of a criminal offense , if the offense requires a bad result.

In essence, if injury is required under the statute, or the case is in a jurisdiction that allows for common-law crimes, the defendant must *cause* the requisite *harm*.

Many incidents occur when the defendant technically initiates circumstances that result in harm, but it would be unjust to hold the defendant criminally responsible.

Thus causation should not be rigidly determined in every instance, and the trier of fact must perform an analysis that promotes fairness.

Causation in fact and legal causation are examined , as well as situations where the defendant may be insulated from criminal responsibility.

Causation of harm is a subjective conclusion that, absent justifying conditions, the defendant has wronged someone.

The causation of some harmful consequence , **is part of** the act element of many offenses, though not of all.

Conversely, the act element of many crimes , **consists only in** the causing of some result.

Thus the act element of most crimes of homicide , **is simply the causing of** a person's death.

Causation and harm can also be elements of a criminal offense if the offense requires a bad result.

8-a: The issue of causation:-

When dealing with materially defined crimes, **the question which always arises is** whether there is a **causal link** (or nexus) **between defendant's conduct** and the **prohibited result** (for example, victim 's death).

Please note the spelling of the word causal (as in ``*causal link*").

Many students regularly misspell it, by writing ``*casual link*" instead of ``*causal link*"! (The word ``*causal*" is derived from ``*cause*".)

In the vast majority of cases of materially defined crimes which come before the courts, **determining whether defendant's act was the cause of the prohibited condition** does not present any problems.

For example: If the Mohamed shoots Hala in the head with a revolver or stabs her in the heart with a knife, **and Hala dies** almost immediately, **and if nothing unusual** (*such as a flash of lightning*) **which might be shown to** have occasioned the death occurs, **nobody will doubt that Mohamed has caused Hala's death.**

However, the course of events might **sometimes take a strange turn**, in which case it might become difficult to decide whether **Mohamed's act was the cause of Hala's death.**

Consider, for example, the following sets of facts:

(1) Mohamed wishing to kill Hala , shoots at her, **but** misses. **In an attempt to escape Mohamed, Hala** runs into a building. **However, shortly before she** runs into the building, **Noha** , who has **nothing to do with Mohamed** , has **planted a bomb** inside the **building because she bears a grudge against** the owner of the building.

The bomb explodes, killing Hala . Is Mohamed's act the cause of Hala's death? (Shouldn't Noha's act rather be regarded as the cause?)

(2) Mohamed assaults Hala and breaks her arm. **Noha, who has** witnessed the assault, decides to help **Hala** by taking her to hospital for treatment.

She helps Hala get onto the back of her truck and drives off. **However, Noha drives** recklessly, and **Hala becomes so afraid** that **Noha may have an accident that she jumps** off the back of the moving truck.

In jumping off the truck, she bumps her head against a large stone, as a result of which she dies.

Who has caused Hala's death?, Noha or perhaps Hala through her own conduct?

(3) Following Mohamed's assault upon Hala , Hala dies after the ambulance transporting her to the hospital crashes into a tree, or after she is struck by lightning on the spot where she is lying after the assault, or because she is a manic-depressive person and the assault induces her to commit suicide.

In such circumstances can one still allege that Mohamed has caused Hala's death?

Four Strategies for Limiting Causation:

1. But-For Causation – “But for” which **the harmful result** would not have occurred.

2. Foreseeability – Requires a **connection between** the actor’s culpable mental state & the result.

Negligent action causes harm only if it leads to harm that is **reasonably foreseeable.**

3. Intervening Events – Does an intervening event “*break the chain*” of causality.

This may occur when the intervening event **was a necessary condition** for the harmful result, **and was not caused by** the defendant’s act.

4. Duties – Where **passive conduct** is a necessary condition for a result, it **must be combined with a duty to** act to constitute a cause.

Consider whether something is *necessary, sufficient & foreseeable* , don’t need all – only foreseeability is necessary.

Thin Skull Rule – You accept the victim as [s]he is.

You could not cite something as an intervening factor , **if what happened was** merely unlikely/worse **than you thought**.

(E.g. if victim refuses medical help – defendant shall still consider responsible for death).

-Common law rule: Causation ends a year & 1 day after the event.

-In order to determine causation common law courts **require** that causation **must be necessary** and/or **sufficient**; and **foreseeable**.*(Must have foreseeability & necessity & sufficiency)*

-Intervening Factor – When totally unforeseeable.

-The principles of causation "Basic principle":-

The basic principle relating to causation applied by the courts is the following:

In order to find that there is a **causal link** between **defendant's act** and the **prohibited condition** (*hereafter referred to as victim's death*) (*that is, in order to find that defendant's act caused victim's death*) , **two requirements must** be met:

First, it must be **clear that defendant's act was the factual cause** of victim's death, and

Secondly, it must be clear that **defendant's act was the legal cause** of **victim's death**.

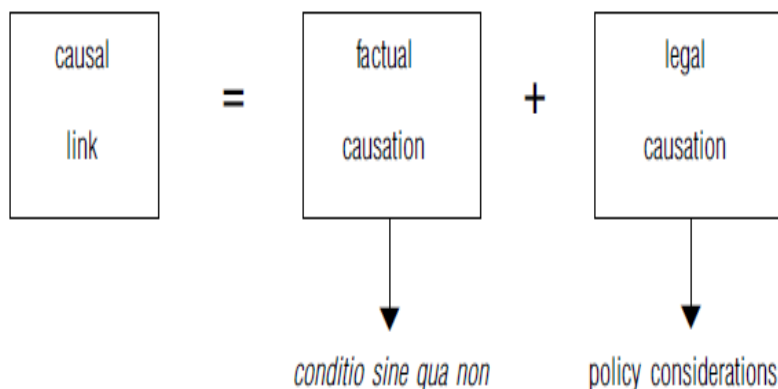
Defendant's act is the factual cause of victim's death , if it is a *conditio sine qua non* for victim's death, that is, if there is ``but-for causation'' or a ``but-for'' link between defendant's act and victim's death.

If this requirement has been met, one may speak of factual causation.

Defendant's act is the legal cause of victim's death if in terms of policy considerations it is reasonable and fair that defendant's act be deemed the cause of victim's death.

If this requirement has been met, one may speak of legal causation.

In brief, the basic formula may be expressed as follows:



8-a-1: Causation in Fact " *Conditio sine qua non* ":-

Every causation analysis is twofold:-

First, the defendant must be the **factual or but for cause** of the victim's harm. **The *but for* term comes from this phrase: "but for the defendant's act, the harm would not have occurred."**

Basically, the defendant is the factual or but for cause of the victim's harm , **if the defendant's act starts** the chain of events that leads to the eventual result.

Conditio sine qua non literally means ``*a condition or antecedent (conditio) without(sine) which (qua) not (non)*''; **in other words, an antecedent (act or occurrence) without which the prohibited situation would not have materialized.**

Defendant's act is the factual cause of victim's death if it is a conditio sine qua non for victim's death, (The word ``conditio'' is pronounced ``kon-dee-tee-ho'', not ``kon-dee-show'').

A convenient English equivalent of this concept is but-for causation (or more precisely, *but-for not causation*). For an act or event to be a but-for cause, one must be able to say that but for the occurrence of the act or event the prohibited condition would not have happened.

Another way of stating the same test (*ie the conditio sine qua non test*) is by asking what would have happened if defendant's act had not occurred. If it is clear that in such a case the result (*victim's death*) would not have materialized, then defendant's act is a factual cause of victim's death.

- Definition of conditio sine qua non theory:

An act is a conditio sine qua non for a situation if the act cannot be thought away without the situation disappearing at the same time.

Therefore, in applying this formula a court must, for a moment, assume that the act in question had not occurred (*``think away'' the act*) and then consider whether the result would nevertheless have occurred.

- Example of Factual Cause:-

Hany and Mariam get into an argument over their child custody agreement.

Hany gives Mariam a hard shove. Mariam staggers backward, is struck by lightning, and dies instantly.

In this example, Hany's act forced Mariam to move into the area where the lightning happened to strike.

However, it would be *unjust* to punish Hany for Mariam's .

The defendant starts the chain death in this case because Hany could not have imagined the eventual result.

Thus although Hany is the factual or but for cause of Mariam's death, he is probably not the legal cause.

8-a-2:Legal Causation:

It is the second part of the analysis that ensures fairness in the application of the causation element.

The defendant must also be the legal or proximate cause of the harm.

Proximate means “near” “suitable” or so the defendant’s conduct must be closely related to the harm it engenders.

The actual result cannot be too remote or accidental in its occurrence to have a [just] bearing on the actor’s liability.

The test for legal causation is objective foreseeability.

The prosecution must be convinced that when the defendant acted, a *reasonable person* could have *foreseen or predicted* that the end result would occur.

In the example of factual Cause", Hany is not the legal cause of Mariam’s death because a reasonable person could have neither *foreseen* nor predicted that a shove **would push Mariam into a spot **where lightning** was about to strike.**

The legal causation foreseeability requirement depending on whether the defendant acted purposely, knowingly, recklessly, or negligently.

If the defendant’s behavior is reckless or negligent, the legal causation foreseeability requirement is **analyzed based on the risk of harm, rather than the purpose of the defendant.**

In the legal literature certain specific tests to determine legal causation have evolved, such as those which determine the “*proximate cause*”, the “*adequate cause*”, or whether an event constituted a “*novus actus interveniens*”.

We shall presently consider these more specific criteria for legal causation.

At the outset, however, it should be emphasized that generally the courts are reluctant to choose one of these specific tests as a yardstick to be employed in all cases in which legal causation has to be determined, to the exclusion of all other specific tests.

Sometimes they rely on one, and sometimes on another of these tests, **according to** whether a particular test would, **in their opinion, result in** an equitable solution.

Sometimes they may even base a finding of legal causation on **considerations outside these** more specific tests.

Before elaborating further on this open-ended approach to legal causation by the courts, we first consider the different specific criteria which have been formulated to determine legal causation.

-Example of Legal Causation:-

Imagine that Hany and Mariam get into the same argument over their child custody agreement, **but this time** they are in their garage, which is crowded with furniture.

Hany gives **Mariam** a hard shove, even though she is standing directly in front of a large entertainment center filled with books and a heavy thirty-two-inch television set.

Mariam staggers backward into the entertainment center and it crashes down on top of her, killing her. In this situation, **Hany** is the factual cause of **Mariam's** death because he started the chain of events that led to her death with his push.

In addition, it is foreseeable that **Mariam** might suffer a serious injury or death when shoved directly into a large and heavy piece of furniture.

Thus in this example, **Hany** could be the factual *and* legal cause of **Mariam's** death.

It is up to the prosecution to make this determination based on an assessment of objective foreseeability and the attendant circumstances.

Another example of Legal Causation :-

Imagine that Henry and Mary get into the same argument over their child custody agreement, but this time they are in their garage, which is crowded with furniture.

Henry gives Mary a hard shove, even though she is standing directly in front of a large entertainment center filled with books and a heavy thirty-two-inch television set.

Mary staggers backward into the entertainment center **and it** crashes down on top of her, killing her.

In this situation, Henry is the factual cause of **Mary's** death because he started the chain of events that led to her death with his push.

In addition, it is *foreseeable* that **Mary might** suffer a serious injury or death when shoved directly into a large and heavy piece of furniture.

Thus in this example, Henry could be the factual *and* legal cause of **Mary's death**.

It's up to the fact to make this determination, **based on** an assessment of objective foreseeability **and the attendant** circumstances.

8-a-2-a: Theories of legal causation:-

The three most important specific tests or theories to **determine legal causation**, which we shall briefly discuss hereunder, are the following:

- **the individualization theory,**
- **the theory of adequate causation, and**
- **the Novus actus interveniens theory.**

8-a-2-a-1 : The individualization theories :-

Definition of the individualization theories:

According to the individualization theories (or tests), **one must, among all the conditions or factors which qualify as factual causes of the prohibited situation (*victim's death*), look for that one which is the most operative and regard it as the legal cause of the prohibited situation.**

The objection to this approach is **that two or more** conditions are often operative in equal measure, **for example** where **Ahmed** bribes **zainab** to commit a **murder** which **zainab** does

while wael stands guard in order to warn zainab should the police arrive.

In a situation such as this, where three different people have acted, one cannot regard the act of one as the only cause of death, to the exclusion of the acts of the other two.

Today the idea behind this test finds little support .

8-a-2-a-2 : The theory of adequate causation:-

Because of the vagueness and ineffectiveness of the individualization theory, many writers have refused to attempt to solve problems of legal causation by looking for the decisive, most effective or proximate condition.

Definition of the theory of adequate causation:

An act is a legal cause of a situation , if according to human experience, in the normal course of events, the act has the tendency to bring about that kind of situation.

It must be typical of such an act to bring about the result in question.

Instead they have preferred to base a causal relationship on generalizations which may be made by an ordinary person regarding the relationship between a certain type of event and a certain type of result, and on the contrast between the normal and the abnormal course of events.

This generalization theory (*a term we use to distinguish it from the individualization theory*) is known as the theory of adequate causation.

An act is a legal cause of a situation if, according to human experience, in the normal course of events, the act has the tendency to bring about that kind of situation.

It must be typical of such an act to bring about the result in question.

To simplify the matter further, one could aver that the act is the legal cause of the situation if it can be said that *“that comes of doing such a thing”*.

If this test can be met, it is said that the result stands in an ``adequate relationship'' to the act.

To simplify the matter further, one could aver that the act is the legal cause of the situation , if it can be said that ``that comes of doing such a thing''.

If this test can be met, it is said that the result stands in an ``adequate relationship'' to the act.⁽¹⁾

8-a-2-a-3 : Novus actus interveniens:-

This expression means `new intervening event'', and is used to indicate that between Ahmed's initial act and the ultimate death of Yasser , another event which has broken the chain of causation has taken place, preventing us from regarding Yasser's act as the cause of Yasser's death.

Examples:

Ahmed inflicts a non-lethal wound to **Yasser's** head. **Yasser** is taken to hospital by ambulance.

On the way to hospital, owing to the gross negligence of the ambulance driver, the ambulance is involved in an accident in which **Yasser** is killed (or, alternatively, **Yasser** is fatally struck by lightning right in front of the hospital entrance).

Ahmed administers a poison to **Yasser** which will slowly kill her.

Shortly afterwards Zidan , who also bears a grudge against **Yasser**, and who acts completely independently of **Ahmed**, shoots **Yasser**, killing her.

It is then Zidan 's act, and not that of Ahmed, which is the cause of Yasser 's death.

Some authorities regard legal causation as consisting in the absence of a novus actus interveniens.

Formulated more completely , according to this approach .

(1) **Sherif, Adel Omar**, "The Rule of Law in Egypt from a Judicial Perspective." In *The Rule of Law in the Middle East and the Islamic World: Human Rights and the Judicial Process*, edited by Eugene Cotran and Mai Yamani, 1–34. London: I. B. Tauris, 2000, p: 65.

Ahmed 's act is regarded in law as the cause of **Yasser's** death if it is a **factual cause** of the death , and **there is no novus actus interveniens** between **Ahmed's** act and **Yasser's** death.

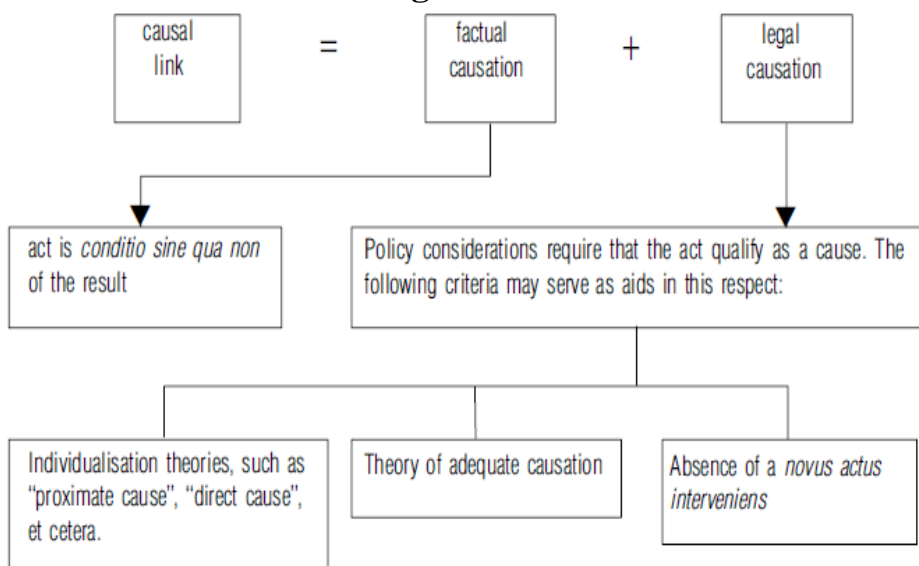
An act is a *novus actus interveniens* , if it constitutes an unexpected, **abnormal** or **unusual occurrence**; in other words, an occurrence which, according to general human experience, **deviates from** the normal course of events, or which cannot be regarded as a probable result of **Ahmed's** act.

A moment's reflection will serve as a reminder that, **viewed thus**, the *novus actus interveniens* test **differs very slightly** from (if it is not synonymous with) , the **test or theory of adequate causation**.

This similarity becomes even more apparent , if one considers the following **well-established rule**:

an act or an event can never **qualify** as a *novus actus* if **Ahmed** previously **knew** or **foresaw** that it **might occur**.

If **Ahmed** gives **Yasser**, who is manic-depressive, a gun, and **Yasser** **shoots and kills** himself with it, but **Ahmed** previously knew or foresaw that **Yasser** might **kill himself** with it, **Ahmed** will not be able **to rely on a defense** which alleges that **Yasser's** act of **shooting himself** was a *novus actus*.



8-a-2-a-4 : Our Own view :

Theory of adequate causation preferable , we submit that of the different specific theories of legal causation, **the theory of adequate causation is the best suited** to determine legal causation. We have already pointed out the criticism of the individualization theories.

Distinction should be drawn between consequences normally to be expected from the type of conduct in which the defendant has engaged and consequences which one would not normally expect to flow from such conduct.

8-a-3: Intervening Superseding Cause:

Another situation where the defendant is the factual but not the legal cause of the requisite harm , is **when something or** someone interrupts the chain of events started by the defendant.

This is called an intervening superseding cause .

Typically, an intervening superseding cause cuts the defendant off from criminal liability because it is much closer, **or proximate,** to the resulting harm.

If an intervening superseding cause is a different individual acting with criminal intent, the *intervening* individual is criminally responsible for the harm caused.

-Example of an Intervening Superseding Cause:-

Review the example with **Hany and Mariam "Example of Legal Causation"**.

Change the example so that **Hany** pulls out a knife and chases **Mariam** out of the garage.

Mariam escapes **Hany** and hides in an abandoned shed. **Half an hour later, Shady,** a homeless man living in the shed, returns from a day of panhandling.

When he discovers **Mariam** in the shed, he kills her and steals her money and jewelry.

In this case, Hany is still the **factual cause** of **Mariam's** death, because he chased her into the shed where she was eventually killed.

However, Shady is probably the **intervening superseding cause** of **Mariam's** death because he interrupted the chain of events started by **Hany**.

Thus Shady is subject to prosecution for **Mariam's** death, and **Hany** may be prosecuted only for assault with a deadly weapon. **The causation analysis could be** complicated by a victim's *survival* for an extended time period. **Because of** modern technology, **victims often stay** alive on machines for many years after they have been harmed.

However, it may be unreasonable to hold a defendant responsible , **for a death that occurs** several years after the defendant's criminal act. **A few statutes** have rules that solve this dilemma.

Some statutes have either a **one year and a day rule** or a **three years and a day rule**.

These rules create a timeline for the victim's death that changes the causation analysis **in a criminal homicide case**.

Under one or three years and a day rules, **the victim of a criminal homicide must die** within the specified time limits **for the defendant** to be criminally responsible.

If the victim does not die within the time limits, **the defendant** may be charged with *attempted murder*, rather than criminal homicide.

The Egyptian Penal Code does not mention causation, but the Court of Cassation has addressed the topic and has held that an offender is liable for crimes that fit in either of **the following two categories**:

(a)**foreseeable consequences of** an offender's intentional actions, which are also called consequences that are "morally linked" to the offender's actions; and

(b)**foreseeable consequences** of actions taken with disregard for potential harm to others (i.e., recklessness).

8-a-4: Causation by omission " Legal duties " :-

Calls for a generalized duty to prevent foreseeable harm.
“In a civilized society, **a man who finds himself** with a helplessly ill person who has no other source of aid **should be under** a duty to summon help.”

In general, where one person **has a duty to seek medical attention** for another’s illness or injury, **this duty is unaffected by the source** of the other person’s malady.

The creating risk should impose a duty to avert harm **only if the actor is** at fault for creating the risk.

8-b: Categories of Social harm:-

A- Result: Some crimes prohibit specified results.

For Example : Murder , death of human being

B- Conduct: Some crimes prohibit specific conduct, regardless of whether there was harm.

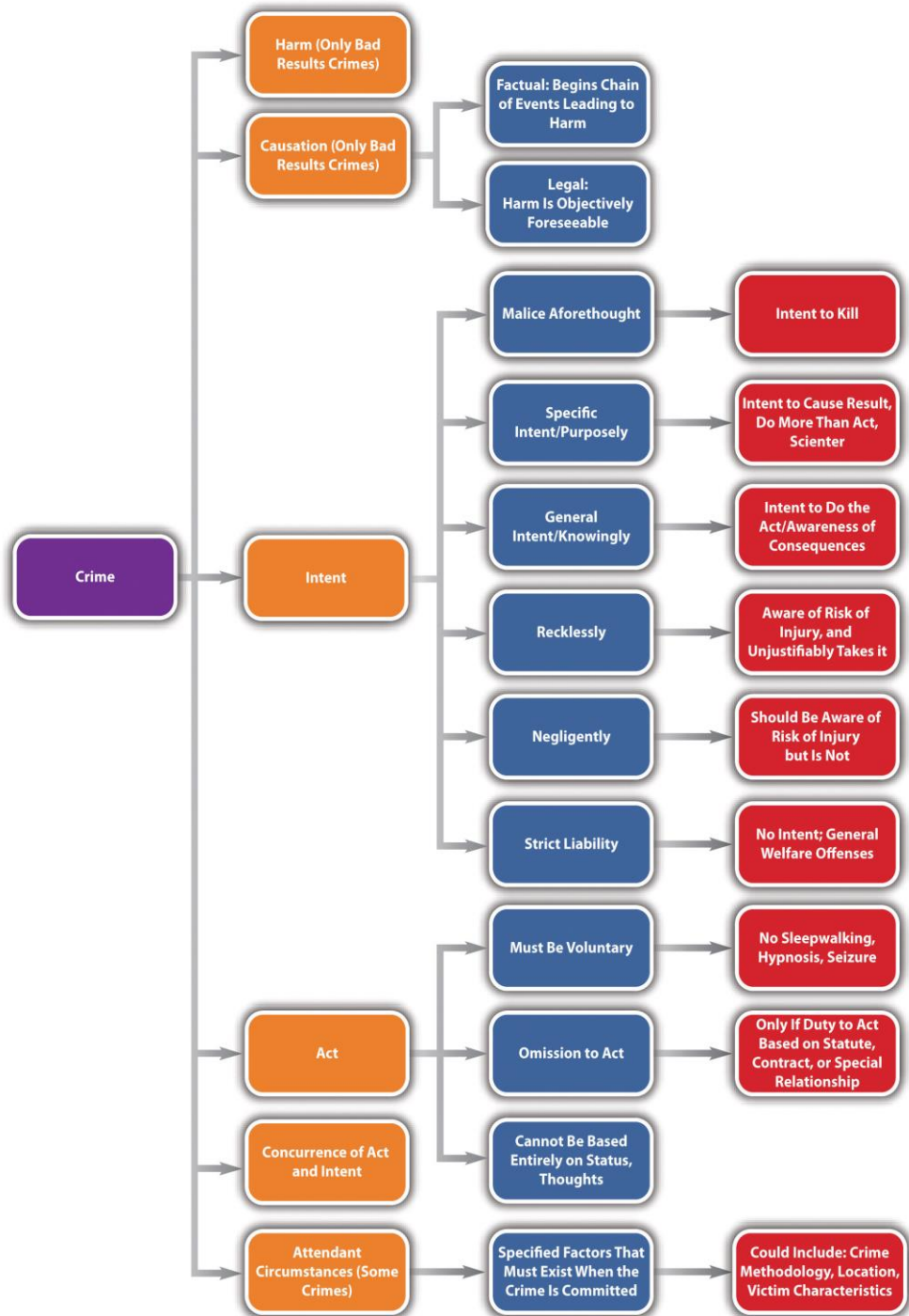
For Example : driving under the influence of alcohol.

C- Attendant Circumstances: a fact that must be in existence at the time of the actor’s conduct, **or** at the time of a particular result, without which the conduct or result is not a crime.

For Example : **sexual intercourse** between man and woman not a crime, **unless** attendant circumstances **exist:**

1) Woman, not his wife, 2) No consent from woman.

Diagram of the Elements of a Crime



9: Prosecution and sentencing of the environmental crimes :-

This section turns towards the prosecution and sentencing of the environmental crimes.

We shall start with a brief overview of the relevant legal provisions, before explaining the crimes elements and its penalties .

9-a: Preface :-

We shall divide this part into three sections:

In the first section, we shall discuss: crimes against terrestrial or land environment .

In the second section, we shall discuss: crimes against air environment .

In the third section, we shall discuss: crimes against water environment.

9-b: First section: crimes against terrestrial or land environment:-

9-b-1: Preface :-

We shall discuss in such item three topics:

In the first topic, we shall discuss crimes against plants & land and marine organisms.

In the second topic , we shall discuss crimes which related to hazardous materials and waste.

And in the third topic , we shall discuss crimes against public hygiene.

9-b-1-a: First topic: crimes against plants & land and marine organisms:-

Article 28 of the Environment Law, which replaced which was amended by Law No. 9 of 2009, stipulated that:

“It is prohibited in any way to perform any of the following conducts:

Firstly: Hunting, killing , catching birds and wild animals or marine living organisms; as well as possessing, transporting, importing and exporting or offering to sell such birds and animals, either dead or alive, as a whole, in part or their derivatives, or practicing activities that tend to destroy their natural habitats or properties or damage their nests, eggs or their offspring.

The Executive Regulation of this law ,determines the species of these creatures and sites to which the provisions of the above mentioned paragraph shall apply.

Secondly: Cutting or damaging plants as well as , possessing, transporting, importing and exporting, or offering them to sell as a whole, either in part or their derivatives and products thereof, practicing any activities that tend to destroy their natural habitats or change their natural properties or habitats.

The Executive Regulation of this law ,determines the species of these plants.

Thirdly: Collecting, possessing, transporting, or offering to sell kinds of fauna and flora fossils or changing their features; as well as destroying their distinguished geological formations or environmental features or harming their aesthetic value in the Natural Protected Areas.

Fourthly: Trading in all endangered living organisms of fauna and flora species; their breeding or planting in sites other than their natural habitats without obtaining a license from Egyptian Environmental Affairs Agency (EEAA).

The Executive Regulation of this law ,determines the species of these creatures and license conditions.

9-b-1-a-1:Prohibited conduct Element :-

Criminal act, or actus-reus, is generally defined as:

" An unlawful bodily movement " .

The criminal statute, or case in jurisdictions that allow common-law crimes, describes the criminal act element.

"Conduct" " act" and "omission" from a strictly technical point of view the term "act" , **does not include** an "omission". An **"act"** is rather the exact opposite of an "omission".

No general concept embraces them both.

The two differ from each other like night and day, **because** to do something and not to do something are exact opposites.

However, one may use the word "**conduct**" to refer to both of them.

So, the first requirement for determining environmental crimes liability is:

A "**conduct**" is understood an **act** or **omission**. "**Act**" is sometimes referred to as "**positive** conduct" or "**commission**" (or its Latin equivalent commission) and an "**omission**" (or its Latin equivalent omission) , is sometimes referred to as "**negative** conduct" or "**failure to act**".

Like all criminal acts, the conduct must be undertaken **voluntarily** and cannot be the result of a ***failure to act unless*** a duty to act is created by common law or statute.

An act or an omission is only punishable if it is voluntary. **The conduct is consider** voluntary , **if the offender** is capable of subjecting his bodily movements to his will or intellect.

If conduct cannot be controlled by the will, it is involuntary, such as, **for example**, when a sleep-walker tramples on somebody, **or** an epileptic swings his hand while having an epileptic fit and hits someone in the face.

One requirement of criminal act is that the defendant perform it ***voluntarily***. **In other words**, the defendant **must control the act**.

It would not serve the policy of specific deterrence to punish the defendant for irrepressible acts.

The most common examples of acts that are not voluntary (**involuntary acts**) and, therefore, not criminal acts : (Reflexes, convulsions, bodily movements during unconsciousness **or**

sleep, **conduct** during hypnosis **or** resulting from hypnotic suggestion, **or** a bodily movement that otherwise is not a product of the effort **or** determination of the actor, either conscious or habitual).

One voluntary act is enough to fulfill the voluntary act requirement.

Thus if a *voluntary* act is followed by an *involuntary* one, **the court may** still impose criminal liability depending on the circumstances .

If the conduct is involuntary, it means that the offender is not the "**author**" of the act or omission; **it was then** not the offender who committed an act.

The concept of a voluntary act should not be confused with the concept of a **willed act**.

To determine whether there was an **act** in the criminal-law sense of the word, **the question is** merely whether the act was **voluntary** , **It need not** be a willed act as well.

Conduct which is not willed, **such as** acts which a person commits negligently, **may** therefore also be punishable.

This does not mean that a person's will has no significance in criminal law; **whether** he directed his will towards a certain end is indeed of the greatest importance, **but** this is **taken into consideration** only when determining whether the requirement of culpability (**and more** particularly culpability in the form of intention) has been complied with.

From what has been said above, you will note that the concept of an "**act**" has a different, and more technical, meaning for *a lawyer* than for *a layman*.

The layman may also regard the muscular contractions of a sleep-walker or an epileptic as an "**act**", **but** a jurist or lawyer will not take this view, **since such** contractions do not constitute voluntary conduct.

9-b-1-a-2: The types of the prohibited conduct Element:-
The prohibited conducts of these crimes includes certain several forms or types :

The first type : prohibited conducts against birds, wild animals, and aquatic organisms :

The legislator in the Egyptian environmental law was keen to provide criminal protection for birds, wild animals and aquatic organisms against any conducts that may harm or threaten them.

The legislator in the Egyptian environmental law stipulated two sets of conditions that must be met in such cases :

The first: related to the type of birds or wild animals on which the crime may be committed.

The second: related to the places where the crime must be committed.

It means that **the first category** of such conditions , includes within its scope the qualitative identification of the subject of the crime "victim" upon which the crime were committed , **while the second category** of such conditions , includes within its scope the required spatial identification for **the location in** which the crime were committed.

9-b-1-a-2-a: The prohibited Act element :-

The required prohibited act element (*Actus-reus*), in such crime takes many forms, as the following:

"killing, hunting, catching, possession, transportation , exportation , importation , and trafficking of the birds or animals or marine creature.

The legislator also criminalized any practicing activities that may tends to destroying their natural habitats or properties or damaging's or destroying their nests, eggs or their offspring.

- Killing's definition :-

Killing in such regard **means** taking the life of a bird, animal, or marine creature, **in another meaning any conduct that causes the its death** , it is assumed that the killing takes place **intentionally or purposely** , so such crime could not be committed **negligently** or **recklessly** or **carelessly** .

Most legislations define the criminal act element of murder, as conduct that causes the victim's death.

The criminal act could be carried out with a weapon, a vehicle, poison, or the defendant's bare hands.

Like all criminal acts, the conduct must be undertaken voluntarily and cannot be the result of a *failure to act unless* a duty to act is created by common law or statute.

Murder presumes that the prohibited **conduct must be** committed against alive bird & animal or marine creature.

Therefore, if the prohibited conduct does not committed against alive bird & animal or marine creature , murder charge shall not be consider .

The means which may be used in killing - either shooting, stabbing, slaughtering, using sharp traps, poisonous materials, or other means- **has no legal value** regarding to charge .

But the usage of these means **must results death** , it means that the prohibited conduct must be factual and legal cause of the death .

- What's the moment of consideration alive (The moment of the beginning of life) :-

There is no a requirement that death should occur within a year and a day of the occurrence which in law is deemed to have caused death.

The rule is a legacy of a time when medical science was so rudimentary that , if there was a substantial lapse of time *between injury and death*, it was unsafe to pronounce on *the question whether the defendant's conduct or some other event caused death*.

With advances in medical science, it is now much easier to ascertain the cause of death.

The accurate and logical legal definition of murder requires a human being ('*reasonable creature*') as the victim of murder crime , it follows that a fetus cannot be the victim of a homicide , it is still correct in circumstances where the fetus dies whilst still in the womb.

If there is evidence, however, which proves that after the birth the child enjoyed an existence independent of the mother , then he/she may be considered a victim of murder or manslaughter .

So, the following questions arises :

Whether, subject to proof of requisite intent, murder or manslaughter crimes could be committed where unlawful injury was deliberately inflicted to a child in utero or to a mother carrying a child in utero where the child was subsequently born alive, existed independently of the mother and then died, the injuries in utero either having caused or made a substantial contribution to the death; and

whether the fact that the child's death was caused solely as a consequence of injury to the mother rather than as a consequence of direct injury to the fetus could remove any liability for murder or manslaughter in those circumstances.

For example when the defendant had stabbed his girlfriend who, to his knowledge, was pregnant ,as a direct consequence of the attack, the woman's uterus was penetrated as was the abdomen of the fetus.

So, the importance to the prosecution of establishing that the child had an '*existence independent of its mother*'.

This suggests that the child must have taken a breath and have an independent circulation.

Some scholars believe that it was not essential that the child should have taken its first breath prior to the act which caused its demise, reasoning that many children are born alive, 'yet do not breathe for some time after their birth'.

Some scholars suggest that **an attack on a child in the process of being born , even before** it has breathed will *'if the child is afterwards born alive, and dies thereof, and there is malice, be murder'*.

Therefore, Some scholars believe that , **if a person, intending to procure abortion, does an act which causes a child to be born so much earlier than the natural time**, that it is born in a state much less capable of living, and afterwards dies, in consequence of its exposure to the external world, the person who, by **this misconduct**, so *brings the child into the world, and puts it thereby in a situation in which it cannot live, is guilty of murder*, must be **considered in the context of this rule**.

The unlawful act murder , requires :

- An unlawful act;
- The unlawful act had been done intentionally;

All the necessary ingredients of the offence of manslaughter were **present** and **providing** the assailant's conduct satisfied the principles of causation then the crime was complete.

When does death occur?

Some scholars believe that brain death **as the major criterion for establishing death** .

There is, a body of opinion in the medical profession **that** there is only one **true test of death** and that is irreversible death of **the brain stem**, which controls the basic functions of the body such as breathing. ⁽¹⁾

Thus, if *this test represents the law*, **someone who is on a ventilator** or a **life support machine, being brain dead, cannot be a murder victim**, although a charge of attempt may lie providing the necessary intent can be proved.

(1) Ashworth, A, 'The scope of criminal liability for omissions' (1989) 105 LQR 424.
- Hart, HLA and Honoré, T, *Causation in the Law*, 2nd edn, 1985, Oxford: OUP.

As a result of developments in **modern medical technology**, **doctors no longer associate death exclusively with breathing and heart beat**, and it has **come to be accepted that death occurs when the brain**, and in **particular the brain stem**, has been **destroyed** , the evidence is that **Anthony's brain stem** is **still alive** and **functioning** and **it follows that**, in the present state of medical science, he is still alive and should be so regarded as a matter of law.

- Possession's definition :-

Although it is passive rather than active, **possession** is still considered a criminal act. **The most common objects** that are criminal to possess are illegal contraband, drugs, and weapons.

There are two types of possession:

- Actual possession , - Constructive possession.

Actual possession:-

Indicates that the defendant **has the item** on or very near his or her person.

Constructive possession:-

Indicates that the item is not on the defendant's person, **but is within** the defendant's area of control, **such as** inside a house or automobile with the defendant. **More than one defendant can be** in possession of an object, **although** this would clearly be a constructive possession for at least one of them.

Because it is passive, **possession should be knowing**, meaning the defendant is aware that he or she possesses the item. **In the vast majority of states**, a statute permitting a conviction for possession **without** this knowledge or awareness, **lacks the criminal** intent element **and** would be unenforceable.

Possession in such regard means monopolizing the item as a matter of ownership and competence, **without** the need for **actual possession** of it, **and it is sufficient for the accused to be a constructive possessor** , **if his/her authority is extended over** the object, i.e. , **or if it were within** the area of his/her control .

- Trading definition :-

Trade means exchange for consideration, **whether this consideration were in kind, cash, or a benefit.**

In trading, it is not required that the sale be delivered or that the buyer pays the price.

The agreement on buying and selling **with the** availability of physical possession **is sufficient for the** availability the charge against both parties, **and therefore it is not required that a** delivery takes place, **whether actual or symbolic.**

- Hunting's definition :-

Hunting means capturing animals, fish, and birds, **and it is the same as the means used in this sniping.**

It can be take place and achieved by using dogs or trained birds such as falcons, **or with** mechanical traps, nets, **or** weapons containing **narcotic** substances, or other means or substances.

- Catching definition :-

Catching means intended to paralyzing the movement of the animal, bird or any creature, **it can be take place and achieved even if the** perpetrator was not present **at the time of** its commission, **as if he/she** placed a snare **that** catches an animal, **while** the perpetrator was not present at that time.

Catching or grasping could be achieved by snapping the object and restricting its movement **or by** luring it to go into a cage or barn **by offering** it food **or by** chasing it until it can be entered into a closed place and caught.

- Transportation definition :-

Transportation means that the perpetrator carries and moves the protected object " **bird or animal** " **from one** place to another, **and this case assumes** that the accused **is not in** possession with the subject of the crime, **otherwise the text that** criminalizing the transportation shall be useless, **as in this case it shall** consider repeat of the criminalization of possession.

An example of a transport that does not involve possession is when the offender transports in his car a person who keeps protected birds or creatures with knowledge and will .

- Import definition :-

Import means the intended interring of the birds or creatures that are the subject of the crime , into the Egyptian territory , whatever were the means which used in committing the crime, and the crime shall considered complete crime as soon as the interring of the birds or creatures take place .

The import may be take place for the account of the same offender or someone else.

Import is not subject to certain legal requirements, but could be committed by every physical act that leads to interring the birds or animals - the subject of the crime - into the Egyptian territory whatever were the means which used , the assessment of that matter is up to the discretionary power of the judge .

Exceeding the customs limit without fulfilling the import restrictions stipulated by the legislator is prohibited.

In defining the meaning of the customs line, the reference is the Customs Law No. 66 issued in 1963, the first three articles of such law stipulate that , the customs line is the political border between the Arab Republic of Egypt and the countries bordering it, as well as the seashores surrounding the Arab Republic of Egypt.

Nevertheless, it is considered a customs line , the banks of the Suez Canal, as well as the shores of the lakes through in which this canal passes.

The scope of maritime customs control extends from the customs line to the distance of eighteen nautical miles.

- Export definition :-

Export can defined as taking out of the subject of the crime " animal - bird " , outside the borders of the Egyptian state's territory, it is not required for its occurrence to prove a specific intent or motive .

Such crime could takes place as soon as the bird or object - that consider the subject of the crime - is taken out of the country's territory, whatever were the motive , but the crime shall not be consider complete and therefor the charge , unless the taking out takes place from the territory of the Egyptian state.

No matter if the subject of the crime were possessed by the offender or not, and also no matter if the offender were outside or inside the country , at the time of the crime .

Note that it is not required for import or export , that the offender intends to provide it for sale or trading , and therefore the charge shall be considered even if the offender intended to just use what he/she exported for personal use.

Importing and exporting does not require that the offender be in possession with the subject of the crime .

So, if some one assigned another to take a bird or an animal - that covered by legal protection - outside the country, the first shall be charged with illegal possession of it, while the second shall be charged with illegal exporting only.

-Harming natural habitats or changing their characteristic's definition :-

The natural habitat is defined as the environmental area in which certain types of animals or plants live.

It is the natural environment areas in which the organisms lives or the environmental areas that surrounding such species.

Upon this point of view, the natural habitat can defined as the shelter that a living organism takes refuge in, which contains the natural conditions to suit such organisms .

Various legislations, including the Egyptian Environmental Law, are keen to designate certain areas as natural reserves, which constitute a natural environment suitable for living organisms, and hunting is prohibited therein.

The " nests of birds " means **the nests in which** they take shelter, **and through which they** can mate, lay eggs, **and** take care of their young.

9-b-1-a-2-a-1:The subject of the crime " *Wild birds and animals or certain aquatic creatures*" :-

The Egyptian legislator did not consider all violations against birds, wild animals, or aquatic organisms **a crime , but rather selected of** some their types , **and referred their identification to** the executive regulations **of the law.**

At first, the Egyptian legislator limits the criminal protection **only to** wild animals and birds, **and later added** aquatic organisms to it, **by the amendment of the Law No, 9** which issued in 2009.

No matter for prohibition such conduct if these animals, birds and aquatic creatures **were alive or dead, and no matter also if** the prohibited conduct **cause a harm for** a whole body of the animal or bird **or only cause a harm for** part of it **or for** its derivatives .

Noted that the legislator had been permitted licensing for hunting these birds and animals , **in certain cases specified in** the executive regulations of the law , **either for the purposes of** scientific or research purposes **or for** eradicating a widespread epidemic **or for** other purposes **approved by the** Environmental Affairs Agency , **in such cases, a license must be issued by the** Minister of Interior **in accordance with the** conditions which provided **by the** executive regulations of the law.⁽¹⁾

(1) Dr. Ashraf shams Eldeen , the criminal protection of the environment, Dar Ehnahda Elarabia , Cairo , 2012 , p: 144.

Dr. Mahmoud Taha , the criminal protection of the environment, Ashraf Abd allah company , 2012 , p: 263.

9-b-1-a-2-a-2: The place where the crime should take place:-

The Egyptian legislator requires that the crime should occur in certain areas specified in the executive regulations of the law. The executive regulations of the law had been identified these places in natural reserves or places where birds or animals were threatened of extinction.

Examples of wild birds are starlings, ibises, and curlews, and examples of wild animals are , the white deer.

Article 24 of the executive regulations requires that a writing hunting license request must be submitted to the Ministry of the Interior, and it also stipulated that the request should indicate the types and numbers of wild birds and animals to be hunted, the purpose thereof, the hunting period, the name of the licensed person , the hunting methods and its tools , and the Ministry of the Interior - in such case - must refer such request to the Environmental Affairs Agency , to verify its seriousness and its importance.

The legislative reference for defining a nature reserve , is determine by decision issued by the Prime Minister , in accordance with the Natural Reserves Law No. 102 of 1983.

The determining of the places where animals and birds are threatened of extinction, determine by a decision issued by the Minister of Agriculture or by the competent governor , in coordination with the Environmental Affairs Agency.

The second type : Conducts which cause harm for plants:

The Egyptian environmental law criminalizes all conducts that cause harm for certain plants, because of its harmful effect on the plant environment:

The Egyptian environmental law criminalized cutting or destroying certain plants, its possession, transfer, import, export, or trade , either all body of the plant or a parts thereof, or its derivatives , products or fruits , or commit any conduct which may cause destroying their natural habitats or changing its natural characteristics or its habitats.

The executive regulations of this law determine the types of these such plants.

Cutting of the plant means , the separating of such plants roots from the ground, **no matter for the** place where the cutting were committed **or for the** means which used in cutting .

Destruction of the plant means , spoiling **or** diminishing of the plant, **whether** in whole **or** in part.

Regarding to , the definition of the possession, transportation, import, export and trade terms , **we had been previously defined** and explained such definitions , **therefore we refer to** what was previously mentioned in such regard.

Examples of natural reserves include: Nabq, Abu Gallum, and Pharaoh's Island in Sinai (Prime Minister's Decision No. 33 of 1996), the Elba area reserve in Al-Bahr Al-Amr Governorate (Prime Minister's Decision No. 642 of 1995), and the islands located within the course of the Nile River in the north, middle, and south of the valley, the Delta Barrages, and the Rosetta Branch and Damietta (Prime Minister Resolution No. 1969 of 1998).

The Third type : crimes against fossils "excavations" :

The Egyptian environmental law criminalized - in Article 28- the collecting, possessing, transporting **or** trading any fossils of all kinds, **either** animals **or** plants fossils.

The legislator in such law also criminalized changing the features of these fossils **or** destroying its geological structures **or** environmental phenomena characteristic , **or any prejudice of** its aesthetic level **in the areas of** natural reserves .

Excavations or fossils can defined as organic remains of living organisms, **both** plant and animal, **that have turned into** mineral matter , **because of** its long burial **with** groundwater **which** laden with dissolved mineral substances, **which replace** the organic matter of such fossils **after** passing a certain period of time .

As for the definition of possession, transfer and trafficking, **we refer to what was previously mentioned** in this chapter.

The fourth type: Crimes against the endangered "Extinction" organisms:

The Egyptian legislator in Article 28 of the Egyptian Environment Law, **criminalized** the conducts of trading of all endangered living organisms of fauna and flora species; **their** breeding or planting in sites **other than** their natural habitats **without obtaining** a license **from** Egyptian Environmental Affairs Agency (EEAA).

The Executive Regulation of the law determine species of these creatures **and** license conditions.

9-b-1-a-2-b: **The prohibited intent element for crimes against birds, wild animals, and aquatic organisms:-**

The required **criminal intent** for **crimes against birds, wild animals, and aquatic organisms** , is the **general intent** or **knowingly** to perform the such prohibited types of criminal act and will to act .

The Elements of a Crime stated, occasionally, a different criminal intent supports the other elements of an offense .

This creates a viable mistake of fact **defense** , **if** the **defendant** has an incorrect perception .

Many jurisdictions expressly disallow the defense, **requiring strict liability** intent .

In general , such crime considered **formally defined crime in some of its type** , **in which the** definitional elements proscribe a certain type of conduct (*commission or omission*) **irrespective of what the result** of the conduct were,

like exportation , **importing** , and **trafficking** of the birds or animals or marine creature .

While it consider materially defined crimes of its type , **in which** the definitional elements do not proscribe a **specific conduct but the conduct which causes a specific bad result** , **like killing** the birds or animals or marine creature.

9-b-1-a-2-c: Causation and harm elements for crimes against birds, wild animals, and aquatic organisms:-

Regarding to the types that consider formally defined, in which its definitional elements proscribe a certain type of conduct (*commission or omission*), like **exportation, **importing**, and **trafficking** of the birds or animals or marine creature, in such case either bad result or causation did not required.**

While in the types that consider **materially defined crimes, in which the definitional elements do not proscribe a specific conduct but the conduct which causes a specific bad result, like **killing** the birds or animals or marine creature, in such cases either bad result or causation are required.**

9-b-1-a-2-d: The stipulated penalty for such crime :-

According to Art. 84 of the Egyptian environmental law, without prejudice to any more severe penalty prescribed in another law, any person violating provisions of Article (28) of this law, shall be subject to imprisonment and/or a fine of not less than L.E. five thousand and not more than L.E. fifty thousand or with one of these two penalties.

In all cases, the court must order of the confiscation of the seized birds, animals, living organisms, plants and fossils, as well as machinery, weapons, equipment, means of transportation which used in committing the crime.⁽¹⁾

(1) Dr. Ashraf shams Eldeen, op. cit, p: 144.

- Dr. Mahmoud Taha, op. cit, p: 263.

- L Bisschop, 'Illegal Trade in Hazardous Waste' in L Elliott and W Schaedla (eds), Handbook of Transnational Environmental Crime, Edward Elgar 2016, p:155.

- N Liu, V Somboon and C Middleton, 'Illegal Trade in Ozone Depleting Substances' in L Elliott and W Schaedla (eds), Handbook of Transnational Environmental Crime; E Clark, 'The Montreal Protocol and Ozon Action Networks' in L Elliott and W Schaedla (eds), Handbook of Transnational Environmental Crime, Edward Elgar, 2016, p: 322.

- L Bisschop, 'Illegal Trade in Hazardous Waste' in L Elliott and W Schaedla (eds), Handbook of Transnational Environmental Crime, Edward Elgar, 2016, p:155.

- Rosaleen Duffy, 'The Illegal Wildlife Trade in Global Perspective' in L Elliott and WH Schaedla (eds), Handbook of Transnational Environmental Crime, Edward Elgar, 2016, p: 68.

9-b-1-b :Crimes against birds that useful for agriculture:-

In Article 117 of the Agriculture Law No. 53 of 1966, the legislator prohibited either hunting, killing, catching, possessing, transporting, or selling of the useful birds or wild animals.

The legislator in such article also criminalized selling, offering for sale, or walking with such birds or wild animals, whether they were alive or dead.

The legislator also prohibited in the second paragraph of such article , any conduct causes destroying of the nests of wild birds or destroying their eggs.

The legislator also criminalized in such article , the cultivation of plants that cause harm for the aforementioned birds or animals without a license issued from the Ministry of Agriculture, also the legislator prohibited any conduct led to growth of such plants in a land owned by the perpetrator.

The legislator also prohibited the import of any materials to be used in hunting, catching, trading, possessing or selling such birds.

Also the legislator prohibited the use of any kind of traps to hunt these birds.

It is noted that such crime may intently multiple with the crime that stipulated in the Environment Law, in such case the penalties stipulated in the Environment Law shall be applied as the most severe punishment. ⁽¹⁾

(1) Dr. Ashraf shams Eldeen , op. cit , p: 144.

- Dr. Mahmoud Taha , op. cit , p: 263.

- L Bisschop, 'Illegal Trade in Hazardous Waste' in L Elliott and W Schaedla (eds), Handbook of Transnational Environmental Crime , Edward Elgar 2016, p:155.

- N Liu, V Somboon and C Middleton, 'Illegal Trade in Ozone Depleting Substances' in L Elliott and W Schaedla (eds), Handbook of Transnational Environmental Crime ; E Clark, 'The Montreal Protocol and Ozon Action Networks' in L Elliott and W Schaedla (eds), Handbook of Transnational Environmental Crime , Edward Elgar , 2016 , p: 322 .

- L Bisschop, 'Illegal Trade in Hazardous Waste' in L Elliott and W Schaedla (eds), Handbook of Transnational Environmental Crime , Edward Elgar , 2016, p:155.

- Rosaleen Duffy, 'The Illegal Wildlife Trade in Global Perspective' in L Elliott and WH Schaedla (eds), Handbook of Transnational Environmental Crime , Edward Elgar , 2016, p: 68.

9-b-1-c: Second topic: Crimes that concerned with the hazardous materials and waste:-

The legislator criminalized a range of conducts that related with hazardous materials and waste.

9-b-1-c-1: The prohibited Act element :-

The legislator criminalized some of these conducts are criminalized in the Environmental Law, while others are stipulated in other laws.

In the following, we will explain the definition of hazardous materials and wastes, and we shall also explain the conducts that the legislator criminalized .

-The definition of the hazardous materials and waste :-

The definition of the Hazardous Substances:

We mean by hazardous materials , the substances that having dangerous properties , which carries hazardous to human health or which carries negatively , adversely and harmful effects on the environment, such as contagious, toxic, explosive or flammable substances or those that produced an ionizing radiation.

- The definition of the Hazardous Waste:

Waste of activities and processes or its ashes which retain the properties of hazardous substances and have no subsequent original or alternative uses, like clinical waste from medical treatments or the waste resulting from the manufacture of any pharmaceutical products, drugs, organic solvents, printing fluid, dyes and painting materials.

So, we mean by Hazardous materials , the materials substances that having dangerous properties which are hazardous either to human health or which adversely affect and cause harm on the environment, such as contagious, toxic, explosive or flammable substances or those with ionizing radiation.

The infectious materials includes within its scope , viruses, microbes, germs, and other materials that are transmissibly by infection , such as touching, inhaling, injecting, etc.

Radiation means the energy that comes from a source and go through space at the speed of light.

This energy has an electric field and a magnetic field associated with it, and also has wave-like properties.

You could also call radiation “Electromagnetic waves”.

The Electromagnetic Spectrum:-

There is a wide range of electromagnetic radiation in nature.

Visible light is one example.

Radiation with the highest energy includes forms , like ultraviolet radiation, x-rays, and gamma rays. Also X-rays and gamma rays have a lot of energy. When they interact with atoms, they can remove electrons and cause the atom to become ionized.

At the same time, it also includes light energy that consisting of light waves of all lengths, and it causes environmental and biological pollution for living organisms , if they are exposed to it, and its devastating effect lasts for a varying periods of time.

These radiations have the ability to change the natural state of the atoms of bodies, turning them into atoms charged with an electric charge, hence the name ionizing rays comes from , and the imbalance occurs in the biological and chemical processes of the organism as a result of this penetration.

As a consequence of the damage that results from radioactive materials, the legislator in the environmental law required to conduct a measurement of the rate of radioactive contamination, to determine whether it is within the limits of safety, or crossed it to the dangerous area .

Hazardous waste means:

Residues of various activities and operations or their ashes that retain the properties of hazardous materials , and have no original or alternative uses, such as clinical wastes resulting from therapeutic activities, as well as wastes resulting from the manufacture of pharmaceutical preparations, medicines, organic solvents, inks, dyes or paints.

It is noted that the legislator, in spite of this, did not specify the types of hazardous materials and wastes, and only defined them.

Therefore, it was stipulated in the text of the second paragraph of Article 29 of the Environment Law as follows: It is forbidden to displace hazardous substances and waste without a license issued from the competent administrative authority.

The executive regulations of environmental law shall determine the required procedures and conditions for granting such license and the authority that competent of its issuance .

The ministers shall, - each in his field of competence - , in coordination with the Minister of Health and EEAA , issue a table of the hazardous substances and waste , that referred to in Para one of the aforementioned article.

One of the most important consequences of the aforementioned text is that , if the hazardous substance or waste were not included or stipulated in aforementioned schedule, its circulation or import will not be criminalized.

- Importing or allowing the entry or passage of hazardous waste:-

There are two forms or types of prohibited conduct of such crime stipulated in the two paragraphs of Article 32 of the Environmental Law:

The first form: is the importing hazardous wastes or materials or allowing its entry or passage through the land territory.

While the second form: is the passage of ships carrying these wastes or materials in the Egyptian marine waters without license.⁽¹⁾

(1) Dr. Ashraf shams Eldeen p: 144.

- Dr. Mahmoud Taha , op. cit , p: 263.

- L Bisschop, op. cit , p:155.

- N Liu, V Somboon and C Middleton, op. cit , p: 322 .

- L Bisschop , op. cit , p:155.

- Rosaleen Duffy, op. cit , p: 68.

Now, we shall explain the aforementioned two forms:

The first form : importing or passing the hazardous wastes or materials through the Egyptian land territory:

The legislator prohibits the import of hazardous waste or allowing its entry or passage through the Egyptian territory (the first paragraph of Article 32).

The term “territories” means the land region and the upper atmosphere layers, but it does not include the marine region.

The legislator permitted the passage of ships carrying these hazardous waste through either the territorial sea or the exclusive economic marine zone, under license issued from the competent administrative authority.

- Inadmissibility of licensing the import of waste:

The aforementioned plan of the Egyptian legislator in the environmental law indicates that the import of hazardous waste or its entry into the Egyptian territory is prohibited in all cases, such prohibition is absolute prohibition that cannot be excluded, so the legislator did not authorize the administrative authority to grant a license in such cases .

According to such rule , the Supreme Administrative Court ruled that , if it is proved that the imported waste , is in fact a form of hazardous waste, in such case the competitive administrative authority must prevent its entry into Egyptian territory , even if an approval or license were issued by the Ministry of Economy for its importing.⁽¹⁾

- Import definition :-

Import is an expression that prevails in the economic field and refers to a legitimate legal process represented in bringing a commodity into the scope of the Egyptian territory, whether accompanied by a person or by shipping it from abroad.

(1) The Supreme Administrative Court, session of February 17, 2001, Appeal No. 8450 of 44 BC, Q44

This general meaning of import applies to all commodities or materials that are legally permissible to be imported.

So, import means the intended interring of the birds or creatures that are the subject of the crime , into the Egyptian territory , whatever were the means which used in committing the crime, and the crime shall considered complete crime as soon as the interring of the birds or creatures take place .

The import may be take place for the account of the same offender or someone else.

Import is not subject to certain legal requirements, but could be committed by every physical act that leads to interring the birds or animals - the subject of the crime - into the Egyptian territory whatever were the means which used , the assessment of that matter is up to the discretionary power of the judge .

Exceeding the customs limit without fulfilling the import restrictions stipulated by the legislator is prohibited.

In defining the meaning of the customs line, the reference is the Customs Law No. 66 issued in 1963, the first three articles of such law stipulate that , the customs line is the political border between the Arab Republic of Egypt and the countries bordering it, as well as the seashores surrounding the Arab Republic of Egypt.

Nevertheless, it is considered a customs line , the banks of the Suez Canal, as well as the shores of the lakes through in which this canal passes.

The scope of maritime customs control extends from the customs line to the distance of eighteen nautical miles.

As for the import of hazardous materials and waste, it is prohibited .

Therefore, a part of jurisprudences believes that the term import means bringing these prohibited materials into the scope of the Egyptian territory in any form.

And they believes that , the import of hazardous waste may include the meaning of bringing it into the Egyptian territory, in the same manner required by the legislator for importing non-hazardous waste, in such figure the offender enters the hazardous waste by legitimizes such entry or import.

According to such rule , the criminal responsibility for importing of the hazardous waste is exists in the case when the offender misleads or deceives the competent authorities , to creates an illusion or a false reality or a false representation of fact that the prohibited hazardous waste that he/she is importing is non-hazardous waste , so its importing is permitted. Or in the case if he/she bribes one or more of the official responsible for the entry of such hazardous waste shipment , so that it can be entered.

Prohibited import of hazardous waste , extends to and include within its scope all forms of entry of these wastes.

So, the criminal responsibility for the prohibited import in such case shall exist when the accused transports the hazardous waste from a ship that anchored in the port , and crosses it through the customs line, even if the offender has no connection with such import of these wastes from abroad.

The importing of hazardous waste requires that the offender bring this wastes from abroad, therefore the prohibited import of such wastes shall not considered when the offender's behavior were limited only to merely transporting hazardous waste within the Egyptian territory.

The prohibited import conduct does not requires actually enter of such wastes into Egyptian territory.

Rather, it is sufficient for creating the criminal responsibility for the perpetrator , to take the measures that enable him/her to do so, even if these wastes did not actually enter the Egyptian territory.

As for the prohibited conduct of "allowing the entry " of these hazardous wastes, it could take place by any conduct lead to entry of these wastes into the Egyptian territory , in any way and by any means. The assessment and evaluation of that , falls within the discretionary power of the competent judge.

No matter if the offender imports the hazardous waste from abroad or not , but it is sufficient for creating him/her responsibility to cross the customs line , even if he/she did not do it by him/herself but by a third party whom has no connection with the importing .

The second Type : Allowing ships that carrying hazardous wastes or materials to pass through Egyptian territorial sea without license:-

The legislator prohibits - as a general rule - allowing the passage of hazardous waste through Egyptian territory, but a distinction must be made between this passage through the Egyptian land region and Egyptian sea territory.

If this passage takes place by sea vessels through the Egyptian territorial sea or the Egyptian exclusive economic zone , then this passage shall be permissible under a license issues by competent authority (Article 32, second paragraph of the Environment Law).

The required act element in such crime is "allowing ships to pass", through Egyptian sea territory without license.

Although the legislator did not require a presumptive condition " the specific offender's job description " , but the act element of such crime shall not be punishable in most cases , except it conducted by whom has the ability and the authority to allow the passage of the ship, and it shall be often available to a public employee.

However, the interpretation of such text does not mean that the legislator requires that the offender must be a public employee.

Rather, this act could be committed - in our point of view - **by any person who has the material ability to allow** such ship to pass.

This means that we must differentiate between the legal ability to allow the ship passes , which is available only to a public employees , and the material ability or power that may be available to any person, whether he/she were a public employee or not, and whether he/she were specialized or has a competence for issuance such license or not .

Note that the passage license for ships carrying hazardous waste through Egyptian sea territory must not extend to permit unloading or re-shipping these wastes.

It is possible to deduce such prohibited passage from the facts of the case and the statements of the witnesses , as in the case that the ship were seized in the Egyptian territorial waters.

This is consider a facts that falls within the discretionary power of the competent judge , without being followed up or monitored by the Court of Cassation.

9-b-1-c-2: The prohibited intent element ":-

The required criminal intent for either importing hazardous waste or allowing its entry or passage through the land territory, or the passage of ships carrying these materials in the Egyptian marine waters without a license , is the general intent or knowingly to perform the such prohibited types of criminal act and will to act , and did not require any specific intent.

Many jurisdictions expressly disallow the defense, requiring strict liability intent .

9-b-1-c-3:Causation and harm:-

Either importing hazardous waste or allowing its entry or passage through the land territory, or the passage of ships carrying these materials in the Egyptian marine waters without a license consider formally defined , in which its definitional elements proscribe a certain type of conduct (commission or omission) , so either bad result or causation did not required .

9-b-1-c-4: The stipulated penalty for such crime :-

According to Art. 88 of the Egyptian environmental law , the penalty for the aforementioned forms of the crime is imprisonment that must not less than five years, and a fine that must not less than twenty thousand pounds and must not exceed forty thousand pounds , or with one of these two penalties.

The legislator also stipulates an ancillary penalty , is the re-export of hazardous waste at the expense of the defendant.

9-b-1-d: Handling "Circulating" of hazardous wastes or materials without license:-

9-b-1-d-1: The prohibited Act element :-

Handling and Possession of the hazardous and wastes materials , may cause serious harm to the environment, and may threaten the possibility of leakage of these materials, and may also result serious harm in the case of failure to follow the required rules , either in preserving, transporting or possessing these materials.

Therefore, the legislator - in the Egyptian Environmental law - has prohibited the handling of these materials and waste without a license.

The term "Handling" means dealing with the hazardous materials and wastes.

The legislator in Art. 1 of the Egyptian Environmental law defined the prohibited handling with substance and waste handling as any conducts that leads to the displacement of substances for the purpose of assembling, transporting, storing, treating, or using it .

Examples of these hazardous materials and wastes include pesticides, agricultural fertilizers, hazardous industrial materials and wastes, hazardous hospital waste, hazardous pharmaceutical and laboratory materials and wastes, household pesticides, petroleum hazardous materials and wastes, hazardous materials

and wastes that emit ionizing radiation, **and** explosive hazardous materials and wastes.

The handling of such substances extends to include all cases of movement **of these** materials, **whatever were the** form of such movement, **whether – also- it were for** a consideration **or not, and whether the** consideration were **in** kind, cash, **or a** benefit.

The legislator authorized the handling of these materials **under** license .

According to Art. 27 of the executive regulations of the law , **the license is** granted for a maximum period of five years, **and the executive regulations of the Environmental law specified the required rules for** obtaining licenses.

The violation of such conditions or the occurrence & emergence of serious effects **that cause** harm to the environment , **which were not expected at the** time of obtaining the license, **may leads to** revokes such license.

The offender must be aware that he/she **is dealing with or handle** a hazardous materials or waste.

So, if he/she were ignorant of the nature of such substance **or ignorant** or mistakes its nature & description , **or if he/she were believed that** its possession without a license **were** legitimated and unprohibited , **then the criminal intent shall be** negated in such case.

For instance , if someone inserts or puts these materials **into** a container or a shipment **that** another person imports, **and such** a hazardous materials or waste **arrived to** Egypt **as part of** this shipment, **that the owner of the shipment were not aware** that it contains dangerous materials , **in such case** the criminal intent shall not considered for the owner of the shipment.

9-b-1-d-2: The prohibited intent element:-

The handling of the dangerous waste without a license is an intentional crime, and therefore it could not be available in the form of Negligent & careless or reckless.

The required criminal intent, is the general intent or knowingly to perform the such prohibited types of criminal act and will to act , and did not require any specific intent.

9-b-1-b-3:Causation and harm :-

Handling of the dangerous waste without a license consider formally defined , in which its definitional elements proscribe a certain type of conduct (*commission or omission*), so either bad result or causation **did not required .**

9-b-1-b-4:The stipulated penalty for such crime :-

According to Art. 88 of the Egyptian environmental law , the penalty for the aforementioned forms of the crime is imprisonment that must not less than five years, and a fine that must not less than twenty thousand pounds and must not exceed forty thousand pounds or with one of these two penalties.

9-b-1-b-5:The Evaluation of the legislator's orientation regarding to defining the handling :-

In our estimation, the legislator's point of view based on limitations of the scope of handling in "everything that leads to the movement of hazardous materials and wastes, whether it were for a purpose of collecting, transporting, storing, treating or using them".

This point of view is already untrue and not justified .

The legislator has used specific terms in defining handling, the absence of which leads to absence of charge because of unfulfillment of its act element.

Therefore, if the crime took the form of acquiring or possessing these materials and wastes **without moving them, such conducts shall not be prohibited .**

The same is the case , if the conduct took the form of dealing with these materials, if it were a legal transaction, such as buying and selling, trading, exchanging , wavering and mediation in all these conducts , or took any form of handling the hazardous materials and waste, such as transportation and actual or symbolic delivery of them without moving , all of these cases shall not carry any criminal charge .

In conclusion, the legislator's linking between the act of handling and the movement of hazardous materials and waste, led to narrowing the scope of criminalization, and leaving a large number of conducts of dealing of the hazardous materials and waste outside the scope of criminalization.

9-b-1-e: - Constructing a hazardous waste treatment facility without a license, or in violation of the terms of the license:

9-b-1-e-1: The prohibited Act element :-

According to Art. 31 of the Egyptian environmental law , it is forbidden to construct any establishment for the treatment of hazardous waste without a license issued by the competent administrative authority after consulting the EEAA.

Disposal of hazardous waste shall be in accordance with the conditions and criteria set forth in the executive regulations of this Law.

The Minister of Housing, after consulting with the Ministries of Health and Industry and the EEAA, designate the disposal sites and determine the conditions of the license to dispose of hazardous waste.

The prohibited conduct in such crime is constructing a hazardous waste treatment facility without a license, or constructing a hazardous waste treatment facility in violation of the terms of the license

The term “Constructing of a facility” expands to include every building, regardless of the nature of its construction, but the expression of the facility is broader in meaning than the building.

The facility's bases may be or not **connected to the ground and can be** moved without damage, demolition or loss.

According to Art.1 of the Egyptian environmental law the term "Establishment" means the following:

-Industrial establishments subject to the provisions of Law No. 21 of 1958 and Law No. 55 of 1977.

-Tourist establishments subject to the provisions of Law No. 1 of 1973 and Law No. 1 of 1992.

-Establishments used for electrical power generation and production which are under the provisions of laws Nos. 145/1948, 63/1974, 12/1976, 13/1976, 27/1976, and 103/1986.

-Mines, quarries and establishments operating in the field of oil exploration, drilling, transportation and usage which are subject to the provisions of laws Nos. 66/1953, 86/1956, 61/1958 and 4/1988.

-All infrastructure projects.

-Any other establishment, activity or project which may have a noticeable impact on the environment.

These shall be determined by a decision issued by the Environmental Affairs Agency , **in agreement with the** competent administrative authority.

According to Art. 25 of the executive regulations of the law , **the license is issued by the** governorate **which on its land the** facility shall be constructed , **after consulting** EEAA , **and the** Ministry of Manpower, **and the concerned ministry of the** waste type .

9-b-1-e-2: The prohibited intent element:-

Constructing a hazardous waste treatment facility without a license, or in violation of the terms of the license , is an intentional crime, and therefore it could not be available in the form of Negligent & careless or reckless.

The required criminal intent, is the specific intent .

As we mentioned in this chapter , crimes that require specific intent usually fall into one of three categories: -

- **Either the defendant intends to cause a certain bad result,**
- **The defendant intends to do something more than commit the criminal act, or ,**
- **The defendant acts with knowledge that his or her conduct is illegal, which is called scienter.**

The required specific intent in such crime is the purpose of the constructing the facility must be "hazardous waste's treatment".

9-b-1-e-3:Causation and harm:-

Such crime consider formally defined , in which its definitional elements proscribe a certain type of conduct (commission or omission), so either bad result or causation did not required .

9-b-1-e-4:The stipulated penalty for such crime :-

According to Art. 85 of the Egyptian environmental law , the penalty for the aforementioned forms of the crime is a detention that must not less than one year, and a fine that must not less than ten thousand pounds and must not exceed twenty thousand pounds or with one of these two penalties.

9-b-1-f: Violation of rules and procedures which stipulated for hazardous waste management:-

9-b-1-f-1: The prohibited Act element :-

According to Art. 30 of the Egyptian environmental law , Management of hazardous waste must be subject to the rules and procedures laid down in the executive regulations of this Law.

The executive regulations designates the competent authority, which, after consulting EEAA, will issue the table of hazardous waste to which the provisions of this Law shall apply.

The legislator required that hazardous waste management be subject to the rules and procedures that set forth in the executive regulations of such law .

Waste management refers to its collection, transportation, recycling and disposal.

Waste recycling is a process that allows materials to be extracted or reused, such as using as fuel, extracting minerals and organic matter, soil treatment, or refining of the oils.

As for the disposal of waste, they are “operations that do not lead to material extraction or reuse, such as burial in the ground, deep injection, discharge in surface water, biological treatment, physico-chemical treatment, permanent storage, or incineration.”

Art 28 of the executive regulations stipulated the required rules for the management of this waste, by obliges such wastes to go through several stages" the rules which regulates the generating of such waste, collecting it, storing it, transporting it, treating it, and disposing it ".

9-b-1-f-2: The prohibited intent element:-

Violation of rules and procedures which stipulated for hazardous waste management, could be exist either intentionally or Negligent or careless or reckless, and did not require any specific intent.

9-b-1-f-3: Causation and harm:-

Such crime consider formally defined, in which its definitional elements proscribe a certain type of conduct (commission or omission), so either bad result or causation did not required.

9-b-1-f-4: The stipulated penalty for such crime :-

According to Art. 85 of the Egyptian environmental law, the penalty for the aforementioned forms of the crime is a detention that must not less than one year, and a fine that must not less than ten thousand pounds and must not exceed twenty thousand pounds or with one of these two penalties.

9-b-1-g: Refraining from taking precautions that prevent harm to the environment as a consequence of the production and handling of hazardous materials:-

According to Art. 33 of the Egyptian environmental law , Those engaged in the production or circulation of hazardous materials, either in gas, liquid or solid form, are held to take all precautions to ensure that no environmental harm shall occur

The owner of or the person who in charge of managing an establishment from which hazardous waste is produced, shall be committed to decontaminating the establishment, the soil and the place where it was set up, in case of moving the establishment or stopping its activity.

Decontamination should be done according to standards and conditions that stipulated in the executive regulation of this law.

So, the legislator required for those in charge of the production or handling of hazardous materials - whether in their gaseous, liquid or solid state - , to take all sufficient precautions to prevent any harm may cause to the environment.

And they also obliged to take all sufficient precautions to disinfect the soil land and the location in which it was established , in the event of moving such facility or stopping its activity, such disinfection must carried out in accordance with the requirements and standards that stipulated and identified by Art. 31 of the executive regulations of such law.

The precautions that specified by the legislator in Art. 31 of the executive regulations , are all procedures and measures that required to protect the environment from harm which may be caused as a result of either the process of producing or moving such materials , whatever were its purpose - its usage, transporting or recycling them - .

Examples of these precautions include , determining and choosing the location in which these materials shall be produced and stored - which must fulfill all certain necessary conditions for that - , **and also** fulfill of all certain necessary conditions for the constructing of the type of facilities **in which** these materials shall be stored , in conformity with the engineering principles that are commensurate with the nature of such materials, **as well as** providing the necessary conditions for the means of transportation , **and also fulfill of all** certain necessary conditions for the facility in which materials will be stored , **to ensure that** such storage shall not cause any harm **either for the environment or the** health & human integrity of its workers or the public, **as well as** the provision of the required systems and devices for safety, warning, prevention, control, and first aid in appropriate quantities and quality **either for** transportation or handling of these materials, **as well as disinfection of the** facility and soil land and the place **where such facility was** established , **if it were** transferred **or its** activity ceased.

9-b-1-g-1: The prohibited Act element :-

The required act element of such crime **takes the form of** refraining from taking sufficient **to prevent** any harm **that may** cause to the environment , **as mentioned above .**

The source and reference of the duty that criminalizes refraining from following or doing it , **is the text of the law.**

On the other hand, these precautions must be sufficient to prevent the occurrence of any damages for the environment.

The assessment of the adequacy of the precautions is subject to the discretion of the trial court, **and it may resort to** technical expertise to determine that.

9-b-1-g-2: The prohibited intent element:-

Refraining from taking precautions that prevent harm to the environment as a consequence of the production and handling of hazardous materials , **could be exist either** intentionally or Negligent **or** carless **or** reckless , **and did not** require any specific intent.

9-b-1-g-3: Causation and harm:-

Such crime consider formally defined , in which its definitional elements proscribe a certain type of conduct (*commission or omission*), so either bad result or causation **did not required** .

9-b-1-g-4: The stipulated penalty for such crime :-

According to Art. 85 of the Egyptian environmental law , the **penalty for** the aforementioned forms of the crime is a **detention that must not less than one year, and a fine that must not less than ten thousand pounds and must not exceed twenty thousand pounds** , or with one of these two penalties.

9-b-1-h: Refraining from keeping the hazardous waste's records or refraining from record the data of such records:-

9-b-1-h-1: The prohibited Act element :-

According to Art. 33 of the Egyptian environmental law , the **owner of an establishment whose activities produce hazardous waste pursuant to the provisions of this Law must be held to keep** a register of such waste indicating the method of disposing thereof, **and the agencies contracted with to receive the hazardous waste.**

The executive regulations determines **the required data to be recorded in the said register and the EEAA must be** responsible for following up the register to ensure its conformity with the facts.

So, the legislator obliges the owner of the facility that produces hazardous waste , to creates and keeps a records of these wastes including the means & ways that shall used in depositing them, as well as the contracting parties whom oblige to hand over these wastes for the purpose of treating or disposing them according to the rules that stipulated in Art 31 of the executive regulations of such law .

The legislator referred to the executive regulations to specify the data to be recorded in such register.

Examples of such data include: the name and address of the facility, the name and job description of the person responsible for fulfillment of such record, the period of time covered by this data, the special requirements issued by the Environmental Affairs Agency regarding the types , nature and quantities of hazardous waste resulting from the activity of the facility, and the means and methods that shall use in disposing these wastes, and the contracting parties that oblige to hand over this wastes for the mentioned purpose , and also the signature of the person responsible for the record.

9-b-1-h-2:The prohibited intent element:-

Refraining from keeping the hazardous waste's records or refraining from record the data of such records, could be exist either intentionally or Negligent or careless or reckless , and did not require any specific intent.

9-b-1-h-3:Causation and harm:-

Such crime consider formally defined , in which its definitional elements proscribe a certain type of conduct (commission or omission), so either bad result or causation did not required .

9-b-1-h-4:The stipulated penalty for such crime :-

According to Art. 85 of the Egyptian environmental law , the penalty for the aforementioned forms of the crime is a fine that must not less than ten thousand pounds and must not exceed twenty thousand pounds .

9-b-1-i: Spraying or usage of the pesticides or any chemical compound in violation of the stipulated rules :-

9-b-1-i-1: The prohibited Act element :-

According to Art. 38 of the Egyptian environmental law , it is prohibited to spray or use pesticides or any other chemical compound for agriculture, public health or other purpose , **except after** observing the conditions, regulations and safety measures that stipulated in the executive regulations of this law **and in a manner that** will not expose humans, animals, plants, waterways and other components of the environment, directly or indirectly, now or in future, **to the** harmful effects of such pesticides or chemical compounds.

So, the legislator has prohibited the spraying or usage of the pesticides **or any** chemical compounds **either for** agricultural, public health, **or** other purposes, **in violation of the** stipulated rules in the executive regulations of such law , **that guarantees** humans, animals, plants, waterways, **or other** components of the environment shall not exposed to any harmful effects , **either** directly **or** indirectly, **either** now **or** in the future, **because of** its harmful effects.

9-b-1-i-2: The prohibited intent element:-

Spraying or usage of the pesticides or any chemical compound in violation of the stipulated rules , is an intentional crime, and therefore it could not be available in the form of Negligent & careless or reckless.

The required **criminal intent, is the specific intent .**

9-b-1-i-3: Causation and harm:-

Such crime consider formally defined , in which its definitional elements proscribe a certain type of conduct (commission or omission), so either bad result or causation did not required .

9-b-1-i-4: The stipulated penalty for such crime :-

According to Art. 85 of the Egyptian environmental law , the penalty for the aforementioned forms of the crime is a fine that must not less than one thousand pounds and must not exceed twenty thousand pounds , and in case of recidivism, the penalty will be doubled.

9-b-1-i: Spraying or usage of the pesticides or any chemical compound in violation of the stipulated rules :-

9-b-1-i-1: The prohibited Act element :-

According to Art. 38 of the Egyptian environmental law , it is prohibited to spray or use pesticides or any other chemical compound for agriculture, public health or other purpose , except after observing the conditions, regulations and safety measures that stipulated in the executive regulations of this law and in a manner that will not expose humans, animals, plants, waterways and other components of the environment, directly or indirectly, now or in future, to the harmful effects of such pesticides or chemical compounds.

So, the legislator has prohibited the spraying or usage of the pesticides or any chemical compounds either for agricultural, public health, or other purposes, in violation of the stipulated rules in the executive regulations of such law , that guarantees humans, animals, plants, waterways, or other components of the environment shall not exposed to any harmful effects , either directly or indirectly, either now or in the future, because of its harmful effects.

9-b-1-i-2: The prohibited intent element:-

Spraying or usage of the pesticides or any chemical compound in violation of the stipulated rules , is an intentional crime, and therefore it could not be available in the form of Negligent & careless or reckless.

The required criminal intent, is the specific intent .

9-b-1-i-3: Causation and harm:-

Such crime consider formally defined , in which its definitional elements proscribe a certain type of conduct (commission or omission), so either bad result or causation **did not required .**

9-b-1-i-4:The stipulated penalty for such crime :-

According to Art. 87 of the Egyptian environmental law , the penalty for the aforementioned forms of the crime is a fine that must not less than one thousand pounds and must not exceed twenty thousand pounds , and in case of recidivism, the penalty will be doubled.

9-b-1-j:Violations of the technical principles and rules stipulated for the extraction of the crude oil:

9-b-1-j-1: The prohibited Act element :-

The legislator obliges the bodies or companies that may carrying out researches , exploration, drilling, extraction and production of crude oil, for a purpose of refining or manufacturing it , to follow the rules and procedures that stipulated in the either in relevant article in the Environment Law or its executive regulations, which must be derived from the foundations and principles of the oil industry , that stipulated by the competent administrative authority.

And also to follow the stipulated rules for safety disposal of the products of drilling oil wells, in accordance with the provisions of such law and its executive regulations .

9-b-1-j-2:The prohibited intent element:-

Violations of the technical principles and rules stipulated for the extraction of the crude oil , could be exist either intentionally or Negligent or carless or reckless , and did not require any specific intent.

9-b-1-j-3:Causation and harm:-

Such crime consider formally defined, in which its definitional elements proscribe a certain type of conduct (*commission or omission*), so either bad result or causation **did not required** .

9-b-1-j-4:The stipulated penalty for such crime :-

According to Art. 87 of the Egyptian environmental law , the penalty for the aforementioned forms of the crime is a fine that must not less than one thousand pounds and must not exceed twenty thousand pounds , and in case of recidivism, the penalty will be doubled.

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