

The twelfth lecture

Section Two: The criminal outcome

The result is the sum of the material effects produced by the commission of the act, which is mainly represented in aggression against the interest subject of protection, and the result has two meanings of a legal meaning achieved in all crimes and acts prohibited by Sharia, and a material meaning achieved in crimes whose behavior entails a change in the outside world as a result of the act committed, and the consequent imparting of two meanings to the criminal result according to the material effects of the act results in the division of the resulting crimes into two parts:

- **Danger crimes:** The aggression against the protected interest is likely not actual nor verified, but it may be achieved in the near future, any threat of danger, the street is accustomed in this type of future impact of the act as a possibility of falling mostly, for example, criminalizing just putting fire in a place and criminalizing driving a car at a speed that threatens the souls with danger, the street in such examples did not criminalize the act of damage has been achieved, the fire may be extinguished shortly after ignition, and the car may reach its destination Without inflicting any harm to anyone, but his crime because of the fate of these acts of the possibility of achieving damage and then the actual aggression against the interest, the fire is very much predominantly damaged to the building in which it was set on fire and even extended damage to souls and souls, and the speeding car is very much predominantly infecting pedestrians with serious damage that may reach the loss of their lives.
- **Damage crimes:** The aggression against the protected interest is actually achieved and realized, as the street here counts the impact that has already been achieved and the impact of its tangible damage in the external reality, because the protected interest is no longer threatened only, as is the case in dangerous crimes, but has suffered damage to this interest, for example, the street's reliance on the crime of murder with the effect of actually achieved is the death of the victim, and its accustomation in the crime of theft by the exit of money from the possession of the victim to the possession of the offender and his control over him.

The distinction between crimes of danger and crimes of damage entails several consequences, the most important of which is with regard to the penalty prescribed in both cases, where the crime of damage is subject to a more severe penalty than that allocated to the

crime of danger, and the causal relationship is established as one of the elements of the material element in the crimes of damage, while it is absent in crimes of danger.

Section Three: Causation

The availability of the causal relationship is assumed, as previously explained in crimes with a material result, i.e. crimes of damage, as it links the behavior committed and the criminal result achieved and shows the share of the act and the extent of its contribution and intervention in the events of the result, where it is proven that the act is the one that caused the result and led to its achievement and occurrence, it is the one that assigns the result to the act and connects these two material phenomena, namely the act and the result.

In the absence of causal relationship in intentional crimes, the responsibility of the perpetrator for the completed crime is excluded and is limited to his accountability for the attempt only, but if the crime is unintentional, his criminal responsibility is forfeited, as there is no attempt in unintentional crimes.

The most important problems posed by the element of causal relationship is to determine the general criterion for this relationship, on which the act committed for this reason or that is attributed, and in this context some jurists tried to extrapolate some general rules in determining the standard of causal relationship.

By extrapolating the various opinions that have been said regarding the statement of a general criterion for the causal relationship, we conclude that Islamic jurisprudence did not unanimously agree on a specific criterion among the series of criteria that were put forward in this context, due to the lack of texts in this regard, so the jurists preferred in this regard to develop detailed solutions to the difficulties raised by the causal relationship and the problems it poses in the most important crimes instead of developing a general theory that establishes the rules of causation in crimes of all kinds.

Based on the above, many jurisprudence has preferred the theory of equivalence of causes as a criterion for the establishment of the causal relationship as an element of the material element of the crime, which is only complete, as this theory is sufficient to say the availability of a causal relationship between the act and the result that the latter has been achieved because the act is one of the factors that had a role and contributed to its occurrence, even if this role was limited, as this trend estimates the ability of this theory to properly explain the causal relationship, as A material relationship between the act and the result, avoiding confusion with what is alien to it,

by making the role of the causal relationship confined to the framework of the material element of the crime because it is related to the materiality of the crime, while other legal considerations related to criminal responsibility go beyond the material of the crime to its morale, and then its fertile field is the legal and moral pillars, not the material element.

Therefore, the statement that the theory of equivalence of causes is widely adopted leads to the statement that the responsibility of the offender for the criminal outcome is determined as one of the factors that contributed to and caused it, even if this act was the least contributing factor to achieving the criminal result.

Another trend also called for combining the theories of "equivalence of causes" and "appropriate cause" so that the picture is complete for the connection of the first to the criterion of causation and its place is the material element of the crime, and the second is related to the officer of the subordination of the act to the text of the criminalization and its place is the legal element of the crime, thus contributing to the two theories collectively in determining the correct scope of criminal responsibility.

The third requirement: the moral element

The crime does not exist once a person commits its material forbidden by Sharia under the text of the Qur'an or the hadith of the Sharif or the jurisprudence of scholars, but in addition to that there must be a relationship between the materiality of the crime and the psychology of the offender, as the psychological assets of the materiality of the crime and its control represent the strength of the moral element without which the crime does not exist.

In addition to the material entity of the crime and its strength of criminal behavior, the crime also has a psychological entity based on the moral pillar that translates the offender's control over all parts of the crime in its various details and parts until it is attributed to him, because the punishment is imposed only on those who prove their psychological connection to the material crime in order to achieve the deterrence and reform that it seeks.

On the basis of the foregoing, the moral element of the crime is based on two important elements, respectively:

- **Discrimination:** Discrimination means the ability to understand the nature and nature of the act that the offender commits it, and to anticipate the effects and results that may result from it, as this ability goes to the material of the act and to its consequences and risks to the interest or right protected by the legal rules alike, without going to the ability

to understand the legal adaptation of the act, as knowledge of the legal provisions is assumed in every taxpayer, as is the case with positive law.

This element finds its legal basis in the hadith of the Messenger of Allah (peace and blessings of Allaah be upon him): "Lifting the pen from three: from the boy until he is informed, from the sleeper until he wakes up, and from the insane until he wakes up", and accordingly, the crime according to the hadith of the master of creation, the Messenger of God, peace and blessings be upon him, cannot bear the responsibility of the one who was not distinguished, so the responsibility and responsibility is the discrimination, which the hadith mentioned three cases in which discrimination is excluded and thus the owner of the assignment and accountability is forfeited, namely: Young age, sleep and insanity, which made jurists open the way to measure these cases if it is proven that there is no discrimination in other cases, such as the case of forced drunkenness.

- Freedom of choice: It is the second condition to bear the responsibility of the act committed and then the moral element and bear criminal responsibility, and freedom of choice means the ability of the offender to determine the direction taken by his will, that is, his ability to direct his will and a certain destination among the different destinations available to him and that can be chosen, and therefore freedom of choice is a condition for bearing the responsibility, where the street punishes the offender if he directs his will in a manner contrary to what is required by his orders or prohibitions, and then he does not deserve punishment except from He could direct his will in the correct direction that is consistent with the orders and prohibitions of Sharia, i.e. he was free to direct his will and yet directed it in a manner contrary to that, but if he directed it in a way contrary to the requirements of Sharia and he is unwilling, as this directive was imposed on him, his will is not considered, which is not considered in such a case because there is no freedom of choice that executes the will.

The person may be distinctive, but it comes criminal behavior which is coerced is free and robbed of will, where he is well aware of the fact that he performs the forbidden behavior that it is forbidden, but nevertheless he cannot avoid coming but commits it under penalty of pressure and coercion, which executes his will and thus freedom of choice, and the evidence of this element is the Almighty's saying: "Except for those who hate and his heart is reassured by faith", and the saying of the Almighty who said: "Whoever is forced to do anything other than Bagh or return, there is no sin against him," and the saying of the Prophet (peace and blessings

of Allaah be upon him): "He lifted from my ummah the error and forgetfulness and what they were forced to do."

The moral element of the two elements properly entails the offender bearing the responsibility for his act and then deserving the punishment prescribed by Sharia, taking into account an important principle in Islamic penal legislation, which is the principle of "personal punishment", which means not to bear responsibility for the crime except for those who committed it personally by performing the behavior that it carries out without others who surround it, even if they are from the closest people, as long as they have no connection with the crime and their will is not directed to commit the behavior subject to follow-up, and this origin has been reported In many legal texts, including the Almighty's saying: "Do not visit another button", and the saying of the Almighty: "Every soul with what it has gained is a hostage", and his saying, peace and blessings be upon him: "A man shall not be taken for the crime of his father or the crime of his brother."

The mandate in Islamic law, which is only done is the completeness of the mind and its mental faculties, as its absence does not do the assignment and the person is not held accountable accordingly and is not subject to responsibility, the complete mind is the only one who can understand what the act that is done or refrains from performing, and it is the only one who controls the members of the body and directs it to the appropriate direction that does not violate Sharia.

The relationship is close between the moral element and the rest of the elements of the crime, as for the relationship of the moral element with the legal element, the latter is the source of the moral element, so that the will, which is one of the elements of the moral element, can not be described as criminal unless it tends to commit material elements that the street gave an illegal character through the legal element, the research into the criminalization of the street for behavior inevitably precedes the search for the availability of the moral element of the crime or not.

The link between the moral element and the material element is also irreproachable, as the moral element for any crime is a reflection of the materiality of that crime in the psyche of the offender, given that the will is the one that tends to commit the criminal behavior carried out by the material crime, and then the determination of the elements of the moral element depends on the identification of the elements of the material element, as the relationship between them is close and the link is close.

