

The Criminal Responsibility of The Instigator of An Impossible Crime According To The Jordanian Penal Code.

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Abstract: Crime is an ancient yet modern social phenomenon, influenced by numerous external factors, causing its incidence to fluctuate continuously. This study aims to explore how Jordanian legislators strive to strike a balance between protecting individual rights and social security. The significance of this study lies in the fact that crime, as a social phenomenon, not only negatively impacts individuals and society but also inflicts economic losses on the state; therefore, it must be addressed as a social problem. The current study seeks to clarify how Jordanian legislators have addressed the decriminalization of "impossible crimes" through explicit legal provisions in the Jordanian Penal Code. It also explores the extent to which instigators can bear criminal responsibility within the framework of "impossible crimes," and the lack of consensus among legal scholars regarding the types of these "crimes." One of the most important findings is that the Jordanian judiciary has adopted the concept of "relative essential impossibility," thereby excluding "legal impossibility," a position affirmed by the Jordanian Supreme Court in its ruling. A key recommendation for Jordanian legislators is to criminalize all forms of impossible crimes within the Jordanian Penal Code, regardless of whether these acts are legally or physically impossible

Keywords: Jordanian Penal Code, Criminal Responsibility, Impossible Crime, Instigation, Instigator

Introduction

Criminal jurisprudence is divided between those who support and those who oppose assigning criminal responsibility for impossible crimes, resulting in two main schools of thought. One school argues for the necessity of punishing the instigator even if their incitement has no effect, basing this idea on the presumption derived from the rules of attempt or the concept of danger. The other school sees no need to criminalize the act of incitement if it has no effect, and they have their arguments for this, which will be detailed below.

Some scholars of criminal law believe that punishment for incitement to impossible crimes is linked to the specific rules criminalizing attempted crimes (Al-Shinawi, 1971). This independent view holds that incitement is an act of direct participation in a crime. In such cases, if the incitement does not lead to a crime, the instigator should be prosecuted for attempted crime. The basis for this is that the instigator constitutes a separate crime—sedition—through the act of incitement itself, especially when.

they provide conclusive evidence of criminal intent by inciting others to commit a crime. According to the independent standard of attempted crime, and because the incited crime did not occur due to reasons beyond the instigator's control, the instigator should be punished according to the rules for attempted crime

According to the rules of attempt, the punishment for incitement must be applied to the instigator. The second school of criminal jurisprudence views the basis for assigning criminal responsibility and imposing punishment for incitement that is not followed by action as the idea of the imminent danger to the protected interest posed by the instigator's activity (Al-Majdoub, 1970). In reality, the law does not punish mere criminal thoughts unless action is taken to realize them. This is because intent is a reflection of the mind and inner thoughts, and the legislative authority is not permitted to interfere in such matters, as this constitutes a violation of individual freedom unjustified by any social necessity (Al-Saeed, 2019). As an exception to the rule of non-punishment for the planning and preparatory stages, the legislator has deviated from this principle in certain cases. For instance, punishment is imposed even when the crime is in its initial stages of thought and planning, such as criminal conspiracy. The rationale for criminalization is that the perpetrator did not stop at the stage of thought and planning but declared their agreement, thus bringing the act into physical existence. Due to the seriousness of incitement and the potential harm it may cause to the protected interest, the legislator has addressed it with specific legal provisions. As a separate crime (Shuwaish, 2011), the act, even if not followed by its actual execution, acquires its criminal characterization according to the relevant legal provisions (Madi, 2012).

The researcher agrees with the second jurisprudential opinion, which bases the philosophy of punishment for incitement to impossible crimes on the fact that they are crimes of endangerment and the actual threat this danger poses to legally protected interests, necessitating their intervention through early preventative measures before harm occurs. We disagree with the first opinion, which bases punishment for incitement to impossible crimes on the rules of attempted crime. We believe that incitement to impossible crimes falls under the category of crimes of abstract conduct, which are completed simply by commencing the act. This means that attempting them is inconceivable, as the attempt itself is the criminal act in these crimes.

The current study is significant because it explains the nature of impossible crime and the rationale for its inability in the eyes of the law. It also analyzes the Jordanian lawmaker's method of treating impossible crime and contrasts it with the act of attempt in its various ranges. Moreover, the paper addresses the question of whether incitement is a crime of its own where an impossible crime is involved, and the concentration of criminal responsibility on the instigator in situations of legal or factual impossibility. Lastly, it summarizes the views of legal experts and the stances of both Jordanian and Egyptian courts regarding the impossible crime.

This study addresses the problem that the Jordanian legislator did not explicitly criminalize the impossible crime within the Penal Code, but tackled it as an exceptional case. The second problem lies in the lack of a clear definition of sedition. How much criminal responsibility should instigators bear when dealing with crimes that are impossible to commit? Furthermore, legal scholars disagree on the nature of this type of crime. Some legal systems employ an objective approach, while others use a subjective approach to determine whether such crimes should be punished.

This study will address these issues by analyzing three central themes: the nature of criminal responsibility, the crime of incitement, and the nature of the impossible crime.

First Requirement: The Nature of Criminal Responsibility

Before delving into the concept of criminal responsibility, it is necessary to provide an overview. Criminal law stipulates that the criminal act itself is insufficient to justify punishment; the offender must also possess the legal capacity to bear criminal responsibility. Criminal responsibility arises when an individual commits a legally recognized criminal act (including its physical and psychological

elements). Furthermore, the offender must be able to bear the consequences of that act and possess the legal capacity to do so (Benou and Bogokki, 2021). This principle is logical because without a criminal act, punishment cannot be imposed; similarly, without criminal responsibility, punishment is inconceivable. Criminal responsibility is inseparable from criminal act; therefore, only violations of legal rules generate criminal responsibility and ultimately lead to legal consequences (punishment).

Section One: The Concept of Criminal Liability

The Jordanian Penal Code does not explicitly stipulate criminal liability for impossible crimes. According to Article (68) of this law, an attempt means commencing the execution of an apparent act that leads to the commission of a felony or misdemeanor. This refers to actions that, in themselves, could lead to a criminal outcome; otherwise, even if these actions constitute a crime from the perpetrator's perspective, they are not considered the beginning of a crime. The law also stipulates that if a perpetrator is incapable of performing the actions necessary to constitute a felony or misdemeanor, this means they are actually incapable of performing the actions leading to the crime, not that they merely believe they are incapable. Furthermore, the crime must be defined as a felony or misdemeanor; that is, the literal meaning of the law must be applied, not the perpetrator's belief or assumption that the actions constitute a felony or misdemeanor. Crimes are not established or classified based on conjecture or belief (Al-Saeed, 1981). The researcher believes that the legislative deficiency is very clear in the Jordanian Penal Code No. (16) of 1960, as it does not contain a specific provision clarifying what constitutes an impossible crime, its elements, and its characteristics, leading to conflicting opinions. And the differences in court rulings from one court to another regarding the impossible crime.

Section Two: Elements of Criminal Liability

The purpose of criminal liability is to bring about a legal consequence through punishing the offender of a criminal offence. There are specific conditions for this liability to be available. Such conditions are not subject to discretion but are mentioned explicitly in the Jordanian Penal Code. According to Article (74/1), *"No one shall be punished unless he has committed the act consciously and willingly (Al-Saeed, 1981)."*

This provision explains that criminal responsibility depends on two basic factors: awareness and will.

The Element of Awareness

Awareness has been described in Shari as distinction, i.e., the ability to perceive the nature and essence of an action, to predict the consequences that this action might have, and to distinguish between what is prohibited and what is permissible. Other jurists also define it as the association of awareness and perception with the meanings of the senses. Criminal liability necessitates actual awareness as opposed to legal awareness. This implies that the perpetrator does not have to be aware of the legal nature of his action or its legal implications. That he acts voluntarily and consciously matters, and is the accepting party of its natural consequences (Qafisheh, 2012).

Article (85) of the Jordanian Penal Code confirms this interpretation by repeating the general rule of Article (10): *"ignorance of the law is no defense of any person who has committed a crime"*. Hence, a person becomes subject to criminal responsibility when he has already attained the age of legal responsibility and understands that he has transgressed a particular legal rule, whether he knows of the particular legal rule he has contravened. Lack of knowledge of the law will not absolve him (Saeed Khaleel Obiah, 2024).

The Element of Will

Will has been described as an individual's rational and psychological composure before committing or not committing a crime. To have criminal liability, will and awareness should operate in conjunction. In this case, will is the freedom of the individual to do or not to do, to act or not to act. The offender's misdeed must result from his free and lawful action (Alazab; et al., 2024). The concept of criminal liability comprises awareness and will. When an individual is forced to do something he does

not want to do and is not provided with an option to execute any other form of choice, the will aspect is destroyed (Al-Raggad et al., 2024). So, will must have two conditions in order to exist:

The act should be possible and not impossible.

The individual should have other choices, and there should be true freedom of choice.

Therefore, criminal liability is established when awareness and will are present i.e. when there is freedom of choice. The East Amman Criminal Peace Court has upheld this principle in a case whereby the accused had memory weakness, declining mental capacities and communication problems. The court also established that the defendant did not know what he was doing and was a legal adult under legal guardianship, per the Sharia court ruling. Therefore, His will was considered non-existent, because he could not differentiate, see or decide. This was why he was not charged with criminal liability (Bodnaruk et al., 2025).

As per this, the researcher believes that the initiator of a crime has criminal responsibility when he participates in the criminal act of introducing and creating the concept of the crime in another individual, whether the crime is a felony, a misdemeanor or even impossible in substance (Bodnaruk et al., 2025). Following the approach of the Jordanian legislator, criminal responsibility falls on the instigator when he commits himself to this act. To be punished, however, and in compliance with Article (74/1) of the Jordanian Penal Code, the instigator must be cognizant and aware of what he is doing when he incites. As will is a fundamental part of criminal intent, the will of the instigator has to be free, legal and intentionally aimed at forming the idea of the crime in another person. He should also know that his actions, which induce the perpetration of a crime, are against the law (Al-Ahmad, 2024).

Section Three: Impediments to Criminal Liability

As criminal liability is based on the two elements of awareness and will, legal scholars have raised a question and controversy about criminal liability for those lacking one. The Jordanian legislator has clarified this issue explicitly, as he considered that criminal liability does not exist in the event of the absence of one of these two elements, criminal liability does not exist. Jordanian law has also identified several cases in which a person is considered to lack one of these two elements (Herman, 2017). The occurrence of one of these cases is regarded as an obstacle preventing the realization of criminal liability for the person concerned. These cases include:

The State of Coercion

Coercion is a condition in which a person is under the influence of force and his actions and will are controlled, such that he acts and does things against his will, and were it not for this force, he would not have acted at all. It makes no difference whether coercion is physical or moral; what matters is that it affects the person's will and deprives him of control and dominance. However, Article (88) of the Penal Code stipulates an additional condition for coercion to be considered an impediment to criminal liability. This condition is that the person must not have placed himself under coercion by his own will and choice and must not have found an escape from that coercion and resorted to it (Still, 2024).

The State of Necessity

A state of necessity refers to a situation in which a person, another person, or property belonging to himself or another, is subject to a threat. This threat must be serious, unavoidable, and without alternative options for the perpetrator. For the necessity to exclude criminal liability, the danger must be grave, threatening serious harm to life or property, and imminent, leaving the perpetrator with no means of avoiding it except by committing the act in question (Bader, 2019).

Insanity and Mental Disabilities

The Jordanian legislator did not provide a specific definition of insanity as an impediment to criminal liability. However, in its legal sense, insanity means "*any deviation that affects the body's systems and powers that contribute to the formation of the will, and is likely to deprive it of discrimination or freedom of choice*". Other legislations have used broader expressions than the term

insanity. For example, Article (88) of the Italian Penal Code uses the term *“mental illness”*; Article (122) of the French Penal Code refers to a *“mental or nervous disorder”* that deprives a person of the ability to distinguish or control his actions. In contrast, Article (5) of the German Penal Code mentions a *“disorder of consciousness, pathological disorder of mental activity, or mental weakness”* (Al-Ahmad & Alzawahreh, 2024).

The Jordanian legislator has placed restrictions on excluding criminal responsibility due to insanity. Article (92) of the Jordanian Penal Code stipulates that criminal responsibility is excluded under two conditions: first, that the perpetrator is insane, i.e., lacking awareness and will; and second, that this lack of awareness and will exists at the time of committing the crime or engaging in the criminal behavior. In the researcher opinion, these restrictions are consistent with Article (74/1) of the Jordanian Penal Code, which sets out the conditions for imposing criminal responsibility and punishment (Al-Ahmad & Alzawahreh, 2024).

Small Age

According to Article (2) of the Jordanian Juvenile Law No. (34) and its amendments define a juvenile as *“every person who has not completed eighteen years of age.”* The Jordanian legislator has established special protections for the juvenile's best interests. A juvenile not completed twelve years of age is not criminally prosecuted. The legislator divided the stages of youth into three categories: juvenile, adolescent, and young man, assigning different punishments appropriate to each stage. However, the law considered that young age is an obstacle to criminal liability (Khawaldeh et al., 2024).

This is confirmed in Article (4/b) of the Juvenile Law, which states: *“Despite what is provided in any other legislation, no one who has not completed twelve years of age shall be criminally prosecuted.”* In the researcher opinion, the rationale is that a minor is not fully aware of their actions before twelve. His perception and understanding are incomplete; thus, he cannot be punished for acts or behaviors he does not realize constitute criminal offences. This approach of the Jordanian legislator is consistent with Article (74/1) of the Penal Code (Al-Ahmad, 2024).

The researcher sees if the instigator has any impediment to criminal liability for committing the crime of incitement, whether the incitement is for a felony, misdemeanor, or an impossible crime due to relative material impossibility according to the plan of the Jordanian legislator. If so, criminal liability is denied to him. However, in return, precautionary measures are taken against him to preserve society's security and its structure's integrity.

Second Requirement: The Crime of Incitement According to Jordanian Law

Incitement is a form of criminal complicity and is considered one of the most dangerous means used to motivate others to commit crimes. In Jordanian law, incitement is regulated under the provisions of the Penal Code. It is regarded as an act that pushes or motivates another person to commit a crime through material or moral means. This section will address the general provisions of incitement and the instigator through the following branches:

Section One: The Concept of Incitement and the Instigator

Incitement as a crime is defined as *“creating the determination to commit a crime in another person with the intention of pushing him to carry it out or attempting to create that determination”* (10). According to Article (80/1/A) of the Jordanian Penal Code, an instigator is *“the person who induces or attempts to induce another person to commit a crime.”* From this definition, it is clear that incitement concerns ideas and intentions rather than actions and results. It is of a moral and expressive nature, as the instigator seeks to influence another person's psyche to make him commit a crime (Al-Sarraj, 1982).

The crime of incitement is realized whether it relates to a felony, misdemeanor, or a crime impossible due to relative material impossibility. The act or behavior towards which the incitement is directed must be criminal, i.e., criminalized by the Penal Code or other national laws. Thus, according to the Jordanian legislator, incitement exists once the instigator attempts to create and disseminate the idea of a crime, regardless of whether the crime is actually carried out (Huseynov et al., 2025). In judicial practice, a distinction is made between two forms of impossibility:

Relative material impossibility: Incitement is still punishable if the incited act is materially impossible under certain circumstances (e.g., lack of means).

Legal impossibility: If the act incited is not criminalized by law, incitement does not exist, and the instigator is not punishable.

Section Two: Elements of the Crime of Incitement

Similar to other crimes, incitement relies on three pillars in the law: the material, the legal and the Sharia pillars, and the moral pillars. If any of these pillars are lacking, neither the crime of incitement nor any other crime is proven because the three pillars should all be present to have a crime.

The Legal Aspect

According to Article (3) of the Jordanian Penal Code, "*There is no penalty or crime except by law,*" it should be illegal and treated as a crime, and whoever commits it should be explicitly sentenced (Saeed Khaleel Obiah, 2024).

The Material Element

Material element of crime involves the cause, the consequence, and the cause and effect. When it comes to the incitement, it is the act of the instigator to form or enhance the concept of committing a crime in the other person. This can be done by influencing the individual to do it or pulling them to do it, no matter the consequences of the action (Wilson, 2017).

The Moral Pillar

It is the instigator's sinful will and criminal intent, meaning that he knows that the result of his action or instigation has a role in causing the outcome, which leads to the commission of the crime. In contrast, his will is present in the instigation to commit a specific crime (Saeed Khaleel Obiah, 2024).

Section Three: Forms of Incitement

The crime of incitement (Sedition is not an arbitrary offense; however, Jordanian legislators have set elements for its constitution. These elements include various acts committed by the agitator. Any one of these acts is sufficient to constitute the offense. These acts are likely to influence the agitator's psychology, driving them to commit the crime. These acts are listed in Article (80/1/a) of the Jordanian Penal Code, and are enumerated rather than illustrated with examples, such as "giving money, giving gifts, using threats, deception, making false statements, abusing influence, or abusing power." According to Jordanian legislators, an agitator only needs to use one of these methods, which are equivalent in legal effect and psychological impact on the incited (i.e., the perpetrator) (Al-Shubail & Al-Salamat, 2023).

Section Four: Punishment of the Instigator According to the Jordanian Legislator's Plan

Incitement is a crime by itself, and it is a rule of law in the Jordanian Penal Code because it is a grave crime. Each rule consists of two components: the first one is the obligation, and the second one is the penalty, the punishment resulting from the crime of incitement. The legal effect, that is the penalty, is accomplished where the act incited is punishable under law, either under the Penal Code or under other laws. The inciter should know the outcome that this will cause. Certainly, incitement does not form part of another crime (instead, it is a crime in itself), although the inciter did not commit the crime or did not even wish to commit it. Consequently, the incitement offence is a crime in its own right, given its severity (Jaconelli, 2018).

According to the text of Article 81 of the Jordanian Penal Code, the foundation and emphasis of the punishment of the instigator is the original perpetrator. If the penalty imposed on the original perpetrator is death, the instigator shall receive a life sentence or a term of twenty to twenty-five years' imprisonment. The instigator will be subjected to the same punishment as the perpetrator if the penalty imposed on the perpetrator is life imprisonment. However, when the penalty is less than the above penalties upon the perpetrator, then the instigator shall be punished according to the same penalty as the perpetrator, only after multiplying this by a fifth to a third (Khater et al., 2024).

The Criminal Responsibility of The Instigator of An Impossible Crime According To The Jordanian Penal Code.

Thus, the perpetrator's punishment is heavier than the instigator's. When the instigation fails to result in the perpetration of the crime, the punishments prescribed in Article (18/1/2) are cut by a third. As the text of Article 82 of the same law stipulates, Incitement to commit a violation is not punishable because it does not imply any penalty.

Section Five: Cases in Which the Instigator Is Punished and the Exception

When all the elements constituting a crime (as defined by law) are present, the instigator will be punished. This means that, under Jordanian criminal law and the laws of other countries, incitement itself is a crime, regardless of whether it is classified as a felony or a misdemeanor. Researchers argue that even if the instigator does not participate in the criminal act, the incitement itself constitutes a crime because if they did participate, they would become a principal or accessory. Therefore, incitement is considered an independent criminal act, unrelated to the actual perpetrator. It is noteworthy that inciting a father to discipline his son is not a crime, nor is inciting someone to kill in self-defense, as this falls under the category of legitimate self-defense. In these cases, the act of incitement does not constitute a crime because it is justifiable, permissible, and beneficial to all those who participate in legitimate self-defense or protect others. (McLeod, 2024).

Section Six: The Instigator and Personal Excuses

Personal excuses are those that exempt from punishment and are distinguished by the fact that their effect does not extend to others. They relate to the person himself. Suppose they are available to the original perpetrator or partner in the crime. In that case, the instigator does not benefit from them because the effect of these excuses does not extend to others. Accordingly, the instigator does not benefit from personal excuses that exempt from punishment (and/or) mitigate it unless they are available to him personally (Al-Raggad et al., 2024).

Section Seven: The Relationship Between the Instigator and the Material Circumstances of the Crime

When there are aggravating material circumstances of personal punishment in the crime, they apply to the instigator, although they may be unknown to him. Examples of this kind of circumstance are breaking, dislocation or climbing. In such instances, the punishment is worsened. The material circumstances can exacerbate, absolve, or soften the punishment, and apply to those who incite the crime. However, incitement may be an independent offence with its own elements. Nevertheless, the instigator will be liable, as regards the penalty, to the circumstances of the crime (Zubko, 2019).

Section Eight: Distinguishing between the instigator as an independent criminal and the accomplice in the crime

An instigator is someone considered an independent perpetrator who does not participate in the commission of the crime with an accomplice. An accomplice assists in the necessary acts to commit the crime, while an instigator does not participate in its execution. An instigator plays a morally facilitating role in the occurrence of a crime simply by expressing the criminal intent. However, when an instigator subsequently participates in the actual criminal act, they become an accomplice (Slavkovic, 2021). There is a fundamental difference in punishment between instigators and accomplices: accomplices, because of their participation in the crime, are punished the same as the principal offender; while instigators, as a second party, are not punished unless all conditions stipulated by law are met (Zubko, 2019).

Third Requirement: The Impossible Crime According to Jordanian Law

Section One: The Concept of the Impossible Crime and The History of Its Emergence

In 1808, German jurist Ludwig Feuerbach defined an impossible crime as "a crime that could not be committed, either because there was no result (e.g., shooting someone) or because the means used were ineffective (e.g., using an unloaded weapon)" (Feuerbach, 2014). It is also defined as "a crime in which the perpetrator exerts all his efforts but fails to achieve the intended result" (Chiesa, 2014; DeCruz, 2024). Therefore, it is similar to a perfect attempted crime: the perpetrator exerts all his efforts, but the criminal result still exists. Another definition states: "The perpetrator begins and completes the

criminal activity, but ultimately fails to achieve the criminal result, either because there is no crime scene or because the means used were ineffective."

The impossible crime first appeared before the French judiciary when a person called (Laurent) was preparing to kill his father by loading a rifle with ammunition and leaving it leaning against the wall. This aroused his father's suspicion, which prompted him to empty it of bullets and leave it in its place until the son came forward, pulled it out, pointed it at his father, and pulled the trigger, but the bullets did not fire. After the father resorted to the judiciary, the court convicted his son of the crime of attempted murder (Oates, 1980).

Section Two: The Difference Between an Impossible Crime and a Failed Crime

The necessity of distinguishing between impossible crimes and attempted crimes lies in the fundamental difference between the two: In an impossible crime, the perpetrator exerts every effort to carry out the criminal act and achieve the criminal objective, but ultimately fails because it was determined before the criminal act began or from the initial planning stage that the objective could not be achieved. In contrast, in an attempted crime (i.e., a complete failure), the perpetrator has already begun to carry out the criminal act. In this case, the achievement of the criminal objective depends on external factors beyond the perpetrator's control. These factors arise during the planning and execution of the criminal act and prevent the achievement of the criminal objective. In other words, if the perpetrator had been more precise, cautious, diligent, and skilled in carrying out the crime, they might have been able to achieve the criminal objective as defined by Jordanian law. If someone else had committed the same crime, and with greater precision and caution, they might have been able to achieve the criminal objective and alter external reality (Turner & Oriona, 2021).

The researcher sees the fundamental difference between an impossible crime and a failed crime (complete attempt) lies in the criterion of the possibility of achieving the criminal result. In an impossible crime, the failure to achieve the result is inevitable. It is preordained or simultaneous with its execution, given the impossibility of achieving the criminal result in the first place. However, failure to achieve the criminal result is probable in a failed crime. It may occur after the commencement of execution, meaning there is a chance of achieving the result, but it does not occur for some reason. Therefore, the temporal criterion is the decisive factor in distinguishing between the two cases.

Section Three: Reasons for Impossibility

The reasons for impossibility are related to the result that the perpetrator intended to achieve, not to the act that the perpetrator committed. The perpetrator performed the act that was supposed to lead to the completion of the crime, but the crime did not occur for the following reasons:

4.3.1. *Impossibility Due To The Location Of The Crime*

Impossibility based on the location of the crime is a legal impossibility. A crime is legally impossible if the crime scene is absent or has lost one of its essential characteristics. For example, in the crime of murder, the essential element is the existence of another living human being. If a person attempts to kill someone who had already died before the attempt or if the intended victim is not present at the expected location, the crime of murder cannot exist. Likewise, if the accused searches the victim's pocket intending to steal but finds nothing, or if someone attempts to perform an abortion on a woman whom he believes is pregnant (Almahasneh, 2024). However, if one is not pregnant, then the crime of abortion does not exist. In the first example, we are faced with an impossible crime due to the absence of the crime scene (a living human being). In the second example, the crime scene (money) does not exist. In the last example, the crime scene (the fetus) is absent, making the crime impossible (Sonbol, 2003).

4.3.2. *Impossibility Due To The Means Of Executing The Crime*

A. Absolute Material Impossibility: It occurs when the means used are absolutely unsuitable for producing the criminal result. For example, if the accused intended to kill the victim by poisoning his food, but the substance was not actually poison, or if the poison was used in such a small quantity that it could not cause death. Similarly, if the accused attempted to kill using a fake (plastic) gun, the crime would be absolutely impossible, according to the Jordanian Penal Code No. (16) of 1960, there is no punishment in such cases (Miller, 2020).

B. Relative Material Impossibility (Complete Attempt): This refers to a situation where the means used would normally achieve the intended effect, but fail due to the manner or quantity used. For example, if the defendant pulls the trigger but the bullet does not fire, it constitutes attempted murder. Similarly, if the defendant uses a rifle that has been emptied of ammunition without their consent, or a switchblade that cannot be opened after being pressed, the act will be classified as "virtually impossible." In such cases, it is considered a complete attempt to commit murder and is punishable under Article 70 of the Jordanian Penal Code (Alahmad, 2025).

4.4. Section Four: Elements of the Impossible Crime

The impossible crime can only be established by combining the three elements: the legal, material, and moral elements. The legal element is the act or behavior that the perpetrator has committed, which is criminalized according to the provisions of the law. Therefore, the legal element applies to relative physical impossibility per the plan of the Jordanian legislator and the judiciary in dealing with an impossible crime.

Jurisprudence employs various theories to regulate such crimes, including substantive theories and their two aspects: the absolute substantive theory, which holds that impossible crimes should not be punished; and the relative substantive theory, which holds that such crimes should be punished, while legally impossible acts are exempt from punishment. In addition, there is the personality theory, which argues that all forms of impossible acts should be punished because legislators have decided to punish according to the severity of the crime; the personality theory divides impossible acts into two types: absolutely impossible and relatively impossible, punishing the latter and exempting the former.

However, if the criminal incident is described as legally impossible or as an absolute physical impossibility, the perpetrator will not be punished when this description is fulfilled (Muda et al., 2024).

Accordingly, the Jordanian Supreme Court ruled: "An impossible crime is one in which the criminal result cannot be achieved due to the ineffectiveness of the intentional act or the lack of the object of the crime. The store the defendants broke into had no money, therefore it does not constitute an impossible crime; their actions constitute attempted theft, in accordance with Article 70 of the Criminal Code." In another ruling, the court ruled: "The defendants used a handgun that was inherently lethal and repeatedly attempted to shoot the victim at close range. If it were not for reasons beyond their control—the handgun failing to fire and the bullet failing to be fired due to a burning casing (technical malfunction)—the crime would have been completed. All of this demonstrates the defendants' intent to kill; therefore, the defendants' defense that they could not kill due to unsuitable ammunition is unfounded." It is noteworthy that the court did not consider the means used in the above rulings.

However, instead, the perpetrator must intend to commit this act and have legal free will. His will must be directed towards committing this act and obtaining the criminal result. It is required that he knows that the behavior performed by the perpetrator leads to a criminal result, without regard to the extent to which the result is achieved, since its occurrence is considered an effect of that crime. If the result occurs, the crime is complete and punishable by law, and it is not impossible. However, if the criminal result does not occur due to the unsuitability of the means or the absence of a place for the crime, then it is impossible for it to occur and is not punishable by law (Hajdin, 2021).

Section Five: Punishment for the Impossible Crime

The Jordanian lawmaker did not mention the impossible crime in his legislative documents and did not refer to it. Consequently, there is no penalty in Jordanian law other than when the impossible crime is a relative physical impossibility. In this case, what is written in the texts of Articles (68 and 70) applies to it. The Jordanian lawmaker has treated the initiation as in the text of Article (68) of the Jordanian Penal Code No. 16 of 1960 and its amendments as: the initiation of the execution of an apparent act to the commission of a felony or misdemeanor (Alahmad, 2025). In case the perpetrator fails to carry out the acts required in the happening of such a felony or misdemeanor through causes outside his control, he will be penalized according to the following:

- 1- Temporary imprisonment of between seven and twenty years when the sentence for the

attempted felony demands the death penalty, and at least five years when the sentence is life imprisonment or life detention.

2- To cut down any other temporary penalty by half or two-thirds.

The researcher believes that, given the course the Jordanian legislator undertook in addressing the incident of an impossible crime within the context of relative physical impossibility, the penalty above is imposed on the perpetrator, and the criminal responsibility is incurred by the instigator of the occurrence of this crime, even when the crime does not occur. The punitive action of the original offender is the measure and controller of the punitive action of the instigator. Hence, the instigator commits criminal liability regardless of the relative physical impossibility of the crime committed or not.

Section Six: The Impossible Crime According to Jurisprudential Trends

The First Trend: The Traditional School

The traditional school believes nothing is punishable for an impossible crime, either because the impossibility concerns where the crime occurs or the instrument with which it is committed. They argue that an attempt should be punished by initiating an act that has the potential to offend. This cannot be imagined as an impossible crime since nothing can be done to create the effect. All that is there is the perpetrator's intent, but that alone cannot be punished. Followers of this theory who adopt a materialistic approach feel that an impossible crime does not threaten the rights enshrined under law, compared to a failed crime or even a typical attempt. Nevertheless, total non-punishment in every instance of impossibility can permit hazardous conduct that endangers the safety of society (Hosnia et al., 2024).

The Second Trend: The Positivist School

The positivist school disagreed with the conventional school and insisted that impossible crimes must be punished in any form. An attempt under this interpretation does not require that the criminal act actually be started; merely that the perpetrator should take on himself acts which unmistakably indicate his desire to commit the crime, even though such acts may not be the physical initiation of the commission of the crime, provided the perpetrator himself thinks that such acts may lead to the commission of the crime. This school does not believe in the impossible crime (Kourtis, 2025). However, it takes it as a punishable attempt, unless the instrument employed betrays the want of some degree of naivety or mental incapacity, in the person who attempts it, as the recourse to magic or sorcery, proving of a weak psyche and of no danger. Therefore, this method results in the punishment of so-called imaginary crimes, crimes that have no legal existence and exist only in the mind of the person punished (Bun et al., 2020).

Jurists would then attempt to revert to the general principles to have complete regulations of the law. This produced two trends, namely, the objective theory and the personal theory, which are as follows:

Objective Theory: Advocates of this theory say that no one should be punished for an impossible crime, either as an attempt or an independent crime. They argue that there must be an attempt in which there should be the onset of an execution in a manner that causes the criminal outcome to have a high probability of occurrence. When the outcome is impossible, as is the case with impossible crime, then the act cannot be regarded as anything more than a standard action that simply reflects the criminal motive of the offender (Perillo, 2000). This theory has been adhered to by several legal systems, according to which the act performed by the perpetrator as the beginning of a crime must be able to lead to the desired criminal outcome. It has, however, been criticized as overlooking intent, which is the moral part of the crime upon which punishment under the law is founded. The legislators do not always need the occurrence of a criminal outcome to punish other offenders, except in some exceptional cases where the law defines the specific categories of crimes (Alkhawatreh et al., 2024).

Personal Theory: The perpetrator of an impossible crime has exposed and proven his criminal motive and will to execute it; thus, the risk of his action has become apparent to society. However, there was an incidental circumstance, of which the perpetrator was unaware. However, he could do nothing

about it, which prevented the gaping jaws of hell from fulfilling their purpose. This brings into question: What is the difference between the person who fires at a living person and misses, and the person who draws his/her trigger only to discover that the gun is empty by chance? Socially, objectively, and morally, there is no actual difference. As the law is concerned with intent, it cannot underscore the perpetrator's punishment because it is categorized as an impossible crime (Soper, 1984). This theory has been widely embraced in Germany, and the German judiciary has decided that strangulation of a stillborn baby is an attempt and should be punished. It was decided in another case that an attempt to make an abortion on a woman who feels she is pregnant but is not is also a punishable attempt (Jovanovic, 2020).

Section Seven: The Position of Jordanian and Comparative Legislation on the Impossible Crime

Through our study For this study we found that most of the legislations have tended towards the absence of a legal text that confronts the impossible crime, and among these legislations are the Jordanian and Egyptian legislators, as no legal text has been included in the form of an explicit legal rule with its two parts, the assignment and the penalty, that includes the criminalization of the impossible crime in all its cases, whether in the case of absolute legal or material impossibility or relative material impossibility. Therefore, we will talk about the position of the Jordanian judiciary in dealing with the incident of the impossible crime and identify the trend followed in criminalization. We will also identify the position of the Egyptian judiciary and the trend followed in criminalization (Abuallim, 2019).

In Article 202 of the Penal Code (1949), the Syrian legislator prosecutes the attempt even when the crime is impractical because of material circumstances the offender lacks knowledge of, unless such an act occurs because of naivety or constitutes a crime of imagination. This personal theory focuses on criminal intent as the ground on which the person is punished (Van Schaack, 2019). Also, according to Article 30 of the Penal Code, the Iraqi legislator considers any act aimed at the commission of a felony or a misdemeanor as an attempt, although impossible because of the subject or means of intervention. This personalist-school approach is absolute; it provides social protection, penalizing all impossible crimes, except purely imaginary ones (Almusawi, 2021).

The Jordanian legislator failed to expressly discuss the impossible crime in its Penal Code, both in the context of an absolute legal impossibility and a relative physical impossibility. Nevertheless, based on Articles 68 and 70, the judiciary differentiated the two: there is no punishment for the absolute legal impossibility, but relative physical impossibility is considered a full-scale attempt. The researcher believes that the judiciary, too, should discuss legal impossibility because, without it, the perpetrators will go scot-free (Saleh, 2023). As the punishment of the instigator remains dependent on that of the principal offender, through this exclusion, the instigator would be relieved of liability despite the separate and serious nature of incitement under Article 80 of the Penal Code. In this way, the judicial method contradicts the principle of instigation, where the instigation liability is determined, no matter whether the crime is possible, impossible, committed, or rejected (Alakayleh, 2021).

The Jordanian Court of Cassation has affirmed that it has adopted the doctrine of relative material impossibility and has regarded it as an attempt. In one case, it decided that breaking into a place intending to steal money, though no money was discovered, is attempted theft in the provision of Article 70 of the Penal Code. In a different case (No. 320/95), the Court found that the act of an accused firing a lethal pistol and trying to shoot the victim but failing to do so because of a technical failure still communicated the intent to kill, and the defense of impossibility was denied. Such decisions confirm the judicial stance that relative impossibility is punishable (Alawamleh et al., 2023). Conversely, the Egyptian lawmaker did not directly outlaw the impossible crime but solved the problem by likening it to an attempt. Article 42 of the penal code draft of 1964 provided that articles on attempts apply when a crime cannot be completed because of either the insufficiency of the means or the want of the subject (Abuallim, 2019).

The Egyptian Court of Cassation embraces the doctrine of distinguishing between absolute impossibility and relative impossibility. It has gone further in its decision to apply the doctrine to punish many types of relative impossibility. In another case, the Court has decided that wherever the

substance employed in the process of poisoning is inherently conducive to producing the desired effect, there is no occasion in which the theory of impossible crime can be applied (Awad, 2024). The Court elaborated that impossibility only ensues when accomplishing the crime is impossible in its very nature because the desired outcome is not present or the means employed are totally unsuitable (Feis, 2019). However, when the substance only needs an increased dose to be deadly, this does not imply that the crime cannot occur, but the failure should be attributed to factors outside the control of the perpetrator. Therefore, when an individual picks such a substance and puts it in a beverage with the aim of killing, the offence qualifies as an attempted offence as per Article 45 of the Penal Code (Al-Fawareh et al.).

In the opinion of the researcher, the Egyptian judiciary differentiates absolute and relative impossibility, although, in fact, it has expanded the limits of relative impossibility to accommodate additional punishable cases. The Court never hesitates to apply punishment in cases of relative impossibility. However, liability is never applied when impossibility is absolute, in cases where the means employed to reach the desired outcome are not appropriate in any way. On the other hand, when the appropriate means are involved and the crime is not committed due to circumstances beyond an offender's control, the act will be treated as an attempt, and the law on attempts is applicable.

Recommendations

Based on the above discussion, this study has given the following recommendations:

The concept of impossible crimes should be clarified by amending the Jordanian Penal Code No. (16) of 1960 concerning impossible crimes. A specific definition, characteristics, and conditions should be established to resolve the debate surrounding the issue and eliminate differing opinions.

When teaching the Penal Code, particularly the section on crimes against persons, emphasis should be placed on impossible crimes and the ability to differentiate them from attempted crimes. This will equip lawyers with the skills to distinguish between the two through sound legal characterization of the facts.

Current lawyers should review the rules and characteristics of impossible crimes using legal texts, legal books, and court opinions to ensure the correct legal characterization of the facts.

Conclusion

This study explores the concept of "impossible crime" and the positions of jurisprudence, the judiciary, and the law on this issue. An impossible crime is defined as a crime in which the perpetrator exerts every effort but is ultimately unable to achieve their intended criminal result. In this respect, it shares two similarities with attempted crime: the perpetrator exhausts all means, but the final criminal result is still not achieved.

Jurisprudence employs various theories to regulate this type of crime, including materialism. Materialism is further divided into two aspects: absolute materialism, which holds that impossible crimes are unpunishable; and relative materialism, which holds that impossible crimes should be punished. In addition, there is legal impossibility, which argues that impossibility itself should not be punished. There is also personality theory, which holds that all forms of impossibility should be punished because the legislator has determined the severity of the crime. Finally, there is personality theory, which divides impossibility into absolute impossibility and relative impossibility, punishing the latter while excluding the former...

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