

LIABILITY ARISING FROM EXCEEDING THE LIMITS OF LEGITIMATE DEFENSE

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ABSTRACT

It is known that the law permits a person who has been in danger to himself, his money, or his honor to pay this attack to stop the expected danger, and this is what is known as the case of legitimate defense. For more than what is required to respond to the danger, and by this he has gone outside the permissible framework, because he inflicted more harm than the harm expected to happen to him in the event of the danger, thus exceeding the limits of his defense. Exceeding the limits of legitimate defense is the lack of proportionality between the gravity of the act of defense and the danger that threatened the victim, that is, the use of a measure of force more than what was sufficient to ward off the danger, and exceeding the limits of the right in this sense requires the pre-establishment of the state of defense with the fulfillment of its conditions, and therefore it is not intended to exclude A condition of legitimate defense, and penal responsibility arises in the intentional transgressive crime when it fulfills its material and moral pillars, where a realistic situation arises represented by the offender knowing the truth of his act.

Keywords: Legitimate defense, the concept of transgression, the responsibility of the transgressor, laws and legislation in the legal defense.

Introduction

The development of crime was associated with the development of human civilization through the ages in primitive societies the human being is doing a crime commensurate with his time and it was enough to discover the investigator's reliance on magic, sorcery and confession interrogation and in the absence of evidence to beating and torture, and with the passage of time these methods in the way of obtaining evidence fade with the French Revolution, where the means of committing crimes have advanced where criminals commit crime professionally, using the latest technologies that facilitate their task and enable them to hide Effects of crime. Experts have unanimously agreed that the crime scene is the area from which the leads begin, which help to unravel the mystery, identify the features of the offender and collect criminal evidence to prove the existence of a relationship between the accused and the crime if he is the perpetrator and helped the crime scene and its effects to identify the circumstances and circumstances and here the investigator recognizes the mitigating or aggravating circumstances or criminal intent or motive for the commission of the crime.

Importance of the study:

Due to the importance of the crime scene to reach proof or deny the occurrence of the criminal act, and how to search for evidence to prove it, and therefore more attention must be paid to the stage of investigation at the crime scene more than other stages of investigations because this stage is the stage of the preliminary investigation in revealing the offender and revealing how the criminal act occurred, and that the phenomenon of crime has increased beyond all expectations and exceeded the percentages, and statistics have shown that the crime scene is of great importance in revealing the truth, so as to Carrying it from the effects above its land, as the criminal has become doing his best in order to obliterate all the existing effects, in order not to discover and show his crime and in order to confront the criminals, and not to escape punishment, there are parties that watch over the preservation of the theater from the tampering of the curious and ensure the search and investigation of physical evidence and the perpetrators relying on the latest research techniques and starting from the crime scene, which is the witness silences and the repository of secrets from which the truth emerges, and the importance of the theater lies The crime is in convicting the real accused and acquitting the innocent.

Objectives of the study:

This study aims to:

- 1- Showing the importance of the crime scene in revealing the identity of the criminal and indicating the role of the competent authorities in examining the criminal effects obtained from the crime scene.
- 2- Achieving justice and identifying the real criminal who left the crime scene and is sure that he obliterated the effects and cannot be identified, but with a skilled research team and officers capable of raising the effects and their bias, the original perpetrator who completed his crime can be identified to the fullest.

The problem of the study:

The problem of the study lies in the following:

1. Every criminal case aims to obtain traces and evidence, and ends when evidence is obtained at the stage of the criminal investigation.
2. The method of investigation in criminal cases varies, as some cases start from the presence of physical evidence proving the occurrence of a crime.
3. There are issues that start from having a physical impact, and that's where we want to address our topic.
4. The necessary precautions based on scientific foundations and practical principles must be adhered to deal with the impact extracted from the crime scene by competent bodies authorized by law.

Study Questions:

The problem enables the study of the following:

What is a crime scene? What are the types of crime scenes? What is the concept of crime scene inspection?

Study Methodology:

The approach followed in this study is the analytical approach and the applied method, because of its great benefit in helping the researcher to derive and formulate the problem of the study and its description, as well as to stop on the strengths of the subject of the study.

2. The nature of the crime scene and the competent authority to take action therein

Exceeding within the limits of legitimate defense is intended to select proportionality between the acts of defense and the danger of assault that threatened the aggressor, and therefore it is not intended to limit legitimate defense to select one of the conditions of assault or defense, but rather to select the condition of proportionality in particular assault and defense, the condition of proportionality is what is the framework within which the defense must be undertaken, and therefore if proportionality fails we are in the case of transgression ⁽¹⁾.

2.1: Definition of override

Transgression language: is excessive ⁽²⁾, and in the terminology: means that the gunner uses a degree of force exceeds enough to respond to aggression when the jurists of Sharia did not have a definition can be extracted from their sayings, but jurists have been interested in its concept and standard ⁽³⁾.

As for legal scholars, we mean to exceed within the limits of legitimate defense to select proportionality between the acts of defense and the risk of assault that threatened the aggressor and therefore it is not intended to limit legitimate defense selection of one of the conditions of assault or defense, but it is intended to select the condition of proportionality in particular assault and defense, the condition of proportionality is what is the framework within which the defense must be carried out and therefore if the proportionality lags behind we were in the case of transgression ⁽⁴⁾.

What is meant by transgression is that the defender during his defense exceeds the limits of his right to defend himself or his money or the soul or property of others.

Overtaking is defined as the lack of proportionality between the act of defense and the danger resulting from the act of assault, where it is said in this case that the person has exceeded the limits of legitimate defense. To exceed the limits of legitimate defense many and multiple forms, this may be due to the absence of one of the conditions necessary for the establishment and realization of the state of legitimate defense, such as the condition of the existence of the

(1) Muhammad Moaz, Provisions and Controls of Sharia Defense in Islamic Criminal Jurisprudence, "A Comparative Jurisprudence Study", Master of Arts Thesis in Islamic Studies, specialization: Comparative Jurisprudence, University of Gezira University, Faculty of Educational Sciences, Department of Arabic Language and Islamic Studies, December 2018, p. 30.

(2) Ali bin Muhammad bin Ali al-Husseini al-Jurjani, Definitions, Dar al-Kitab al-Arabi, Beirut, vol. 1, 1st edition, 405 AH, p. 35.

(3) Mansour bin Younis bin Idris al-Bahouti, Scouts of the Mask, edited by: Hilal Muslehi Mustafa Hilal, Dar al-Fikr, Beirut, vol. 2, second edition, 2008, p. 102.

(4) Muhammad Moaz, Provisions and Controls of Sharia Defense in Islamic Criminal Jurisprudence, "A Comparative Jurisprudence Study", Master of Arts Thesis in Islamic Studies, specialization: Comparative Jurisprudence, University of Gezira University, Faculty of Educational Sciences, Department of Arabic Language and Islamic Studies, December 2018, p. 30.4

danger of the situation, or the description of this danger as a crime or not and may use force against it or not. This transgression may be represented in the use of the right of legitimate defence, such as fault in the person of the aggressor or deviation from the target, and finally this transgression may be in the necessary degree of force with which to respond to the act of aggression or the means that can be used⁽⁵⁾.

Exceeding the limits of justified defense is defined as "the disproportion between the gravity of the act of defense and the danger that threatened the victim," or "the use of more force than was necessary to repel the danger." As a result, this is not intended to undermine any of the conditions of legal defence, but rather to negate the requirement of proportionality."⁽⁶⁾

It is reasonable to talk about transgression if one of the conditions necessary for the right to legitimate defence (i.e., the right to use force) is not met, and the transgression means that the defence has become "illegitimate".⁽⁷⁾

When the right of legitimate defense is available, it entails that the act of the defender becomes justified, and a legitimate act, for which there is no responsibility, neither penal nor civil, not only that, but the objective nature of the reasons for justification requires that the effect of permissibility extends to every act related to the original act, so it becomes permissible, as if the defender used in his defense a licensed weapon, so that his responsibility and confiscation are refrained, and all participants in the crime, whether they knew or not, benefit from this effect. Legitimate defense status⁽⁸⁾.

If it is determined that the effect of the existence of a legitimate defence is to justify the act and the absence of responsibility, it follows also that the Public Prosecution must keep the papers for the absence of a felony, or issue a decision that there is no ground for filing a lawsuit if it has conducted an investigation into the incident, because the incident is not punishable by law⁽⁹⁾.

If the defender exceeded the limits of legitimate defense as a result of error, such as if he incorrectly determined the gravity of the danger, or the gravity of the act of defense, when he could have correctly determined, he will be unintentionally liable⁽¹⁰⁾, and the assessment of all of this is subject to the discretion of the Court of First Instance.

(5) Abdelali Bousnoubra, Beyond the Limits of Legitimate Defense in the Algerian Penal Code, 5Journal of Communication in Economics, Administration and Law, University of Badji Mokhtar – Annaba, No. 48, December 2016, pp. 74-75.

(6) Mahmoud Najib Hosni, Explanation of the Penal Code, General Section, vol. I, Al-Halabi Human Rights Publications, Beirut, Lebanon, 3rd edition, without year, pp. 328-329.

(7) Rachef Sabrin and 7Saadi Fatima, Beyond the limits of legitimate defense, Master's thesis submitted to Abderrahmane Mira University, Faculty of Law and Political Science, Department of Private Law, 2013-2014, Bejaia, Algeria, p. 18.

(8) Mahmoud Naguib al-Hasani, Explanation of the Penal Code, Special Section (Crimes of Assault on Persons), Dar Al-Nahda Al-Arabiya, Cairo, without mentioning the year of printing, p. 329.

(9) See, Explanation of the Penal Code, Dr. Mahmoud Najib Hosni, p. 329.

(10) Dr. Mahmoud Najib Hosni, op. cit., p. 330.

2.2: Overtaking effects

Statement of what is meant by the concept of the impact of legitimate defense It is necessary to distinguish between two cases: The first case: the act of defense hit the right of the aggressor, so the legitimate defense is considered existing in the event of the existence of legal conditions, as there is no responsibility and no punishment is imposed on the aggressor defender, and it must decide to try the accused (defender), and if the case is before the competent court, it must decide the innocence of the accused, and the second case if the act of defense affects the right of the non-aggressor. In this case, a distinction must be made between two cases ⁽¹¹⁾.

First: If the aggressor errs in directing the act of defense and injures a person other than the aggressor, he is responsible for an impractical crime when he proves that he has exercised the necessary care to prevent injury to others.

Second: Injuring the right of others deliberately: The defender may find himself forced to attack the right of others to ward off the danger that threatens him, such as damaging the tree of others to obtain a stick, in this case the defender cannot invoke the legitimate defense in the face of others, but he has the right to invoke the case of necessity.

Once the conditions of legitimate defense are met and the defender is committed to the limits of defense, the act loses its criminal character so that this act becomes legitimate and does not entail civil or criminal responsibility, in the right of legitimate defense and its object, everyone who contributes to the work of defense, from the actor, partner and instigator and will intervene benefit from this right, and in application of that, the Court of Cassation ruled through a judgment by saying that to consider the act a legitimate defense that the act occurs in self-defense or presentation and that the payment occurs in the event of the assault And that it is not right (illegal) and that the accused cannot get rid of the assault except by killing, wounding or an influential act, and since the determination of the state of legitimate defense the accused can get rid of the assault except by killing, wounding or an influential act, and since the determination of the state of legitimate defense is an objective matter, the right to estimate it belongs to the Court of First Instance alone according to the evidence and circumstances presented to it in proof or denial, and the court does not control it to discriminate in that Unless the evidence and these circumstances are only true or do not reasonably lead to the conclusion reached by the judgment.

3.2: Liability of the transgressor

Unless the transgression is minor, the liability of the transgressor shall be limited to the extent that he has exceeded his right to defense. That is, after deciding the permissible amount of his act. ⁽¹²⁾If it is difficult to calculate matters for us to deduce the amount of transgression that the

(11)Abdullah bin Suleiman bin Abdul Mohsen, Controls of Private Sharia Defence and its Implications, um Al-Qura University Journal for Sharia Sciences, Arabic Language and Literature, vol. 12, no :32 College of Sharia, 2008, p. 273.

(12)Egyptian cassation rulings on 1/6/1942 AD set of rules c 2 / No. 415 p 18.470 m c 6 / No. 234 set of judgments 12 No. 182 / p 16.905/11/1964 AD group of pain performance c 1 / No. 974 / p 412.

transgressor should bear the consequences, it has become necessary to entrust the discretionary authority to the trial judge, provided that it is understood that the deduction of the permissible amount is a matter not positions, but the judge has the authority to estimate what has increased, according to the criterion and considerations that he is convinced of achieved and estimates necessary in assessing the exceedance.

Unless the transgression of legitimate defense is accompanied by exceptional circumstances - such as a sudden accident, the principle is that it creates both criminal and civil liabilities, if the necessary conditions are met and each of the two liabilities differs from the other in scope and purpose: "Civil liability faces a past situation in order to restore the situation to what it was before the damage occurred... Criminal responsibility, on the contrary, faces the future, in order to protect society from the recurrence of crime.

It is not possible to talk about the responsibility of the transgressor without addressing the responsibility of the transgressor of the limit of legitimate defense intentionally, and the responsibility of exceeding the limit of legitimate defense for a mistake. Whenever the defender commits the transgressive act, knowing that he is exceeding the limits prescribed by law, he is deliberately exceeding the limits of legitimate defense and is therefore asked about his act, there is no doubt that the responsibility here is intentional because he intentionally exceeded and is deliberately responsible. As for exceeding the limits of legitimate defense in good faith, two opinions have emerged:

First opinion: The commentators believe that the perpetrator here is considered to have committed an unintentional crime, and the defender who transgresses in good faith is punished by punishing the wrongdoer in his crime due to the lack of criminal intent, which is the most important element in intentional crimes.

Second opinion: There can be intentional good-faith transgression, so the offender is held accountable for this as a deliberate crime, and transgression is not punishable by the same penalty as bad faith, but the court may take the mitigating excuse and the assessment of the transgression and good faith or not is left to the judge.⁽¹³⁾

Legal responsibility has several forms that differ according to different branches of law, most notably criminal responsibility, civil, administrative and international responsibility, but we will only study two types of liability (civil and criminal), when exceeding the limits of legitimate defense, the responsibility of the transgressor is determined in terms of criminal punishment, while civil compensation unlike legitimate defense is a legitimate act that prevents both civil and criminal responsibility of the person who committed the crime. This can be illustrated through the following:

First: Civil Liability:

(13) Abdul Aziz Suleiman Hamdan Hoshan, *Overcoming the Right of Sharia Defense: A Comparative Study between Sharia and Law*, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2010, p. 233.

Civil liability is compensation for damage, as civil liability can be said to be: "the obligation of a person to ensure damage caused to others as a result of his act; Civil liability concerns the guarantee of the material and moral rights of third parties, in which the official bears the duty of compensation for an act caused to third parties in damage. This means that every fault, no matter how serious, entails civil liability. ⁽¹⁴⁾

In the event that the person is in a legitimate defense, he is not responsible and there is no room to talk about compensation because the legitimate defense is permissible, but in the event that the person exceeds the limits prescribed for the defense, there is no doubt that he entails his responsibility, and he is obligated to compensate.

Thus, exempting the offender from criminal liability does not absolve him of civil liability for every crime he commits, as he is liable in his own property for compensating any damage caused to others on his property or himself, and lack of awareness or his young age does not remove civil liability as well as criminal liability ⁽¹⁵⁾.

If the illegality of the incident in criminal law depends on the applicability of the criminal rule to it, and the emergence of criminal responsibility depends, in addition, on the completeness of the elements of guilt on the part of the perpetrator, that is, that the objective element of the crime and the moral element of the perpetrator are achieved, then the wrongfulness in civil law depends on the act causing damage and its association with error. ". The most important elements of a civil crime are: the achievement of damage, so that civil responsibility towards the perpetrator or civilly responsible for it arises. ⁽¹⁶⁾

The criterion of civil liability is objective personal ", consisting of the common man, and thus differs from criminal liability, which takes into account circumstances and is not satisfied with the objective criterion only, since it is limited to the application of strict liability, which has no basis in criminal law. ⁽¹⁷⁾

Foreign and Arab legislation stipulates civil liability in the event of exceeding the legitimate defense, adopting for this purpose the method of suspending civil non-liability in the case of legitimate defense on the condition that it is not exceeded. Article 212 of the Iraqi Civil Code stipulates that:

- Necessities permit prohibitions, but they are valued as much.
- Whoever causes damage while in a state of legitimate defense of himself or others shall be irresponsible, provided that it does not exceed the necessary amount, otherwise he shall be bound by compensation taking into account the requirements of justice.

(14) Alaa Al-Din Ibrahim Mahmoud Al-Sharafi , Public Legal Defense: A Comparative Jurisprudence Study, Master's Thesis, Specialization in Jurisprudence and Legislation, An-Najah National University, Nablus, Palestine, 2008, p. 165.

(15) Ziad Hamdan Mahmoud Sahar , Special Legal Defence Pushing the Seller in Islamic Jurisprudence: A Comparative Study with Positive Law, Master's Thesis submitted to An-Najah National University, Palestine, 2008, p. 176.

(16) Dr. Abdul Razzaq Al-Sanhouri: «The mediator in explaining the new civil code / year 1952 AD / c 1 / p 766 / No. 520.16

(17) Dr. 17Abd al-RazaQ al-Sanhouri: al-Wajeez fi al-Qanun al-Madani, 1966, vol. 1, p. 318, footnote 5.

Second: Criminal Liability:

Criminal liability means the competence of a person to bear the criminal sanction arising from the crimes he commits." It can also be defined as: "the capacity of a person to bear the penalty or preventive measure established by law as a consequence of the offence he has committed".⁽¹⁸⁾

Criminal liability is also "the responsibility of the offender for his crime when all the necessary elements of punishment are available", for the object of criminal responsibility is the living, rational and adult person, which are the descriptions of the offender.⁽¹⁹⁾

If the elements of defence and the conditions of each element are met, and the victim does not exceed the limits of legitimate defence, the acts of defence committed to repel the threat of assault are essentially a crime that is fully justified and does not entail any criminal liability.⁽²⁰⁾

Obviously, criminal responsibility rises as long as the crime of transgression in legitimate defense has fulfilled its objective and moral pillar. This responsibility will not arise if one of its (unspecified) elements of the crime fails: the failure of the objective element or the failure of one of its elements - by lack of material attribution - and the failure of the moral element - or the failure of one of its elements - by lack of moral attribution, and in both cases, there is no criminal responsibility even if an incident harmful to an interest protected by the Penal Code is realized.

Criminal liability is either intentional or unintentional, if the defender wants to act the defense, he committed knowing all its elements and the consequences that lead to it that would prejudice the interest protected by law beyond the extent necessary for the defense, and this result was achieved, the incident was a crime of intentional transgression and intentional responsibility.

If the aggressor carries a stick, and the defender is able to take the stick or break it from the person who threatened him with it, but the defender prefers to seriously injure the aggressor, the responsibility for this resort is criminal intent. However, if the act is intended without its criminal consequence and the act is accompanied by negligence or negligence that it was remedied, the incident is an unintentional crime.

The Iraqi Penal Code explicitly stipulates the two forms of responsibility for transgression in legitimate defense, as Article (45) is as follows: "... If the defender deliberately or negligently exceeds the limits of this right..." The defender may make a mistake in assessing the circumstances of permissibility, as if he made a mistake when assessing the gravity of the assault or the gravity of the means used in defense, so he committed the act of defense knowing

(18) Awad Mohamed Awad, Penal Code (General Section), University Press, Cairo, 2012, p. 416.

(19) Ziyad Hamdan Mahmoud Saghe, op. cit., p. 238.

(20) Muhammad Sayyid Abd al-Tawab, "Legal Defense in Islamic Jurisprudence", a comparative study, 1st edition, Alam al-Kutub, Cairo 1983, p. 326.

all its elements and wanting them, but his action was based on a mistake in judgment as he did not intend to exceed the permissibility with the presumption of good faith he has.

The good faith of the defender is replaced by the lack of will to transgress, or - in a positive way - the will of the proportionate defense only, it is related to a mistake in one of the elements of permissibility, so good faith has nothing to do with the psychological element, the moral element of the transgressive crime. The transgressor in good faith wanted and knew of his act with all its elements, including the result by which the transgression was achieved, but he did not intend it, so do not exclude the crime - contrary to many of the opinions of jurists.

According to one view, "if only the error is available, then the transgression is in good faith,⁽²¹⁾ but if the defender deliberately crosses the limits of the defense, the transgression is not accompanied by good faith."⁽²²⁾

This view accepts discussion: intentional injury may be available in conjunction with good faith, such as those who commit the act deliberately and want to defend and achieve the transgression in it, he has intended the act and the result and did not intend to transgress in good faith, so there is intentionality, and the transgression in good faith is unintentional.

However, we recognize that if the defender deliberately crosses the boundaries in the sense of wanting to cause more serious harm than the law requires, there is no good faith and intentional transgression. Therefore, it is necessary to distinguish between intentionally injuring without the will to overtake, where there is good faith, which is one of the forms of error in permissibility. And between intentional injury with the intention of overtaking, where there is bad faith in the crime of intentional transgression.

If good faith involves a mistake in estimation, it does not require that the crime be unintentional or negated intention, but this may lead to the negation of the sin from the available will when the mistake is made by the ordinary person in such circumstances as the perpetrator. Thus, "in jurisprudence there seems to be a confusion between good faith and backwardness of intention"⁽²³⁾.

However, another aspect of jurisprudence believes - rightly - that «this sound intention does not negate the existence of the intention to take the life of the aggressor in the defender, this intention also does not negate the existence of the state of legitimate defense, it does not negate also the possibility of benefiting from the excuse of exceeding the limits of this case if the crime of the aggressor does not allow to be paid by premeditated murder»⁽²⁴⁾If you allow we were not about to exceed at all, and the act would have been permissible.

(21)Dr. Mamoun Salama, Mamoun Salama, Penal Code, General Section, Dar Al-Fikr Al-Arabi, Cairo, Egypt, 1990, p. 160.

(22)Dr. Mahmoud Naguib Hosni, 22 Assault on Life in Arab Criminal Legislation, Dar Gharib Printing, Cairo, 1979, p. 235.

(23) Dr. Omar Al-Saeed Ramadan, The Moral Pillar of Violations, Thesis for obtaining a doctorate degree in law, Dar Al-Kitab Al-Arabi, 1959, p. 200.

(24)Dr. Raouf Obaid, op. cit., p. 485.24

In this regard, we affirm that good faith, if it does not negate intentionality, may benefit the availability of mitigating or exempt excuse, but if the defender transgresses the transgression, while denying good faith, he cannot claim the excuse of mitigation;

However, article 59 of the Italian Penal Code violated somewhat the requirements of the above, making liability unintentional if the fault was based on the fault of the perpetrator⁽²⁵⁾

Due to the closest link between the act of transgression and the act of defense, "we first address the issue of controversy around it, in which jurisprudence and the judiciary differed, namely is it valid to defend by an unintentional act?"

Jurisprudence and jurisprudence in France have held that the perpetrator of unintentional crimes cannot benefit from cases of legitimate defence. The argument is that a permissible defensive act must be knowingly and willingly⁽²⁶⁾.

Such crimes are not amenable to acts of defense, so they fall outside the scope of applications of reasons and issued by the French judiciary «strict sentences merely for negligence in the exercise of legitimate defense».

In one incident, an angel wanted to intimidate some villains who came to climb the fence of his house, in fact he fired a shot from his pistol at a human height, injuring and injuring one of the intruders.

If the permissibility of the legitimate defense is proved by unintentional activity, it is possible a priori to imagine that an excess has been achieved in this defense, for example, if a person wanted to hunt and hit the line of a thief stealing fruit, and he climbed the garden tree, killing him. The murder here was carried out in a legitimate and unintentional defence and was achieved by an excess of the defence.

We cannot fail to point out two things: (First) it is necessary not to confuse the possibility of achieving the override by an unintentional act of defense with the idea of the realization of unintentional transgression, regardless of the nature of the act of defense, in terms of whether it is intentional or unintentional. (ii) The state of defence by unintentional act cannot result in a permissible defence or unintentional transgression, whereas if the defence is intentional it is conceivable that it is permissible or deliberately or unintentionally transgressed.

However, exceeding the limits of legitimate defense constitutes a crime that entails criminal responsibility and punishable, and the direction of the commentators differed, so some went to say the duality of the two errors, each of them has its content, which is determined according to the difference in the goal of the penalty prescribed for each of them and a group of

(25)In its last paragraph, this article states: "... If the perpetrator believes that there are circumstances that exempt from all punishment intended as 25permissible circumstances, they are always considered in his favor, but if the mistake is based on a mistake, the perpetrator can be punished when the law considers his reaction an unintentional crime and punishable for it.

(26)Dr. Omar Al-Saeed Ramadan, op. cit., p. 39.26

commentators tended to say the unity of the two errors because the images provided for in the Penal Code deal with all degrees and cases of error.

And to say the order of civil liability for exceeding the limits of legitimate defense takes the form of disagreement between the theory of double criminal error and civil error, the introduction of the theory of duality makes the absence of criminal sin when exceeding does not prevent the consequence of civil liability, in civil error the judge is limited to prove the violation of the perpetrator behavior of the usual person, but in criminal law, the judge penetrates into the psyche of the offender to know the engine of this behavior.

It is clear from the foregoing that the establishment of one of the two responsibilities does not conflict with the existence of the other responsibility, as one act may entail criminal responsibility and civil liability at the same time, such as murder and theft, as each of these acts causes harm to the individual and society, so the person who committed this act is criminally responsible for the penalty and civil liability for compensation.

3.: Impediments to the establishment of liability:

Abuse of legitimate defence may be achieved in the area of the substantive element ⁽²⁷⁾ However, criminal liability is precluded by the failure of one or more elements of the mental element necessary for each crime in general, which calls for the failure of the transgressor ⁽²⁸⁾.

The transgressor may be incapacitated, and he may default in criminal intent, while the transgressive crime achieved is intentional crimes, and he may have both intent and unintentional error, and the transgression occurred suddenly or due to force majeure. The transgressor may have the capacity, and his will to achieve the transgression, but this will be defective in its composition a significant defect by law, as if the circumstances of its affairs are natural, so that the legal blame is not directed at the perpetrator, because his behavior in such circumstances is slow. As a man who has returned to me, such as moral coercion, extreme panic, terror and dread that affects the will eloquently and humiliated as a result of the surprise or severity of the assault or other personal and objective circumstances of transgression.

The failure of the moral element - the failure of one or more of its elements - leads to the inability to hold the transgressor accountable in his criminal defense, whether because he is not addressed by the law in the first place - as in the case of failure to have capacity -, or it was impossible to attribute the incident to him on the basis of morality - as in the failure of the feat and unintentional error - and to say otherwise means sufficiency with attribution Material without moral attribution, i.e. the recognition of strict responsibility only as a reason for criminal responsibility for exceeding the legitimate defense, which is not valid to accept.

(27)Dr. Omar Al-Saeed Ramadan, op. cit., p. 626.

(28)Even if the aggressor is injured because he committed the transgression deliberately, it is not reasonable for his intended act to turn into unintentional according to the place of injury, but according to the psychological element of the moral element when committing the transgression.

Sometimes the responsibility is not based on some people, because the danger of assault does not affect the wise only but may affect the insane and boys, and since self-defense and money is innate, it is natural that whoever is assaulted will defend himself against that danger.

Here we will address the impediments to the establishment of responsibility, which is represented in the lack of capacity, and the failure of the moral element.

First: Incapacity of the transgressor

Impediments to liability are the causes that affect a person's capacity, making him legally unfit to bear the responsibility of the crime he committed, and therefore the search for impediments to liability necessarily requires that the crime has been committed and that the perpetrator is a cause that makes him ineligible for its punishment⁽²⁹⁾.

The commentators of the law stated that when the perpetrator of the crime is not addressed by the provisions of the law, he is not responsible for his criminal act, but the State must take the measures it deems necessary to guarantee this patient treatment as well as to ensure the safety of the people.

Eligibility may be encountered by symptoms that lead to its absence or deficiency, due to symptoms that have nothing to do with man, i.e., not one of his acts (such as insanity, dementia, young age). Accordingly, it will adapt two groups of people that are among the causes of incapacity:

The group of people with mental illnesses and mental disabilities (insane, insane boys, adult breadwinners, whose mental development has not been completed).

Criminal legislation considers that insane people are not responsible and therefore are not punished - crimes committed by them, and thus their punishment is not fair, as insanity corrupts a person's perception. Insanity arises for several reasons (e.g., drug addiction or severe trauma).⁽³⁰⁾

This means that the transgressor of legitimate defence is not punished or criminally held accountable if the act is committed while in a state of insanity, but for psychological conditions that do not lose the person's feeling and perception, they are not considered a reason for lack of responsibility.⁽³¹⁾

However, the principle is that the court has full authority to assess the facts of the case and that it is the supreme expert in everything that it can decide on itself, and if the judgment inferred the integrity of the mind of the accused from his actions after the incident, this inference is sound and irrefragable.

Second: Backwardness of the moral element

(29) Muhammad Awad, op. cit., p. 461.

(30) Ibid., p. 470.

(31) Ibid., p. 482.

The moral element of the crime means the failure of the intention to cause the transgressive crime, as the transgressor is here fully competent and responsible for his act, but the crime occurred from him beyond his control.

The moral element of the crime is one of the most important elements on which the crime is based, and the reason for the establishment of criminal responsibility for the act committed by the crime, so that responsibility for crimes does not exist merely because the person has committed the material element of the crime⁽³²⁾.

This element may be about a deliberate act (criminal intent), and it may be unintentional or unintentional, which is criminal error). We find that the commentators of the law call the moral element criminal intent." Criminal intent is "if the offender commits his crime with the intention of its result, so the act is deliberate and he may commit it with the intention of the act without the result, so the crime is wrong or unintentional."

The commentators of the law have stated that the failure of one of the elements of the moral element in the transgressor does not make him criminally liable, as if the failure of criminal intent (a will to commit the legally criminal behavior and to be aware of the elements of the crime) and unintentional error, for example, if the act occurred as a result of a sudden accident, such as: to be surprised by another attack on him, so he defends himself with the means he finds, here the act of the transgressor in defense has been stripped of criminal intent and unintentional error and then not shall be criminally liable for such transgression⁽³³⁾.

The impediments to criminal responsibility are of a personal nature, as their scope is the will of the offender The existence of impediments to liability such as insanity or smallness prevents the imposition of the prescribed penalty, since the effect of impediments to liability goes to the moral element of the crime and destroys it, and thus criminal responsibility does not exist and punishment is not imposed, but this does not prevent the perpetrator from being held civilly accountable for the destruction of the property or property of others⁽³⁴⁾.

2. 3: The position of punitive laws on the case of exceeding the legitimate defense

Punitive legislation differed in terms of punishing the accused when he exceeded the restrictions in the case of legitimate defense, and we find there are three directions of transgressive punishment:

1.2. 3: Legislation that considers it an exempt excuse

Some penal laws stipulate that the person who exceeds the limits of legitimate defense is exempted from punishment if the defender is in a state of intense emotion at the moment of his act of defense, as turmoil, fear or panic push a person not to appreciate the consequences of the act he undertakes. These laws indicate that some conditions must be met in order to exempt the transgressor, including the defender was facing a serious danger, and not to cause danger, and

(32) Abdul Aziz Suleiman Hamdan Hoshan, op. cit., p. 567.

(33) Abdul Aziz Suleiman Hamdan Hoshan, op. cit., pp. 571, 570.

(34) Zidan Hamdan Mahmoud Saghe, op. cit., pp. 188, 187.

finally that the defender in a state of extreme emotion loses insight so that he does not properly estimate the consequences and results of his act, and it must be noted a difference in the position of punitive laws, as this exemption includes in some penal legislation all the reasons for permissibility in the event of exceeding them without being limited to one reason. While the excuse exempted in other penal legislation is limited to the case of transgression in the legitimate defense only.

Since the reason in all cases of transgression as an excuse exempt from punishment, it requires the presence of an abnormal psychological state in the person of the transgressor, because each attack causes an ability of panic, fear and excitement in the defender, it is not right to exempt him from punishment just this case, but the exemption should be in specific cases exclusively when the will of the defender is abnormal in its queens when the transgression occurs, because the usual person in such a case wire the same path as the transgressor in his defense. Like a person who is in a state of panic or extreme agitation... etc. so that a man cannot fully control his powers for the honor of his daughter, wife or one of his mahram in a case of assault where the transgressor loses control of himself and his ability.

Intense emotion so that he has lost control Article (60/3) of the Jordanian Penal Code stipulates: If the transgression occurs in the knock, the perpetrator of the crime shall be exempted from punishment in the conditions mentioned in Article 89 of the Penal Code that: The perpetrator shall not be punished for an act that is resorted to by necessity to be immediately pushed by another or on behalf of his property or the property of another person, a grave danger that he did not intentionally cause, provided that the act is proportionate to the danger. Article 3/183 also states: of the Syrian Penal Code, provided that if there is an excess of defense, the perpetrator of the crime may be exempted from punishment under the conditions mentioned in Article (227). The said article refers to:

However, if the perpetrator of the crime excessively exercises the right of legitimate defence, he shall not be punished if he commits the act in the form of intense emotion and lacks the power of consciousness or will. With regard to the position of the Iraqi legislator, the question that arises is whether the transgressive defender can be omitted if the state of moral coercion provided for in article 63 of the Penal Code is achieved when it provides that no person who is coerced to commit the crime shall be criminally liable for material or moral force that he has not been able to pay.

We find that there is a difference between the case of moral coercion and the case of mitigation or exemption from "punishment The coerced transgressor benefits from the text of Article (62) of the Penal Code, but gives it that the issue of commuting the penalty should not be binding on the judge, but should be left to the discretionary authority in this regard, as he is the one who estimates the exemption in some special cases, when the assault is serious and sudden. A on the honor or life of the aggressor, unlike other cases that do not require it. In the decision of the Iraqi Court of Cassation in this regard, the murder of the victim by the accused is considered to have been motivated by an honest motive that requires inference under article 130 of the Penal Code when imposing the penalty if the reason for the defendant's request was immoral from the

accused when he was visiting her husband's house. The accused is not considered to be in a state of legitimate defence if her mere distress is sufficient for the escape of the accused ⁽³⁵⁾.

2. 2. 3: Legislation that considers it a mitigating excuse

Mitigating legal excuses are facts that require a reduced punishment. As one of the general characteristics of excuses is that they are specified in the law, so the judge may not consider an incident as a mitigating excuse if there is no provision for it." This characteristic distinguishes legal excuses from mitigating judicial circumstances, because the latter leaves the criminal legislator to the competent judge. Another characteristic is that it is binding on the judge, that is, if there is a legal excuse, the judge has no choice but to take it, and this is the other difference between it and extenuating circumstances. The decision of the Kurdistan Region Court of Cassation in this regard stated that the defendant's deliberate premeditated murder of his wife, and his admission of this at all stages of the investigation and matching the facts of the incident that he committed his crime for the misconduct of the victim, thus verifying the honorable motive of the accused and that the inference of Article (130BC) was correct and in accordance with Law (e). Another decision stated that the conviction decision was correct and in accordance with the law, and that the Criminal Court was correct when inferring the provisions of Article (130 BC) A look at the realization of the mitigating legal excuse, but with regard to the violation of the right of legitimate defense, we find that some legislators have taken a position and considered the transgression as a mitigating legal excuse, including the Iraqi and Egyptian legislators ⁽³⁶⁾.

3. 2. 3: Legislation that considers it a mitigating circumstance

Article 45 of the Iraqi Penal Code allows the judge to rule on the penalty of misdemeanors to the penalty of felony, and to rule on the penalty of violation instead of the penalty for misdemeanors. However, an important aspect of Egyptian jurisprudence goes on to say that the legislator has considered the case of transgression as a mitigating excuse. However, there are others who consider it a mitigating judicial circumstance, and their evidence is that the legislator has made the order of its assessment optional and the judge has Absolute authority in this regard as stipulated in Article (17) of the Egyptian Penal Code, which represents the general text of judicial circumstances.

There is a third aspect of the Egyptian jurisprudence is the provision of Article (201) of the Egyptian Penal Code, of a special nature as it combines the characteristics of both the legal excuse and the judicial circumstance, it agrees with the first in that the punitive legislator has singled him out for the text and decided on a specific case, which is exceeding the defender to the limits of his right, and agrees with the second in that the discretion is optional due to the judge according to the circumstances of each case. All opinions Contained in connection with the Egyptian text can be imagined with regard to the position of the punitive legislator in Iraq,

(35) Talib Khudair Muhammad Bahadh, Serious Provocation as a Mitigating Legal Excuse in Iraqi Legislation, PhD thesis, in Criminal Law, Saint Clemens International University, Department of Law, Postgraduate Studies, 2011, pp. 75-77.

(36) Ibid., p. 77.

where the Court of Cassation of Iraq went in a decision in this regard that ((if the accused mistakenly believes that the state of legitimate defense exists because of the victims' pursuit of him while carrying their weapons, this requires a reduction of his sentence)) and in the court's decision to distinguish the Kurdistan Region in this regard (The accused when he was inside his home had faced an immediate danger to his life by attacking the victim with a knife and was able to control the victim He stabbed him all over his body, which led to his death, and accordingly, since the facts of the case indicate that the accused exceeded the limits of the right of legitimate defense, and ratified the decision to reduce his sentence by reference to Article (45 of the Penal Code), and this means that the Iraqi Court of Cassation as well as the Kurdistan Region Court of Cassation argue that the sentence may be reduced when the case of transgression occurs. As is the case with the Egyptian legislator ⁽³⁷⁾.

The end:

Through our study on the subject of criminal responsibility resulting from exceeding the limits of legitimate defense and addressing the relevant aspects, we have reached several results, including what the law agrees, and in addition to that, in the light of the results and conclusions we have reached, we can make a set of proposals on the right of legitimate defense in terms of organizing the provisions prescribed for it and its special cases.

Through this research, we conclude the following:

- 1. Legal scholars differed in the adaptation of legitimate defense, some of them believe that it is a right, some of them believe that it is a duty, and some of them believe that it is a license.*
- 2. When the defender exceeds the limits of legitimate defense, he is liable.*
- 3. Determining the transgression of the limits of legitimate defense requires the existence of conditions, both with regard to aggression on the one hand and defense on the other. It is not permissible to defend the assault of some persons, such as children, or insane people with mental disorders, nor does the right of defense against abuse by parents or spouses arise. Some argue that the assault requires it to be of such gravity that the defender's actions are aimed at eliminating the risk of death.*
- 4. The necessity of legitimate defense, which is that the use of force is the only means available to the defender when danger comes, but if he has another option to ward off him by a means other than force, he must use it and not be considered an aggressor, if it is possible to defend by shouting and distress or distress to policemen, he does not have to beat or injure.*
- 5. Transgression is the opposite of legitimate defense, which is a legitimate act that prevents any civil or criminal liability, similar to exceeding the limits of legitimate*

(37) Talib Khudair Muhammad Bahadh, op. cit., pp. 78-79.

defense, which determines the responsibility of the transgressor in civil and criminal terms.

6. *Private legitimate defense is one of the reasons for lifting criminal responsibility on the defender, as it works to destroy the legal element of the crime, to turn after it legitimate.*
7. *The right to legitimate defense is included in the general human rights because it is enshrined in the Penal Code. As a result, the legislator approved it and granted it to any citizen threatened with harm. But he did not give it in full, but specified it, because this right can be exercised only if certain conditions are met.*

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