



AENSI Journals

Journal of Applied Science and Agriculture

ISSN 1816-9112

Journal home page: www.aensiweb.com/jasa/index.htmlJ
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A**Journal of
Applied
Science
and
Agriculture**American-Eurasian Network
for Scientific Information
AENSI Publisher

Consideration to Material Element of Leave to Task in Intentional Murder

Aliakbarkhakzadeh, HeydaraliBagheryan and Mohammad Amin Rodini

Department of Literature and Humanities, Persian Gulf International Branch, Islamic Azad University, Khorramshahr, Iran.

ARTICLE INFO

Article history:

Received 28 February 2014

Received in revised form 19

April 2014

Accepted 23 April 2014

Available online 15 May 2014

Key words:

Material element ,Intentional

Murder, crimes

ABSTRACT

Material element crime is an issue that only include positive actions or the same treatment which committed by doer But material element has three crime part without the realization of their full element at all material not the existing crime and crime has not happened. In this paper we study the consideration of Material Element of Leave to Task in Intentional Murder.

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To Cite This Article: Aliakbarkhakzadeh, HeydaraliBagheryan and Mohammad Amin Rodini., Consideration to Material Element of Leave to Task in Intentional Murder. *J. Appl. Sci. & Agric.*, 9(5): 2716-2721, 2014

INTRODUCTION

The first part of physical behavior is that it is part of the action can be included or leave action. The crimes of the type of action they are, but some of the crimes with the absence of doing what the law can do it as a duty no one has realized that of the cases can be referred to the following items: Desertion refused to register the birth or death, lack of report has been stolen missed vehicle plate number or by persons dissuaded them, lack of report of some of the crimes by the officers, lack of event registration marriage, lack of acceptance or of investigating the complaint or petition by judicial officials report lack of financial crimes by superiors, managers or officials of the organizations, lack of complaints against the law imprisonment who has been the agents of justice police or we conjure up.

The second part of material element is of a collection of conditions and circumstances that Legislative Assembly there or lack of them to the realization of the crime considered necessary These conditions may be related to criminal, sacrifice, time and place of committing the crime, crime and the subject property or anything else. In addition to these conditions may be affirmative (like property of things stolen in burglary and sometimes negative (like lack of consent in rape crime or rape).

The third part of material element is the occurrence of the result has been determined by the Legislative Assembly, for example in murder is such that the realization of such a crime is dependent on the same killing of man. And if the result happen, crime Tom has not happened and is committed it is only possible if legislator predicted for example began to murder condemned. Of course sometimes it is observed that in some of the crimes, legislative assembly.

The realization of them bound to the result that some of the crimes are called absolute crimes like oath lies and false witness.

It is useful that some of the lawyers first elements constitutive crime in the three divided into oath(material element, spiritual element, the element law) (Hossein Aghaeinia, 2008) and some of the other lawyers basically such a customary division rejected and consider such a believe that predicted that element for piecing together a crime under the title in the same legal ways the principle of law of a crime . that second group to correct it seems that without really predicted the law and determining and explaining the law no one can leave or verb as a material element and no crime can be a certain mental state element and its spiritual and psychological crime (Hossein Mir Mohammad Sadeghi, 2010).

At present what in this chapter work in hand we shall study conditions and not the conditions and it is not necessary for the realization of a legal crime but in this study the behavior to try a discussion on physics or the same material element in crime like murder special emphasis on the verb we have left.

The act of task, leave or take?

In this regard we should investigate Does urgent challenge commit .necessarily must be positive in the form (action) of can form negative task leave to take ? purpose of every movement is physical that is the

manifestation of foreign and therefore movements of his body can not internal body in action including the concept of guilty behavior (Hossein Aghaeinia, 2008. Crimes).

For practical action that is directly or indirectly the victim body against an influential country and death damages incurred on the result in a member of the victim body against researcher. including this term instances sometimes hitting act task also include: speech beat, poison, height of the hurl, to pressure sore throat, fire, shooting, knife, the deliberate speech to sensitive parts of body and lethal and the like.

Leave the practical action is the observer to do the current job is a person and has been required to do so has been left verb from in offensive behavior which duty based on the law, contract acceptance of the responsibility and care like so on. Therefore refused to spend an action to do will not be enough. Including instances leave action can be to: the mother refused to feeding a new born baby has been born in his lack of play legal duty driver after an accident with the escape from the stage a crime post left and shift work by who have the responsibility to have time to move trains and rail control that resulted in a reaction and two train passengers killed it and the like.

Real or role- based crimes omissions law:

Lashings has been observed that the legislator is left action element material is a crime that samples of the hereunder mentioned it. Of course we need to be reminded that this subject perhaps apparently complete connection with the research in the axis of action left is in the murder but the theme in his later Describing the discussions and their deep understanding will help many.

It has help to our country to get such result that if legislator in the article 206 of the Islamic penal term(Do work) is mentioned but can be easily and with comparison with other laws governing he found that the purpose of the use of these so called positive action only has not been left for action in our society and in other societies as well as some custom work done by a person as to be an example of the cases referred to us by suggesting that in the introduction that he samples of the cases pointed out before that perhaps its hotel should serve other directly related to murder but not at the physical crimes against the individuals concerned is : " To avoid the law of indemnity for every one and removing risks criminal act of year 1976, in its first clause such legislator has written:

" any one person or persons in introducing life hazard to see and would be able to help arrange immediate action ask the other announced that immediate or authorities of the occurrence of the authorities capable of danger of intensified the result to prevent, without this action no danger with others, and appealed to the implication or the conditions and on the assistance of the refused to, was sentenced to a felony for a year and a cash penalty to fifty thousand Rials will be condemned. In this case if he committed to the those who administer his professional able to effective help to felony imprisonment of three months to two years or pay penalty for ten thousand rials up to a hundred thousand rials will be condemned. The authorities treatment centers, including state and private person who damaged and to treating him or refused to help primary have maximum punishment will be mentioned..

The First article in the ward 2 respectable legislator who according to their duty or law is bound to help persons damaged or faced with danger to life in the case of the duty to avoid and have refused to bear six months to three years imprisonment.

Of course it must be said that this law was approved in the year 1958 has approved the first law and examples of other noted of the law respected founder left in action for a time element of the crimes material-physical urgent challenge to account for and this issue should be examined and explained in action left element is aimed for and concluded that doubtless the transition in using the (Do Work) in the article a article 206 the Islamic penal dissuaded the only positive action and has not been unique to know in action positive material so legal interpretation, is not worthy of the secret laws and legal cases (Marolzeke) concluded that action left excluded from Article 206 the Islamic panel term and it is not doing as well as verb and verb left in circle including.

Artificial or omissions crimes based on mere ethical duty:

More than we have seen that physical integrity crimes against persons with special murder in most cases with the realization of the positive action of committing it is like squeezing a sore throat, knife, poison to another shooting, haul in water, throwing the height, strike parts of feeling and body lethal persons.

Our discussion here is that if a little bit is merely left with a verb that could be able to do it and with the assumption that no verb part of duties based on the contract law, accepting the responsibility and rare ...has not been that of these kind of portrait of task can be food in water in Cull child by hunger and thirst is likely his death, the individual I, drowning out of the water to not smoking or lack of reporting into a hotel informed that we have in there and in the bombing Nov explosion will again occur and all will be killed, and... pointing out. And is it really can be does lease such action to commit murder and as a murderer under persecution and trial and punishment contract?

At first it must be said that for the director to know a person in addition to the occurrence of an action and the criminal action should be a relation between the factor-occurant action and its established and this exception from this rule and it must be admitted that to individual murderer here and is considered responsible for his happened knowing the verb he left and his death occurred In relation to ,verify factor.

thesame in a way that some lawyers believe that the child death and drown man hungry in the fall in the pool and drowning and starvation because there has been no result in not smoking out of water or food by not displaying the refused to individual. In other words. A nun action Inprevent death, while for responsible for the He should lead to death. ". (Hossein Mir Mohammad Sadeghi, 2010)

Therefore those of the crimes that the verb as a Turk in the above mentioned, had been mentioned only based on a moral obligation and were not based on a legal duty or a contract and. . . in addition to the law as a legal duty is not considered a relationship but evenfactorthe verb leave and death has verify and , will master forms entered and correct it seems that (Hossein Mir Mohammad Sadeghi, 2010).

With the remembrance of the law refused to help to indemnity for every one and remove the criminal act of year 1977 risks this question should be whether legislative assembly approval of the bill in his filing has been that a moral system of public mot? pointed out a legal duty in conventional and reasonable?

Or that it would make it a crime in fact is a moral obligation to become a legal duty? Is this the way of legislative interference with alloys in the freedom of people? is this expectation is not strange that we expect to have people forget that with the ease and comfort wherever person found to a read for rushing to help him and otherwise not morally but will you grieve with guarantee the execution of the penal code as well as their face? And have you the observer all the people expect?

Response to all the above – mentioned questions and problems to the approval of the bill is that God in the holy Koran and the basis and root any human will be considered as and that verse is familiar : "No duty on anyone it is not at the level he can be" (The Holy Qur'an), that the other words can be as reasonable and conventional human duties " Therefore interpreted in persons for help in conventional and reasonable and as much as can be expected and more than the expected to other human rights Iran professors of this agreement and believe that conventional and reasonable the clear duty and is a human (Hossein Mir Mohammad Sadeghi, 2010; Hossein Mir Mohammad Sadeghi, 2010).

The current apex of criminal responsibility:

At first it is necessary to have a look short and curt with the conditions that the task leaver in charge of recognizing English law have counted we have briefly can be said that in English law criminal liability task leaver action is caused by the action that he duty(staff department too to act- but the duty violated to it.

Now it should be such that it was the duty of action what basis and for a while and at what position can be one assume that the duty to take action or action verb special ? As already partly we mentioned this duty can be created to different momentum and the individual in the case of duty introduced in charge. origin of this duty is not important and can be the law, contract, existence of a link specific risk creating early by his person and finally optional acceptance responsibility for taking care of the other leavers (Hossein Mir Mohammad Sadeghi, 2010). that hereunder to explain and describe these cases discouraging:

1- leave the task of law or contract:

Lack of performance of duty law like case that police officer duty maintain order and the protection of the lives of others is refused to do this and to avoid the police officer beaten by eating without shelter and finally his death that in English law in such a case the agent responsible for and also for example R.Cs that example and a famous physician and savior and drown, Also among this group.

In connection with the will of that should be this is not necessary to directly with the person suffers left verb be concluded but the house with other people duties concluded like mood savior and drown with a pool manager will die during that for example in a future year savior in the pool and drown so duty lifeguards people in danger and responsible if in that duty short with the assumption of having his intention even can be responsible for his death and that physician and R.Cs.

2- leave the job due to the existence of special relationship:

Might in time between the some of the men to a special type of relations they have with each other expectations that custom and reason and sometimes even morality and canon there are also confirm the duties and obligations to such duties sanctioned its, for example where two intimate friends with each other in sports like Rock climbing dangerous, waiting for each of the other is that in the friend for their help and to take favorable, so if the other side to this duty to act can be responsible for knowing and if its for example have to that his friend die and he too comfortable hand to be refused to help (that in such a condition verify this kind of abuse by the very intention is hard) can be responsible for his death as punishment.

3- *Quit his job caused by the apex of the previous risk:*

For example this is where for example a person with the intention to enter the damage , agricultural barn with conflict and conflict has been burn, after a while the flame breathing fire and the scope of the screaming that I noticed and the farmer that is burning in the warehouse and the opportunity to abuse and no attempt to save the lives unhappy farmer to farmer in that fire in barn burned and die do you think that in such a condition that no one fire to inside a barn in intended to murder is not positive and the verb in order to kill someone who has not done it should be the responsibility to escape justice and fairness or closer as we say this person himself operating risk and even during fire and after the fire finished that one in the fire have been in duty verbalize that saved him and if the presence of anyone in science in the fire and have to kill him to help did not supplement his can be based on the function of a previous danger by this individual and that it was the duty action left him as murderer and criminal liability intentional murder his time?

4- *leave the task of voluntary acceptance of responsibility:*

In a mood too someone might have a voluntary duty taking care of another and to help with the work expected to need him in a state .Activize as expected to the right has been create a duty nun is that the burden is therefore in the event of danger for him criminal is responsible and even verify other elements can be murder ad responsible for murder too. The best example is the case where a mother her child to a nurse to take care children to die and after a while of crying in the child too much and was very angry and nurse only child in the house and leave to go to the state if a danger lives child that threat of course it is also predicted that have been custom and it is quite likely that he knows, the nurse responsible for lives child and lack of criminal responsibility should play a duty to accept this.

vertical position of jurists concerning the responsibility of the task leaver:

Instead of before any difficulty to this issue before it is a point that were – lashings function that has been left to apex and apex in such cases is not a duty that is doing the action abandoned his duty is not (Mohammad javan Hosseini Amoli, 2002; Mohammad Hassan Najafi, 2006).

Based on the disagreement jurists in this regard to this key issue will be the some of the jurists nun responsibility action limited to cases that have considered doing the action duty nun has been or not? They not and in any case they know nuns responsible for (Goldouzian, 2004).

Of course many of the he extends to the Islamic jurists left for example task person to imprisonment for example and he water and food have pointed out and imprisonment the murderer . that coma is very it is clear that deliberate knowing this murder and originally deliberately knowing murder , depends on the fact that we the special mental element and to the moral and also why should we verify that without completion of a crime element cannot be one who never guilty of guilt.

Tahrirorvasila Imam Khomeini also do has mentioned that if another person for a time that is typically lethal and persons like him alive in that period typically do not like the food and drink to ban that person die deterrent in retaliation. Of course it is clear that the punishment for retaliation where we intentionally and in action verify committed and for example in the aforementioned so typically as the lethal and in accordance with clauses B and C of article 206 the law Islamic punishment act of year1993 has been by this documents, murder caused by typically lethal attention without intention to commit spiritual element and verify intentional murder, deliberate.

For example the sentence of another famous jurists is that the can be assumed to know the owner of animals due to lack of maintenance of the waste in or damage to the animal of the responsible for knowing but child or swimming coach in drowning for training swimming coaches have been pointed out (Article 357 of Criminal Procedure).

Against Islamic jurists views, theory can be seen to be very interesting and strange it seems that why in the view that if someone was sentenced to human and non- proliferation of water and food to die for, imprisonment of guarantee. Because of this promise in such a state death resulting from hunger and thirst and not due to the imprisonment of the sacrifice by the imprisonment in other words what is necessary for the responsible person is recognizing it factor here is not clear (Goldouzian, 2004; Article 357 of Criminal Procedure).

Yet it seems that the mentioned that we should only nuns in some cases responsible for doing the action that our individual duty abandoned and in some cases has been that the individual peak action responsibility (staff department too to act) responsibility is not there would be any a few morally despicable and completely absurd as.

The responsibility Iran's rights standing in regard to task – leaver:

In the expression of lawyers and law professors in the matter difference of opinion there are two views on the subject there is first view perspective of those professors and lawyers who believe that because text in a special law on the basis that there is no explaining rights experts (Mohammad Hassan Najafi, 2006)

Those Leavers did not own verb, they believe that respectful that the legislator in explaining instances of crimes against persons and even in cases with corresponding intentional murder and unwittingly the terms like (done), (positive Action) has been using and we should not be in explaining legislator view when further and the words clear to leave verb and verb negative generalization. For example in all the three clause article 206 law Islamic punishment explain instances of premeditated murder, and the above clauses A and B of article 371 the law in cases of amputation or the wounds deliberately, done) referred to.

As an example in the article 206 law Islamic punishment such that: "murder in cases under deliberate: A cases that killer with to do something. . . . B -cases that the killer willingly. . . . c-there are cases that the killer to kill and what to do.

We see that in all articles this article action apparently to have been positive and this base on believers view

But in return for this group, a group of lawyers and professors are other believe that should not be the realization of the murder or damages physical whether deliberate or inadvertent, unique cases of committing an action considered positive but this group for nun action despite conditions that we shall respect criminal liability. And in response the first subjects to be presented including these arguments can be cases pointed to: First there is no need that the legislator all instances of murder as a. Second is that Legislative Assembly in articles 206 the Islamic penal element in material not of the Spirit of Laws such that the legislator to be understood in this article in the spiritual element of murder cases and legitimization of crimes. Third legislative assembly in the expression of words (done) or (action) meant conventional meaning has and should only be paying these terms lack of access to the Legislative Assembly will be followed by (Goldouzian, 2004).

According to the reasons for the second group the first group not only rejected but also believe that peak in Iran rights also be punished and if conditions that we shall leave his action proven to know (of course humble in second group more and closer to the Legislative Assembly and moves always within society) instead of escape from criminal liability for apex action.

In confirmation of this legal administration of the judiciary during a theory of advisory declared that it is:

The same way that the assassination was the result of committing action, as revised and strangled and etc, it may be left in action as well as researcher .for example if a mother , that commitment feeding his son has to kill her child to not milk to die killer. If a man who according to the rules (rules state responsible for life guards is responsible for the duty and its refusal to lifeguards and strangled in it he verb leave crime and subject to Article 2 of the punishment to help refused to remove risks and indemnity for every one criminal act of in this case, the relation causality thus mentioned which is responsible for lifesaving action solely intends to leave and is not intended to result and therefore murder noun of instances and was responsible for the intentional peninsula guarantee pay the blood money it will be. In the case that is responsible life guards left committed action and may result (smother drown) and result, the, responsible for murderer mentioned is considered punishment and intentional murder (Mohammad Hassan Najafi, 2006; Goldouzian, 2004).

It is noteworthy that the reasoning of the first should be the argument also added that sometimes the society's custom man that positive action by committing murder and death has prepared another difference and respect that kind of performance of the reproaches and limbs and it was scandalous and it is like an example of that was in accordance with the example and nurse a child that the child maintenance to what he due to severe and tired of work by crying and deviltry the too much child, child in Risk criminal alone at home and leave to go and despite the fact that he knows he might have in this criminal dangers like fire and home. No action and not to allow children to work dangerous. And death for him to be provided with that verify the good intention and intention to murder of doubt according to the theory of legal nurse said this child like for example said in this theory of the legal mother savior and drown) murderer deserve punishment and retaliation.

Conclusion:

With regard to the discussion of the past and of arguments and to their beliefs and opinions and different lawyers have different interpretations of the subject and the text of their conventional materials Islamic Criminal law and the favor of the theory of the legal in some manner that it can be as a new chapter to a suitable performance and making the punishment courts, should be explicitly acknowledged that all deliberate murder through verb left with no legal problem and will not face legal. It must be mentioned that in this way our courts with the problem is a great way and that prove factor relation between.

also verify deliberately left. verb in comparison with the murder showing positive action that verify this verb subjects left in far more complex.

But nevertheless when nuns can be responsible for action that conditions in this The that the conditions described in future writings discussion and study. The first conditions the existence of a duty is the Law or a contract like the same cases that had already said the responsibility for such a special savior drown, needle

watch, the physician and nurse and child.... are in charge of the duties that the law placed a special legal basis is the responsibility of that.

The second condition for existence of a link factor Otherwise leave the verb also until the result has been and individual action relation factor verify responsibility and there is not in this position and stabilize this relation factor for sure and it is necessary for an individual. responsible for verb leave ourselves in fact with the condition we want to say that if a factor independent that death is to be in this case cannot be a non action responsible for result.

The third condition for responsible for the nuns in return for murder and death with physical damage resulting from the leave action, ability to do action is needed before with verse of " we pointed out that the individual is responsible and in a place that is the fate of ability to doing the action expected to have and the wise also legally it is not permissible to have bound and is bound to know, hat he is the ability even to do it. Therefore a father who by observing the fall and drown in pool grogginess son saved him does not murderer only would be considered to save him but refused to and therefore this responsibility includes a father who know Swimming is not to save his son.

The fourth and the last condition for responsible for the apex action, psychological elements necessary in he therefore left for that action to be condemned in retaliation warned on condition that the discussion in basic criminal liability there is, in other words non action, death or death of the other to be asked and in this direction the verb to leave duty and his action and the death is the result.

REFERENCES

- Article 357 of Criminal Procedure.
 Goldouzian, 2004. specific criminal law, edition 9. Mizan publishing group., pp: 175.
 Hossein Aghaeinia, 2008. Crimes against persons. Mizan publishing group, edition 3: 54.
 Hossein Aghaeinia, 2008. Crimes. Mizan publishing group, edition 2: 31.
 Hossein Mir Mohammad Sadeghi, 2010. Crimes against persons. Mizan publishing group, edition 4: 26.
 Hossein Mir Mohammad Sadeghi, 2010. principles of criminal law. Mizan publishing group., pp: 64-71.
 Mohammad Hassan Najafi, 2006. "Javherolkalam fi sharhsharayoleslam", 10: 243.
 Mohammad javanHosseiniAmoli, 2002. Meftaholkarama, 2: 342.
 The Holy Qur'an