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Research Article

Mens Rea in Qatar's Penal Code: Criticisms and Recommendations

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Abstract

This paper discusses *mens rea* as an element of crime, examining the legislative wording of *mens rea* and the vital role that this wording plays in the formation of the *mens rea* element in the Qatari Penal Code. The purpose of this paper is to improve the legislative wording of *mens rea* in the Qatari Penal Code. This paper also addresses general questions about how criminal *mens rea* relates to criminal justice, what makes *mens rea* ambiguous, and how we can solve this ambiguity. More seriously, this paper seeks to determine whether legislative omission contributes to the ambiguity of *mens rea*, thus adversely affecting criminal justice. In conclusion, this paper offers recommendations for the Qatari Penal Code to improve its approach to *mens rea*.

Keywords: Mens rea; Criminal Law; Mental element; Qatar; Recommendations; Criticisms

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مقالة بحثية

الركن المعنوي للجريمة في نصوص قانون العقوبات القطري: نقد واقتراحات

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ملخص

يهدف هذا البحث إلى الكشف عن العيوب التشريعية في نصوص قانون العقوبات القطري الصادر عام 2004 والمتعلقة بالنصوص التي ناقشت الركن المعنوي. حيث يناقش هذا البحث مسألة عدم وجود صياغة تشريعية سليمة لتحديد أنواع الركن المعنوي والمتمثلة بالقصد الجنائي والخطأ غير العمدي. كما يناقش البحث مسألة عدم وجود معايير وضوابط لتحديد مدى توافر عنصر الركن المعنوي لدى المتهم من عدمه. بالإضافة إلى ما تم ذكره، إن المشرع القطري لم يحدد تعريف لصورة القصد المباشر وصورة القصد الاحتمالي في نص المادة رقم 32 من قانون العقوبات القطري، واللتين تعدان صورتان هامتان من صور القصد الجنائي. ومن مشاكل البحث، عدم وجود تعريف واضح لأنواع الخطأ غير العمدي والمتمثلة بصورة الخطأ الواعي وصورة الخطأ غير الواعي في المادة رقم 32 من قانون العقوبات القطري. كما تعد مشكلة الجمع بالعقوبة بين جميع أنواع الخطأ غير العمدي مخالفة أساسية لفكرة تناسب العقوبة والتي تشترط أن تكون العقوبة متناسبة ومتسقة مع الحالة الذهنية والنفسية للجاني. وفي نهاية البحث، يقدم الباحث الحلول والاقتراحات لتطوير نصوص قانون العقوبات القطري التي تناقش الركن المعنوي وذلك لتنجب الأضرار الناتجة عن هذه المشكلات القانونية.

الكلمات المفتاحية: قانون العقوبات، الركن المعنوي، الركن المادي، الجريمة، القصد الجنائي، القصد العام، القصد المباشر، القصد الاحتمالي، الخطأ غير العمدي، الخطأ الواعي، الخطأ غير الواعي، تناسب العقوبة، المتهم

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Introduction

Mens rea is considered one of the most ambiguous subjects in criminal law.[1] It generates considerable confusion and difficulty not only in determining guilt or innocence, but also in the sentencing of criminal offenses.[2] The ambiguity of *mens rea* is likely attributable to three causes: the nature of *mens rea*, the legislative wording of *mens rea*, and the judicial interpretation of *mens rea*. The nature of *mens rea* refers to a non-apparent element that resides in the defendant's mind;[3] "judicial interpretation" refers to the methods and tools judges use to interpret *mens rea*; and "legislative wording" refers to how legislators draft and define *mens rea* in the law.

It is very important to mention that the ambiguity inherent in *mens rea* cannot be eliminated. This type of ambiguity is inevitable because it is related to the nature of *mens rea* as a non-apparent element. This paper is concerned with the ambiguity specifically created by the legislative wording of *mens rea*, that is, the vocabulary with which the legislature describes the required mental state, and the related legal framework for drawing distinctions among different types or degrees of culpability.

The ambiguity in the legislative wording of *mens rea* may be divided into two types: internal and external. Internal ambiguity focuses on the subjects that relate directly to *mens rea*, so as not to be detached from it; in other words, internal ambiguity focuses on the legislator's approach to *mens rea*, paying particular attention to the legal texts of the criminal code that determine the level of *mens rea* (e.g., texts that use terms such as *purposely*, *knowingly*, *recklessness*, etc.), the legislative wording that includes the vocabulary of *mens rea* (e.g., *intentional, willful*, etc.), and the legal texts that connect *mens rea* to the offense elements analysis (e.g., criminal homicide constitutes murder when it is committed *purposely* or *knowingly*, or when the defendant *knowingly* created a great risk of death to many persons) or the default rule governing *mens rea*.

In contrast, external ambiguity focuses on the subjects that relate indirectly to *mens rea* but may be captured or categorized in different legal provisions of the Qatari Penal Code, such as insanity, intoxication, or mistake of law or facts. These subjects are not essential to *mens rea*, but they do affect it as they concern a criminal's mental state and criminal culpability. When legislatures draft provisions for these subjects, in discussing conditions or elements they may further contribute indirectly to the ambiguity of *mens rea*.

This paper focuses on the subjects of internal ambiguity with regards to *mens rea*. The first section examines the general constitutional problems caused by the legislative wording of *mens rea* in Qatari legislation, discussing the legislative omission that has resulted in jurisprudential and judiciary efforts to correct such omission by creating a new type of *mens rea*. This approach by the Qatari legislature has caused constitutional problems in general, and conflicts with fundamental legal principles. The second section of this paper targets the legislative wording of *mens rea* provisions in the Qatari Penal Code that addresses various issues, such as the default rule and the types of *mens rea*. This section focuses on the current *mens rea* types, whether mentioned by the legislator or used by the judiciary through jurisprudence. The focus here will be on these types, introducing their problems and suggesting solutions for their development. Lastly, in the third section, this paper proposes a model that includes all proposed modifications that should be included in the Qatari Penal Code. These modifications include new forms of *mens rea* and the criteria that govern them.

1- William J. Stuntz & Joseph L. Hoffmann, *Defining Crimes*, 90 (2nd ed., 2014).

2- Ike Oraegbunam & R. Okey Ounkwo, *Mens rea principle and criminal jurisprudence in Nigeria*, 2 Nnamdi Azikiwe University Journal of International Law and Jurisprudence, 225, 225 (2011), available at http://www.ajol.info/index.php/naujilj/article/view/82407.

3- Therefore, the nature of *mens rea* as a non-apparent element makes it very difficult to prove in court, especially when the prosecutor must prove that the defendant had a conscious intent to commit the crime.

It is important to mention that because the law is new—the current Qatari Penal Code was drafted in 2004 and promulgated in May 2004—defects are not unexpected. New laws in any country are always subject to criticism. Additionally, the Qatari Penal Code has not been subject to many academic or technical studies until today. This paper provides suggestions aimed at solving the defects in the law.

I. Constitutional Problem

The most critical problem facing *mens rea* in the Qatari Penal Code (QPC) is legislative omission. This legislative omission has caused a lack of clarity that affects criminal justice in a host of deleterious ways. This section discusses the definition of legislative omission, citing specific examples in the Qatari Penal Code; it then presents the negative consequences caused by this problem.

A. Legislative Omission

Legislative omission is deemed one of the most important causes contributing to the ambiguity and subsequent misunderstanding of *mens rea*, adversely affecting criminal justice. Legislative omission occurs when the legislature overlooks an important aspect of a particular subject, leading to legislative ineffectiveness and contradiction to the Constitution.[1] It is defined as legislative inadequacy or deficiency regarding a given topic or issue.[2] Legislative omission has two types. The first is drafting deficiency, which means the legislator fails to effectively and comprehensively draft the legal provision so as to cover the important aspects of a particular subject. The second type of omission is drafting ambiguity, which means the legislator drafts a provision that is so ambiguous that it becomes very difficult to understand and enforce.[3] Namely, the legislature uses ambiguous words, terms, or phrases that make the provisions unclear, sometimes even leading to absurd results.

In the Qatari Penal Code, legislative omission contributes to the ambiguity of *mens rea* in two ways. The first includes the overlooking of and deficiency in addressing important issues in *mens rea,* such as its types. The second occurs when the legislature ambiguously deals with a certain article, leading to its ineffectiveness and failing to reveal the legislator's intention in the legislative wording.

1. *Negative Consequences of Legislative Omission*

Criminal law is one of the most important fields of legislation when it comes to liberties, rights, and public interests; it secures the balance between individual and public interests.[4] With this role, criminal law is subject to many constitutional principles that ensure that the law shall not abuse individual freedoms and rights. The most important of these principles is related to the legality of crimes and their penalties; specifically, this principle states that any dispute arising in court should be settled by the legislative power, according to the legal provisions made and published before the dispute arose.[5] The wording of the Qatari legislation regarding *mens rea* negatively affects the legality principle in two ways. First, the legislature does not mention all of the types of *mens rea*, which requires certain phrases to deal with its legal definition, criteria, and elements. Secondly, the legislature has inadequately dealt with the legal articles that address *mens rea,* making it ambiguous and unclear.

1- Jawahar Adeel, *The Constitutional Review of the Legislative Omission*, 4 (1st ed., 2016).

2- Id.

3- Id. at 24.

4- Ahmed Fathi Srouer, *The Constitutional Criminal Law*, 5 (2006). See also the Constitution of Qatar, Article 40 (2004). The Qatari Constitution of 2004 provides for this principle in Article No. 40: "No crime and no punishment shall apply, save as prescribed by the Law."

5- Ahamed Fthee Srouer, *Alwaseet in Criminal Law*, 97 (6th ed., 2015).

Legislative omission also leads to a clash between legislative and judicial authorities. In accordance with the Qatari Constitution, the legislative authority is the only authority empowered to enact laws; neither the executive authority nor the judicial authority may practice such a role.[1] Therefore, the role of judges should be limited to the application of law to disputes and should not, under any circumstances, extend to the establishment of a legal rule. However, legislative omission forces judges t o assume the role of legislator, amending and filling in gaps in the penal code's provisions.[2]

Moreover, legislative omission harms the accused's ability to defend himself due to the absence of legislative texts related to *mens rea*.[3] *Mens rea* is the element that defines the criminal's liability, which may confer upon the criminal a death sentence or innocence.[4] The *mens rea* element should be accurate and clear in its wording because of its sensitivity in defining the defendant's criminal liability.[5] The defendant, who depends on the opinions of jurisprudence and the unbinding decisions of the courts, is greatly affected by his right to defense, especially when the legislator neglects to define most *mens rea* types, such as *conditional intent*, which is punished by the death sentence. The accused should be punished according to the law, and any judgment that violates the law or explains the law differently from the legislator's intention should not be the source of punishment.

It must be noted here that no criminal code can achieve perfect clarity. Defects in law are expected and may even be desired by legislators for many reasons, such as giving judges room to apply justice. There is no criminal code that completely mechanizes judges' tasks or forbids them from applying justice as required. In other words, judges should have room to evaluate cases, and jurisprudence should be able to study and explain the law. However, these tasks must be based on legislative wording, that is, words or phrases in the provisions of law that allow judges and jurisprudence to carry out their tasks. For example, the phrase "he is aware that it is *practically certain* that his conduct will cause such a result,"[6] or the degree of awareness in the word *knowingly* in the Model Penal Code in the United States (MPC), have been subject to many explanations by legal scholars, and judges have defined these notions in many ways.[7] This interpretation by judges and scholars has a legal basis, which is the phrase "practically certain." In contrast, in the Qatari Penal Code, this cannot happen because indirect intent (*knowingly* in the MPC) is not mentioned at all in the law. Any efforts to explain the degree of awareness in this type of *mens rea* will be too ambiguous and will not have any basis in the law, as the type itself— "indirect intent"—is not mentioned in the Qatari Penal Code. Furthermore, it is inappropriate to expand the word "will" or "desire" in Article No. 32 of the QPC to include awareness, as desire is completely different from awareness and both represent two distinctive elements of *mens rea*.[8]

II. Specific Problems Regarding *Mens Rea* in the Qatari Penal Code

This section discusses the problems related to *mens rea* in the Qatari Penal Code. It first examines the article that contains the problem and its negative consequences, then presents suggestions for

1- See the Constitution of Qatar, Article 76 (2004).

2- I was told by many judges that they have to perform the role of the legislator because of legislative omission. Their role must be limited to the application of the provisions of the law utilizing the facts at hand, and must not extend to the enactment of laws.

3- Adeel, *supra* note 4, at 26.

4- Paul H. Robinson & Michael T. Cahill, Criminal Law 153 (2d ed. 2012).

5- Oraegbunam & Ounkwo, *supra* note 2, at 2.

6- See Model Penal Code, § 2.02 (2) (b) (emphasis added).

7- See Jonathan L. Marcus, *Model Penal Code Section 2.02(7) and willful blindness*, 102, Yale L.J. 2231, 2237 (1993).

8- See Katheryn Brown & Angela Davis, *Criminal Law Book*, 62 (1st ed., 2016).

amending or repealing said article. This revision would ensure the development and activation of *mens rea* texts, especially since there has not been any amendment regarding *mens rea* in the Penal Code since its issuance. This revision should focus on the amendments of the current *mens rea* provisions by adding a new type of *mens rea* and cancelling some other types. Jurisprudential opinions, which are adopted by the Qatari judiciary, should also be revised and amended before legislators adopt them in the Qatari Penal Code.

A. The Problem of Indirect Intention

The first problem is related to paragraph 2 of Article No. 32, which provides the definition of intent.[1] The current definition is limited to direct intent (general intent); it does not contain indirect intent, which describes a situation in which the defendant could foresee the criminal result as practically certain to occur (see *knowingly* in the MPC), although he did not desire to produce the criminal result. Therefore, the current definition of intent is incomplete, as it fails to encompass situations in which the defendant did not desire the criminal result that occurred due to his criminal conduct, even if he expected it. Qatari legislature requires that the defendant's desire directly cause the result, which is similar to the definition of *purposely* stated by the Model Penal Code.

In comparing the criminal laws of Arab Gulf countries, it clear that the Qatari legislature's position is completely different from other laws. Emirati law, for example, addresses the situations in which the defendant wants only to engage in the conduct, expecting that the result will happen as an effect of his criminal conduct, though he does not have the desire (intent) to commit it. The law states, "The intent arises when the culprit's will moves toward either the commission or omission of an act, where such commission or omission is legally defined as a crime for the purpose of producing a direct effect or *any other criminal result which the offender has expected*."[2] In this way, the Emirati legislature has decided that the result that the defendant expects lies within the definition of intent, which the Qatari legislature excludes. For this reason, Qatari legislature is best described as adopting one form of intent—*purposely*, wherein the defendant desires to commit the criminal result—and it has excluded the form of indirect intent (or *knowingly*) in contradiction with the Model Penal Code, English law, Emirati law, and other laws that adopt this type of *mens rea*.[3]

1. *Negative Consequences*

This definition disregards the element of awareness, failing to ask whether the defendant was aware that the criminal result would occur as a consequence of his conduct. This element is critical, as it reflects the mental state that the defendant may have had at the time he committed the criminal conduct. Many judgments discuss cases where knowledge and foresight of the result were inevitable because only the defendant's mental state, not his desire, matters in a crime.[4] In such cases, justice will not be achieved by judges. Resorting to jurisprudence may be a solution for judges to avoid this problem, because jurisprudence distinguishes between awareness of the result versus the desire to cause the result. But this may contradict many constitutional principles, including legality, as discussed above.

2. *Solution*

This solution recommends amending the second paragraph of Article No. 32 by adding *knowingly*

1- Qatari Penal Code, Article 32 (2004): "The intention is present when the will of the perpetrator is directed to commit or omit an act, in order to produce a result punishable by law."

2- Emirati Criminal Law, Article 38 (1987) (emphasis added).

3- The Model Penal Code uses the term *knowingly* instead of *indirect intent*.

4- See *State v. Ducker,* 27 S.W.3d 889 (Tenn. 2000).

(or indirect intent) to the wording of intent, as in English criminal law. The article would then read as follows: *Intent is present when the will of the perpetrator is directed to commit or omit an act, in order to produce a result punishable by law. Intent is also present when the criminal is practically certain that the criminal result will occur as a consequence of his conduct, even if he does not directly desire this criminal result*. This solution will provide a legal basis for indirect intent and set a standard for the degree of awareness.

B. Problems with the Definition of Types of Mistake

The second problem arises in the third paragraph of Article No. 32, which provides the definition of a mistake. The drafting of this article is too ambiguous; the Qatari legislature has defined neither the type of "mistake" nor the standards upon which we can determine whether or not the defendant made a mistake. Rather, the legislature only states some examples of mistake.[1] It is not clear whether these examples are limited (or exclusive), and the legislature does not clarify their intended meaning, leading to more ambiguity.

The Kuwaiti legislature is much better than the Qatari legislature in defining "mistake," as shown in Article No. 44:

"The mistake is available in case the defendant acted, on committing the act, in a manner in which the reasonable person would not have acted if he was in the defendant's situation and his act is described as negligence, incaution, rashness or noncomplying with the law of the lists.

And the defendant is considered to be acting in such manner in case he did not expect, while committing the act, the results that a reasonable person could have been expected and have not prevented its occurrence nonetheless. Or he did expect the results, but he counted on his skill to prevent its occurrence, but it took place nonetheless."[2]

As we can see from the second paragraph, the Kuwaiti legislature has outlined both the meaning of "mistake" and the standard that should be used by the judge to prove that a mistake occurred. The legislature states that one of the definitions of mistake is that "[the defendant] did not expect, while committing the act, the results that the reasonable person could have been expected." This type of mistake is similar to *negligence* in the Model Penal Code. Moreover, the results expected by the defendant lie within the definition of a mistake: "Or he did expect the results, but he counted on his skill to prevent its occurrence, but it took place nonetheless" (similar to *recklessness* in the MPC).

1. *Negative Consequences*

Article No. 32 of the Qatari Penal Code does not reflect the concept of *mens rea*. *Mens rea*, which shows the relationship between the defendant and the crime, primarily focuses on the mental state of the defendant at the time in which the defendant committed the crime.[3] The legislature in this article does not state any mental states that make the defendant eligible for punishment; it does not clarify the criminal's mental state during the act, or the mental state that the defendant must have possessed during the criminal act. The Qatari legislature only mentions some examples of mistake.[4] However, the examples here do not reflect the criminal's mental state; rather, they reflect the criminal's material conduct. That means the legislature does not distinguish between

1- Qatari Penal Code, Article 32 (2004): "Mistake is available when the result on which the law imposes penalty occurs because of the mistake of the defendant, whether this mistake was due to negligence, carelessness, incaution, rashness, or non-complying with the laws or regulations."

2- Kuwaiti Criminal Code, Article 44 (1960).

3- Stephen J. Morse, *Inevitable mens rea*, 27 Harv. J.L. & Pub. Pol'y, 51, 52 (2003–2004).

4- Qatari Penal Code, Article 32 (2004).

the defendant's criminal act and the defendant's mental state. The examples given are not clear in terms of whether or not they are exclusive, and the legislature does not clarify their intended meaning, leading to more ambiguity.[1]

Additionally, this article adversely affects the defendant's rights to defend himself. It provides the judge with very broad discretion for defining what he considers to be a mistake. According to the current definition of mistake, the judge is not limited to a mental state or a standard upon which to base his decision. Only the judge has the authority to define what is and is not a mistake. The defendant is unable to challenge the court decision because there is no legal basis for his challenge. That kind of discretion results in the improper conviction of defendants and negatively affects criminal justice. There should be a clear text defining the mental states that deserve punishment.

Lastly, there are no standards for identifying whether or not the criminal made a mistake. Here, the legislature does not mention whether the standard to be applied is objective or subjective; such a standard ensures justice and the fair application of the law. These standards are very important in deciding whether or not the defendant deserves punishment. They are based on technical matters such as the *reasonable person in the defendant's situation* or the *characteristics* that should be considered to determine the defendant's liability.[2] When the legislature ignores a standard that can determine criminal liability, that could give the judge broad discretion for defining criminal liability and he can only define these standards. This omission prejudices the defendant's constitutional rights when defending himself.

Resorting to jurisprudence may be a solution that fills the legislative gap, but that will result in a contrast to many constitutional principles, such as legality, legal certainty, and other matters, as discussed above.

2. *Solutions*

This solution recommends drafting a definition of mistake in Article No. 32. This definition would outline the types of mistakes and the general standards that govern them. For example, jurisprudence considers *mistake* to cover both conscious and unconscious mistakes, so that when the legislature intends to adopt this approach, it can state the definition of mistake: *Mistake is a conscious or unconscious failure by the defendant to adhere to the required standard of care and caution of the reasonable person*. In other words, the definition of mistake is related to the defendant's mental state. The phrase "conscious or unconscious" refers to whether or not the defendant expected the occurrence of the criminal result as a consequence of his conduct.[3] This definition also points to a particular standard when the defendant commits the failure—the objective standard.

Furthermore, if legislators want to adopt the forms of *recklessness* (conscious mistake) and *negligence* (unconscious mistake) and considers them both to fall under the mistake type of *mens rea*, then the article should point out the legislative adoption of these two types, stating: *The defendant is considered to be acting in such a manner in this case that he did not expect, while committing the act, the results that a reasonable person should have expected, or he expected that the result could possibly occur, but disregarded this possibility. This disregard involves a deviation from the standard of care that a reasonable person would observe in the actor's*

1- Ashraf Shams Aldein, *Explanation of the Criminal Law in Qatar: General Part*, 346 (1st ed. 2010).

2- See George P. Fletcher, *Basic Types of Criminal Law*, 118 (1998).

3- Rmsees Bhanm, *The General Theory of Criminal Law*, 657 (3rd ed., 1997).

situation.[1] This text defines the two types of mistake: *recklessness* and *negligence*. The reason for considering these two types under the form of mistake is that jurisprudence and the judiciary do not differentiate between them. This wording also defines the standard that should be applied to a conscious and unconscious mistake, which is an objective standard.[2]

Another solution recommends abandoning the current examples of mistake in Article No. 32. Those examples do not reflect any mental state as explored by *mens rea*; instead, they cause disturbance and confusion. The term "*negligence*" in the previous article means "omission,"[3] while the definition of *negligence* in other legal systems means "non-awareness of the result." Also, this article considers the "non-complying with the law of the lists" to be an example of mistake.[4] This example of mistake constitutes a problem as the legislature presumes liability once the defendant violates the relevant rules and regulations, unless the defendant can prove that the reason for the accident is attributable not to him but to an extraneous factor.[5]

Additionally, two other reasons are very important to show that this example of mistake is not suitable for criminal punishment. First, the initial conduct that violates the law of the lists has a very low level of blameworthiness, and it contains very trivial fault. This type of mistake can be a basis of civil liability but not for criminal liability,[6] especially when the law punishes the defendant in a homicide case for three years if the death is due to his non-compliance with the law of lists. Second is the problem of moral luck. A thousand people can violate the law of lists; however, just because one was not lucky and caused an injury due to his violation, doesn't mean there are more sufficient grounds to punish him for three years.[7] This person, while violating the law of lists, is not more blameworthy than the other nine hundred ninety-nine persons who engaged in the same violation. This example is very common and not criminal, and could lead to punishing people just because they were not lucky enough while violating the law of lists.

C. The Problem with Failing to Distinguish between Different Types of Mistake

This section discusses the issues that arise when lawmakers disregard distinctions between *recklessness* and *negligence* (or conscious and unconscious mistake), instead grouping them under one form and one punishment. The cause of this problem lies with the legislator, the judiciary, and the jurisprudence, as the legislator does not distinguish between a conscious mistake (*recklessness*) and an unconscious mistake (*negligence*). In addition, the judiciary, who resorts to jurisprudence in this matter, does not distinguish between these two types of mistake when it comes to matters of fault and punishment.

1. *Negative Consequences*

This problem adversely affects the role of *mens rea*, as *mens rea* supposes that each mental state

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1- Similar to the Kuwaiti legislature that clearly stated the types of mistake. See Kuwaiti Criminal Code, Article 44 (1960).

2- However, in conscious mistake (*recklessness*), the court must first be assured as to whether the defendant was aware that there was a possibility that the result would occur from his conduct, and the standard here is a subjective standard.

3- Judgment, The Qatari Court of Cassation, Case No. 36 on May 8, 2007. The court also mentioned, as an example of negligence, the defendant's failure to verify that the victim exited the machine before operating it, directly causing his death.

4- Qatari Penal Code, Article 32 (2004): "...or non-complying with the laws or regulations." See also Judgment, Egyptian Court of Cassation, Case No. 166, Cassion Collective Rules, 655 on June 10, 1985.

5- Judgment, The Qatari Court of Cassation, Case No. 129 on June 9, 2008.

6- For more information, see Ariel Pora, *Expanding liability for negligence per se*, 44 Wake Forest L. Rev. 979, 981 (2009).

7- For more information, see Christopher Jackson, *Tort, moral luck, and blame*, 60 Clev. St. L. Rev. 57, 86 (2012).

has a defined degree of blame and fault that deserves a defined punishment.[1] There is no difference in the criminal's mental states while committing crimes. *Mens rea* focuses on distinguishing between defendants according to their mental or psychological states when they commit their crimes.

The current situation, which treats *negligence* the same way it treats *recklessness*, will not achieve retribution and fairness because it imposes a punishment on *recklessness* that is less than what the defendant deserves, as the degree of culpability in *recklessness* is higher than in *negligence*.[2] For example, the civil law system holds that *mens rea* generally consists of two elements: awareness and desire.[3] A conscious mistake is presumed to contain the element of awareness, in which the defendant foresees the criminal result.[4] The element of desire does not factor in as the criminal does not desire to cause the criminal result. Therefore, a reckless person meets one element of *mens rea*: awareness. However, *negligence* (or unconscious mistake) does not require the defendant to be aware of the potential criminal result while committing the crime,[5] in which case, both the element of awareness and the element of desire are absent. It is therefore not logical, legal, or just to punish the criminal who foresaw the occurrence of the criminal result with the same punishment as the criminal who did not foresee it. *Recklessness* meets one element of *mens rea*—awareness—but *negligence* does not meet any element of *mens rea* and takes into account neither awareness nor desire. Differentiating between the punishment for these two types of mistake will ensure retribution and fairness.

One justification for punishing criminals is the hope of deterring the commission of crimes in the future;[6] however, when the law ensures that a reckless defendant is punished with a lesser punishment, individuals will not be deterred. For example, *recklessness* often occurs in car accidents, when the driver expects a criminal result (i.e., striking a pedestrian) but continues his risky conduct (i.e., speeding in a populated area). According to many statistics, the number of car accidents in the State of Qatar is excessive for the size of the state and its population of 1.5 million. [7]In 2012, Qatar had the highest number of car accidents per capita in the world.[8] One reason for this figure may be the lack of deterrence from the punishment of reckless drivers, who are treated the same as those who are negligent.

2. *Solutions*

One solution recommends distinguishing conscious mistake (or *recklessness*) from unconscious mistake (or *negligence*) by adding separate provisions to the definition of each type of mistake under Qatari law. Therefore, the legislature should add two articles, each of which adopts one type

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1- Stephen F. Smith, *Proportional mens rea*, University of Virginia Law School: Public Law and Legal Theory Working Paper Series 1 (2008). See also Darryl K. Brown, *Federal mens rea interpretation and the limits of culpability's relevance*, 75 Law and Contemporary Problems 109, 109 (2012). The author states that "fault is a determination based on intention or conscious awareness of the wrongful conduct, its consequences, and the significant circumstances in which it occurs. Together wrongdoing and fault make an offender blameworthy (or culpable), which justifies imposing criminal punishments. An important corollary is that criminal punishment is set in some proportion to wrongdoing and fault; culpability limits punishment."

2- See Stuntz & Hoffmann, *supra* note 1, at 207–209. See also Robinson & Cahill, *supra* note 12, at 12.

3- Aldein, *supra* note 25, at 282.

4- Bhanm, *supra* note 27, at 657.

5- Aldein, *supra* note 25, at 349.

6- For more information about the role of deterrence, see Glanville Williams, *Criminal Law: The General Part* 30 (2nd ed.,1998).

7- Available at https://dohanews.co/number-of-people-killed-in-qatar-traffic-accidents-hits-new-high/. See also https://dohanews.co/study-road-deaths-qatar-accidents-occur-sundays-mondays/.

8- Available at http://www.raya.com/news/pages/532790c9-c2c1-4096-bba4-e8aa0bb8b9df.

of mistake. One article would cover *recklessness* (conscious mistake), and the other would cover *negligence* (unconscious mistake). These new types of mistake should be evaluated under a clear and explicit standard, an objective standard, which is missing in the current Qatari Penal Code.

In cases in which the legislature does not intend to distinguish between conscious mistake and unconscious mistake, choosing instead to consider them as one form, the legislature should at least consider conscious mistake as an aggravating circumstance in unintentional homicides. Homicide crimes are the most dangerous and merit a more severe punishment for the criminal who expects the victim's death than for the criminal who does not.[1] The law can achieve this goal by adding "conscious mistake" to the aggravating circumstances of unintentional homicide listed in Article No. 313, which states the following: "The penalty stipulated in the two preceding Articles shall be doubled, depending on the circumstances, if the crime is the result of a transgression of the offender's occupation, profession or job, or the offender is under the influence of narcotics or alcohol, or the crime leads to the death of a person or the injury of more than three people, or the offender fails to help or seek help for the victim despite having the capability to do so."[2] This solution recommends that the legislature add the foresight of the criminal result as an aggravating circumstance within the current circumstances in Article No. 313. The French legislature has adopted this approach and considers the foresight of the result as an aggravating circumstance in both homicide and non-fatal crimes.[3]

D. The Problem of the Default Rule

The last phrase of Article No. 32 outlines the default rule of the Qatari Penal Code, stating the following: "Unless the Law explicitly provides for Intention, the perpetrator shall be liable for the offence whether it was committed intentionally or by mistake."[4] This article shows that mistake is the minimum default rule, that is, whenever the defendant commits an act, he is punishable whether he committed it intentionally or mistakenly, unless the intention is clearly stipulated.[5] This means that in cases in which the legislature does not stipulate any form of *mens rea* regarding a specific crime, the defendant will be punished regardless of whether he committed the crime with desire (intent) or by mistake.

A number of comparative laws, by contrast, provide that the defendant will not be punished for a mistake unless the legislature has clearly stipulated the type of mistake committed. For example, the Kuwaiti law states that "[i]f the law does not openly stipulate the punishment to the act because it is coupled with a mistake, then the defendant will not be punished unless there is an intent of the defendant."[6] In this way, the Kuwaiti legislature has decided that the defendant should receive punishment due to committing a criminal act by mistake only when the legislature expressly stipulates the form of mistake. When the legislature does not specify any form of *mens rea*, the crime can only merit punishment due to the inclusion of intent. The Kuwaiti legislature has thus adopted a form of intent as a default rule.

1. *Negative Consequences*

Mistake is the minimum default rule. This is wrong for two reasons. First, the law does not define

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1- Brown & Davis, *supra* note 16, at 190.

2- Qatari Penal Code, Article 313 (2004).

3- However, while the form of conscious mistake should not be an aggravating circumstance, it should be an independent type of *mens rea*, as it is mentioned in solution one. The second solution will temporarily ensure the differentiation between homicide crimes, which is important to achieve justice and deterrence.

4- Qatari Penal Code, Article 32 (2004).

5- Aldein, *supra* note 25, at 343.

6- Kuwaiti Criminal Code, Article 40 (1960).

mistake nor the standard that governs it; therefore, "mistake" is not sufficiently appropriate to become a default rule. Second, if the judge adopts the jurisprudential definition of mistake, it means that *negligence* (unconscious mistake) will be the default rule in these crimes. The negligent defendant, however, is unaware that he is committing a crime. *Negligence* is the lowest level of culpability and not sufficiently blameworthy to take this role,[1] especially when most of the crimes in the Qatari Penal Code fall under the governance of this article. This adversely affects criminal justice, the principle of a fair trial, and the defendant's right to defense, leading to the imposition of punishments on defendants regardless of whether the *mens rea* deserves punishment.

Many scholars argue that *negligence* should not be punished at all, because it doesn't generate a high enough level of culpability to merit punishing the defendant.[2] Some laws, like the Model Penal Code, require a higher standard for proving *negligence*: *gross negligence*.[3] Neither the Qatari Penal Code nor jurisprudence requires negligence to be gross in order to punish the defendant; *ordinary negligence* is sufficient to trigger the liability of the defendant.[4] Therefore, mistake should not become the default rule because it is a lower level of culpability. Additionally, it would lead to more serious consequences, as the next points show.

Article No. 32 contradicts the legal logic of crime and punishment according to *mens rea*.[5] The current situation means that no proportionality exists between the idea of culpability and the idea of punishment,[6] as the punishment here becomes applicable to all degrees of culpability whether high or low. Each type of *mens rea* reflects a particular degree of culpability by the criminal, whether or not he was intentional, negligent, or reckless regarding the criminal result.[7] Therefore, the current situation contradicts the idea of crime and punishment, because a crime cannot simultaneously be unintentional and intentional. All crime should be measured by a particular type of *mens rea*, and its punishment should reflect the type of *mens rea* involved.[8]

The problem of the default rule in Article No. 32 is it often leads to imposing a severe punishment on the defendant without giving him the opportunity to defend himself by arguing that he had no intention to commit the crime. There are more than 250 crimes in the Qatari Penal Code; the word "intention" is stated clearly in those crimes about fifty times, and the word "mistake" is stated about thirteen times. There are more than 190 crimes without a default rule, and the liability for them is determined without considering the mental state of the defendant. Those crimes have varied punishments, starting with the death sentence (Article Nos. 99, 101, 102, 103), life imprisonment (Article Nos. 104, 111), seven-year imprisonment (Article Nos. 157, 256), five-year imprisonment (Article No. 259), or ten-year imprisonment (Article No. 116). In these crimes, the criminal is punished regardless of his mental state, that is, the criminal is punished whether he committed the crime negligently or intentionally. This matter is very dangerous and prejudices criminal justice and the guarantee of the defendant's rights. Some examples of these crimes include

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1- See George, P. Fletcher, *The theory of criminal negligence: A comparative analysis*, 119 U. Pa. L. Rev. 401 (1970).

2- Id.

3- American Law Institute, *Model Penal Code and Commentaries*, vol. 1, 241 (Philadelphia: The American Law Institute, 1985).

4- Srouer, *supra* note 8, at 705.

5- Aldein, *supra* note 25, at 343.

6- See Smith, *supra* note 35, at 1. "The concept of moral culpability, namely proportionality of mens rea. This concept requires that the punishment must be tailored to the defendant's level of blameworthiness." See also Brown, *supra* note 35, at 110. "This principle states that punishment must be in accord with or in proportion to culpability."

7- Ted Sampsell-Jones, *Mens rea in Minnesota and the Model Penal Code*, Mitchell Hamline School of Law, 6 (2013).

8- See Smith, *supra* note 35, at 1.

helping the enemy by giving him information or instructing him; retaining the salaries of workers; breaking, damaging, or violating places or their contents if they are made to perform religious rites for one of the divine religions according to the regulations of Islamic law; and opposing or doubting any of the basics or tenets of Islam. As these crimes result in severe punishment, the defendant should not be punished if he commits them mistakenly.

2. *Solutions*

1. This solution recommends repealing this paragraph and drafting a new article that names intent as the default rule, so that criminals are not punished due to the commission of mistakes (involving either *negligence* or *recklessness*) except when clearly stated in the law. This amendment could be written as follows: *There is no felony or misdemeanor in the absence of an intent to commit it. If the law does not clearly stipulate the punishment to the act because the act is coupled with a mistake, the defendant will not be punished unless the defendant had intent to commit the criminal result*. The reason for choosing intent as a default rule is to stop punishing defendants who commit a crime due to *negligence* or *recklessness*. The defendant who intentionally commits a crime deserves the stated punishment for that crime, even if the intent is not clearly stated. Intent is the highest degree of culpability;[1] in such cases, the defendant cannot allege that the punishment imposed on him is unfair because the intent supposes a severe punishment. The defendant who desires to commit a criminal result is the only one who deserves such punishment. This approach is adopted by many laws in the world such as French law, Kuwaiti law, and the Italian Penal Code. Additionally, Article No. 30 of the Rome Statute of the International Criminal Court states, "Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge."[2] This quote shows there is universal agreement that intent or even knowledge should be the default rule for crime, not a much lower level of *mens rea* (or mistake).

E. The Problem with the Number of Types of Mens Rea

This section focuses on the current *mens rea* types mentioned in Article No. 32, and discusses one of the biggest problems with Article No. 32, that being the limited number of types of *mens rea*. Article No. 32 states that there are only two forms of *mens rea*, that is, "the *mens rea* of the crime is composed of intention or mistake."[3]

1. *Negative Consequences*

Such a truncated list of the types of *mens rea* limits and decreases the estimating authority of the judge to define the punishment, as the judge only has two options: label the crime *intentional* or *unintentional*, meaning that the defendant either did or did not intend to cause the result.[4] This discretion is dangerous because the maximum punishment for an intentional crime could reach either the death sentence or life imprisonment, while the punishment for a mistake is generally six-months' imprisonment.[5] There is a large gap between these two punishments. In other words, such limited classification of the types of

1- See Stuntz & Hoffmann, *supra* note 1, at 207–209.

2- UN General Assembly, *Rome Statute of the International Criminal Court* (last amended 2010), July 17, 1998, ISBN No. 92-9227-227-6, available at http://www.refworld.org/docid/3ae6b3a84.html.

3- Qatari Penal Code, Article 32 (2004).

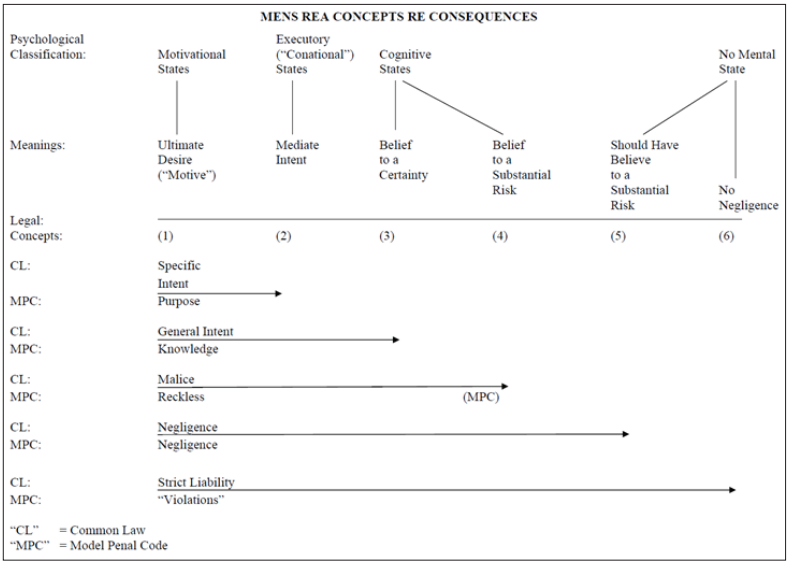
4- This negative consequence does not contradict my concern about the broad discretion of the judges previously mentioned in section I. This research is concerned with the discretion that is based on jurisprudence, not the discretion that is based on law, because this discretion is neither limited nor restricted to any legal provision.

5- For example, in the Qatari Penal Code, punishment for the crime of murder could reach the death sentence, while unintentional homicide merits three years' imprisonment.

mens rea adversely affects the degrees of culpability and the hierarchy of punishment based on them (or the proportionality of *mens rea*).[1] Intent is the maximum degree of culpability, and the minimum degree is mistake or *negligence*.[2] The current distinctions focus only on the maximum and minimum degrees of culpability, neglecting the degrees in between. There is no hierarchy of culpability nor a hierarchy for punishment. Each punishment should reflect a defined degree of fault.[3] The legislature considers that the mental and psychological states of the criminal reflect the maximum degree of fault (the desire to cause the criminal result), or the minimum degree, which is a mistake or non-awareness of the result.

The Model Penal Code succeeds in defining the psychological and mental states that determine the criminal's culpability.[4] Culpability reflects a particular degree of mental or psychological state that leads to a particular punishment (though *purposely* and *knowingly* are usually punished the same way). That degree of fault, whether cognitive or moral, forms a particular type of *mens rea* in its elements, as demonstrated in the figure below.

FIGURE 1[5]



For example, *knowingly* reflects a degree of fault, which is certainty, while *recklessness* reflects another degree of fault, which is substantial risk.

Resorting to jurisprudence may be a solution for judges who wish to avoid the problem of *mens rea* types, because the judiciary has noticed shortcomings regarding the types of *mens rea* and has resorted to jurisprudence to correct legislative omissions. But this may contradict many constitutional principles, including legality, as mentioned above. Also, this approach would be ineffective because the additional types of *mens rea* are considered as either intent or mistake; they do not add anything to the hierarchy of punishment as there are still only two types of *mens rea* according to the Qatari Penal Code.

1- See Stuntz & Hoffmann, *supra* note 1, at 207–209.

2- Robinson & Cahill, *supra* note 12, at 157.

3- See Smith, *supra* note 35, at 1. See also Brown, *supra* note 35, at 110.

4- See Robinson & Cahill, *supra* note 12, at 156.

5- See Michael S. Moore, *Intention, responsibility, and the challenges of recent neuroscience*, Stan. Tech. L. Rev. 8 (2009). This figure is from an essay by Moore about intention and recklessness.

2. *Solutions*

One solution recommends amending Article No. 32 by abandoning the two current types of *mens rea* and replacing them with others. If the legislature adopts this solution, it would render the solutions for the first two problems unnecessary. These types will be discussed in the next section. This solution also recommends abandoning the examples in Article No. 32 that are related to mistake because they do not take into account the defendant's mental state at the time of the crime. They also cause much ambiguity and overlap with other standards, as mentioned above.

III. A New Model of *Mens Rea*

This model is intended to replace the current *mens rea* types with others that clearly express the mental and psychological states of the criminal when he committed the crime; additionally, it will help in achieving a hierarchy of punishment.[1] These types of *mens rea* are divided into two sections. First, the general section shows the four general types of criminal culpability applicable to all offenses. These types are *direct intent*, *indirect intent*, *recklessness*, and *negligence*. Second, the special section focuses on the definition of particular offenses that consider two other types of mental state as aggravating circumstances. These types of mental state are *exceedable intent* and a special type for *aggressive recklessness*. These two types are not general and only applicable to certain offenses if the law so requires.

A. The General Section

1. *Direct Intent*

A person acts intentionally when he/she engages in conduct intending to cause a result that is punishable by law.

2. *Indirect Intent*

A person acts with indirect intent when he/she is practically certain that his/her conduct will cause the criminal result, even if he/she does not directly intend to cause it. Unless the law states otherwise, the person who acts with indirect intent will be considered as acting intentionally and will be punished with the same punishment as someone who acted with direct intent. However, the defendant who commits the crime of murder with indirect intent will not be punished with the death sentence, contrary to the defendant who commits murder with direct intent.

Comment No. 1

- The first type of *mens rea* described is direct intent, which refers to the criminal's desire to cause the criminal result by engaging in criminal conduct. The criminal here is not only aware that the criminal result will occur because of his conduct, but he also intends (or *desires*) to cause this criminal result. The second type includes indirect intent (*knowingly*), as the criminal is aware (*practically certain*) that the criminal result will occur because of his criminal act. Practical certainty is the degree of awareness that is free of serious doubt, as the criminal is practically certain that the criminal result will occur according to the plan in his mind and the ordinary course of events.
- Punishment for indirect intent will be the same as direct intent unless the law differentiates between them. The defendant whose indirect intent led to a criminal result will fall under

1- Many judges express their disagreement with the current situation, as the current situation limits the opportunity of imposing the appropriate punishment on the defendant as he is limited with an intentional crime. Now judges can impose a fair ruling from the varied punishments according to the mental state of the criminal when he commits the crime.

the same consideration as the defendant whose direct intent led to a criminal result, unless the law states otherwise. I propose this article give the legislature the discretion to decide when it is necessary to differentiate between direct and indirect intent, that is, the legislator should be able to decide when the crime should be punished only under indirect intent. If direct and indirect intent are not considered the same, then indirect intent will be pointless unless the legislature amends all crimes in the Qatari Penal Code to include it, which will be difficult. This solution recommends that the legislature should amend only some crimes when necessary to distinguish between direct and indirect intent. Although the punishment for indirect intent will be the same as direct intent, the defendant will not be punished with the death penalty if he commits the crime of murder with indirect intent. In that case, life imprisonment should be imposed instead.

- The default rule will be direct intent.
- Those types of *mens rea* will repeal the current types of intent listed in the Qatari Penal Code, or general and specific intent. General intent will be replaced by direct intent. Specific intent will be governed by the article that discusses motive (Article 35).

3. *Recklessness*

A person acts recklessly when he is aware of the possibility that the result will occur due to his conduct but nevertheless disregards the possibility of its occurrence by continuing that conduct. Such disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

Comment No. 2

- This type of *mens rea* expresses the types of *recklessness*. It includes the conscious mistake form, but with amendments that help to clarify its meaning.
- The distinguishing element in *recklessness* is the criminal's degree of awareness regarding the result. Here, the degree of awareness is less than the degree of practical certainty. "Possibility" means the result can possibly happen. It includes all sorts of foresight that is attached to doubts that the result will occur. It is enough for the defendant to be liable, under this form of *mens rea*, when the *possibility of the result occurrence* crosses the defendant's mind while he engages in the conduct.
- To avoid any ambiguity, the proposal explains the meaning of "disregard" with the phrase "continuing that conduct." Without this phrase, the defendant could argue that he did not disregard the risk and tried to avoid it in order to escape punishment, while "continuing that conduct" is material, external evidence that can be identified and observed. Also, the standard to prove *recklessness* is objective under the defendant's situation. However, the court must first be assured as to whether the defendant was aware that there was a possibility that the result would occur from his conduct, and the standard here is a subjective standard.
- The standard here is the gross deviation from the standard of a reasonable person. The ordinary deviation from the reasonable person standard must be the basis for civil liability, not criminal liability.

4. *Negligence*

A person acts negligently when he should have been aware of the possibility that the result would occur due to his conduct. The failure to perceive this possibility must involve a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

Comment No. 3

- This is the definition of *negligence* as the non-awareness of the possibility of the result of occurrence.
- The standard is an objective under the defendant's situation.
- The standard here is the gross deviation from the standard of a reasonable person. The ordinary deviation from the reasonable person standard must be the basis for civil liability, not criminal liability.

B. The Special Section

The special section focuses on the definition of particular offenses that consider two other types of mental state as aggravating circumstances for punishment. These two types are not general and only apply to certain offenses if the law so requires.

1. *Aggressive Recklessness*

The defendant who acts with *aggressive recklessness* will receive more severe punishment than the defendant who acts with simple *recklessness*, because the *aggressive recklessness* of his conduct poses an extreme indifference to the value of human life, health, or property.

The concept of *aggressive recklessness* shares the same definition of *recklessness*, but with the addition of one element related to criminal conduct.[1] The defendant's conduct in this type poses an extreme indifference to the value of life, money, or health. The defendant will then be subject to more severe punishment than the defendant who commits the crime with simple *recklessness*, because the criminal foresaw the occurrence of the result, but nevertheless he exposed people's lives to extreme danger (e.g., death). However, he will not be punished by the death penalty in the case of murder. Applying a severe punishment to the defendant will help to deter future crimes of this sort, especially when this type of crime poses an extreme indifference to the value of human life.

Aggressive recklessness is similar to conditional intent because both of them share the same degree of awareness, that is, expecting the occurrence of the result.[2] However, the difference is that *aggressive recklessness* involves aggressive conduct while conditional intent supposes the acceptance of a criminal result occurring.[3] This solution recommends abandoning the conditional type for many reasons.

First, the standard for acceptance is unclear, inaccurate, and presumed.[4] The criminal may or may not desire to cause the result, but he cannot accept a result that he does not desire, so the nature of acceptance is ambiguous from its qualities and specifications. That means the ambiguity of *mens rea* will increase and result in instability in the criminal judgments in Qatar. There are also considerable criticisms being directed at the degree of expectation required for the fulfillment of conditional intent since both jurisprudence and judges have provided different degrees of awareness for conditional intent.[5]

1- *State v. Robinson*, 934 P.2d 38 (Kan. 1997).

2- Conditional intent means that the defendant foresees the result of his criminal act, and although he does not desire that result, he continues the act. Conditional intent is the most important type of *mens rea* in the civil law system because of the great controversy surrounding it. See also Judgment, Egyptian Court of Cassation, Case No. 1853 on December 25, 1930.

3- For more information about the similarity between conditional intent and recklessness, see Markus Dubber & Tatjana Hornle, *Criminal Law: A Comparative Approach*, 241 (1st ed., 2014).

4- Id.

5- Bhanm, *supra* note 27, at 623.

Second, the penalty for intentional crimes is serious, even though the offender who acts with conditional intent does not intentionally cause the criminal result nor is he practically certain of its occurrence. This punishment may reach the death sentence, indicating that mere acceptance, not desire, becomes a reason to impose a severe punishment, though it is ambiguous and presumed.[1] Regarding acceptance and the distinction between acceptance and desire, the German courts state that accepting the result as a condition for conditional intent does not mean that the defendant desired such a result. The defendant who accepted the result in order to fulfill his goal is deemed to have accepted the fact that his act could cause the undesired result.[2] It is clear that this type of *mens rea* provides the judge with very broad discretion. The judge is also not obliged to explain the reasons that lead him to infer acceptance. The judge may presume the matter of acceptance without any mention of his reasons for concluding such acceptance.

Third, conditional intent overlaps with conscious mistake (or *recklessness*). The difference between conscious mistake and conditional intent is that in the latter, the defendant accepts the result and even welcomes it, whereas in the former, the defendant does not accept the result and depends on his skills to avoid it.[3] If the defendant accepts the criminal result, then his penalty in homicide will escalate from three-years' imprisonment to the death penalty. Acceptance is a strange criterion when compared to the graveness of the penalty.

These reasons motivate us to recommend the abandoning of conditional intent and the replacement of it with another type of *mens rea* that quantifies conscious mistake only as an aggravating circumstance, much like the French legislature. The French legislature has abandoned the form of conditional intent, and uses only conscious mistake as an aggravating circumstance.[4] This type of *mens rea* will replace conditional intent because accepting the result is an internal intangible matter, while the conduct that exposes people's lives to extreme danger is a material and external matter that can be witnessed and observed. The defendant in such cases will have difficulty escaping punishment compared to cases involving conditional intent, in which the defendant may argue that he did not accept the result or tried to avoid it. The judge's discretion will lessen and shift from presuming acceptance to proving the defendant's material conduct posed an extreme risk to people's lives.

2. *Exceedable Intent*[5]

Exceedable intent is a special type of intent that is included in the Qatari Penal Code.[6] The legislator should state its application separately in each crime. The reason for keeping it is to close the door to the criminal who committed an act that posed an extreme danger to human life, but alleged that he did not expect the possibility that the criminal result would occur.

The QPC states, "Criminal intention is deemed to have been exceeded when the intention of

1- Dubber & Hornle, *supra* note 70, at 241.

2- Id. The author states, "In the leather belt case, the German Federal Court of Justice emphasized that a volitional element (accepting) can be present even if the offender honestly claims that he had preferred the victim's survival to the victim's death."

3- Bhanm, *supra* note 27, at 623.

4- See French Criminal Code, Art. 221-6. See also Catherine Elliott, *French Criminal Law*, 68 (2nd ed., 2011).

5- Qatari Penal Code, Article 33 (2004).

6- Exceedable intent is fulfilled when the defendant aims to cause a certain criminal result, but as a result of the aggressiveness of his conduct, another criminal result occurs that is more aggressive than the criminal result initially intended. For more information, see Srouer, *supra* note 8, at 649.

the perpetrator was to produce a result less severe than that produced and which he did not intend."[1] This solution recommends that the legislator add the word "expected" in this article to reflect the accurate definition of exccedable intent. The article should state: *Criminal intention is deemed to have been exceeded when the intention of the perpetrator was to produce a result less severe than that produced and which he did not intend and* expect.

Conclusion

As stated in the beginning of this paper, the causes of ambiguity regarding *mens rea* are related to its wording, nature, and interpretation. Having presented the provisions of the Qatari Penal Code regarding *mens rea*, we can conclude that the legislative wording of *mens rea* contributes to its ambiguity. The ambiguity caused by the legislative wording is very serious, risky, and detrimental to the people's rights and the constitutional principles that aim to protect individuals' rights and freedom. We can blame this ambiguity on the legislature's omission, which uses unclear and inaccurate vocabularies or phrases to address *mens rea*, and fails to define the distinguishing elements of each type of *mens rea*. Each of those matters has resulted in varied explanations and analyses about the concept of *mens rea* and the contents of its types.

Furthermore, the Qatari Penal Code only includes two forms of *mens rea*, which ultimately undermines the role of *mens rea* and decreases its effectiveness and importance, because the judge has only two options: to accuse the defendant under either intention or mistake. The legislative omission also 1) leads to the legislature's ignorance of including legal provisions that could end disputes and solve the problems with conditional intent; 2) results in having an inappropriate default rule for *mens rea*, which is important for applications in criminal justice; and 3) results in assigning conscious mistake the same punishment as unconscious mistake. These are the most significant consequences of the Qatari Penal Code's wording of *mens rea*; in short it causes ambiguity in understanding *mens rea* on the one hand, and the disruption of the application of *mens rea* on the other.

The ambiguity found in the Qatari Penal Code is abnormal and odd. Reasonable ambiguity takes place when legislation uses some ambiguous terms or phrases in order to give judges room to evaluate their cases without being bound to legal texts, which will help the judge to apply justice, but this room should be granted according to the legal texts. However, the ambiguity found in the current Qatari Penal Code is not granted by the legislature in the legal texts, but caused by the omission of legal texts that define the *mens rea* types or elements. That legislative omission, whether by disregarding some legal texts or choosing very ambiguous terms, provides judges with very broad discretion without requiring them to adhere to any legal restrictions.

The proposed solutions in this paper will not clarify all of the ambiguity surrounding *mens rea* nor will they solve all of its associated problems, but they will definitely contribute to the understanding of *mens rea* in terms of its definition, elements, and types. If these recommendations are adopted, they will help judges and individuals to understand the concept and the important role of *mens rea*. These recommendations will not only help to reduce the ambiguity surrounding *mens rea*, but they will also contribute to the variation of punishments that can be imposed on criminals.

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