

# The Legal Regulation of the Fictitious Crime in the Omani Legislation

## Analytical Descriptive Study

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### Abstract

*The fictitious crime is one of the crimes around which there are still many questions, as it represents criminal behaviour with the perpetrator's imagination only. For instance, for someone who wants to seize money, it turns out that the money belongs to him, which requires more detail and knowledge of the way the Omani legislator organizes this crime. Accordingly, the article will attempt to answer the research problem represented in knowing the legal implications of the fictitious crime in the Omani legislation. To achieve the objectives of the article, doctrinal legal research methodology using a qualitative approach was adopted. The article came to the conclusion that the fictitious crime is due to illusions based on the naivety and ignorance of the perpetrator and without involving the truth. So that the perpetrator believes that he/she is committing a criminal act, but the law does not punish him. The article also recommended that the Omani legislator stipulates explicitly that the fictitious crime should not be punished by an independent and clear text so that it leads to non-punishment for the act that a person commits with the intent of committing a specific crime, then it becomes clear that this person's belief to achieve the result is based on his delusion.*

**Keywords:** *Fictitious Crime, Delusion, Impossible Crime, Attempted Crime.*

### Introduction

There are many forms of crimes committed by a person, as it may be by a positive act such as theft and murder, or it may be by a negative act such as not performing testimony or not paying taxes, and some of them is what happens to a person's life, and some of them are what affects his body, money or honor (Al-Hadithi, 1992).

Here, the question arises about the location of the fictitious crime from these images, as it is a criminal behavior in which the perpetrator wants to achieve a criminal result, but it is only achieved in his imagination, such as someone who wants to seize money and it turns out that the money belongs to him/her. This requires more detail and knowledge of how the Omani legislator organizes this crime (Alia, 2010).

In addition, the criminal intent is available to the person who committed the fictitious crime as acts characterized by illegality based on the illusion of the perpetrator. Here, the main question of the research is raised, which is what are the legal implications of the fictitious crime in the Omani legislation, and what is the position of the Omani legislator in the punishment of the fictitious crime?

Therefore, the person commits a fictitious crime with acts that he believes to be a crime, but for various reasons, the law does not punish it, which requires clarifying the implications of that act, which removes the ambiguity about this crime, as it is not rare in practice. On the other hand, this article attempts to contribute to the in-depth legal studies related to the fictitious crime in light of the great deficiency in it according to the Omani legislation (Al-Khamlishi, 1985).

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The article aims to achieve many goals represented in clarifying the concept of imaginary crime. Distinguish between fictitious crimes and similar crimes. Determining the elements of the fictitious crime in Omani law. Find out the position of the Omani legislator on the fictitious crime punishment.

### *Research Problem*

The problem of this article is the presence of criminal intent in the person who committed the fictitious crime as acts that are illegal based on the illusion of the perpetrator, and therefore what are the legal implications of the fictitious crime in the Omani legislation. Is the fictitious crime distinguished from the impossible crime and the attempted crime? What are the elements of the fictitious crime? What is the position of the Omani legislator in punishing the fictitious crime?

### *Research Methods*

This study employed doctrinal legal research methodology (Sun & Zhao 2022). Additionally, this study used the qualitative method of research (Hamilton & Finley 2020). A library-based method was used to collect information. The primary data attained from treaties, national legal statutes, official records, and case law (Al Amaren, Hamad, and Al Mashhour 2020).

Whilst the secondary data were collected from relevant sources such as legal textbooks, journal articles, and reputable websites. Both primary and secondary information was critically and analytically scrutinized in this study using the content analysis approach (Cho & Lee 2014)

### *Discussion And Analysis*

#### *Concept of the Fictitious Crime*

#### *Definition of the Fictitious Crime*

The concept of crime is disputed by the legal definition, which assumes the existence of a text that criminalizes the act or omission and punishes it. The social definition that considers crime is every act that causes social disturbance, and the truth is that the scope of disagreement between the two definitions is so narrow that it imposes a kind of correlation between them. The legislator does not criminalize an act or omission unless it poses a threat to the social system (Al-Hadithi, 1992).

Therefore, crime was defined as “Every act or omission of a person capable of discernment that causes social disturbance and is punishable by criminal legislation.” (Alia, 2010).

As for delusion, it is defined as “A realization of the hesitating side, which is what occurs in the animal of the genus of knowledge without a subject for knowledge, and it is weaker than conjecture, and delusion is often used in corrupt conjecture.” (Al-Khamlishi, 1985). It is also defined as "Imagining other than reality, i.e., a remote mental possibility that is rare to obtain." (Din Haddou, 2004).

This explains that delusion differs from error in its legal sense, as delusion is a disturbed mental state if the mind becomes unable to distinguish between what is real and logical and between fantasies and illusions. As for the fault, it is when the criminal result occurs due to the fault of the perpetrator, or failure to observe laws or regulations, according to Article (33) of the Omani Penal Code (Hamdi Qishta, 2023).

With regard to the definition of fictitious crime in terms of terminology, there are many definitions. Dr. Hassan Al-Marsafawi defined it as "An act that takes place according to a purely naive perception, in which the crime does not occur and is not achieved except in the illusion of its perpetrator." (Al-Kafawi, 1998). And Dr. Samir Alia defined it as “A permissible act in reality, but the perpetrator mistakenly believes that it is a crime.” (Al-Borno, 2020).

Finally, Dr. Mahmoud Naguib Hosni defined it as "An act that is not criminalized by law, but I think the perpetrator is criminalized by law." (Al-Marsafawi, 2001).

The authors conclude from the previous definitions that the imaginary crime is due to illusions based on the naivety and ignorance of the perpetrator and without involving the truth, so that the perpetrator believes that he is committing a criminal act, but the law does not punish him. An example of that is the blind man who harasses a woman thinking that he is a stranger to him, and his wife took her, or the one who takes money believing that it belongs to others, but it is in fact his property, and the one who shoots a person intending to kill him, and then this person is dead before being shot.

The one who delves into this concept finds that the imaginary crime is an impossible crime to verify, but this impossibility is due to the legal character and not to other characteristics. It is a behavior separate from the result that originally occurred, and then its ruling is the rule of a legally permissible act. Therefore, when we use the term imaginary crime, it is a matter of metaphor, not the truth, as it does not exist except in the illusion of the perpetrator (Alia, 1996).

As for the Omani legislation, there was no definition of it, and it was content with an implicit reference to its concept and an explanation of some of its provisions when regulating the attempt of the crime (Naguib Hosni, 1999).

Where it was stated in Article (34) of the Omani Penal Code, stipulates that "There is no punishment for whoever commits the criminal act by a material error factor, which is based on one of the constituent elements of the crime." From this, it is clear that the Omani legislator has exempted her from punishment.

#### *Characteristics of the Fictitious Crime*

The article will address the most important characteristics of the fictitious crime in the following form:

#### *Committing Criminal Behavior*

Behavior is an element of the material element in all different types of crimes, whether the crime was intentional; or not intentional, and whether the crime was committed and the result achieved; Or did it remain in the stage of initiation, and thus without criminal behavior, the crime would not exist, for the rule says that "There is no crime without behavior." (Article 3 of the Omani Penal Code).

This behavior takes two forms: a positive act and a negative act, and this is what came with Article (27) of the Penal Code, which stipulates: "The material element of the crime consists of an activity that is legally criminalized by the commission of an act or omission."

It is clear from the foregoing that the fictitious crime does not deviate from that rule in which criminal behavior must be committed, whether positive or negative. Whoever shoots a person, but then it becomes clear that he/she died before being shot, the person is facing the imaginary crime by committing the positive behavior. It may be a negative act, such as the case of the rescuer who refuses to save a person who is believed to be drowning, and then it turns out later that he is a floating tree branch.

#### *Perpetrator's Belief in The Illegality of The Act*

It is recognized that the principle of legitimacy is one of the basic pillars of penal law, which includes that there is no crime or punishment except by a text. So the crime is only carried out by an illegal act, and in the sense of violation, the legitimate act according to the penal law or the penal laws complementing it is not carried out by the crime, and therefore in the fictitious crime in which the perpetrator believes that he has committed a crime contrary to the truth and that he has committed an illegal act which is in fact legitimate and not punishable by law, which leads to non-punishment for it as it is not considered a crime and is not punishable by law except in the perception and illusion of the perpetrator (Din Haddou, 2004).

### *Behavior In a Fictitious Crime Often Does Not Cause Harm*

Jurisprudence has resorted to dividing crimes in terms of achieving the result into crimes of harm and crimes of danger or material crimes, the existence of which requires the achievement of a tangible criminal result; Such as beating, murder, and theft (Al-Salami, 2017).

As for crimes danger, they are those in which the legislator does not require a tangible result, but is concerned with the resulting dangers that may endanger criminally protected interests, such as the crime of refraining from testifying, and possessing a weapon without a license, as the authors find in these crimes that they do not cause any damage; Rather, they threaten with a possible attack, so the legislator punished over them to avoid the occurrence of harm, and thus criminalizing is a preventive criminalization (2017).

It becomes clear from the foregoing that the fictitious crime is one of the dangerous crimes that does not require the achievement of a criminal result, but it is distinguished from it in that it is not considered a crime, as it is criminal behavior in the illusion of the perpetrator, but it is legally permissible, and therefore there is no danger in the fictitious crime due to the separation of behavior in it from the result achieved (Al-Doukhi, 2021).

### *Distinguishing the Imaginary Crime from Similar Crimes*

Some people may confuse the fictitious crime with the impossible crime, or between the attempted crime, so this article will explain the distinction between the fictitious crime and the impossible crime, then distinguish between the fictitious crime and the attempted crime.

### *Distinguishing between a Fictitious Crime and an Impossible Crime*

The impossible crime is the crime in which the criminal result is not achieved because of its impossibility to achieve it; Either because there is no place for the crime, such as someone who wants to kill a dead person, or an attempt to abort a virgin girl who is not pregnant, or because the means used are insufficient. Like someone who wants to kill someone with an empty gun, or poison someone with a non-toxic substance (Morsi, 2004).

It is clear from the foregoing that the impossible crime and the fictitious crime agree that the perpetrator commits the entire criminal behavior, but the result is not achieved for a reason outside the will of the perpetrator, except that they differ in several aspects, the most important of which are:

In terms of criminal activity, it considers that the impossibility of the crime is due to the absence of the place of the crime, or the insufficiency of the means used. As for the fictitious crime, it is a legally permissible act, but the perpetrator mistakenly thinks that he has committed a crime from the point of view of the law (Al-Ghafri, 2023).

Likewise in terms of punishment, the legislator punishes the impossible crime as one of the forms of attempt. As for the fictitious crime, it is not punishable (Morsi, 2004).

As for the criminal severity, we find that the impossible crime involves the existence of the criminal risk of the perpetrator, as it is considered a criminal act and threatens protected rights and interests. As for the fictitious crime, it does not often constitute an assault on the public interest and does not pose a threat to the protected rights and interests (Al-Doukhi, 2021).

On the other hand, some jurisprudence believes that it is possible to distinguish between the impossible crime and the fictitious crime on the basis of the start of execution, as the criterion for the start of execution may be present in the impossible crime. But it is not present in the fictitious crime, and therefore if the act committed by the perpetrator made it impossible for him/her to complete the crime, the crime would be impossible. But if the act does not reach the start of execution, then the crime is fictitious (Al-Salami, 2017).

However, this opinion has been criticized so that it is not sufficient alone to distinguish between the two crimes, because the start of execution is not absolutely present in the fictitious crime, while it is still a matter of disagreement between the schools regarding the impossible crime (2017).

### *Distinguishing between a Fictitious Crime and an Attempted Crime*

The attempt is a stage in the commission of the crime; It comes after preparation and before committing the crime, and the Omani legislator defined it in the Penal Code. That it is "The commencement of the execution of an act with the intent of committing a felony or misdemeanor, if its effect is stopped or frustrated for a reason not related to the will of the offender. The commission of an act which in itself is part of the constituent parts of the material element of the crime, or immediately and directly leads to crime, is considered a beginning of execution, and the mere intention to commit it or the preparatory actions for it are not considered an attempt unless the law stipulates otherwise." (Article 30, 31 of the Omani Penal Code).

From the foregoing, it is clear that the attempt is related to the non-achievement of the result, and therefore there is no room for research into the attempt when the result is achieved, and it is not possible to imagine the attempt except in material crimes (harm), that is, the crime must have a consequence.

As for formal crimes (danger) that are not required to occur as a criminal result, it is not possible to imagine their attempt; Such as the crime of carrying weapons without a permit, building without a permit, and possession of narcotics (Morsi, 2004).

The crime must also be intentional. Because the attempt is the pursuit of a certain result that does not occur, but in unintentional crimes, the offender does not want the result and does not seek it. Finally, the crime must be a felony or a misdemeanor. Because violations are mostly formal crimes or unintentional crimes (Al-Salami, 2017).

From the foregoing, it is clear that the fictitious crime differs from the attempt in several respects, the most important of which is in terms of legality, as attempted acts are considered punishable in the law. As for the fictitious crime, there is no legal punishment for it. In addition to that, the criminal result is not achieved in the attempt, and that is later on the commission of the criminal act, such as someone who wants to shoot another person and a third person intervenes to control them before shooting, so if the result was achieved, it would have become a complete murder. As for the fictitious crime, it is not related to the result, as the perpetrator carries out the criminal behavior, but the result of the crime is not achieved in the first place.

Finally, the authors find that the Omani legislator punishes the attempt to commit a crime, as mentioned above, but does not punish the fictitious crime, as it does not represent a crime according to the law. Therefore, this leads to saying that the fictitious crime is not considered an attempted crime because the element of starting the execution is not fulfilled, because the attempt is supposed for the perpetrator to start the implementation and that the result is not achieved for a reason outside the doer's will, but in the fictitious crime the crime is completely denied, the attempt has no place because the perpetrator did not commit criminal behavior and did not violate the rights protected by law.

### *The Legal Framework for the Fictitious Crime*

After explaining the conceptual framework of the fictitious crime, the study requires an explanation of the availability of the elements of the crime in the fictitious crime, that is, the availability of the legal element, the material element, and the moral element of the fictitious crime. Then clarify the idea of the feasibility of punishment for the fictitious crime and the position of the Omani legislator regarding this crime.

### *Elements of the Fictitious Crime*

Addressing the extent to which the elements of the crime apply to the fictitious crime requires an explanation of the legal element, the material element, or the moral element, as follows.

### *The Extent to Which the Legal Element of The Crime Applies to The Fictitious Crime*

The principle of "legitimacy" is one of the main and important principles on which modern criminal systems are based. It means the existence of a legal text that defines the crime and the punishment for it and molds it to a specific behavior in order to remove it from the circle of permissibility and bring it into the circle of criminalization (Al-Ghafri, 2023).

The general rule is that the principle in acts is permissibility until the law criminalizes them, so these actions become criminal. It also indicates that the criminal law has a single source, which is the written law. In contrast to civil or commercial law, one of whose sources is custom, which is expressed in the science of criminal law by the principle of "There is no crime or punishment except by a text." (Hamdi Qishta, 2023).

With regard to the fictitious crime, the illegal character of the act may take several forms, including when the doer believes that there is a text that criminalizes the act, or it is based on the existence of a text that criminalizes the act, but the availability of one of the reasons for permissibility led to the permissibility of the act and the perpetrator was unaware of its existence, and he committed the act under the illusion that the law punishes it (Al-Doukhi, 2021).

Such as someone who arrests a person in flagrante delicto and uses force against him\her, while he\she does not know that he\she is in flagrante delicto, then it turns out that the law allowed the arrest of the accused in flagrante delicto by any person even if he\she did not have an official character (Al-Ghafri, 2023).

Finally, the unlawful characteristic may be derived from a criminalizing text, but the presumed condition in it does not exist, which changes the act and makes it legitimate, i.e. the mistake occurred in the facts constituting the crime. An example of this is someone who takes leftover money under the illusion that it belongs to another person, as the crime of theft is denied due to the absence of one of its constituent elements, which is that the money is owned by others, but he mistakenly assumed that it had been achieved (Al-Salami, 2017).

Therefore, the authors said that the illegitimate character of the act in the fictitious crime stems from the illusion of the person and not the penal law, and therefore the legal element of the fictitious crime does not exist because the illusion is not considered a source of criminalization and punishment.

### *The Extent to Which the Material Element of The Crime Applies to The Fictitious Crime*

The material element of the complete crime, according to the general rule, consists of three elements: criminal behavior, the criminal result, and a causal relationship between the behavior and the result.

#### *First: Criminal Behavior*

Criminal behavior is meant as the external material activity that constitutes the crime and thus excludes intentions and ideas without deviating from the realm of criminalization.

Criminal behavior may be positive or negative. Positive behavior is "A voluntary organic movement or movements that bring about change in the external world, whether or not it leaves physical traces." Accordingly, positive behavior may consist of a movement or organic movements, and they must be voluntary movements, such as killing, stealing, and beating (Hamdi Qishta, 2023).

Therefore, if the previous concept of the positive behavior of the crime is dropped in its simple form, the authors find that it differs from committing a fictitious crime because the subject of the crime is legitimate and there is no punishment for it in the law, such as the blind man who rapes his woman thinking that she is a foreigner, but then she is his wife. The same applies to the soldier who is in the war and wants to shoot his direct officer. When he fired, he did not hit that official, but he hit a soldier of the enemy country and killed him (Al-Salami, 2017).

As for negative behavior, it is meant “A person’s voluntary abstention from performing a certain positive action that he was legally required to do in certain circumstances.” (Hamdi Qishta, 2023).

Based on the previous definition, it becomes clear that there are three elements in front of negative behavior, the first element: refraining from doing a positive action; Such as refusing to testify or pay taxes.

The second element: That the person has a legal duty to do that act, and that the act or its consequences are protected by criminal law (Al-Ghafri, 2023).

The third element: the voluntary capacity to abstain must be present. And if the previous concept is dropped on the material element of the complete crime, according to the general rule, consists of three elements: criminal behavior, the criminal result, and a causal relationship between the behavior and the result (Al-Salami, 2017).

### *Second: Criminal Result*

Jurisprudence in defining the criminal consequence was divided into two directions. The first is physical and the second is legal; Therefore, the article will present them as follows:

#### *Physical Result*

Proponents of the materialistic definition define it as the tangible material effect that occurs as a result of the external world, which also represents a violation of one of the rights of others.

As the legislator’s goal in criminalizing murder is to protect the right to life, and therefore the material result is what is caused by the actual assault on the right to life, which is the loss of life, and in the crime of theft, the legislator aims to protect the right to property, and therefore the material result is the transfer of the stolen from the possession of its owner to the possession of the offender i.e. the thief; the article concludes that the materialistic concept of the criminal result requires that it have an impact on the outside world, and the change that takes place in the outside world is what concerns the criminal law and justifies its existence (Din Haddou, 2004).

#### *The Legal Result*

The criminal consequence, according to the proponents of this trend; is the effect that the criminal behavior causes on the criminally protected interest, whether by harming it or exposing it to danger. There is no crime without prejudice to a protected interest, and it follows from that that the criminal result exists even if it does not produce a tangible effect in the outside world, and it is equal that the result is harmful, like death in murder, or that be merely a threat to the protected interest without requiring the occurrence of damage, like the master’s refusal to provide his servant with food, in the face of the difficulty of the legal result and the necessity of having it available in all crimes; Jurisprudence has resorted to dividing crimes into crimes of harm and crimes of danger (Din Haddou, 2004).

Based on the foregoing, the authors find that the fictitious crime has no consequence according to the two previous concepts, where the imaginary crime does not have a tangible result, but rather it is behavior without a result, and the provisions of the Penal Code do not punish it, as it does not reflect the seriousness of its perpetrator and does not lead to the occurrence of harm, and whoever is done, it comes out of the concept of the criminal consequence of both types (2004).

### *Third: Causal Relationship*

It means that the criminal behavior, whether it was an act or omission, is what led to the achievement of the criminal result; In other words, the criminal result would not have occurred had it not been for that act or omission, so if there is no causal relationship between the behavior and the result, that its realization is

not due to the behavior of the offender; Then there is no responsibility for the complete crime (Din Haddou, 2004).

Accordingly, the authors conclude that the causal relationship is an element in the material element of the crime. It is limited to material offenses (harm) only that require a criminal consequence to occur. As for formal crimes (risk), their material element does not include the need for a specific criminal result. As it is sufficient for its existence to carry out criminal behavior only, and therefore the problem of causation does not arise in relation to it, and this is what the Omani legislator adopted in Article (28) of the Penal Code.

When applying the concept of causation to the fictitious crime, the authors find that it does not apply to it, because the fictitious crime is in fact behavior that the perpetrator believes has led to a criminal result. But in fact, the behavior is not criminalized in the law, just as the result that occurred has nothing to do with the behavior of the perpetrator, and therefore the causal relationship between the behavior and the result is broken (Din Haddou, 2004).

#### *The Extent to Which the Moral Element of The Crime Applies to The Fictitious Crime*

In order for the crime to exist legally, it is not sufficient to have an act or omission stipulated and punished by the legislator; Rather, the act or omission must have emanated from a sinful will, as this relationship between the criminal activity and its perpetrator is what is called the moral pillar of the crime.

The Omani law stipulated the moral element of the crime in Article (33) of the Penal Code, which states: "The moral element of the crime is intentionality in intended crimes, and error in unintentional crimes. This commission or omission is legally criminalized, with the intent of producing a direct result or any other legally criminalized result that the offender had foreseen and accepted to risk. The crime is also intentional if it occurs against a person other than its intended person, and there is a mistake if the criminal result occurs due to the fault of the perpetrator, or failure to observe laws or regulations" (Mustafa, 1987).

It is clear from the previous article that criminal intent takes two forms: the first is the criminal intent, and the second is the unintentional error.

Criminal intent is defined as "The divergence of the will of the offender to the act that comes to him and to the result intended for punishment," as it becomes clear from the definition that criminal intent is based on the two elements of knowledge and will.

#### *First: The Element of Knowledge*

The rule is that in order for the knowledge carried out by the criminal intent to be available alongside the will; The offender must be aware of all the legal elements of the crime, i.e. the elements of the crime as defined by the criminalization text. If knowledge of one of them is absent due to ignorance or error; The criminal intent, in turn, is negated, and here the article wonders whether, in the fictitious crime, it is necessary for the perpetrator to take note of the stated reason in order to benefit from it. Jurisprudence believes that this is not a requirement because this perception is in line with the concept of a fictitious crime in which the act is not punishable, and the result that happened has nothing to do with the behavior of the actor ((Behnam, 1997).

#### *Second: The Element of Will*

It is considered the second element of criminal intent after knowledge, and it is a psychological force that directs all or some of the body's organs toward achieving an illegal purpose or violating a right or interest protected by law. The importance of will appears in distinguishing between intentional and unintentional crimes. Where the will in intentional crimes is directed to the behavior and the result, while in non-



intentional crimes the will is directed to the behavior without the result. Because the will is directed to behavior without the result (Mustafa, 1987).

The element of will in this concept is present in the perpetrator of the fictitious crime, but it has no legal value because the result he\she wanted to achieve was not achieved because of his\her behavior. One of the criminal elements, and thus the lack of criminal intent. The moral element is also linked to the legal element, which was not available in the fictitious crime. Therefore, the moral element of the fictitious crime is not available, because the will did not tend to carry out punishable behavior in the law (Behnam, 1997).

Based on the foregoing, the fictitious crime does not have the general elements of the crime, so the perpetrator does not commit criminal behavior, and the act does not lead to a criminal result that threatens the legally protected interests and does not have the moral element. Therefore, the article will explain the possibility of imposing punishment on the perpetrator of the fictitious crime.

#### *Punishment for the Fictitious Crime*

After the article clarified the absence of the elements of the fictitious crime in the traditional sense and the consequent absence of the violation of the rights protected by law, the implications of it must be addressed, so is it possible to inflict punishment on the perpetrator, or is there no point in that, in addition to that, the position of Omani law must be addressed of punishment for the imaginary crime

#### *The Futility of Punishment for The Fictitious Crime*

The goals of punishment are centered on achieving justice, general deterrence, and private deterrence. This means that the best penal system is the one that brings them together and coordinates between them to achieve the ultimate goal of punishment, which is to protect society from crime (Salama, 1995).

In terms of achieving justice, we find that the occurrence of the crime carries the meaning of attacking the values and ideals that are stable in the conscience of the group, and the imposition of punishment on the criminal satisfies the sense of justice inherent in the human soul as it achieves the meaning of retribution that prevents the victim from thinking of taking revenge on the offender. And it prevents the group itself from practicing this collective revenge against the perpetrators of the crime or against his\her relatives, but rather makes it accept him\her among its ranks after he\she has executed the sentence imposed on him\her. And if the concept of justice is applied to the imaginary crime, it cannot be achieved, given that the imaginary crime is a statement that actions have no results and the committed act did not lead to disturbing the social and psychological balance of society, and therefore it cannot be said that there is a just goal for punishment for the imaginary crime (Behnam, 1997).

In terms of general deterrence, which is intended to warn the offender and all people through the threat of punishment with bad consequences for crime in order to avoid it, and the idea of general deterrence is based on the fact that there are criminal motives among members of society; These motives create a latent crime in society that may turn into an actual crime, and the threat of punishment is what prevents the latent crime from turning into an actual crime (1997).

Consequently, punishment has a basic social role in this regard, and in order for punishment to fulfill its threatening role, it must be threatened with harm to the individual that exceeds the benefit that should be achieved from the crime. The impediment to committing the crime. Here, the punishment for the imaginary crime cannot have any general deterrence if it is punished, because it is not considered a crime according to the principle of legality, and because there is no great criminal risk for the perpetrator to make him an example for others (Al-Ani, 2018).

In terms of special deterrence, which is intended to choose the punishment that suits the circumstances of the offender and is consistent with the gravity of his crime, and implement it using the latest methods of punitive treatment that work to eradicate his evil impulses and eliminate the criminal danger inherent in the person of the criminal and prevent him from returning to crime in the future. The private deterrence, then,

has an individual character because it is directed at a particular person that infects the accused in his body through the death penalty, and his rights are restricted through his imprisonment, and this is in contrast to the general deterrence that faces an absolute danger. A religion whose source is all people who are feared to imitate the criminal (Mustafa, 1964).

Based on the previous concept, the special deterrence is not applied to the perpetrator of the imaginary crime, because the special response assumes that the perpetrator has a criminal risk, although the committed behavior is not punishable by the legislator, and it did not lead to a criminal result in the law. Therefore, the functions and objectives of punishment are negated in the case of the imaginary crime, in addition to the fact that the reason for criminalization is not available due to the absence of the place of the crime or the non-fulfillment of the crime at all, which did not infringe on the legally protected interests and therefore there is no interest that requires punishment for the imaginary crime (Al-Ani, 2018).

### *The Position of Omani Law on Punishment for A Fictitious Crime*

Some legislation tends to allocate a clear text to confront the fictitious crime, by adopting non-punishment for it because it occurred in the form of an error in the law, which is the case in which the person commits an act that he believes to be criminal, but in fact, it is considered permissible, or the error may have occurred on the facts constituting the crime. The Omani legislator has tended to stipulate explicitly that the imaginary crime will not be punished if it occurs as a result of a material error that occurred on one of the constituent elements of the crime.

This is in Article (34) of the Penal Code, which states: “There is no punishment for whoever commits a criminal act by means of a material error that falls on one of the constituent elements of the crime. However, in unintentional crimes, it is required that the mistake not result from the fault of the perpetrator.” A mistake of fact means knowledge contrary to the truth, in which the offender, at the time of committing the act, knows facts that are not true, or is delusional that there are facts but they do not exist (Al-Ani, 2018).

If a hunter wanted to shoot an animal among the trees, it turned out that it was a human being among the trees. Here, the perpetrator is not asked about the crime of murder because the mistake occurred on an essential element, which is taking the life of a living human being, which is the material element of the crime of murder, also in the crime of theft, the perpetrator is not responsible for it if he takes the money of others believing that it is his money, because the mistake occurred on an essential element in the crime, which is taking the movable money owned by others (Al-Ani, 2018).

However, based on the previous article, if the mistake resulted from the perpetrator’s mistake in unintentional crimes, the perpetrator will be questioned for his mistake. If a nurse gives medicine to a patient and the patient dies as a result of that, then it turns out that another person put poison in the medicine without the nurse’s knowledge, then she\he is not asked about the death. Because the criminal intent does not exist, and she\he did not commit a mistake, but in the event that a mistake was made in monitoring or the type of medicine, she\he is responsible (Mahmoudi, 2011).

It is worth noting that there is an aspect of jurisprudence that rightly calls for the necessity of applying precautionary measures to the perpetrator of the fictitious crime, as it does not see that the occurrence of a crime is not a requirement for the application of the precautionary measure, so why do we wait for its occurrence in order to apply these measures? Therefore, it can be applied to dangerous people before they commit a crime, given that the goal of precautionary measures is to protect society from crime, and it is considered the most appropriate way to confront fictitious crime (Al-Ani, 2018).

## **Conclusion**

A fictitious crime is when the perpetrator commits an act that is mistakenly believed to be a crime, but in reality, it is a permissible act, and this distinguishes it from the impossible crime and the attempted crime, in addition to the difficulty of applying the general elements of traditional crimes to it. In conclusion, the

authors came to many conclusions and recommendations as follows: The fictitious crime is due to illusions based on the naivety and ignorance of the perpetrator and without involving the truth, so the perpetrator believes that he\she is committing a criminal act, but the law does not punish it. One of the characteristics of the fictitious crime is the commission of criminal behavior, whether positive or negative, and the perpetrator's belief in the illegality of the act, and the behavior in the fictitious crime often does not cause harm. The impossible crime and the fictitious crime are distinguished on the basis of the start of execution, where the criterion for the start of execution may be present in the impossible crime, but it is not present in the fictitious crime, and therefore if the act committed by the perpetrator made it impossible for him to complete the crime, the crime would be impossible, but if the act was It does not reach the start of execution, so the crime is fake. The fictitious crime differs from the attempt in several respects, the most important of which is in terms of legality, where the acts of attempt are considered punishable by law, but in the fictitious crime there is no legal punishment for it, in addition to that, the criminal result is not achieved in the attempt, and this is subsequent to the commission of the criminal act.

The fictitious crime does not have the general elements of the crime, as the offender does not commit criminal behavior, and the act does not lead to a criminal result that threatens the legally protected interests, and it does not have the moral element. The Omani legislator has tended to stipulate explicitly that the criminal act shall not be punished if it occurs as a result of a material error and falls on one of the constituent elements of the crime. In addition, the authors recommend that the Omani legislator stipulate explicitly not to punish the fictitious crime in an independent and clear text so that it leads to not punishing the act that is issued by the person with the intent to commit a crime if the person believes that the validity of his action to achieving the result is based on his delusion. Also, expressly states that there is no punishment in the event of participation in the fictitious crime, given that the act of the perpetrator is not punishable and that the accomplice derives his criminality from the act of the original perpetrator. The Omani legislator urged the need to apply precautionary measures to the perpetrator of the fictitious crime as long as he\she is not penalized for it, given that the aim of the precautionary measures is to protect society from crime and is considered the most appropriate to confront the imaginary crime.

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