

**Criminal Liability for Incomplete Cybercrime ‘Attempted Crime’ in
Jordanian Law**

Mohamad Alshible¹ &
Mohammad AL-SALAMAT²

Abstract

In certain cases, criminal acts may not culminate in the intended result, thus halting at the stage of the act itself, whether that act is completed or not. This legal concept is commonly referred to as the initiation or attempted commission of a crime. Lawmakers often delineate provisions specifying penalties for such incomplete crimes within conventional legal frameworks. However, the situation becomes considerably intricate regarding cybercrimes, as their nature differs from other offenses due to the intricacies of identifying the constituent elements within cyberspace. Another significant difficulty arises from the ambiguity in certain legislative frameworks, as is the case with Jordanian law, which leaves the treatment of incomplete crimes to general legal provisions, consequently engendering potential ambiguities and practical application issues. Considering these complexities, this study offers a comprehensive framework for addressing incomplete crimes committed in cyberspace. Nevertheless, the most optimal course of action involves the development of unequivocal legal statutes that align seamlessly with the foundational principles of criminal law and its core theories.

Keywords: Criminal law, cybercrime, incomplete cybercrime, individualization of penalty.

Introduction

In an incomplete crime, commonly referred to as an attempted crime, the critical aspect of achieving the criminal result is not achieved (Fathallah, 2019) due to circumstances beyond the perpetrator's control (AbuAfifa, 2012). The French legislature defined attempted crime as: "An attempt is committed where being demonstrated by a beginning of execution, it was suspended or failed to achieve the desired effect solely through circumstances independent of the perpetrator's will (Article 121-5 of the French Penal Code)." Similarly, the Jordanian Penal Code described it as "An attempt to begin executing one of the acts which appear to lead

¹ The author is a Criminal Law Participate Professor at Jadara University in Jordan. He has been practicing in the Bar Association as a lawyer since 2011 and involved in teaching criminal law since 2011. he is interested in research in criminal law for more than 20 years. He can be reached at: mshible@jadara.edu.jo or soramohamad@yahoo.com

² The author is a civil Law Doctor. He is affiliated with Amman Arab University, Jordan. He is interested in research in different branches of law. He can be reached at: mohammad9975@gmail.com

to the commission of a felony or a misdemeanour. If the perpetrator could not complete the acts needed to commit such felony or misdemeanour for reasons beyond his / her will, and unless the law provides otherwise, he/she shall be punished (Article 68 of the Jordanian Penal Code).

Attempted crime can come into two forms: complete attempt or incomplete. In a completed attempt, the perpetrator proceeds with the criminal act, but an unexpected issue arises, preventing him from achieving the desired result. All steps necessary to achieve offense have been taken in an uncompleted attempt, but the action is voluntarily or involuntarily prevented. In both forms, the result has not been achieved.

The authors insure here in this scope as in cybercrimes, there exists a complex interplay of factors. A significant challenge emerges concerning the appropriate legal actions to attempt to commit these crimes. This challenge hinges on the delicate balance between punishing attempts that yield a certain level of danger, thus constituting a criminal standard consistent with the principle of legality, and the absence of a clear legal framework for penalizing such attempts in alignment with the overarching perspective and underlying philosophy of the punishment for attempted cybercrimes.

The issue of punishment in cybercrimes is multifaceted and extends beyond the matter of attempted offenses. It encompasses various aspects, including the criminalization of specific acts. Some acts have not yet been formally criminalized, or the legislative process has lagged in creating specialized provisions to address them. Consequently, these acts remain unaddressed or are subject to judicial discretion in the absence of clear legislative framework. In such instances, the judiciary endeavors to adapt existing legal texts to address the evolving landscape of cybercrimes, exemplified by cases such as cyberbullying (Alshible, 2023).

In applying legal principles, instances of confusion have arisen, particularly during a phase when there was uncertainty surrounding the appropriate application of Jordan's Communications Law and Cybercrime Law to certain electronic activities. Notably, subsequent to applying the Communications Law to specific electronically perpetrated acts, the Jordanian Court of Cassation ushered in a new legal precedent through a particular case. This legal precedent pertained to a case involving the alleged offense of republishing photos and videos and their dissemination via a Facebook account. In this case, the photos and videos were further duplicated and archived on a flash drive before being transmitted to the complainant's father. Importantly, the Court of Cassation reclassified the offense, shifting it from a violation of the provisions outlined in Article 75/A of the Communications Law to a misdemeanour related to the retransmission or publication of data containing obscene material that defames another individual

under the stipulations outlined in Article 11 of the Cybercrime Law. This legal transformation is delineated in Court of Cassation Decision No. 2436 of 2019 (Alshible, 2020), serving as a pertinent illustration of the complexities and nuances inherent in the legal framework governing electronic activities, as well as the necessity for precise interpretation and application of laws to address the challenges presented by contemporary technological advancements.

The question of attempt holds a contentious position in criminal law, with debates revolving around its conceptualization as mere preparation or an attempt. This issue also extends to the domain of cybercrimes, where the possibility of attempting certain offenses is evident, while not all cybercrimes lend themselves to such attempts (Abu Issa, & Alkhseilat, 2022). For instance, irrespective of legal provisions specifically penalizing attempts, some cybercrimes can be envisioned as subject to attempted commission. Within the Information Systems and Cyber Crime Law, we encounter instances such as hacking and information destruction, where a perpetrator may undertake substantial preparatory steps that are directly relevant to the offense yet still be prevented by circumstances beyond their control, such as the presence of a robust security system (Abu Issa, 2019).

Moreover, in the context of electronic forgery, attempts can manifest when an individual initiates acts aimed at distorting documents (Al-Hanais, 2010,) by employing various tools like devices for alteration, editing, and scanning. Therefore, it becomes imperative to delve into the legal provisions governing the punishment for attempted electronic crimes. This examination is undertaken as follows:

First: The Legal Structure of the Attempted Cybercrime

The concept of an attempted crime, akin to a completed crime (Hosni, 1989), encompasses the same elements, which are as follows (Abukhatwa, 1989):

1. Initiation of the commission of an offense

The notion of initiating the commission of an act presents a debate in light of two divergent doctrines pertaining to its interpretation (Al-Surour, 1996; Mustafa, 1983; Al-Shazly and Al-Qahwaji, 1997; Refaat, 2005).

- a. The doctrine grounded in Objective criteria, encompassing standards such as the commencement of the implementation of the act that constitutes the physical element of the crime and the existence of a causal relationship between the criminal act and its eventual outcome. Under this doctrine, the initiation of implementation occurs if the act possesses a causal efficacy in

achieving the crime's intended result, even if that result remains unattained (Al-Alami, 2002. Alia, 1998).

- b. The doctrine based on subjective criteria (Al-Alami, 2002. Alia, 1998), exemplified by the "Rossi" criterion, posits that any action from which the perpetrator is significantly unlikely to desist constitutes the initiation of implementation (Najm, 2000, p. 225). This doctrine also includes the "Jaro" criterion, which contends that when the offender reaches a stage where the abandonment of the act becomes exceedingly difficult, it is deemed the commencement of implementation (Al-Hawawsheh, 2010). Additionally, the Italian school's criterion maintains that if the act, from the perspective and appreciation of the perpetrator, may directly lead to the desired outcome, it is considered the initiation of implementation (Behnam, 1968).

In this context, the Jordanian legislator has adopted the criterion rooted in the manifest appearance of actions stemming from the perpetrator, provided that they lead to the commission of either a felony or misdemeanor (Al-Saeed, 2011). This approach is seen as an application of the subjective doctrine. Conversely, the Jordanian judiciary has applied a harmonious blend of both objective and subjective doctrines in its jurisprudence (Jordanian cassation court decision, No. 136/1985 Bar Association Journal, p. 1063, dated 1/1/1986).

2. Criminal intent 'mens rea'

Legally, an attempt entails taking a substantial step toward committing a crime with a specific intention to achieve the desired result. In cases of attempted crimes, individuals intend to commit an offense but fall short of completing all the elements required for a complete crime. The failure to achieve substantial results in such cases does not diminish the implication of the perpetrator's criminal intent. The legal framework dealing with attempted crimes strongly emphasizes the importance of criminal intent, as it reflects the individual's will and the gravity of their actions, justifying the criminalization of attempts (Abdelmoneim, 2000). Consequently, the offense of attempted crime, akin to all other criminal offenses, mandates the existence of criminal intent. Furthermore, it is imperative that this criminal intent, in the context of an attempted crime, is concurrent with the commission of the act. In other words, it must either be contemporaneous with the act or precede it, clearly indicating the perpetrator's intent to commit the crime (El-Shenawy, 1971).

3. Failure to achieve the crime results (for reasons beyond the control of the perpetrator)

In this context, the critical distinction between an attempted crime and a completed crime lies in the non-realization of the intended result due to factors beyond the perpetrator's control. This factor stands as the paramount differentiating element between the two. Hence, in cases where the result remains unachieved, primarily due to circumstances external to the perpetrator's volition, the individual remains liable for the attempted crime. This liability extends to situations where the result is not realized because of reasons distinct from those driven by the perpetrator's will, which might have prompted the individual to abandon the criminal intent post-result attainment. Such voluntary withdrawal from the criminal endeavor is legally recognized and often referred to as "withdrawal" in jurisprudence and legal doctrine (Al-Hawawsheh, 2010).

Second: Liability of Preparator of Attempted Crime:

The principles of criminal justice dictate that an offender who commits an incomplete crime must face penalties, irrespective of whether the intended result is achieved. This approach stems from the notion that such an offense embodies a situation where the result remains unrealized due to factors beyond the perpetrator's control, prompting them to cease the commission of the crime (Al-Hawawsheh, 2010). This perspective underscores the criminal threat inherent in the perpetrator's actions and intent, justifying legal consequences (Hosni, 1987).

The Jordanian legislator's approach to this issue can be stated as follows:

1) The Jordanian legislator holds the perpetrator of an incomplete crime liable within specific controls.

The Jordanian Penal Code, as outlined in Articles 68 to 71, prescribes punishment for attempted crimes; however, this provision does not encompass all types of crimes. Generally, it penalizes attempted felonies, whether specific provisions exist for each crime individually or not. In the case of misdemeanors, an attempt is subject to punishment only if there is an explicit legal provision specifying such penalties. Attempted violations, however, do not incur legal sanctions.

Nonetheless, the penalization of an attempted crime necessitates the practical feasibility of conceiving such an attempt. Numerous felonies and misdemeanors are impossible to be considered incomplete crimes because their nature falls under crimes that occur in a single sentence or do not occur at all such as the insulting crime. Because of this nature, it can't be limited to the scope of intention without achieving the desired result. On the other hand, certain crimes do

indeed allow for a realistic conception of an attempt, but the legislator may choose not to penalize such attempts, such as the crime of illegal entry into a website.

Regarding cybercrimes, we believe that destruction is a misdemeanor that might be classified as an attempted crime. Nevertheless, neither the Penal Code nor the Information Systems and Cyber Crime Law penalize it as an attempted offense. Another type of crime that cannot be penalized as attempted crime is unintentional due to the absence of criminal intent (Hawawsheh, 2010).

2) Liability approach in general.

The Jordanian legislator generally stipulates less penalty for an incomplete attempted crime than a complete attempted crime as follows:

- A specific statute penalizes a complete attempt, as in Article 68. In contrast, the penalty of the incomplete attempt is punished with a penalty less than the penalty for the complete attempt, as stipulated in Article 70 of the same Law.
- Under exceptional circumstances, such as the penalty for an incomplete crime of fraud, both incomplete and complete crimes are treated equally and have the same penalties (Article 417/4 of the Jordanian Penal Code stipulates that: “The same punishment shall apply to attempting to commit any of the misdemeanors stipulated in this article”).

Third: Penalties for incomplete cybercrime

When dealing with cybercrime in the Jordanian law, a distinction must be made between two cases:

1. Cybercrimes to which the Penal Code applies are as follows:

- Felonies: According to Article 71 of the Jordanian Penal Code, the Jordanian legislator punishes the attempt of all felonies that can be committed electronically.
- Misdemeanors: There must be a provision that punishes the attempt to commit these crimes, including, for example, the crime of seizing property by threat 448/3. The threat may be made electronically and constitutes a crime other than the crimes stipulated in the Information and Cybercrime Law. In addition to the crime of incitement via the Internet, which states that every person who incited or tried to incite is punished under Article 80/1/a.

2. Cybercrimes to which the Electronic Crimes Law applies

In the preceding Cybercrime law (Law 2015), it was observed that incomplete criminal crime was not subject to legal sanctions (Abu Issa and Al Shibli, 2022). Nevertheless, this absence of punishment did not preclude the utilization of penalties for attempted crimes as stipulated in the Penal Code when dealing with attempted cybercrimes. This was due to the characterization of the Information and Cybercrime Law as a specialized legal framework for defining certain offenses and specifying their corresponding penalties within cybercrimes while maintaining the applicability of the general provisions outlined in the Penal Code, analogous to treating incomplete crimes (Resolution No. (8) issued by the Jordanian Bureau for Interpreting Laws on 10/19/2015).

Conversely, the 2023 law introduces provisions for penalizing incomplete cybercrimes, necessitating a clear delineation of the legislative approach adopted by the Jordanian authorities regarding these incomplete cybercrimes as expounded upon in the Information and Cybercrime Law. This clarification will be elucidated in two primary clauses, as delineated below:

- The penalty for attempted cybercrimes aligns with the overarching principles outlined in the Penal Code, applying its standard provisions to offenses that lack specific legal prescriptions within the Cybercrimes Law.
- In cases where the Information and Cybercrimes Law includes dedicated provisions pertaining to the penalties for attempted cybercrimes, the following sanctions shall be enforced:
 - a. Penalizing whoever gains unauthorized access to government data, a government information network, a government bank electronic network, or a government financial institution's information network as stipulated in Cybercrimes Law No. 17 of 2023 Article 4/e.
 - b. Electronic fraud is penalized in Article 10 of the Cybercrimes Law. Article 10/2 penalizes the attempt of the crime stipulated in Article 10/1 of the law.

Conclusion

Committing incomplete or attempted crimes within the scope of electronic activities is possible, though legislation enacting legislation to criminalize such actions varies from jurisdiction to jurisdiction. Jordanian law governs the provisions pertaining to attempts in conventional crimes, which can also be extended to encompass cybercrimes. In accordance with general legal provisions, the attempt to commit felonies is typically punishable, regardless of whether there exists a specific legal text. In contrast, in the case of misdemeanors, the act of initiating an offense is only penalized if a relevant legal provision is present. A similar framework is

applied to cybercrimes, taking into consideration the unique provisions articulated in the Cybercrimes Law, whether it pertains to the nature of liability, the presence of specific legislation, or the magnitude of the penalties involved.

However, this analogy and linkage should not persist in the same manner concerning cybercrimes, which have distinct characteristics that set them apart from traditional crimes. This divergence necessitates the legislator adopt specialized provisions concerning cybercrimes that define attempted acts, elucidate their constituent elements, and prescribe the corresponding penalties. Hence, the researcher suggests that the punishment for a completed cybercrime should not be imposed unless it carries a genuine threat, considering the fundamental discrepancy in penalties between completed and incomplete attempted cybercrimes.

References:

- Abdel Moneim, S. (2000). *The General Theory of Penal Law*, Alexandria: New University House, p. 588-590
- Abu Afifa, T. (2012). *Explanation of the Penal Law, General Section*, Amman: Dar Al-Thaqafa for Publishing and Distribution, 1st edition, p. 280-285
- Abu Issa, H, Al Shibli, M. (2022). The Avenge as a Motive of Homicide Crimes in Jordan for the Period (2017-2021). *Pakistan Journal of Criminology*, 14(1), 113-128.
- Abu Issa, H. (2019). *Information Technology Crimes, a comparative study in Arab legislation*, Amman: Dar Wael, 2nd edition
- Abu Issa, H., & Alkhseilat, A. (2022). The cyber espionage crimes in the Jordanian law. *International Journal of Electronic Security and Digital Forensics*, 14 (2), pp. 111-123. DOI: 10.1504/IJESDF.2022.121203
- Abu Issa, H., & Khater, M. (2023). Distance Indecent Assault Crime in Jordanian Law Perspective. *Pakistan Journal of Criminology*, 15 (1), 125-138.
- Abu Khatwa, A. (1989). *Explanation of the General Provisions of the Penal Law*, Cairo: Dar Al Nahda Al Arabiya, p.251.
- Al-Alami, A. (2002). *Explanation of the Moroccan Criminal Penal Law*, General Section, Casablanca: Al-Najah New Press, p.169.
- Al-Hanais, A. (2010). The Illicit Use of Magnetic Credit Cards from the Point of View of Criminal Law, *Damascus University Journal of Economic and Legal Sciences*, Volume 26, First Issue, pp. 69-104.
- Al-Hawawsheh, A. (2010). *The Impossible Crime, a comparative study*, Amman: Dar Al-Thaqafa for Publishing and Distribution, p. 64-88
- Alia, S. (1998). *Explanation of the Penal Law, General Section*, University Foundation for Studies, Beirut: Publishing and Distribution, p.235.

- Al-Saeed, K. (2011). *Explanation of the General Provisions in the Penal Law, General Section*, Amman: Dar Al-Thaqafa for Publishing and Distribution, p.193.
- Al-Shazly, F., Al-Qahwaji, A. (1997). *The General Theory of Crime*, Alexandria: University Press House, p. 326.
- Alshible, M. (2020). Social media rumors in time of corona pandemic, why & how is criminalized? (comparative study). *Journal of Advanced Research in Law and Economics*, 11(3), 722. doi:10.14505/jarle.v11.3(49).03
- Alshible, M. (2023). Legislative Confrontation of Cyberbullying in Jordanian Law. *Pakistan Journal of Criminology*, Vol.15, No.01, January-March 2023, 17-30.
- Al-Surour, A. (1996). *Mediator in Penalties, General Section*, p.303
- Behnam, R. (1968). *The General Theory of Criminal Law*, Alexandria: Manshaet Al Maaref, p.703.
- El-Shenawy, S. (1971). *Attempted Crime*, Cairo: Dar Al-Nahda Al-Arabiya.
- Fathallah, M. (2019). *Explanation of the Law on Combating Information Technology Crimes*, Alexandria: New University House, p.815.
- French Penal Code
- Hosni, M. (1989). *Explanation of the Lebanese Penal Law, General Section*, Cairo: Dar Al-Nahda Al-Arabiya, p.359.
- Humid, A. (1990). *al-Mufasssal fi Sharh Penal Law*, New Press, Damascus, p.243.
- Jordanian Penal Code.
- Jordanian Penal Discrimination No. 136/1985 (five-member body), Bar Association Journal, dated 1/1/1986.
- Mustafa, M. (1983). *Explanation of the Penal Law, General Section*, Cairo, 10th edition, p.300.
- Najm, M. (2010). *Penal Law, General Section, General Theory of Crime*, Amman: Dar Al-Thaqafa for Publishing and Distribution, p.225.
- Refaat, A. (2005). *Explanation of the General Provisions of the Libyan Penal Law, General Section*, Cairo: Dar Al-Nahda Al-Arabiya, p.233.
- Resolution No. (8) issued by the Jordanian Bureau for Interpreting Laws on 10/19/2015.