THE
HANDBOOK OF
COMPARATIVE CRIMINAL LAW

Edited by
KEVIN JON HELLER AND MARKUS D. DUBBER
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CONTENTS

Introduction: Comparative Criminal Law 1
Kevin Jon Heller and Markus D. Dubber

Argentina 12
Marcelo Ferrante

Australia 49
Simon Bronitt

Canada 97
Kent Roach

China 137
Wei Luo

Egypt 179
Sadiq Reza

France 209
Catherine Elliott

Germany 252
Thomas Weigend

India 288
Stanley Yeo

Iran 320
Silvia Tellenbach
CONTENTS

Israel 352
  Itzhak Kugler

Japan 393
  John O. Haley

Russia 414
  Stephen C. Thaman

South Africa 455
  Jonathan Burchell

Spain 488
  Carlos Gómez-Jara Díez and Luis E. Chiesa

United Kingdom 531
  Andrew J. Ashworth

United States 563
  Paul H. Robinson

The Rome Statute of the International Criminal Court 593
  Kevin Jon Heller

Index 635

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D. Theft and Fraud
E. “Victimless” Crimes

I. INTRODUCTION

Criminal law in the Arab Republic of Egypt is governed primarily by a Penal Code, modeled along Napoleonic lines, that was promulgated in 1937 and has been amended periodically since then. Supplementing that code are, among many other laws and regulations, the country’s 1979 constitution and interpretations of the Penal Code and the constitution by the courts of several overlapping judicial systems.¹ The most important of these courts for criminal law purposes are the Court of Cassation, which is Egypt’s highest court of ordinary civil and criminal justice, and the Supreme Constitutional Court, which considers constitutional questions that arise in any of Egypt’s judicial systems—ordinary justice, administrative justice, military justice, and emergency justice. This chapter focuses on criminal law under the Penal Code and the constitution, as applied and interpreted by the ordinary judiciary and the Supreme Constitutional Court. However, reference will also be made to matters of criminal law that appear in other laws or arise in Egypt’s other judicial systems.

A. Historical Sketch

Modern criminal law in Egypt dates from 1883, when a system of national courts was established and several new codes of law were promulgated, all modeled along Napoleonic lines. Criminal law before the 1883 penal code consisted of a mixture of uncodified Islamic law (sharia) and periodic and piecemeal criminal legislation (qanuns), the latter under Ottoman rule from the sixteenth to the eighteenth centuries and then essentially independent of it in the nineteenth century (although Egypt nominally remained a province of the Ottoman Empire until its collapse in 1923). The 1883 reforms explicitly modernized Egypt’s legal system in an effort to strengthen the country internally and vis-à-vis Ottoman and European powers; therefore, they were the culmination of several intersecting developments of the preceding 100 years. Egypt’s nineteenth-century leaders, beginning with Governor Muhammad Ali (1805–1848), had increasingly sought to enhance the central government’s authority and control over local officials and civilians through penal codes and other legislation; Egyptian intellectuals were increasingly influenced by European law and legal thought, especially French models; the growing presence of Europeans in Egypt itself (primarily for commerce), Egypt’s increasing economic dependence on them, and European demands for special legal protections in the country had resulted in the creation in 1876 of a separate system of legal codes and courts for foreigners, modeled along French lines and called the “mixed courts”; and a combination of fiscal problems and a nationalist movement led to political instability that occasioned the British occupation of Egypt in 1882. The 1883 legal reforms, of which Egypt’s first modern penal code was a part, thus constituted an explicit assertion of political sovereignty and legal modernity.

The 1883 penal code and other legislation governed only Egyptian nationals; foreigners were still subject only to the jurisdiction of the mixed courts. Egypt regained nominal in-
dependence from the British in 1922; a replacement penal code issued in 1937, in connection with the termination of certain foreign privileges; and finally in 1949, when the mixed courts were abolished, the new penal code reached all residents of Egypt. That 1937 code, as amended periodically and interpreted regularly by Egypt’s judicial systems, remains in force today.

B. Jurisdiction

The Penal Code authorizes prosecuting the following: (1) anyone who commits a listed offense in the country; (2) anyone who commits in a foreign country an act that makes him or her an accomplice in a listed offense that takes place wholly or partially in Egypt; (3) anyone who commits an offense listed as threatening national security from inside or outside Egypt; (4) anyone who commits one of several specified offenses of forgery or counterfeiting; and (5) any Egyptian national who commits in a foreign country an act that constitutes an offense under both the Code and the law of the country in which the act was committed, unless that person has been prosecuted for the offense in the foreign country and either acquitted or convicted (and, if convicted, has completed the sentence).²

An ordinary criminal case can be brought in any one of three places: where the crime was committed, where the defendant resides, or where the defendant was arrested.³ Attempt crimes may be charged anywhere part of the attempt took place.⁴ If a crime is committed outside the country and the defendant neither resides in Egypt nor was arrested there, jurisdiction lies in one of two designated courts in Cairo: the Cairo Criminal Court for felonies and the Abdin Summary Court for misdemeanors and violations.⁵ Juvenile courts, created under a 1974 law, try defendants who were under eighteen years old at the time of the offense. Military courts, authorized by the constitution and established by the 1966 Military Justice Law, have jurisdiction over defendants who are members of the armed services, as well as over civilian defendants whose cases the president expressly refers to a military court. "Emergency" state security courts, established pursuant to the 1958 Emergency Law, can hear alleged violations of orders the president issues pursuant to his emergency powers, as well as any criminal offenses the president refers to them.

Prosecutions in the military and emergency courts have been a prominent and controversial feature of Egyptian criminal law in recent decades. The Military Justice Law authorizes civilian referrals in two types of cases—felonies that pertain to state security, and any crimes during a state of emergency—⁶ and judicial challenges to such referrals reached the Supreme Constitutional Court on two separate occasions in the 1990s. (The court ruled in the president’s favor in the first case and never issued a decision in the second.) Future challenges of this kind are ostensibly foreclosed by a new constitutional provision, adopted in a package of constitutional amendments passed in March 2007, that authorizes the president to refer crimes of “terrorism” to “any judicial body established by the Constitution or the law.”⁷ Criminal prosecutions also regularly proceed in the state security courts established pursuant to the Emergency Law, which has been in force continuously since 1981 and for all but three of the last fifty years. (The law’s most recent extension came in May 2010, for two years.) A presidential decree that was issued in 1981 and was amended in 2004 refers a variety of crimes to these courts, including crimes concerning
state security, public incitement, and public demonstrations and gatherings. Moreover, the
president’s new constitutional authority to refer crimes of terrorism to “any judicial body”
includes, by definition, the emergency courts too; constitutional challenges to emergency-
court terror prosecutions are also thus presumably foreclosed now.

C. Legality Principle

Egypt’s constitution affirms the principle of legality (la jarimah wa la ‘uqubah illa bina’an
‘ala qanun), forbids ex post facto punishment, and forbids punishment without a judicial
sentence.\(^8\) The Supreme Constitutional Court (SCC) has addressed these principles on a
number of occasions. In a 1992 case the SCC considered a military order that sanctioned
an army officer who had refused to obey a command during a military campaign. The law
pursuant to which the sanction was ordered, which enumerated the sanctions for acts of
military insubordination, had not been enacted until after the officer’s misconduct. The
SCC found that the sanction constituted a criminal punishment and therefore violated
the constitution’s ex post facto clause.\(^9\) In a 1993 case the SCC considered a 1945 law that
criminalized and punished persons who were “vagabonds or suspects”; included within
this group were persons “notorious for” committing any of a number of listed offenses.
The legality principle requires criminal offenses to be clearly defined, the SCC said, and it
found that the law at issue violated that requirement, as well as the prohibition of ex post
facto punishment.\(^10\) The following year the SCC reached the opposite result when consider-
ing a customs law that forbade smuggling and listed several specific acts that constitu-
ted it. The defendant had challenged on vagueness grounds catchall language that ap-
peared at the end of the provision, which said that smuggling included “any other act
designed to evade payment of customs taxes . . . or in contravention of the applicable reg-
ulations on prohibited merchandise.” The SCC found the language sufficiently clear to
satisfy the legality principle since it stated precisely what the legislature aimed to prevent:
the avoidance of customs tax.\(^11\)

Article 5 of the Penal Code restates the legality principle and adds two defendant-
friendly corollaries on ex post facto legislation. First, after an offense is committed but be-
fore final judgment in a case, if a new law reduces the sentence for the offense, the defend-
ant faces only the lesser sentence. Second, after final judgment in a case, if a new law
decriminalizes the conduct for which the defendant was convicted, the judgment and sen-
tence are vacated.

D. Sources of Criminal Law

1. Legislature

The primary source of substantive criminal law in Egypt is, as noted at the beginning of
this chapter, the 1937 Penal Code, as periodically amended and regularly interpreted by the
courts. The Code was adopted by what was to become Egypt’s parliament, the People’s As-
semble, and that body alone can amend it. Drug crimes and punishments are set out in
supplemental legislation, the Law Combating Drugs and Regulating Their Use and Trade
(hereafter Drug Law), which originated as a presidential decree in 1960, was thereafter ap-
proved by the People’s Assembly (see section I.D.3), and has been amended regularly since. Further penal provisions appear in other statutes, such as the 1961 Law Combating Prostitution, the 1973 Law Forbidding Drinking Alcoholic Beverages, and the 2002 Law Combating Money Laundering. The constitution also contains provisions that govern criminal law, particularly in guarantees that include the legality principle and the presumption of innocence. Other laws that bear on criminal matters include the Code of Criminal Procedure (enacted in 1950), the Emergency Law (1958), the Appeals Law (1959), the Military Justice Law (1966), the Police Authority Law (1971), and the Juvenile Code (1974, rewritten in 1996).

The Penal Code contains over 400 provisions and is divided into four Books. Book 1, “General Provisions,” sets out the types of crimes and possible penalties, along with rules of accomplice liability, attempt, defenses, and other matters that fall in modern criminal law’s general part (discussed in more detail in section II in this chapter). But that book contains only 76 of the Code’s provisions; the remainder of the provisions, and thus the vast majority of them, are in Books 2 through 4, which enumerate specific crimes in three categories and thus constitute the code’s special part (discussed in more detail in section III in this chapter). The Code classifies all criminal offenses in three categories: felonies (jınayat), which carry punishments that range from three years’ imprisonment to death (as well as possible ancillary punishments); misdemeanors (junahl), which carry jail sentences of up to three years or fines above 100 Egyptian pounds (£E 100) (approximately U.S. $18 as of this writing); and violations (mukhalafat), which carry fines of not more than £E 100. These punishments are discussed more fully in section II.B, while specific offenses in the three categories of crime are discussed there and in section III.

2. Judiciary

The Supreme Constitutional Court is the final authority on penal matters insofar as provisions of the constitution bear on them; its decisions bind all branches of the government, including all of Egypt’s judiciaries—ordinary, administrative, military, and emergency. The bulk of jurisprudence on criminal law lies, however, in decisions of the Court of Cassation, the country’s highest court of ordinary justice (civil and criminal). The Court of Cassation is the second level of appeal in violations and misdemeanors and the only level of appeal in felonies (as noted in section I.E), and it hears only claimed errors of law: failures to apply the law, misapplications of the law, misinterpretations of the law, and legal insufficiency of evidence for conviction. Its decisions thus provide the most plentiful and substantial elaborations and interpretations of the Penal Code. Indeed, as will be seen in later sections, Court of Cassation decisions regularly provide content and detail the Code lacks, such as articulating the necessary elements of specific crimes and even the standard elements of every crime (actus reus, mens rea, and so on).

3. Executive

Executive decrees supplement the criminal law legislation set out in section I.D.1. Egypt’s president has the constitutional authority to issue implementing regulations that do not “modify, obstruct, or prevent” the execution of the law; the president may also delegate that authority to others (Const. Art. 144). Separate constitutional provisions empower the president to issue regulations for the police (Art. 145) and for public services and authorities
The constitution also authorizes the president to issue decrees that have the force of law in cases of “necessity” or “exceptional circumstances” and with prior authorization by two-thirds of the members of the People’s Assembly, and these decrees become laws—and are thereafter called “decree-laws”—if the People’s Assembly approves them at its next regular session (Art. 108). The statute on “vagabonds on suspects” that the SCC deemed unconstitutional in 1993 (see section I.C) took effect in 1945 as such a decree-law; so too did the 1960 Drug Law, which continues to govern drug crimes and punishments. Additional executive authority in criminal law can derive from legislation itself; one example is the power, originally statutory and now constitutional, given the president to refer criminal cases to military or emergency courts (discussed in section I.B), and another is article 54 of the Drug Law, which authorizes the president to issue regulations to implement the law’s provisions.

4. Scholars

Commentaries on the Penal Code and treatises on criminal law are plentiful in Egypt. How influential these are is not clear; court decisions do not typically cite scholarly works. At least three subsets of Egyptian criminal law scholarship are discernible. One subset annotates the Penal Code with pertinent court decisions and adds explanatory and conceptual material, for instance listing the elements courts have deemed required of particular crimes or of crime generally. In doing so, this scholarship implicitly and explicitly identifies gaps in the Penal Code and other legislation that have been filled by judicial decisions, and provides and organizes the missing content. A second subset of criminal law scholarship explains the Egyptian system in light of the French system that was its model or compares it with other foreign systems. A third compares the contemporary Egyptian regime with “Islamic” criminal law, the remnants of which ended with the first modern code of 1883. Of these three types of scholarship, the first is presumably the type that bears most directly on the work of judges, legislators, and practitioners.

E. Process

Crimes in the two lesser categories—misdemeanors and violations—are tried in single-judge Summary Courts (mahakim juz’iyyah), of which there are over 200 throughout the country; these courts also hear minor civil claims. Appeals from these courts go to three-judge panels of the courts of first instance (mahakim ibtida’iyyah), which also have trial jurisdiction over major civil claims; when hearing criminal appeals, these courts are called misdemeanor courts of appeal (mahakim junah al-istin’af). Felonies are tried in three-judge criminal courts (mahakim al-jinayat), panels for which are drawn from a judicial body that also hears first appeals in major civil cases, the Court of Appeal (mahkamah al-istin’af). Appeals from the felony-trial criminal courts and from the misdemeanor courts of appeal go to the Court of Cassation, where they are decided by panels of five judges.

1. Adversarial/Inquisitorial

Criminal procedure in Egypt remains patterned on the French system, but there are substantial differences. The 1950 Code of Criminal Procedure followed the French model in
assigning the duties and powers of pretrial investigation and charging to judicial officers, namely, an examining magistrate and an indicting chamber. Subsequent amendments, however, have given prosecutors the powers of examining magistrates and abolished the indicting chamber. The Code still allows prosecutors to refer cases to examining magistrates if they wish, but in practice prosecutors conduct all pretrial investigations and make all charging decisions. Victims, as well as putative civil plaintiffs (i.e., those alleging financial harm from the defendant’s conduct), can initiate criminal proceedings or join them after they have commenced, as in the French system. Trial procedure also follows the French model, beginning with a preliminary colloquy between the presiding judge and the defendant in which the defendant is informed of the charge and invited to make any statements. The court determines the order of witnesses, and although the parties may question each witness, in practice the parties present their questions to the court and the court asks the witness those questions it allows, along with any questions the court itself wishes to pose. Verdicts must rest only on evidence that is presented at trial, and the court can order a recitation of evidence from the preliminary examination, including statements of the defendant. At trial the defendant need not testify; the court can, however, give the defendant the opportunity to clarify or respond to any issue that arises at trial. After testimony is completed, all parties can present closing statements, after which the court retires to deliberate.

2. Jury/Written Opinions
All criminal trials in Egypt are bench trials; there are no juries. As noted at the beginning of this section, a single judge hears and decides violations and misdemeanors, while three judges do the same for felonies. Felony convictions and sentences require agreement by two of the three judges, except death sentences, which must be unanimous. Verdicts must be issued publicly and in writing, and they must provide reasons for the judgment and for all rulings on motions made by the parties. Verdicts must be signed by the issuing court within eight days of issuance (absent “compelling reasons” for delay); unsigned verdicts of guilt become invalid after thirty days.

3. Presumption of Innocence
The presumption of innocence is guaranteed by the constitution (Art. 67) and has been addressed several times by the Supreme Constitutional Court. In a 1995 case, for instance, the SCC found the guarantee violated by a ministerial decree that forbade the sale of spoiled meat and deemed any meat that did not carry an official butchery seal per se spoiled. The decree established presumptions about both the condition of the meat (the actus reus of the crime) and a seller’s awareness of that condition (the mens rea), the SCC said, and thus violated the presumption of innocence; on that ground, among others, the SCC reversed the conviction of a butcher under the decree. In a 1996 case the SCC found the guarantee violated by a statute that created a rebuttable presumption of knowledge that foreign goods were smuggled when a person was found in possession of such goods without documentation that duty was paid on them. The presumption allowed a conviction without proof of mens rea, the SCC said, and the statute was therefore unconstitutional.
4. Burden of Proof
Neither the constitution nor the Penal Code specifies the quantum of the government’s burden of proof in criminal cases. Uniformly, though, court decisions and commentary describe that quantum in terms that approximate or replicate the American standard of “proof beyond a reasonable doubt.” In its 1993 ruling striking down the law that penalized “vagabonds and suspects,” for instance, the SCC said that a criminal conviction requires proof of guilt at a level of “definitiveness and certainty” (jazm wa yaqin) that “leaves no reasonable cause for doubt to the contrary” (la yada‘u majalan ma‘qulan li shubhah intifa‘iha).18

II. GENERAL PART

A. Liability Requirements

1. Objective/Actus Reus
   i. Act
   The Penal Code does not directly mention actus reus or its equivalent. It does, however, effectively establish a voluntary-act requirement for criminal liability by forbidding punishment for acts that are committed as a result of an offender’s unconsciousness, insanity, or mental infirmity, or from the forced or unknowing ingestion of any kind of drugs, or are otherwise not a result of the offender’s free will (Art. 62). Court of Cassation opinions and criminal law scholarship also regularly discuss the “material element” (rukn maddi) of a crime as both a definitional component of specific crimes and a general liability requirement, and the SCC has declared that element to be a constitutional requirement. In its 1993 ruling striking down the law that penalized “vagabonds and suspects,” the SCC said that one of the constitutional flaws of that law was its failure to specify a material element or to require proof of one for a conviction; both requirements, the SCC said, follow from the constitutional guarantee of the legality principle (Const. Art. 66).19 In a 1996 ruling, elaborating on these and other constitutional requirements of criminal liability, the SCC provided the term actus reus in parentheses as the equivalent of the Arabic term “material element,” as though to remove any doubt that the concept at issue was the same.20

   ii. Omission
   The Penal Code does not explicitly address liability for omissions, but a number of provisions establish such liability. Case law and commentary accordingly discuss criminal liability for omissions, which are called “passive” (salhi) conduct, as opposed to “affirmative” (ijabi) conduct. The SCC has embraced liability for omissions as a general matter; in its 1993 ruling striking down the law on vagabonds and suspects, for instance, the SCC noted that the material-element requirement could be satisfied by designating either affirmative or passive conduct as the basis of liability.

   Most of the Code provisions that punish omissions address breaches of explicit or obvious legal duties and bring misdemeanor penalties or less. Among these are duties of government officials to fulfill the obligations of their positions at the time or in the manner required, and duties to care and provide for members of one’s family.21 Other provisions suggest duties that one might consider less common or obvious. For instance, under
article 84 of the Penal Code, a person who knows about another's act of treason or other crime of state security but fails to notify law-enforcement authorities faces up to one year of detention and a £E 500 fine unless the offender is the person's spouse or blood relative; these penalties are doubled if the crime occurs during a time of war. Under article 39 of the Drug Law, any person who is apprehended in a place maintained for obtaining drugs (unlawfully) at a time when, with the person's knowledge, drugs are in fact being obtained unlawfully faces a minimum penalty of one year's detention and a fine of £E 1,000 to £E 3,000, unless the person lives in the place or is the spouse or blood relative of the person who maintains the place for obtaining drugs. In other words, according to the latter provision, one has a duty to leave premises that are maintained for unlawful drug use unless one lives on the premises or is married or related to the person who maintains them for that purpose.

iii. Status
The Penal Code does not address status as a permitted or prohibited basis of criminal liability, nor do any of its provisions appear to suggest such liability. Provisions of other criminal statutes have suggested such liability, however, and the SCC has issued rulings that disapprove of it. One such ruling was the SCC's 1993 invalidation of the law on vagabonds and suspects, discussed in previous sections, where the SCC noted the absence of a material element (actus reus) for liability as one of the law's constitutional flaws. A second such ruling came in 1996 when the SCC struck down a provision of the 1960 Drug Law that essentially penalized the status of being a habitual offender or accusee: the law authorized courts to commit to a work institution, for a period of one to ten years, anyone who had been convicted or accused “for serious reasons” (li asbab jaddiyah) more than once of any of a list of specified drug crimes. Among the provision’s flaws, the SCC said, was that it permitted punishment without proof of a specified actus reus or mens rea; it thus violated the legality principle.22

2. Subjective/Mens Rea/Mental Element
Intent elements appear in the definitions of many offenses in the Penal Code, but the Code contains neither definitions of these elements nor even a general mens rea requirement. Case law and commentary do, however, discuss criminal intent (qasid jina‘i) as the necessary “moral element” (rikn ma‘nawi) that, along with the material element (actus reus), must exist for a crime to have been committed. And as with the material element, the SCC has declared that proof of the moral element is a constitutional requirement of criminal liability. In its 1996 ruling striking down the habitual-drug-offender law (discussed in section II.A.1.iii in this chapter), the SCC discussed the moral element along with the material element as a necessary aspect of criminal liability pursuant to the legality principle. As it did with the term actus reus, the SCC inserted the term mens rea in parentheses as the equivalent of the Arabic term “moral element”; but on the latter point the SCC went further, listing as examples four particular mens rea terms in English—felonious intent, malice aforethought, fraudulent intent, and guilty knowledge—and equivalents for them in Arabic.
i. Intent
The Penal Code uses the term "willful" (‘amdan) to express the most culpable degree of mens rea (except when premeditation is added to a willful homicide, as discussed in section III.B.1 in this chapter). The Code does not define the term, but the Court of Cassation has defined willfulness as the intentional commission of the actus reus with knowledge of its consequences—that is, what appears to be at least "knowledge" under the American Model Penal Code. Willfulness is the specified mens rea for a variety of crimes in the Code—for example, murder (Arts. 231–234), arson (Arts. 252–259), harming beasts of burden (Arts. 355, 357), destroying property (Art. 361), disabling a public utility (Art. 361(bis-A)), destroying government documents (Art. 364), and the very first crime listed in the Code, the capital crime of threatening the country's unity or independence (Art. 77).

ii. Recklessness
Although reckless conduct is not expressly defined as such in the Penal Code, it gives rise to criminal liability in various contexts. Under article 244, personal injury resulting from an error that is caused by an offender's "gross breach of duties" carries a penalty of up to two years in jail and a £500 fine. The same provision lists two other types of wrongdoing that give rise to liability if personal injury results: (a) using liquor or narcotics and (b) refraining from assisting a crime victim or other person in need when asked and able to assist. That behavior is thus implicitly defined as criminally reckless per se. Moreover, as noted in section II.A.4 in this chapter, the Court of Cassation has defined criminal causation to include foreseeable consequences of actions taken with disregard for potential harm to others and has thus endorsed criminal liability for recklessness generally.

iii. Negligence
Like reckless conduct, negligent conduct is not expressly defined in the Penal Code but can give rise to criminal liability. The Code provision that criminalizes reckless personal injury also criminalizes personal injury that is caused by an offender's "neglect, imprudence, carelessness, or non-observance of the law," and deems it punishable by the lesser penalty of up to one year in jail and a £200 fine. Many other crimes in the Code involve negligence, with liability triggered by "neglect," "carelessness," or "error" in a variety of circumstances: for example, in managing public funds or property (Arts. 116(bis-A)–116(bis-B)), permitting an arrestee to escape (Art. 139), caring for a mentally infirm person who is in one's custody (Arts. 377/3, 378/8), and repairing or maintaining chimneys and other places where fire is used (Art. 378/2). A series of Code provisions also define the crime of "criminally negligent bankruptcy" (tafalus bi taqsin) (Arts. 330–333), which carries a penalty of detention for up to two years (Art. 334).

iv. Strict Liability
No Penal Code provision directly addresses strict liability. The Court of Cassation has said, however, that criminal intent generally cannot be presumed or imputed but must be proven—that is, that there is no strict liability; thus the owner of an animal that has injured someone cannot be held criminally liable for the harm absent proof that the owner negligently failed to prevent such harm. But the Court of Cassation has also recognized a presumptive strict liability in at least one category of offenses, so-called immoral or in-
decent offenses. According to this doctrine, a man who has sexual intercourse with a married woman, punishable by jailing for up to two years under articles 274 and 275 of the Penal Code (see section III.C.2 in this chapter), is presumed to know that the woman is married; and a person who commits the nonforcible sexual assault of someone under the age of eighteen—that is, statutory rape, which is punishable by jailing under article 269 (see section III.C.1 in this chapter)—is presumed to know that the victim is underage. In both cases the defendant can rebut the presumption of knowledge by proving exceptional circumstances that made it impossible for him to learn the victim’s status.

3. Theories of Liability
   i. Inchoate Crimes
      a. Attempt
      Attempt is defined as undertaking an act with the intent to commit a felony or misdemeanor, but failing to complete the act for reasons beyond the actor’s will. Expressly excluded from this definition is “mere resolution or preparation” to commit a crime. The Court of Cassation has elaborated on this definition and has said that the line between preparation and perpetration is crossed when, provided intent is proven, the offender undertakes an act that “immediately precedes” the actus reus and would “inevitably lead to” it. The punishments for attempt crimes are fixed reductions of the penalties for the completed crimes: life imprisonment for offenses that carry the death penalty, aggravated imprisonment for offenses that carry life imprisonment, imprisonment or one-half the designated sentence of aggravated imprisonment for offenses that carry aggravated imprisonment, and detention or one-half the designated sentence of imprisonment for offenses that carry imprisonment.

      b. Conspiracy
      The Penal Code’s conspiracy provision, article 48, was declared unconstitutional by the SCC in 2001, and a replacement provision does not appear to have been promulgated. The provision defined a conspiracy (ittifaq jina‘, “criminal agreement”) as an agreement between two or more persons to commit a felony or misdemeanor or to undertake preparatory acts toward one. Penalties were set out according to the degree of the contemplated crime and the level of involvement of the offender; all participants, however, were said to be punishable simply for joining the agreement. Among the grounds the SCC listed for striking down the provision was its failure to specify an actus reus, which the SCC said violated both the legality principle and the presumption of innocence (Const. Arts. 66 and 67).

   ii. Complicity
   Seven articles in the Penal Code address accomplice liability. Article 39 defines a principal perpetrator as one who either commits the crime or, if the crime consists of several discrete acts, intentionally commits one of those acts. Article 40 defines three kinds of criminal accomplices: one who “instigates” (harada) the act that constitutes the crime, if the crime occurs on the basis of that instigation; one who agrees with another to commit the crime, if the crime occurs on the basis of that agreement; and one who knowingly gives the perpetrator a tool or other object used to commit the crime or assists the perpetrator
in any way in preparing for, committing, or completing the crime. Article 41 states that accomplices are punished equally to principals, with two exceptions: special circumstances that alter the principal’s liability do not affect the accomplice’s liability if he or she is unaware of those circumstances, and the accomplice is punished according to the nature and degree of his or her own intent or knowledge, even if they are not the nature and degree of the principal’s intent or knowledge. Similarly, a defense that exculpates the principal does not necessarily exculpate an accomplice.\(^{31}\) Accomplices are also liable for crimes they did not intend to be committed if those crimes result from their instigation, agreement, or assistance in a crime they did intend to be committed.\(^{32}\)

Regarding *mens rea* and causation in unintended crimes (Art. 43), the Court of Cassation has held that accomplices can be liable for all crimes they should have reasonably anticipated as a result of their instigation, agreement, or assistance.\(^{33}\) Concealing goods that are known to have been obtained from a felony or misdemeanor is a separate crime, punishable by two years’ imprisonment or, if the offender knows what precise crime produced the goods and that crime carries a greater punishment, the punishment for that crime.\(^{34}\)

4. *Causation*

The Penal Code does not mention causation, but the Court of Cassation has addressed the topic and has held that an offender is liable for crimes that fit in either of the following two categories: (a) foreseeable consequences of an offender’s intentional actions, which are also called consequences that are “morally linked” to the offender’s actions; and (b) foreseeable consequences of actions taken with disregard for potential harm to others (i.e., recklessness).\(^{35}\)

B. Defenses

Defenses are listed in a short section of the Penal Code titled “Permissibility Causes [Permissions] and Responsibility Preventives” (*Asbab al-ibahah wa mawani’ mas’uliyyah*). This section contains only four articles (Arts. 60–63) and does not list all possible defenses to liability or punishment. The provisions on self-defense, for instance, appear in the Code’s special part, just after the provisions that define homicide and other injuries to persons; provisions for discretionary sentence leniency in felony cases and stays of punishment in misdemeanor cases are listed in other sections (see sections II.E.2.i and II.E.2.ii in this chapter); and statutory grounds for pardons and other grounds for remitting punishment (*mawani’ iqab, or “penalty preventives”) appear ad hoc in provisions on specific crimes. Nor does the section indicate which of the defenses it contains are “permissions,” which are “responsibility preventives,” or what those terms mean. Commentary, however, which appears to be more abundant than jurisprudence on the topic, makes it clear that the categories of permissions and responsibility preventives correspond roughly with those of justifications and excuses in American law.

Permissions comprise acts that do not cause the harm protected by a criminal statute or that do so in the service of a greater interest. In this category are acts of self-defense (Arts. 245–248); acts by government officials that are performed pursuant to orders of a superior or in the good-faith belief that the acts are lawful executions of their powers (Art.
acts performed in the good-faith belief that they are authorized by Islamic law (sharia) (Art. 60); and acts of express or implied license, such as in sports, medical treatment, and child discipline. Permissions are said to attach to the act rather than the actor, rendering the act lawful and extending to all participants in the act; neither the actor's free will nor his or her mens rea is negated in these defenses. Responsibility preventsives, on the other hand, are said to attach to the actor rather than the act, entailing the loss of free will and a consequent negation of the actor's mens rea; they thus do not render an act lawful, and they extend only to actors who meet the specified requirements. In this category are infancy, insanity and diminished capacity (Art. 62), involuntary intoxication (Art. 62), and duress (Art. 61 or Art. 62; see section II.D.4). As for the defense of necessity (Art. 61), commentators disagree over whether it is properly characterized as a permission or as a responsibility preventive; the better view appears to be the former, hence its inclusion in that category below (section II.C.1 in this chapter). Defenses of either type appear to negate criminal liability entirely, although other possible consequences might remain, such as institutionalization (for insanity or diminished capacity) or civil liability.

C. Justifications

1. Necessity
Article 61 of the Penal Code sets out the elements of a necessity defense: no punishment applies to an act performed out of necessity (darurat/an) to prevent the actor or another from imminent and grievous harm, as long as the actor did not create the circumstances that engendered the necessity and had no other means of preventing the harm. Elements of the defense are discussed by commentators, if not yet decided by courts, and the issues are familiar ones—for example, whether the cause of the necessity can be human, as well as natural; what consequences follow a good-faith act that exceeds the limits of the defense; and how necessity differs from duress. Noteworthy in these discussions is what appears to be a majority tendency to lump necessity with duress as a responsibility preventive rather than deeming it a permission, even though it is distinguished from duress and unquestionably shares the features of permissions (and justifications). One authoritative commentator summarizes the debate and argues convincingly that necessity is properly considered a permission.36

2. Self-Defense
As noted in section II.B.1, the Penal Code's self-defense provisions do not appear in the Code subsection that is devoted to defenses, but rather in the Code's special part, just after the provisions that define homicide and other injuries to persons. Article 245 states the general proposition that no punishment befalls one who kills or injures another in lawful self-defense, defense of property, or defense of another person's life or property. Article 246 defines lawful self-defense as the use of force necessary to defend oneself against any act that threatens bodily injury and that, if consummated, would constitute a crime under the Code. The same article goes on to reference Code sections that enumerate crimes that, if threatened, allow the use of force in defense of property—namely, crimes of arson, robbery or theft, destruction of property, and burglary or trespass. Article 247 states that there
is no right of self-defense when law-enforcement protection is available, and article 248 forbids resisting law-enforcement officers during the good-faith performance of their duties, even if they exceed the scope of their duties, unless a person reasonably fears death or serious bodily injury. In a 1987 opinion the Court of Cassation added another circumstance of lawful force in response to which the defense is unavailable: a citizen’s arrest of a flagrant delicto offender, which the Code of Criminal Procedure allows. In the same opinion the court said that the policy of self-defense was to ward off unlawful aggression rather than to punish aggressors.37

Intentional killing in self-defense is prohibited except in three circumstances: a reasonable fear of death or serious bodily injury, the forcible rape or indecent assault of a woman, and kidnapping.38 Killing in defense of property is prohibited except to prevent one of four types of crimes: arson, felony robbery or theft, unlawful entry of an inhabited home at night, and an act giving rise to a reasonable fear of death or serious bodily injury.39 The defense is not available when a person exceeds its lawful limits, but in such a case, if a person has acted in good faith and without intending to commit harm greater than that permitted under the defense, a judge may, if the person has committed an act that constitutes a felony, partially excuse the offender by ordering a jail sentence instead of the prescribed felony punishment.40

3. Superior Orders
Article 63 of the Penal Code exempts government employees from criminal liability for acts they undertake in executing orders of superiors that they must obey or believe they must obey, and acts they undertake in the good-faith belief that the acts are required by law or are within the scope of their duties.41 In both cases the burden is on the accused official to prove that he or she undertook the act only after taking steps to verify its legality, and that he or she reasonably believed that it was legal.42

D. Excuses

1. Mistake/Ignorance of Law or Fact
The Penal Code does not expressly provide or proscribe defenses of ignorance or mistake of fact or law. In a 1992 case, however, the SCC articulated the equivalent of a “fair notice” mistake-of-law defense in forbidding the punishment of a ship captain who had navigated into an area of the Red Sea that legislation had designated as a nature preserve and thus off limits to vessels. The officially published version of the pertinent legislation had referred to a map to indicate the protected waters but had failed to include the map. Criminal prohibitions must be clear and unambiguous, the SCC said, and to punish a person absent such clarity would be to deprive him of liberty without due process of law and thus unconstitutional under article 41 of the constitution. For this reason (among others) the SCC forbade the ship captain’s punishment.43

2. Insanity/Diminished Capacity
As noted in section II.A.1.i in this chapter, article 62 of the Penal Code forbids punishment for acts that are not products of an offender’s free will, and it lists among such acts those that result from an offender’s insanity or mental infirmity. The Code thus establishes insanity
and diminished capacity as formal defenses, and commentary universally deems these defenses responsibility preventives rather than permissions.

3. Intoxication
Intoxication is not mentioned in the Penal Code, but article 62 effectively establishes a responsibility preventive (excuse) of involuntary intoxication by including acts committed under the influence of drugs ingested forcibly or unknowingly in its list of conduct for which punishment is forbidden since it is not a product of the offender’s free will (Art. 62; section II.A.1.i. in this chapter). The Court of Cassation has expanded on the Code provision by stating that intoxication, whether voluntary or involuntary, can negate specific intent as a general matter and particularly in the case of willful murder.\textsuperscript{44}

4. Duress
Commentary universally recognizes a duress defense and deems it a responsibility preventive. The source of the defense is seen either as article 61, which sets out the necessity defense, or article 62, the provision that forbids punishment for acts that are not products of the defendant’s free will (and that expressly lists insanity, diminished capacity, and involuntary intoxication as defenses of that type). The better view appears to be the latter one, for the same reasons that necessity seems best considered a permission rather than a responsibility preventive (see section II.C.1). Details of the defense are well established. Two types of duress are identified, “material coercion” (\textit{ikrah maddi}) and “mental coercion” (\textit{ikrah ma‘nawi}); the first is described as the actual physical movement of the defendant’s body by the coercer to compel the commission of a crime, while the second involves a threat of harm to the defendant or another to which the defendant accedes by committing the crime. In either case the actor’s free will is said to be negated.

E. Sanctions

1. Punishment
The Penal Code lists “primary” punishments (\textit{uqubat asliyyah}) and “ancillary” punishments (\textit{uqubat tab‘iyyah}). Primary punishments are fines, detention (\textit{habe}), imprisonment (\textit{sijin}), and death.\textsuperscript{45} Imprisonment or detention for a year or more also brings mandatory penal servitude (\textit{habs ma‘a al-shugl}).\textsuperscript{46} Ancillary punishments are of four kinds: (1) deprivation of certain rights and privileges; (2) removal from government employment; (3) probationary supervision by the police; and (4) seizure and confiscation of contraband and fruits or instrumentalities of the crime.\textsuperscript{47} All these punishments are discussed in more detail in the following sections.

2. Quantity/Quality of Punishment
   i. Felonies
Felonies include intentional homicide, rape, mayhem, kidnapping, robbery, burglary, arson, and terrorism offenses. Every felony conviction carries one of the following primary punishments: imprisonment (\textit{sijin}), which means a term of three to fifteen years in a “general jail” (\textit{sijin ‘umumi}); aggravated imprisonment (\textit{sijin mushaddad}), which means a
term of three to fifteen years in a “specialized jail” (sījn mutakhassis); life imprisonment (sījn mu‘abbad), also served in a specialized jail; or the death penalty (i‘dam). The Men over the age of sixty who are sentenced to aggravated or life imprisonment, and all women who receive one of these sentences, serve their terms in a general jail rather than a specialized one. Felony sentences may be reduced if, in the discretion of the sentencing judge, conditions warrant leniency (ra‘fah): a death sentence can be reduced to life imprisonment or aggravated imprisonment; life imprisonment can be reduced to aggravated imprisonment or (simple) imprisonment; aggravated imprisonment can be reduced to (simple) imprisonment or to the misdemeanor punishment of detention for at least six months; and (simple) imprisonment can be reduced to detention for at least three months.

Every felony conviction also carries two mandatory ancillary punishments and two discretionary ones. First, every convicted felon is deprived of the following rights or privileges: government service; decoration with a rank or medal; testifying in court (for the period of the sentence); managing his or her own funds or property (for the period of the sentence), responsibility for which is instead turned over to a court-appointed trustee; and remaining a member of certain local councils or committees and, if sentenced to life or aggravated imprisonment, ever again serving in one of those groups or serving as an expert or a witness to contracts. Second, any felon who is employed by the government loses that employment and remains ineligible for reappointment to government service for a period of at least one year and not more than six years after completion of the sentence. (A government employee who is convicted of a felony in one of several specified categories—bribery, embezzlement, forgery, torturing a suspect, or otherwise harming civilians by abusing his or her position—but is given a sentence of detention due to judicial leniency [see the preceding paragraph] must be ordered ineligible for government employment for a period of at least twice the length of the detention.)

Third, a person sentenced to any term of imprisonment for a felony conviction of any of another list of specified crimes is, after serving the sentence, to be placed under police surveillance for a period of time equal to his or her sentence or for five years, whichever is less; but the sentencing judge can reduce or eliminate this penalty. Convicts under police surveillance must abide by provisions set forth in separate laws that govern such surveillance, and violating those laws brings a penalty of one year’s detention. Fourth, the sentencing judge may order the confiscation of fruits or instrumentalities of the crime, and must order the seizure of any such objects the use or possession of which is itself a crime—that is, items that are contraband.

ii. Misdemeanors

Misdemeanors include a wide range of crimes, from simple theft and impersonating a public official to perjury, false imprisonment, aggravated assault, and negligent homicide. Convictions bring detention for up to three years and fines that can exceed £310.

Detention is served in a general jail or central jail (sījn markazi). Sentences of one year or more include mandatory penal servitude, while sentences of less than one year can include penal servitude or not; in the latter case they are called “simple confinement” (habs
Misdemeanor sentences may also include any of the ancillary punishments except one—the deprivation of rights and privileges—but, unlike with felony sentences, none of them are mandatory.  

A misdemeanor sentence of a fine or detention for one year or less may be “stayed” (iqaf) upon issuance if the sentencing judge finds that, given the defendant’s character, background, or age, or the circumstances of the crime itself, the defendant is unlikely to commit any crime again. The court must state the reasons for the stay in its ruling, and the stay can reach all ancillary penalties and other consequences of the conviction. A stay becomes final after three years—that is, the criminal conviction is then vacated—but it may be canceled before then if (1) the defendant is sentenced to detention for more than one month for an act committed before or after the stay, or (2) the defendant had received such a sentence before the stay, but the judge who issued the stay had not known about it. In the first scenario the staying court may act on its own to cancel the stay, but in the second scenario it may cancel the stay only upon motion of the prosecution and service to the defendant. The original sentence is imposed upon cancellation of the stay, along with any ancillary punishments and collateral consequences of the conviction.

iii. Violations

Violations carry fines of not more than £100. Examples of violations are disturbing the peace, unlawful discharge of a firearm, defacing property, and littering public roads or waterways.

iv. Sentence Computations, Commutations, and Pardons

Under the Penal Code, time spent in custody before conviction is counted as part of any sentence of imprisonment or jailing. If a defendant is detained before trial but, upon conviction, sentenced only to a fine, £5 is subtracted from the fine for each day the defendant was in custody; and if a defendant who was detained before trial receives both a fine and a custodial sentence that is shorter than the period of pretrial detention, the same amount is deducted for each day in excess of the sentence the defendant was detained. The constitution gives the president the authority to grant amnesties and to commute offenders’ sentences (Const. Art. 149); the Code too discusses commutations and pardons. Full pardons, partial commutations, and lighter substitute sentences are set out as the three possibilities; ancillary penalties and collateral consequences remain in place unless included in a pardon or commutation order; and five years of police surveillance still follow the pardon or commutation of a life sentence.

3. Death Penalty

The Penal Code specifies hanging as the method of capital punishment. A death sentence requires the unanimous decision of the three judges who hear the case, and before the sentence is issued, the court must send the case file to the country’s highest religious official, the chief mufti (qadi al-jumhuriyyah), to seek his opinion. But the court is not bound by the chief mufti’s opinion, and it need not await that opinion longer than ten days before issuing the sentence. If the chief mufti is unavailable or unable to review the case, the
minister of justice is to review it instead.\textsuperscript{71} When appeals are exhausted and a death sentence is final, it is submitted to Egypt's president, who has fourteen days to pardon the defendant or commute the sentence.\textsuperscript{72} A commuted death sentence becomes a sentence of life imprisonment.\textsuperscript{73}

III. SPECIAL PART

A. Structure

The Penal Code's special part consists of its Books 2 through 4. Book 2, which is titled “Felonies and Misdemeanors Prejudicial to the Public Interest” and is the longest of the Code's four Books, lists crimes of terrorism, bribery and other wrongdoing by public officials, damage to the country's currency or infrastructure, and other ostensible threats to national security or integrity. Book 3, “Felonies and Misdemeanors Occurring to Individuals,” treats crimes of homicide and lesser physical injury, sexual assault, burglary and theft, arson and other damage to personal property, fraud, and other ostensible damage to individuals (including “corruption of morals” and “slander”). Book 4, “Violations,” contains a handful of provisions addressing miscellaneous minor wrongdoing in the public sphere, including disturbing the peace, failing to restrain one's dog from passersby, and “snapping rudely at another person for no public reason.” Other provisions that were initially listed in Book 4 and addressed wrongdoing such as violations of public health or weights and measurements were abolished and replaced by separate statutes via 1981 legislation.

B. Homicide

Homicide offenses are treated in nine articles that lead off the Penal Code's Book 3, “Felonies and Misdemeanors Occurring to Individuals.” Terms analogous to murder or manslaughter are not used in the Code; homicides are instead distinguished and graded according to the offender's mens rea.

1. Murder/Manslaughter

Death is the penalty for a killing committed willfully (\textit{amdan}) and with premeditation (\textit{sabq al-israr}) or by “ambush” (\textit{tarassud}) (Art. 230). Premeditation is defined as the intent, reached before the act (\textit{qasd musammim 'alaihi qabla al-fi'l}), to commit a misdemeanor or felony the purpose of which is to harm a particular person or any person one finds or comes across (\textit{wajadahu au sadafahu}), even if that intent is related to the occurrence of some event or dependent on a condition (Art. 231). Ambush is defined as lying in wait for a person (\textit{tarabbus al-insan}) in one place or several places for a period of time, whether long or short, to kill that person or to harm the person by striking or a similar method (Art. 232). An intentional killing via some substance (\textit{jawhar})—that is, a drug—is considered poisoning (\textit{qatif bi al-samm}) and is also a capital crime, whether or not death occurs immediately and regardless of how the substance is administered (Art. 233). An intentional killing without premeditation or ambush brings life or aggravated imprisonment unless it occurs in the course of committing another felony, that is, constitutes fel-
ony murder, in which case it brings the death penalty; and if it occurs during acts accompanied by a degree of intent that would constitute a misdemeanor, including assisting the perpetrators of a misdemeanor in committing the crime or escaping, either death or life imprisonment is the sentence (Art. 234). Death is also the sentence for any intentional killing committed with a “terrorist purpose” (tanfidhan li gharad irkabi) (id.). Accomplices in a murder that carries a mandatory death penalty can receive the same sentence or life imprisonment (Art. 235). As noted in section II.D.3 in this chapter, the Court of Cassation has held that intoxication, whether voluntary or involuntary, can negate the specific intent required for conviction of willful murder.

Unintentional killings that result from intentionally inflicting physical injury or providing a victim harmful materials (mawadd darrah) bring three to seven years of simple imprisonment or aggravated imprisonment, that is, in a “general” jail or a “specialized” one (see section II.E.2 in this chapter), or enhanced punishment as follows: if the wrongful act is committed with premeditation or by ambush (still without the intent to kill), the death brings a standard term of simple or aggravated imprisonment, that is, three to fifteen years; the same penalty applies if the wrongful act is committed with a “terrorist purpose”; and if the act that results in unintended death is committed with premeditation or by ambush and with a terrorist purpose, the penalty is aggravated or life imprisonment. An accidental killing caused by one’s mistake, negligence, imprudence or carelessness, or failure to observe the law—that is, negligent homicide, or “misdemeanor manslaughter”—brings detention for at least six months and/or a fine of up to £E 200. The penalty increases to one to five years of detention and/or a fine of £E 100 to £E 500 if the death results from a “gross breach” (ikhbal jasim) of the norms of one’s position, profession, or occupation, or if, when the conduct that causes the death takes place, the actor is intoxicated by liquor or drugs or refrains from assisting the victim or requesting assistance despite being able to do so. The penalty is detention for one to seven years if the conduct results in the death of more than three people; and if the act that causes death is accompanied by one of the aggravating factors just listed, the penalty is detention for one to ten years.

2. Provocation
The Penal Code recognizes only one form of provocation as adequate to mitigate the penalty for unjustifiable homicide: a husband who surprises his wife in the act of adultery and kills her and/or her partner “in the instant” faces detention—the misdemeanor punishment of three years or less in a general jail—instead of either life or aggravated imprisonment (for unpunished intentional homicides, Art. 234) or aggravated or basic imprisonment (for unintentional homicides that result from intentional physical injury, Art. 236). Court decisions and commentary have identified various aspects of this defense, including extensions of it and limitations on it. The first requirement is this familiar pair: the provocation must be sudden—the infidelity must truly be a surprise—and the killing(s) must take place in the heat of it. Second, following the text of the Code provision, the mitigation is available only to men—that is, to husbands, but not to wives who kill their husbands (and/or their husbands’ adulterous partners) in similar circumstances. Third, the mitigation is not independently available to anyone but the husband himself; a relative or
family member of either the husband or the adulterous wife who independently kills the
wife or her partner in these circumstances is not entitled to the mitigation. But, fourth,
any accomplice of the husband in a qualifying killing is entitled to the mitigation. Finally,
a husband need not have witnessed actual intercourse to receive the mitigation; finding
his wife with a man in sufficiently suspicious circumstances can constitute adequate prov-
ocation for the mitigation.

C. Sex Offenses

1. Rape and Indecent Assault

The Penal Code treats sexual assault in three short provisions. The first of these, article
267, is considered the Code’s rape provision, although the Code does not use the formal
term for rape (ightsab) in this provision or any other. Article 267 says that sexual inter-
course with a female without her consent (waq'a untha bighair ridaha) brings a penalty
of aggravated or life imprisonment. The provision adds that the penalty is higher, namely
mandatory life imprisonment, if any of a list of aggravating factors is present: if the off-
ender is a blood relation of the victim, or is responsible for her upbringing or supervision
or has (other) authority over her, or is a paid domestic employee (khadim) of the victim or
of one of the other persons just described. The second and third provisions, articles 268
and 269, set out punishments for a lesser and different crime, “indecent assault” (hatk ‘ird,
literally “violation of honor”). The Code does not define indecent assault, but court judg-
ments and commentary explain that indecent assault differs from rape in several ways.
These will be summarized in the next paragraph; first, the penalties for indecent assault
under the two pertinent provisions are as follows. Under article 268, indecent assault by
force or threats (or its attempt) brings three to seven years of aggravated imprisonment.
As in the rape provision (Art. 267), the penalty is higher if specified aggravating circum-
stances are present: if (a) the victim is under sixteen years of age, or (b) the perpetrator has
one of the special relationships with the victim listed in article 267, the ceiling rises to the
maximum felony imprisonment term of fifteen years; and if (c) both aggravating factors
are present, the penalty is life imprisonment. Under article 269, indecent assault without
force or threats, but of a person who is under eighteen but at least seven years old, brings
detention; and the penalty rises to mandatory aggravated imprisonment if the perpetrator
is one of the persons described in article 267 or the victim is under seven years old. (Un-
like the previous provision, this one does not specify an even higher penalty for cases in
which both aggravating factors are present.)

Rape and indecent assault differ, according to court judgments and commentary, in
several ways. First, rape—nonconsensual sexual intercourse, forbidden and punished by
article 267—is understood to include only vaginal penetration (and its attempt, although
the Code provision itself does not say so). Indecent assault, on the other hand, means any
other type of penetration, as well as nonconsensual sexual touching that does not involve
penetration. Second, given that distinction, rape is considered a crime that can be com-
mitted only by males, and only against females; indecent assault covers the other possible
gender combinations. Third, a husband cannot be prosecuted for raping his wife, on the
rationale that marriage gives him a right to sexual intercourse with his wife; but that right extends only to vaginal intercourse, so a husband can be prosecuted and punished for an act that constitutes indecent assault of his wife.

For both crimes, however, proof of force, the threat of force, or its equivalent is deemed essential to a conviction. The requirement of force or threats is explicit in the text of the indecent-assault provisions; for rape, although it is not in the text of the provision, it is seen as the basis for establishing a woman’s nonconsent. But it is not the only such basis: a woman’s insanity, mental infirmity, intoxication, or unconsciousness at the time of the act suffices to establish her nonconsent for rape. So does a man’s deceit or trickery, as when a man enters a woman’s bed as if he is her husband, or a doctor secretly achieves or attempts intercourse while examining a patient.

2. Adultery
Immediately following the Penal Code’s provisions on rape and sexual assault comes a series of provisions on adultery. These provisions are noteworthy in several respects. To begin with, a person who is married can be charged with adultery only upon the complaint of his or her spouse (Arts. 273, 277). Next, adultery by a married man is a crime only if it takes place in the marital home, and the penalty for it is detention for up to six months (Art. 277). But adultery by a married woman is a crime wherever it takes place, and it brings a penalty of detention for up to two years for both the offender and the man with whom she commits the offense (Arts. 274, 275). The husband of a convicted offender can stay the execution of his wife’s sentence if he consents to maintaining intimate relations with her (Art. 274). If a husband has committed adultery in the marital home, an adultery complaint by him against his wife will not be heard (Art. 273).

3. Public and Private Indecency
Two provisions of the Penal Code treat public and private indecency, which are lesser forms of sexual wrongdoing. The public indecency provision, article 278, criminalizes the performance in public (‘alaniyyatan) of any “scandalous, indecent act” (fi’ll jadid mukhill bi al-hayah) and sets a penalty of detention for up to a year and a fine of up to £E 300. A public act of immorality and an accompanying mens rea are said to be required for the crime, but whether the “scandalous and indecent” element is said to be required for the fact finder to decide on a case-by-case basis. Public exposure is one illustration of the crime; so too is kissing or hugging a woman against her will and in a manner that falls short of indecent assault (Arts. 268 and 269), discussed in section III.C.1. Private indecency, in article 279, is defined as the commission of an “indecent act” (amr mukhill bi al-hayah) with a woman, in public or private, and it carries the same penalty as public indecency; it too is seen as a lesser version of indecent assault. For both crimes, indecent words alone are said to be insufficient to trigger liability. Another Penal Code provision, article 269(bis), prescribes detention for up to one month for anyone who, in a public place, incites passersby to indecency (literally, “depravity,” fisq) by speech or gestures; a second offense within a year brings detention for up to six months and a fine of up to £E 50. Commentary says that an invitation to a passerby to fornicate is sufficient to constitute this offense.
4. Prostitution and "Debauchery"
Prostitution is criminalized by the 1961 Law Combating Prostitution (the Prostitution Law), which addresses "debauchery" (fujur) as well as prostitution (di'arah). No statute defines debauchery, but courts and commentators have established its meaning as prostitution by men. Soliciting or facilitating either type of prostitution, or maintaining premises for its purpose, is punished by one to three years of detention and a fine of £E 100 to £E 300 (Arts. 1(a), 8). The maximum penalties increase to five years' detention and a fine of £E 500 in any of four circumstances: the solicitee-victim is under the age of twenty-one; the defendant employs deception, force, or coercion to induce the act; the defendant keeps a person in a place for prostitution against his or her will; or the defendant induces or assists a male under twenty-one or a woman of any age to leave the country to engage in prostitution. (Arts. 1(b), 2, 3.) Publicly advertising for prostitution brings up to three years of detention and a fine of up to £E 300 (Art. 14). Prostitutes themselves, meanwhile, may be punished for "habitual engagement" (i'tad munarasah) in the offense, with detention for three months to three years and a fine of £E 25 to £E 300 (Art. 9(c)). Conviction of any Prostitution Law offense also allows, but does not require, the ancillary penalty of police supervision for a period equal to the length of detention (Art. 15).

The Prostitution Law is also used to prosecute and punish individuals for noncommercial sexual contact that is deemed illicit, such as sodomy, which is not expressly criminalized in Egyptian law. This is because courts and commentators have defined the offense of prostitution, whether committed by a man (and thus called fujur) or a woman (di'arah), as simply "illicit" or "indiscriminate" sexual contact—that is, fornication, with or without a commercial component. As a result, in recent years dozens of homosexual men have been prosecuted, convicted, and punished under the "habitual engagement in debauchery" provision of the Prostitution Law. Also used for such prosecutions is article 98-F of the Penal Code, which prescribes detention for six months to five years and a fine of £E 25 to £E 300 for anyone who propagates "contempt of religion" or otherwise threatens "national unity or social peace." In the most notorious of these cases, fifty-two men arrested at a Cairo nightclub in 2001 were prosecuted for homosexual conduct under the "habitual debauchery" provision of the Prostitution Law; two of the defendants were also charged with "contempt of religion" under the Penal Code provision. Convictions and sentences of one to two years of detention were handed down for twenty-one of the defendants charged only with debauchery, while the twenty-nine others were acquitted. Of the remaining two defendants, one was convicted of both offenses and sentenced to five years of detention, and the other was acquitted of debauchery but convicted of contempt of religion and sentenced to three years of detention.79

D. Theft and Fraud

1. Theft
The Penal Code defines theft (sariqah) as taking another's movable property (ikhtalasa manqul mamluk li ghairihi), and sets a baseline penalty for it of up to two years of detention (Arts. 311, 318). The penalty is higher—from a mandatory minimum of six months' detention to life imprisonment—when one or more aggravating factors are present. Life
imprisonment is the penalty for thefts that are committed when all five of the following factors are proved: the theft was committed at night, by two or more defendants, while armed, by entering a dwelling via breaking and entering or a false claim of official authority, and by using force or the threat of force (Art. 313). Life or aggravated imprisonment is the penalty for thefts that carry some of these five factors and are committed on public roads or transport (Art. 315), and for thefts that are committed by force or threat of force and cause injury (Art. 314). Aggravated imprisonment alone is the penalty for thefts that are committed by force or threat of force but do not cause injury (and have no other aggravating factors), and for thefts committed with three factors in combination (at night, by two or more defendants, while armed) (Arts. 314, 316). Six months to seven years of detention is the penalty for thefts committed with only one aggravating factor of three specified ones (while armed, by entering a dwelling via breaking and entering or a false claim of official authority, or on public roads or transport) (Art. 316(bis-3)), and misdemeanor detention with penal servitude is the penalty for thefts committed with one of four other specified aggravating factors (at night, by two or more defendants, by entering a dwelling without breaking and entering or a false claim of authority, or by entering an enclosed nondwelling area) (Art. 317). Further provisions punish the theft of materials used in telecommunications services, utilities, and other public works (felony imprisonment, absent aggravating factors) (Art. 316(bis-2)); theft during an air raid (same) (Art. 316(bis-4)); and the theft of military weapons or ammunition, which brings aggravated imprisonment or, if aggravating factors are present, life imprisonment (Art. 316(bis-1)).

An offender who steals from a spouse or blood relative can be prosecuted only upon the request of the victim (Art. 312). In such a case the victim can also halt a theft prosecution any time after its initiation or stay the execution of sentence after conviction (id.). An individual who finds a lost item or animal and does not return it to its owner or submit it to police or other public officials within three days faces up to two years of detention with penal servitude if the finder intended to take possession of the item; absent that intention, the penalty is E£100 (Art. 321(bis)). A repeat offender who has previously been sentenced to detention for theft can be placed under police surveillance for a period of one to two years (Art. 320).

2. Fraud

The acquisition of money, property, or other items of value from another by fraud (ihtiyal) brings the misdemeanor punishment of detention (up to three years in jail) (Art. 336). Unsuccessful attempts bring detention for not more than one year, and repeat offenders can be placed under police surveillance for one to two years (id.). The same penalties attach to writing a check with insufficient funds “in bad faith” (bi su' niyyah), withdrawing sufficient funds to cover checks after writing it, or stopping payment on a check (Art. 337).

E. “Victimless” Crimes

1. Drug Offenses

The 1960 Drug Law, as amended periodically (most recently in 2004), regulates the lawful production, distribution, and use of controlled substances, as well as defining and punishing
unlawful drug activity. As in U.S. criminal law, a series of schedules in the law classifies controlled substances in categories according to their type, and these categories are used to govern both lawful and unlawful drug activity. The most serious drug crimes carry the death penalty and a fine of between £E 100,000 and £E 500,000. Among these crimes are producing, importing, acquiring, or transporting drugs with the intent to distribute them unlawfully (Arts. 33, 34); maintaining or providing premises for the unlawful use of drugs for pay, when the act is accompanied by any of a list of aggravating factors (Art. 34); and coercing or tricking another person to ingest cocaine, heroin, or any other “Schedule 1” drug (Art. 34(bis)). Life imprisonment and a fine of £E 50,000 to £E 100,000 are the penalties for maintaining or providing premises for the unlawful use of drugs without payment, and for unlawfully providing drugs to another without payment (Art. 35). Discretionary sentence reductions under article 17 (see section II.E.2.i) are forbidden for each of these crimes (Art. 36), and any business establishment or other nonresidential location in which any of these crimes occurs is subject to closure (Art. 47). Penalties may be suspended, however, for any participant in one of these crimes who informs the authorities of it before they learn of it on their own, or after they learn of it if the information leads to the arrest of the other participants (Art. 48). The death penalty and a fine are also the penalties for causing a death while resisting the efforts of public officials to implement or enforce the Drug Law (Arts. 40, 41). Meanwhile, on the other end of the penalty spectrum, any person who is present in a place where drugs are unlawfully distributed and knows about the illegality faces one year of detention and a fine of £E 1,000 to £E 3,000; but spouses and relatives of a person who lives in the location are exempted from this provision, as are any other nonoffenders who live there (Art. 39).

A special set of provisions addresses unlawfully obtaining, possessing, or producing marijuana and related plants (“Schedule 5” drugs) for personal use. Article 37 of the Drug Law sets a penalty of aggravated imprisonment and a fine of £E 10,000 to £E 50,000 for these crimes, but it then goes on to authorize courts to suspend sentences and send offenders instead to special clinics (masahkat) established by the government for treating convicts in these circumstances. Terms and conditions of this alternative disposition are also set out, including that offenders who violate the terms of their treatment are subject to serving the original sentence (Art. 37/2).

2. Alcohol Offenses
The 1973 Law Forbidding Drinking Alcoholic Beverages prohibits serving or drinking such beverages in public places other than authorized hotels, tourist establishments, and recreational clubs (Art. 2). Violations bring six months of detention for offenders and fines of £E 200 for offenders and offending establishments; repeat offenses bring mandatory closure of offending establishments for one week to six months (Art. 5). Advertising alcoholic beverages is also forbidden, and it brings the same penalties as unlawfully serving or drinking them (Arts. 3, 6). Public drunkenness brings detention for two weeks to six months or a fine of £E 20 to £E 100; detention is mandatory for repeat offenses (Art. 7).
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Arabic texts of the following codes and statutes, as amended and with annotations of related laws, decrees, and court decisions, are available via subscription to the Legislation and Developments Information Service (LADIS) at www.tashreaat.com.


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Law No. 57 of 1959, _Bi Sha`n Halat wa Ijra`at al-Ta`n Amama Mahkamah al-Naqd_ [Law of the Conditions and Procedures of Appeal to the Court of Cassation].

Law No. 182 of 1960, _Fi Sha`n Mukaffahah al-Muhaddarat wa Tandhim Isti`maliha wa al-Itti`jar Fiha_ [Law Combating Drugs and Regulating Their Use and Trade].

Law No. 10 of 1961, _Qanun Mukaffahah al-Di`arah_ [Law Combating Prostitution].


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Supreme Constitutional Court, Case No. 20, Judicial Year 15 (1 Oct. 1994).

Supreme Constitutional Court, Case No. 49, Judicial Year 17 (15 June 1996).

Supreme Constitutional Court, Case No. 114, Judicial Year 21 (2 June 2001).

Secondary Sources


**NOTES**

1. References to articles of the Penal Code will hereafter be listed simply as “Art.;” references to articles of other laws will be indicated with additional abbreviations: “CCP Art.” for the Code of Criminal Procedure, “Const. Art.” for the Constitution, and so on. Full citations for all laws cited are in the selected bibliography.


3. CCP Art. 217.

4. CCP Art. 218.

5. CCP Art. 219.


7. Const. Art. 179. This new provision anticipated a new antiterrorism law, which has been promised for several years and has apparently been drafted but has not yet been publicly disclosed. Meanwhile, terrorism is defined and punished in a series of Penal Code provisions that were substantially expanded in 1992 (Arts. 86-90).


12. The Code originally had 395 articles; many have been deleted and others added over the years. An added article is numbered in one of two ways. The first way is as the “repeat” version—*bis*, in Latin—of the article number that precedes it. Thus, following Art. 86 in the Code is Art. 86(*bis*). In these instances, when more than one article is inserted in succession at the same place in the Code, sequential letters are added to the *bis*; thus, following Art. 86(*bis*) are Art. 86(*bis*-A), Art. 86(*bis*-B), and so on. But inserted provisions may also be numbered with letters alone, without a “*bis*”; thus, Art. 77 of the Code is followed immediately by Art. 77-A, Art. 77-B, and so on. Internally, separate paragraphs of articles are not typically labeled as formal subdivisions of the articles, but they may be indicated in citations by a forward slash. Thus, “Art. 86(*bis*-D)/2” means the second paragraph of Art. 86(*bis*-D), which is the fifth article after Art. 86.

13. Arts. 9-12.

14. See section III.E.1 in this chapter.

15. CCP Art. 215; Penal Code Arts. 11-12.

16. CCP Art. 410.

17. CCP Arts. 216, 283, 382; Penal Code Arts. 10, 14, 16.


20. This ruling is discussed further in subsection II.A.1.iii, “Status,” and subsection II.A.2, “Subjective/Mens Rea/Mental Element,” in this chapter.

21. Examples of the former are Art. 116 (failure to distribute public commodities as required), Art. 116(his-C) (nonperformance or default on contracts for public works), Art. 122 (failure to issue judicial rulings when required), and Art. 377/7 (failure to perform assigned duties such as assisting during disaster or arrest). Examples of the latter are Arts. 284 and 392 (failure to comply with a judicial order or a lawful demand for custody of child) and Art. 293 (failure to pay alimony after a judgment ordering it).

22. SCC Case No. 49, Judicial Year 17 (15 June 1996).


24. Id.


27. Id.


29. Art. 46.

30. SCC Case No. 114, Judicial Year 21 (2 June 2001).

31. Art. 42.

32. Art. 43.


34. Art. 44.


38. Art. 249.


40. Art. 251.

41. Art. 63.

42. Id.

43. SCC Case No. 20, Judicial Year 15 (1 Oct. 1994).


45. Arts. 10–23. “Permanent hard labor” and “temporary hard labor” were also possible primary punishments for felonies until 2003, when legislation abolished them and replaced them with, respectively, life imprisonment and aggravated imprisonment. Law 95/2003, Art. 2. But Code provisions that specified one or the other of those now-discontinued punishments for a particular crime have not been individually amended to reflect the change.

46. Art. 20.

47. Art. 24.

48. Arts. 10, 14, 16.
49. Art. 15.
50. Art. 17.
51. Art. 25.
53. Art. 27.
54. Art. 28. The felonies that carry this penalty include crimes against national security, counterfeiting, theft, homicide, the nighttime harming of beasts of burden or fish, and the nighttime destruction of agricultural lands or other flora. Id.
55. Art. 29.
56. Art. 30.
57. Arts. 11, 18.
60. Art. 55.
61. Arts. 56, 59.
62. Art. 57.
63. Art. 58.
64. Art. 12.
65. Art. 21.
66. Art. 23.
67. Arts. 74–75.
68. Art. 13.
69. CCP Art. 381/2.
70. Id.
71. CCP Art. 381/3.
72. CCP Art. 370.
73. Art. 75.
74. Art. 236.
75. Art. 238.
76. Id.
77. Id.
78. Art. 237.
79. The twenty-one debauchery-only convictions were subsequently reversed, and all fifty of those defendants were retried; in 2003 convictions again were handed down in twenty-one cases, but the sentences increased to three years of detention and three years of police supervision. On appeal, fourteen of those sentences were reduced to time served and one year of supervision.
80. A term of six months is listed as a mandatory minimum sentence. Note that this penalty straddles the categories of misdemeanor (detention for up to three years) and felony (imprisonment for three to fifteen years).
81. The provision says only "penal servitude," but that is not a stand-alone punishment; given the other theft penalties, the intended penalty appears to be misdemeanor detention with work.
82. These factors include the following: the offender provided the drug to a person under the age of twenty-one, a relative or spouse, or a person under the offender's
guardianship or other authority; the offender is a public official whose duty is to implement or enforce the Drug Law; the offender is a public official who used his or her official authority to commit the crime; the offense occurred in a place of worship, an educational institution, a public club or garden, a health-care facility, a penal institution, or a military facility; the offender paid or forced a person to ingest the drug; the drug involved was cocaine, heroin, or another "Schedule 1" drug; and the offender has a prior conviction under this article or the previous one.