AL-FARABI KAZAKH NATIONAL UNIVERSITY

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DEPARTMENT OF CYBERSECURITY AND CRYPTOLOGY

LEGAL REGULATION OF INFORMATION SECURITY

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MODULE 3

VIOLATIONS AND LEGAL LIABILITY

LECTURE 10

THE CONCEPT OF AN OFFENCE AND TYPES OF LIABILITY

LECTURE OBJECTIVE

Identify the elements of an offence and distinguish disciplinary, civil, administrative and criminal liability.

LECTURE PLAN

1. Offences and the sources of duties

2. Elements of an offence and forms of fault

3. Types of liability and causal links

OFFENCES AND APPLICABLE DUTIES

Concept or participant	Meaning, duties and application
Conduct	An offence may involve a prohibited action or a failure to perform a duty.
Source of the duty	A duty may arise from legislation, an employment relationship, a contract or applicable internal rules.
Legal assessment	The applicable rule determines which facts and conditions must be established.

An offence assessment begins by identifying the rule and the relationship to which it applies. Employment duties, contracts and statutory obligations can govern different aspects of the same activity. The relevant rule determines which facts matter and who can be responsible. Technical terminology alone does not determine the legal category.

ELEMENTS OF AN OFFENCE

Concept or participant	Meaning, duties and application
Subject	The person or entity whose conduct is being assessed.
Object	The protected interest or relationship affected by the conduct.
Objective side	The act or omission, circumstances, consequences and causal link where relevant.
Subjective side	Fault and, where relevant, intent, negligence, motive or purpose.

The subject identifies the actor, while the object identifies the protected interest. The objective side concerns observable conduct and circumstances. The subjective side concerns fault and other mental elements where relevant. Keeping these elements distinct helps organize evidence and identify which part of an allegation remains unsupported.

INTENT AND NEGLIGENCE

Concept or participant	Meaning, duties and application
Direct intent	The person foresees a consequence and wants it to occur.
Indirect intent	The person foresees a consequence and consciously accepts its possibility.
Recklessness	The person foresees a risk but relies without sufficient grounds on preventing the outcome.
Negligence	The person fails to foresee a risk they could and should have foreseen.

Intent concerns how the actor understood and accepted the conduct or consequences. Negligence concerns the required degree of care and what the person could or should have foreseen. Logs can establish actions and times, while instructions, communications and explanations may be relevant to the actor’s knowledge and purpose.

FOUR TYPES OF LIABILITY

Disciplinary

Concerns breach of employment duties or workplace rules.

Civil

Concerns private rights and remedies, including compensation where legally justified.

Administrative

Concerns conduct defined as an administrative violation.

Criminal

Concerns conduct meeting the elements of an offence under criminal law.

Each form of liability has its own basis and procedure. A workplace violation can raise a disciplinary question, while damage may raise a separate compensation issue. Administrative and criminal classifications depend on the applicable provisions. The evidence needs to establish the facts relevant to the particular form of responsibility.

HARM AND CAUSATION

Harm

Identify the damage or adverse consequences and how they can be established.

Causal link

Determine whether the conduct led to the harm when the legal rule requires that connection.

Formal violations

Some duties can be breached even when the available evidence shows no resulting loss.

The presence of damage and its amount are separate questions from the causal connection. A system may have several weaknesses or intervening events that affect the outcome. An assessment identifies which conduct contributed to the loss. Some provisions concern the prohibited act itself, so proof of damage is not always required.

PARALLEL CONSEQUENCES

Different duties

One event may engage more than one type of liability when it breaches distinct duties.

Independent grounds

Each consequence requires its own legal basis and procedure.

Example

A breach of an employee’s security duties may raise a disciplinary question and a separate question about compensation for damage.

One event may breach distinct duties and create separate legal consequences. This requires identifying the grounds for each consequence and following the relevant procedure. A disciplinary decision, for example, does not automatically establish the amount of compensation. The legal assessment also observes the limits on repeated proceedings or punishment.

CASE DISCUSSION

An employee ignores an assigned backup procedure. A later system failure causes records to be lost.

What duty, conduct, harm and causal connection would need to be established?

Analysis

Identify the assigned backup duty, the omitted action, the lost records and whether the missing backup prevented recovery. One event can raise distinct types of liability on separate legal grounds.

THE OBJECTIVE SIDE OF AN OFFENCE

The objective side concerns externally observable conduct and its circumstances. Relevant facts can include action or omission, time, place, method and consequences.

Where a rule requires a harmful outcome, the assessment also establishes a causal link. Logs and technical records can support this assessment, but their interpretation depends on the surrounding facts.

The subjective side concerns fault and the actor’s relationship to the conduct or its consequences. The lecture distinguishes direct and indirect intent from forms of negligence.

A technical event does not by itself demonstrate intent. Instructions, communications, access history and the actor’s explanation may help establish what the person knew and what outcome they anticipated.

TECHNOLOGY AND EXISTING LEGAL RELATIONSHIPS

A technology can create familiar legal relationships even when legislation does not name that technology explicitly. The lecture uses cloud infrastructure as an example involving services, storage and processing.

An assessment identifies the actual service and the parties' duties. Contractual terms and information categories help determine which rules apply to the activity.

A workplace security violation can raise a disciplinary issue. If it also causes damage, a separate assessment considers whether compensation is available and on what grounds.

The same record of events may be relevant to both questions. Each procedure still requires the facts and conditions specified for its particular type of responsibility.

CONCLUSION

1. An offence assessment identifies the subject, protected interest, conduct and relevant form of fault.

2. Harm and causation matter where the applicable rule makes them elements.

3. One event can raise distinct types of liability on separate legal grounds.

SELF-ASSESSMENT QUESTIONS

1. What elements are examined when assessing an offence?
2. How do an action and an omission differ?
3. What is the difference between intent and negligence?
4. How do disciplinary, civil, administrative and criminal liability differ?
5. Why are harm and causation relevant to some forms of legal liability?

REFERENCES

1. Lecture 10. The Concept of an Offence and Types of Liability. Course materials.

2. Republic of Kazakhstan. Criminal Code.

3. Republic of Kazakhstan. Code of Administrative Offences.