LECTURES

Theme 1. Concept, objectives and system of criminal law. Science of criminal law.

1. The concept of the General Party of criminal law.
2. The principles of criminal law.
3. Science of Criminal Law.

The general party of criminal law contains a range of those acts that are deemed to be crimes, determine their characteristics and those penalties that may be imposed to persons convicted for committing the relevant part crimes. Special inextricably linked to the overall piece. And is with her unity. Unity organic standards of both parts of the criminal law is, above all, in the fact that they have the same problem - the protection of crime encroachment of rights, freedoms and legitimate interests of individuals, property and the rule of law in whole. part elaborates in his articles about the concept of crime, given in the General Part kode. Special Part of Criminal Law course analyzes the features of the individual elements of a crime, it is designed to promote the correct qualification committed criminal acts, to promote the proper use of the criminal law, thereby strengthening the rule of law. Application by a special section is only possible on the basis of compliance with the General Part. The subject of this part of the science of criminal law is the study of the rules, which is particularly part of their implementation and recommendations to improve the existing legislation and improve its application. General of the Criminal Code contains an exhaustive list of crimes specifically refers to them and, as a rule, describes their basic features. The duty of the investigative and judicial authorities in every criminal case - set in the act the person signs.
The question of how to qualify a socially dangerous act, whether there is the composition of a crime - an everyday issue in the inquiry officer, investigator, prosecutor, lawyer, judge. Resolution as it requires the ability to analyze individual offenses set forth in the General Part of the Criminal Code, and highlight in a particular criminal case, the features that have criminal law for establishing the actions of a person in a particular crime. Incorrect application of the law that can be expressed in the offense of abuse, is one of the reasons cancel a court verdict in the relevant courts.
For proper qualification of the offense should apply not only to the relevant rules of the General Part of the Criminal Code, which describes the features of the crime, but also to the norms of the General Part. The most important condition for the correct classification of the offense - to establish full compliance with signs of the offense socially dangerous act all the signs of a particular of the offense under the Special Part of a norm, and in some cases, and the norm of the General Part of the Criminal Code. Precise and steady determination of each of the four elements of (object, objective and subjective sides of the subject) of the crime, which is the only ground for criminal responsibility - an indispensable requirement without which compliance can not talk about right and reasonable application of the law.
3. When the construction of the General Part of the basis is taken the most essential

features that characterize the individual characteristics and social danger of the crime as a whole. Building a system of the General Part of criminal law in the Republic of Kazakhstan is based on the most important signs - the object of a criminal assault.
Legislator combines chapter crimes with a single generic object. In the first place in the system fit most dangerous acts. The Criminal Code of RK is a crime against the person.
Each chapter of the General Part of the Criminal Code is built taking into account the nature of the objects, which are aimed at crime.

2.The concept and the principles of criminal law.

1. The principle of legality.
2. The principle of equality before the law.
3. The principle of guilt.
4. The principle of justice.
5. The principle of humanism.
6. The principle of inevitability of punishment.

1. Under the principles of criminal law refers to the basic principles, guiding ideology, enshrined in criminal law, required the legislator, law enforcement officials and citizens in the fight against crime.
The principles of criminal law is also in the fact that they are guided by forensic investigators and other law enforcement agencies in carrying out their activities. For example, the principle of guilt obliges the court to establish and prove the guilt of the defendant and its form (intent or negligence). The principle of humanity requires the court to consider when sentencing the beginning the possibility of applying the least severe penalty from those provided in the specific authorization by a special section, and only then move on to more severe form of punishment. Principles of criminal law should be guided and citizens in protecting their legitimate rights and interests, while combating crime.

1. The principle of legality means that crime and offenses, as well as other criminal consequences of committing a crime defined by the Criminal Code alone. From this it follows that criminal prohibitions and penalties for its violation shall be established by law (published by the highest state authorities of the Russian Federation regulatory legal act), rather than any other source of law (by-law, judicial precedent or custom) . From the formulation of the principle of the rule of law also implies that to prosecute for a socially dangerous act, not provided for in the criminal law, or to assign a punishment that is not in the system of penalties or sanctions appropriate Criminal Code, it is impossible. law.

2. The principle of equality before the law provided for in Art. 4 of the Criminal Code, means that the perpetrators of the crime, be held criminally responsible, regardless of gender, race, nationality, language, origin, property and official status, place of residence, religion, beliefs, membership of public associations, and other circumstances .
Often, this principle is interpreted more broadly understood as equality before the law, not only criminals but victims who have every right to equal protection of his

interests.
The principle of equality before the law does not exist in isolation from other principles, such as justice and humanism.
3. The principle of guilt, according to Art. 19 of the Criminal Code, means that the person is subject to criminal responsibility only for those socially dangerous acts (or omissions) and socially dangerous consequences in respect of which his fault. This principle is expressed in the Latin formula: "nullum crimen, nulla poena sine culpa" (no crime, no punishment without fault).
Thus the concept of significant harm in the law is not disclosed and, therefore, is estimated categories established by the court. The court determines whether the significant damage to the individual citizen, guided by a variety of circumstances, including the financial situation of the owner, including income and property obligations of the victim.
4. The principle of justice is that punishment and other criminal-law measures applied to a person who committed a crime should be appropriate to the nature and degree of social danger of the crime, the circumstances of its commission and the identity of the perpetrator The principle of justice in criminal law science is understood in two ways: as the fairness of the criminal law and justice as punishment.
With the principle of equity linked and other requirements having completely independent meaning: can not be punished twice for the same crime.
5. The principle of humanity has two aspects: humanism to the victims of the crime, since criminal law is intended to ensure the safety of the person, and humanism to the persons who committed the crime. In this case, punishment and other criminal-law measures applied to such persons may not have intended to cause physical suffering or humiliation of human dignity The principle of humanism, putting in first place in the hierarchy of legally protected values life and health, human rights and freedoms, has found expression in the structure of the Special Part of the Criminal Code, an opening section on crimes against the person, in the increased protection of certain groups of victims (pregnant women, minors, persons who are in a helpless state).
7. The principle of inevitability of punishment is not explicitly referred to in the Criminal Code. However, legal scholars consider it one of the main. This principle is directly linked with the principle of equality before the law, because, as already mentioned, it is equal to the duty of all persons who have committed a crime, be held criminally responsible for their actions. In this aspect of the principle of equality can talk about the legal requirements of the inevitability of punishment.
3.An important feature of the new criminal legislation is the inclusion in the list of its objectives the prevention of crimes. The methods of implementing this general prevention function of criminal law is to establish criminal responsibility for specific crimes and the threat of imminent use of criminal penalties. The essence of crime prevention is abstinence persons from committing offenses under penalty. However, the criminal law contains a number of incentive norms that encourage citizens to participate in the suppression of crime to protect their rights and legitimate interests of their own. For these purposes, the criminal law introduced

significant changes aimed at preventing criminal attacks and for avoiding criminal liability for causing damage to an attacker.
By means of criminal law made the fight against crime. The mechanism for implementing these rules and a mechanism of legal regulation. The issue of criminal liability in each case is in relation to the criminal act that deserves punishment.
Criminal law and legal studies prepares a criminal act to determine:
• its functional capacity to act as a legal basis for criminal liability;
• its malicious subjects of public relations for the property;
• punitive measure impact on the causer (criminal), which is necessary to restore the trampled them justice.
The mechanism of legal regulation involves a process that is inherent in the application of criminal law. It starts from the moment a person has committed a crime and ends with this sentence a person to release this person from criminal responsibility. This process is clearly regulated rules of criminal procedure.
The mechanism of legal regulation also includes the process of defining criminal acts, establish its legal characteristics and fixing them in criminal law. This is a preventive (warning) the role of legal regulation.
The higher the social danger of the crime committed and the degree of public danger of the person who committed the crime, the more severe the punishment provided for it. This situation appears more characteristic of the mechanism of legal regulation.
Criminal law as a science is significantly different from the criminal law as a branch of law. This difference is manifested in the problems faced by them, subject and method.
The objectives of the criminal law as a science are: the study of the totality of social, economic phenomena and their interactions with the development of criminal law; identification of the basic laws, the spirit and trends in the improvement of the criminal law; the formation of the general theoretical provisions designed to promote and master the correct application of criminal law.
The subject of the science of criminal law is the study of criminal law, law-making and law enforcement; bases and principles of criminal responsibility; concepts of criminal law in the past and present; Relations with the criminal law and the interference of the theoretical propositions of philosophy, the general theory of law and sociology; foreign criminal law and the relevant doctrine. Thus, the object of the science of criminal law goes beyond the study of criminal law only.
Criminal law as a science is a system of beliefs, theoretical ideas about the nature and characteristics of the criminal law, its social orientation, patterns and trends.
The science of criminal law is closely linked with other legal sciences and legal disciplines of education. Criminal law as a science is in communication with the general theory of law, criminology, criminology, operative-search activities, as well as many other branches of law and science (constitutional, administrative, civil, criminal procedure, criminal enforcement, environmental, international and etc.). Criminal law as a science complements and directly influences the development of other branches of law and science.

2 Lecture. Criminal legal

1. The concept of criminal law .
2. The structure of the criminal law.
4. The interpretation of the criminal law and its kinds.

1.Criminal law - is a normative legal act adopted by the Parliament (in cases provided by part. 2 of article 45, part. 2 of Article 61 of the Constitution, - the President) of Kazakhstan, establishes the general provisions of criminal law, which defines the socially dangerous acts are crimes and establishing for them the punishment governing grounds for excluding criminal responsibility and punishment. The Criminal Code of the Republic of Kazakhstan was adopted 3 July 2014 and entered into force on 1 January 2015. In accordance with Art. 1 of the Criminal Code, and other laws that criminalize shall apply only after their inclusion in the Code. Criminal law consists of two parts - general and specific. Both parts are in total organic unity, but at the same time significantly different in character standards. The general part consists of 7 sections, articles which reveal the general provisions, the concept of crime, punishment, its objectives and types. Generalities also regulates the exemption from criminal liability and punishment, particularly the criminal liability of minors, as well as the compulsory medical measures to persons in need in their application. The special part includes 18 chapters which describes the specific criminal offenses with the exact types and terms (size) of punishment for them. As the General and Special Parts are divided into articles.
Each item in turn comprises one or more parts with the corresponding numbering. Parts of the articles differ in content and punishment. Therefore, the procedural documents it is important to specify not only the story, but part of it and even the point. Structural become a common part of the different articles of the Special Part. The structure of the legal norms are three elements: a hypothesis, dispositions and sanctions. Criminal law in this sense distinguishes some specifics of their construction. Hypothesis as part of the criminal law is presumed only in the description of specific crimes. Such "technical" method allows to avoid unnecessary cumbersome articles of the Special Part. However, this does not mean that the hypothesis of criminal law does not exist. It is the role of the General Part of the norm containing a reference to the achievement of the required age of criminal responsibility, the form of guilt, responsibility and the establishment of others.
2. In the article of isolated dispositions and sanctions. Disposition - this part of the article, calling the crime and reflects its characteristics. Depending on the characteristics of building dispositions are divided into four types: simple, descriptive, blanket and reference.
Simple disposition only calls a criminal act, without revealing its features: art. 114 of the Criminal Code - "Causing death by negligence";

Descriptive disposition calls the crime and reveals its attributes: Art. 190 of the Criminal Code - "Fraud"; Blanket dispositions represent a particular way of formulating criminal law provisions. They are the most striking evidence of the relationship of criminal law with other branches. Blanket is a disposition that in the criminal law does not define the attributes of a criminal act, and refers to other laws or regulations. Examples of articles containing blanket dispositions are art. 156 of the Criminal Code - "Breach of the principles of occupational safety and health";
Reference called a disposition that does not contain evidence of a crime, and refers to another article or articles of the criminal law, where the signs are named or disclosed. This method of legislative technique in the present paragraph. "N" h. 2 tablespoons. 99 of the Criminal Code - "Murder";
Sanction - part of the article, provide a description of the type and duration (the size of) punishment. It provides an indication of the impact of the measure, which applies to the judicial authorities of persons who have committed crimes. According to Art. 52 of the Criminal Code, the court shall elect the punishment within the limits established by the corresponding article of. In criminal law emit absolutely certain, relatively-certain alternative sanctions. Absolutely definite sanction determines the specific type and amount of punishment. The current Criminal Code of the sanctions available.
Relatively definite sanction indicates the type of punishment, setting its size, within certain limits. This authorization provides the possibility of broad court individualization. She, in turn, can be of two types: the sanction is defined as the minimum and maximum penalties and sanctions defines only the upper limit of punishment. An example of the first kind of sanctions are sanctions h. 3 tablespoons. 120 of the Criminal Code.
Alternative sanctions contains a reference to two or more basic types of punishments, of which the Court shall elect only one. For example, arbitrariness, for contempt of court (Art. 1, Art. 410 of the Criminal Code) may be appointed by a court fine or community service, or arrest. Application of criminal law in time.
Application of criminal law in time is governed by Art. 5 of the Criminal Code, which states: "The criminality and punishability determined by the law in force at the time the act was committed. The time of commission of the crime is the time a socially dangerous action (or inaction), regardless of the time of the consequences. " Under the commission of an act understood as a completed crime cases and actions (omissions) forming a preliminary criminal activity. Action recognizes the law, which came into force and has not lost it in the manner prescribed by law. Introduction of the criminal law by virtue of prior acceptance, signing and publication. The time of commission of the crime of complicity in the commission of an act recognized performer. One form of punishment is replaced by another, more gentle, or when the sanction of the new law provides for an alternative choice of penalties, which gives the court the right to choose a lighter. This issue must be resolved in each case by comparing the disposition of the two laws and sanctions. The law establishing the crime or offense, increasing penalties or punishment or otherwise worsens the situation of a person shall not be retroactive.

Application of criminal law in space
Application of criminal law has always limited to a specific territory. The rules of the existing criminal law in space consistently implemented two principles - territoriality and nationality.
The principle of territoriality is to ensure that a person who committed a crime on the territory of the Republic of Kazakhstan, shall be liable under this Code. According part. 2 article. 7 of the Criminal Code, an offense committed on the territory of Kazakhstan, is an act which was initiated or continued or was completed in the territory of the Republic of Kazakhstan.
The territory of the Republic of Kazakhstan within the existing boundaries is an integral, indivisible and inviolable.
The state border is set:
on land - from the characteristic points and lines of the relief or clearly visible landmarks;
the sea - on the outer limit of the territorial sea of the Republic of Kazakhstan. Territorial waters - a belt of sea adjacent to the coast or inland waters of the country and forms part of the national territory. The width of the coastal waters is determined by international treaties of the Republic of Kazakhstan ratified by the Parliament of the Republic of Kazakhstan. Regime of territorial waters is regulated by the Convention on the Territorial Sea and the Contiguous Zone of 1958, as well as the domestic law of the states. In the Caspian Sea water area relating to the internal waters, determined by international treaties of the Republic of Kazakhstan ratified by the Parliament of the Republic of Kazakhstan. Criminal law applies in the case of conduct on the continental shelf and the exclusive economic zone of the Republic of Kazakhstan (p. 2, Art. 7 of the Criminal Code). The airspace is a vertical surface, passing over land and water territories, including territorial waters. Part 3 of Art. 7 of the Criminal Code regulates the liability for crimes committed on vessels navigating or flying the flag of the Republic of Kazakhstan. If the crime is committed on a ship registered at a port located in the Republic of Kazakhstan and the open water or air space, liability arises under the Criminal Code. Under the open sea of the aquatic surface located outside the territorial waters of any state, and which is in common use states. Military aircraft and warships of the Republic of Kazakhstan are always considered part of its territory, regardless of their location, both during their stay on the high seas or in airspace and territorial waters of another State or during the stay in a foreign port. In the case of a crime on the territory of the Republic of Kazakhstan shall be subject to criminal responsibility of the citizens of Kazakhstan, foreigners and stateless persons. An exception to this general position to be considered the question of criminal liability of diplomatic representatives of foreign States and other citizens who enjoy immunity. In the hours. P 4 Art. 7 of the Criminal Code is determined that the issue of criminal responsibility of persons for crimes committed on the territory of the Republic of Kazakhstan, is permitted in accordance with international law. The immunity of a foreign state is that the premises are inviolable diplomatic representation. The authorities of the receiving State does not have the right to get into the premises only with the permission of the head of a diplomatic mission. Diplomatic

immunity is a representative of a foreign state is that he shall enjoy personal inviolability: he can not be detained or arrested, it can not be brought to justice in the courts. Persons enjoying the right of diplomatic immunity are ambassadors, attorneys in the business, advisers, military attaches and their assistants and deputies. Personal inviolability and immunity from criminal jurisdiction also extends to the family members of these persons, provided that they live together with them and are not nationals of the host country. The territorial principle of criminal law in space is complemented by the principle of citizenship, according to which, if the citizens of the Republic of Kazakhstan commit crimes outside the Republic of Kazakhstan, they are responsible under the criminal law of Kazakhstan, for their actions if they are not punished by the sentence of the court of the State where the crime was committed. Kazakh citizens are persons who permanently reside in the Republic of Kazakhstan on the date of entry into force of this Act, were born on the territory of the Republic of Kazakhstan and are not citizens of a foreign country and who have acquired citizenship in accordance with the present law. Stateless persons are persons who have no evidence of the citizenship of any state. If the citizens of the Republic of Kazakhstan, as well as stateless persons who commit crimes outside the Republic of Kazakhstan, have not been convicted in the State in whose territory the act considered a crime, they are subject to criminal liability under the laws of the Republic of Kazakhstan. According to Part. 1 tbsp. 8 of the Criminal Code, the punishment in this case can not exceed the maximum punishment provided by the law of the State in whose territory the crime was committed. Part 3 of Art. 8 of the Criminal Code regulates the question of liability of servicemen of military units stationed outside Kazakhstan. Committing a crime of such persons in a foreign country entails criminal liability under the laws of the Republic of Kazakhstan. Foreigners who commit crimes outside the Republic of Kazakhstan shall be subject to liability under the Criminal Code in cases where the crime is directed against the interests of the Republic of Kazakhstan, and in cases stipulated by international treaties of Kazakhstan, if they have not been convicted in another Member State and subject to criminal prosecution on the territory of the Republic of Kazakhstan (h . 4 Art. 8 of the Criminal Code). Such criminal consequences of committing a crime as a criminal record, repeatedly, the recognition of relapse, which occurred on the territory of another State, does not have a criminal legal value in case of a crime on the territory of the Republic of Kazakhstan, except for cases stipulated hours. 2, Art. 9 of the Criminal Code. Issuance of perpetrators
Article 9 of the Criminal Code stipulates that not be extradited to a foreign state citizen of the Republic of Kazakhstan has committed a crime on the territory of that State, unless otherwise stipulated by international treaties. Foreigners and stateless persons who commit crimes outside the Republic of Kazakhstan, the Republic of Kazakhstan may be extradited to a foreign state for criminal prosecution or punishment in accordance with international treaties of the Republic of Kazakhstan. Extradition shall be refused if the offender is a national of the requested country. In this case, according to the Convention, member countries carried out in accordance with its legislation criminal proceedings against its own

citizens, suspects that they have committed on the territory of the requesting party to a crime. 3. Interpretation of the Criminal Law
Under the interpretation of the right to understand the clarification and explanation of the meaning of the law.
The interpretation depends on which body or person shall provide interpretation of whether it is mandatory or not, what
method is applied in the interpretation of what it can be in terms of volume.On the subject of interpretation is: legal, judicial
and doctrinal.
It called the legal interpretation given by a body that is empowered by law to do so. This type of interpretation is binding.
Judicial interpretation given by the court in the application of the rules of law in a particular case. It can be of two types:
1. Giving the verdict of the court in a particular case. The above interpretation of it is binding, but only in the case (causal
interpretation).
2. The judicial interpretation given in the form of clarification in the regulatory decisions of the Supreme Court of the
Republic of Kazakhstan. It is based on a generalization of the judicial practice in certain categories of cases, and is required
in applications that rules of criminal law in respect of which it was explained (legal interpretation).
Doctrinal (scientific) interpretation given in textbooks, monographs, speeches at conferences, reports researchers and
practitioners. It has no binding force.
Upon receiving an interpretation is grammatical, historical, systematic.
Grammatical interpretation is clarifying the meaning of the law by an etymological and parsing text. Systematic interpretation
is to compare the analyzed provisions of the criminal law with the provisions of the same or any other law.
The historical interpretation involves finding out the reasons that prompted the adoption of appropriate criminal law,
the environment in which it was created.
In terms of interpretation is divided into a literal, restrictive and disseminator.
A literal interpretation is in accordance with the interpretation of the exact meaning of the text of the law.
A restrictive interpretation gives a narrower meaning than it follows from the text.
Disseminator interpretation of the law gives a broader meaning, which allows to apply it to a wider range of cases.

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3. Lecture. The concept of a criminal offense.

1. The concept and social essence of the criminal offense.
2. The difference between the criminal offenses from other offenses and anti-social offenses.
3. Classification of crimes in the existing criminal law, its characteristics.

1. Unlike most Western countries, which spread the right criminal formal definition concept crimes for domestic criminal law is its traditional material as the formal definition of a socially dangerous act prohibited by the criminal law. If the formal definition of the crime emphasis on formal grounds wrongfulness of the act, then the determination of the material along with the formal sign is mandatory material - socially dangerous acts or omissions.
The definition of the criminal offenses set forth in article 10 of the Criminal Code of the Republic of Kazakhstan: "A crime is considered guilty of socially dangerous act (action or inaction) prohibited by this Code under threat of punishment." From this definition, it is clear that a crime has a number of mandatory features. This - a socially dangerous act, its unlawfulness, guilt and punishment. Only if all of these features combine to act may be considered a crime.
The first sign of the crime - its social danger. Public danger - it is an objective property of the acts (action or inaction) actually cause substantial harm to legally protected public relations, or to pose a threat of such harm.
That public danger (harmfulness) action or inaction taken into account by the legislator when deciding on criminalization or decriminalization act. It is important to establish what the alleged offense of public danger. According to the second part of Article 10 of the Criminal Code "is not a crime the act or omission, though formally and containing signs of any act provided of this Code, but by virtue of insignificance not representing public danger, that is not to harm or pose a threat harm to the individual, society or the state. "
Second in order of consideration, but not least, be sure to sign the offense is criminal wrongfulness, that is a prohibited act by the criminal law. Illegality - is, as already stated, the formal signs of a crime. It should be borne in mind that the crime may be involved only if the ban was set by the criminal law. Inextricably linked to the wrongful crime following two features: the guilt and punishment.
Isolation legislator guilt, that is, the existence of the actions (inaction) of a person guilty, as an independent sign of crime demonstrates the importance attached to the institution. According to the second part of Article 19 of the Criminal objective imputation, that is criminal liability for innocent causing of harm is not allowed.
The next sign of the crime - a criminal offense. The presence of criminal prohibitions are not backed by the threat of punishment, does not give grounds to assert that it is prohibited act is criminal.
2. limiting crimes from other offenses, the legislator usually indicates dispositions in the articles of the Criminal Code symptoms characterizing the consequences of

criminal acts. So, for criminal liability under Article 324 of the Criminal Code for violation of environmental requirements for economic and other activities requires that such a breach has caused significant pollution of the environment, harm to human health, mass death of animals or plants, and other serious consequences, and on the part first paragraph of Article 345 of the Criminal Code for violation of traffic rules and operation of vehicles by a person driving a vehicle - causing grave or medium-gravity damage to human health. In the absence of these effects, or if there are other, less serious consequences (for example, infliction of bodily harm as a result of violations of traffic rules by a person driving a vehicle), acts under certain conditions punishable administratively.
The main difference between the crime of other crimes is a different degree of public danger. Each offense infringes on the legally protected public relations therefore represents a specific danger to the public. But the quantitative characteristic of this property is not the same. A higher degree of social danger of the crime distinguishes other offenses may determined different circumstances.
Criteria for distinguishing crimes from other offenses:
1. the nature of consequences perfect act;
2. reasons and objectives of the act;
3. The form of guilt;
4. Crimes provided only in criminal law, it entails specific consequences such as criminal punishment and a criminal record.
Often crime is different from other crimes only by the nature of consequences perfect act. Thus, the violation of safety rules that caused light or medium-gravity damage to human health is a disciplinary or administrative violation, and the same act that caused by negligence serious bodily injury, forms the offense (Art. 1, Art. 143 of the Criminal Code). Sometimes factor significantly increases the risk of social action and turns it into a crime, can serve as motivation and the purpose of committing such an act. In some cases, a crime different from other relations only in form of guilt. Thus, when the deliberate fault of the infliction of bodily harm constitutes a crime and, in the event of the same injury on his responsibility carelessness causer can only have a civil character. Crime and other offenses only not differ in the degree of danger to society, but also by the nature of illegality and legal consequences. Crimes - criminally wrongful act, it is provided only in criminal law. The offenses are not crimes, provision of family, civil, labor Code, the Code of Administrative legal relationship, departmental disciplinary regulations, as well as a number of subordinate regulations. Therefore, any of these offenses is characterized not criminally wrongfulness. The difference between the crime of other offenses in their legal consequences is that only crimes entails specific consequences such as criminal punishment and a criminal record.
3.Crimes little gravity shall be deliberate actions for committing of which the maximum punishment provided by the Criminal Code does not exceed two years' imprisonment and negligent acts, for the commission of which the maximum punishment provided by the Criminal Code does not exceed five years in prison. Misdemeanor shall be deliberate actions for committing of which the maximum punishment provided by the Criminal Code does not exceed five years in prison, as

well as negligent acts for the commission of which is punishable by imprisonment for a term exceeding five years.
Serious crimes shall be deliberate actions for committing of which the maximum punishment provided by the Criminal Code, does not exceed twelve years in prison.
Particularly serious crime shall be deliberate actions for committing the Criminal Code which is punishable by imprisonment for a term of more than twelve years or the death penalty.
Categories crimes affect the application of the various factors of criminal responsibility.
First, they are important in determining the type of recidivism.
Second, categories of offenses affect the appointment of persons sentenced to imprisonment of the correctional institution.
The third category of offense is usually dependent use of amnesties.
Fourth, depending on the category of crimes and terms of use of parole from punishment.
Fifth, on the category of crime depends on the application of the limitation period.
Sixth, depending on the category of crime maturities criminal records, etc.
Thus, the Criminal Code of the Republic of Kazakhstan provides for four categories of offenses: minor offenses, less serious crime, serious crimes and especially grave crimes. The basis of classification is the nature and degree of public danger of the act.
Crimes can be divided into groups for various reasons. Such classifications can be normative (legislative) or doctrinal (scientific) character. The most common classification of crimes on the nature and degree of public danger and generic object. Other classification criteria include the characteristics of the process of committing a crime, the extent of its finished, the signs of the subject and the subjective side, and so on. D.
The grounds crime groups may serve as the nature and degree of public danger. The legislation of most states of Mr. crimes under this category are divided into 2-3, and quite often the least dangerous crimes receive the name of criminal offenses. For criminal offenses are assigned minimum sentence, often they do not involve other consequences associated with criminal liability (eg, criminal record).
The categorization of crimes allows a differentiated approach to the imposition of criminal liability: for small crimes and high severity may provide for a different legal regime. This may include, for example, the statute of limitations to attract a person to criminal responsibility, sentencing, institutes of exemption from criminal liability and punishment

Lecture 4. The composition

1. The concept of composition under the criminal law.
2. Composition of the crime as the basis of criminal responsibility.
3. Types of composition.

1.Set of established criminal law of objective and subjective features that characterize a particular socially dangerous activity as a crime in criminal law called offense crime.
If the offense rather commit, is the actual ground for criminal responsibility, the offense - its legal basis. These two reasons are interrelated and, in fact, constitute a single entity: without the statutory offense of socially dangerous act can not be considered a crime, the presence of the same criminal ¬law rule providing for signs of any ¬offense crime is not the basis of criminal responsibility, if the person has not committed an act subject to these signs.
Thus, without the elements of a crime, criminal liability can not be realized. Along with this important, pivotal role of the offense decides to others, can be called their "official", but very necessary task. Only on -basic of a crime can be a process qualification of a crime, because he acts the necessary criminal model (standard), comparing with the law enforcer who selects the appropriate criminal law, which is the most complete and accurately reflects the content and characteristics of the offense.
The problem of classification of the crime - one of the most complex and significant in the criminal law, not only in theory but also in practical terms, because of how it will be qualified or otherwise act depends on the effectiveness of the criminal law, and the fate of the person to whom this law is applied.
The term "qualified" is derived from two Latin words: «gualis» - quality and «facere» - do. With regard to criminal law, this means give a qualitative assessment of socially dangerous act, which allows to distinguish it from related torts. In other words, under the qualification of the crime meant the establishment of a legal and binding an exact match of the actual signs of perpetrating the acts featured particular of the offense under criminal law.
Signs of an offense described not only in the disposition of the Special Section, but also in the relevant articles of the General Part of the Criminal Code. The articles of the Criminal Code describes most of the signs, or other crime. Symptoms also common to all crimes or for a specific group of crimes are usually referred to in the articles of the General Part of the Criminal Code (a form of guilt, the age at which comes responsibility, unfinished criminal activity, complicity, and others.). The articles of the Criminal Code generally provides the grounds of the completed crime committed directly or performer.
The theory of criminal law has developed on the basis of identifying and compiling evidence of specific offenses the general concept of the offense, which includes characteristic elements common to all elements of crimes stipulated by the Special Part of the Criminal Code.
In legal literature, it is recognized that in every part of his crimes, there are four mandatory elements: object, objective side, the subject and the subjective side. Elements of the crime are closely linked. If the deed is missing at least one of them, then it means that there was no crime in general, and therefore there is no basis and criminal liability.

2.Under the object of the crime is understood that the benefit (social value), which is protected by the criminal law and that crime causes harm. As such a good domestic criminal law theory recognizes public relations, protected by criminal law.

Set of features that characterize the external side of human behavior is the objective aspect of the crime. These signs are socially dangerous action (active behavior) or omission (passive behavior) of the person, such as theft - secret abduction of another's property or omissions at work.

The objective aspect of many of the crimes includes the addition of an act or omission criminal implications, a causal relationship between them and the actions of a person.

In addition to the above features to the objective side applies situation, time, place, method, tools and means of committing crimes.

Subject of a crime is the natural person who committed the crime, and endowed with the attributes provided by the criminal law. These include sanity, achievement person of a certain age, and in some cases, and special features (official status, profession and so on.).

Subjective aspect of the crime constitute signs characterizing the internal mental side of human behavior: the wine, the motive and purpose of the crime.

In theory distinguishes basic (mandatory common) elements of crime and special features (optional, extra). Main features - these are the features that are present in every part of the crime, the absence of at least one of them is evidenced by the absence of corpus delict. The main features include: object crime - public relations, protected by criminal law; in the objective side - the act (or omission action); in the subject - an individual responsibility, age; in the subjective side - wine.

Special features of a crime - these are signs that are used in the construction of the legislator not all, but single offenses, as it were, in addition to the basic features. Special features in: an object is its structure, content, including the subject of the offense; the objective side - effects, a causal relationship, situation, time, place, method, tools and means of committing crimes; subject - the official position or status, criminal record, etc .; subjective side - the motive, purpose.

The classification of crimes are usually placed criteria such as degree of public danger of the act, a way of describing the law of the offense and the design of the objective side of the crime.

Depending on the degree of public danger of the act composition crimes are divided into basic, qualified, especially qualified and privileged (with softening signs).

The basic structure of the crime - a formulation which It contains set of basic, permanent signs act certain type and provides additional features that increase or decrease the degree of social danger of the offense.

3. In Depending on the degree of public danger of the act composition crimes are divided into basic, qualified, especially qualified and privileged (with softening features).

The basic structure of the crime - a compound that It contains set of basic, permanent signs act certain species and does not provide the additional features

that increase or decrease the degree of public danger of the offense.
If the elements of the crime in addition to the basic features of this type of offense indicated also aggravating the responsibility and punishment circumstances, then this constitutes a crime It called qualified. These qualifying signs can be a variety of circumstances: repeatedly, the method (a special cruelty, violence and so forth.), Criminal records, organized group, selfish motives, etc.
The offense, which along with the basic signs are mitigating liability and punishment circumstances called preferred composition.
Depending on how you describe the law Various elements of the crime-obtained simply and complex crime.
The simple structure of a crime - it is a composition in which no complications of any element of the composition. It describes a single act, or part of the stage which does not form self crime, that is, each of the elements of the composition is presented in a single copy.
The complex structure - it constitutes a crime, which has a complexity of an element structure (object, objective side, subject, subjective side).
A variety of complex structure is an alternative of the crime, which includes several options for criminal action (or inaction), each of which can be the basis of criminal responsibility.
Of great practical importance is the classification of offenses depending on the design of the objective side. According to this criterion vary material, formal and truncated offenses.
The compositions in which the effects appear as a necessary sign of a completed crime, called the material a crime. If as a result of the act the consequences provided such a composition crimes not come, then the deed or not recognized crimes (eg, reckless torts) or classified as prepared or attempted crime (in deliberate acts aimed at achieving specified effects).
Formal offenses - these composition in which to recognize the crime consummated enough to commit an act under criminal law. The effects do not appear here as the essential characteristics of the crime.
In some cases, the end of the legislature crime carries on one of the preliminary stages of criminal activity - or attempting to cook. To recognize this is not consummated crime requires not only the occurrence of the criminal consequences, but also completing the action that can cause them to attack. Such crimes composition called truncated (robbery, banditry, and others.).

The object of the criminal offense
1. The concept of the subject of a criminal offense.
2. Types of objects of criminal offense.
3. The subject of the criminal offense.

1.Concept object criminal relationship.Object criminal offense are public relations for the assault, which provides for liability criminal law.
Public relations, which can be subject to criminal attacks, from a formal point of view, different from all other social relations that the responsibility for them

provided the criminal law. Indication of this feature certainly in defining the object of criminal attacks. From a social point of view of criminal admit only the most socially dangerous encroachment on the legally protected relationships. The degree of public danger of attacks depends on the importance of public relations, the nature and extent of the damage caused by this relation, the prevalence of abuse, from the data characterizing the act and the person who is guilty of committing it. The question of attribution of attacks on legally protected public relations is decided by the legislator on the basis of all the circumstances that affect the degree of public danger of the act as a whole. That degree of public danger is the only criterion on which a distinction from other tort criminal offenses regulated by other branches of law.

2.Types of objects of crime

Types of objects of crime. The criminal - legal theory prevails in the general division of objects, the generic (exclusive) and immediate.

List of public relations, protected by criminal law against criminal offenses and, therefore, represent a shared object infringement, the existing legislation is given in connection with the definition of tasks of criminal law (Art. 2 of the Criminal Code).Every crime causes damage in some specific relations, protected by criminal law. However, the crime can be committed in various areas of society therefore can damage different in content and value of public relations for the government. This fact is important because the nature of the offense depends primarily on the relative value of those relationships to which it encroaches. Therefore, the main criterion for the classification of all crimes in the Special part of the criminal law are generic and direct objects of attack.

Under the generic object refers to a more or less wide range of homogeneous social relations, which infringes a number of offenses detrimental to this relationship, it is a generic object of protection, understood as a group of similar public relations, used by the legislator as the basis for the construction of the system by a special section of the Criminal Code of the Republic of Kazakhstan and distribution of all of the crimes of individual chapters. The very title of the Heads of the Criminal Code as a general rule specifies a generic object of the crime, the responsibility for which is provided in the articles of this chapter.

The immediate object of attacks - a public relations, which are protected by the crimes under the features of the composition.

Selecting objects (a common, generic, immediate) aims: firstly, to emphasize that any crime encroaches on the public relations (common object), and secondly, clarification of the question of whether, against what exactly public relations directed one or another group of crime or specific crime (generic and direct object).

Some crimes simultaneously impinge on two or more dissimilar immediate objects. When separate assessment of damage to the values created as a misconception of the nature and degree of public danger of the offense as a whole. Therefore, in such cases the legislature has resorted to designing formulations with multiple direct objects, so-called complex or dvuobektnym compositions. They

cover an attack on several heterogeneous social relations. So, robbery - the attack to steal other people's property, coupled with violence dangerous to life or health of the person attacked or the threat of such violence directly (st.179 CC) is considered as a complex (dvuobektnoe) the offense at the same time infringing and the personality and the property.
In this case, as the main direct (and descent) of the object are the property relations, since the purpose of the perpetrator is stealing other people's property, and the attack on the victim's vehicle - achieve the goal of the perpetrator, that is, the person (life and health) - acts as an auxiliary (optional) object .
In the theory of criminal law to distinguish between the presence of the so-called optional subject. In contrast to the additional (auxiliary) object in some cases, it acts as a second object of attacks, and may be absent.

3.Matter crime.
If the offense is committed by acting not on the actors and on the other elements of public relations, which are objects or things, they are called objects of attack. Acting on the subject of abuse, a criminal can cause physical damage or other particular things or change things, violating public relations.
In the literature, there is a belief that any offense presupposes a certain subject, that "non-objective" crime does not exist. According to this view may be the subject of abuse and subjects of public relations activities. This public relations broken by modifying the action of either the perpetrator or of other persons by the will of the perpetrator. Violation of public relations by acting on the subject of infringement does not mean however, that the object always suffered damage. In contrast, in the theft of another's property offender shall take all measures to preserve the value of the stolen material. The results of any crime outwardly appears to change the subject of infringement (property displaced during the theft, the victim suffered injury, the official not to perform an action that should accomplish, hunting weapons adapted to bleed, etc.)

Lecture 6 Objective side.

1. The concept and importance of the objective side of the crimes.
2. Social dangerous and unlawful act.
3. Definition and types of consequences of the crime.
4. The causal link between the socially dangerous acts.
5. The method, place, time, environment, tools and means of committing a crime as optional features of objective side and criminally-legal value.

The objective side of the offense is the combination of external signs of a criminal act, these in the disposition of the criminal law.
The objective side of a crime of a particular set of It contains only those attributes that required to assign it to the category of socially dangerous and criminal - of illegal as well as distinguishing it from related offenses.
The objective side of the offense includes: an act or omission socially dangerous

consequences, a causal link between the act or omission and consequence; time, place, situation, the way instruments and means of committing the crime. Action or inaction of man - a mandatory feature of any crime. Socially dangerous consequences, a causal link, time place, the situation, the way instruments and means of committing a crime called optional features objective side of the offense, as they can act as binding only when they are in the disposition of criminal said - legal standards.

Socially dangerous acts or omissions

Action - an active behavior. The vast most crimes provided by the Criminal Code, can be accomplished only through action. Specific forms of criminal behavior rather varied. They are considered special part of criminal law. Features forms (methods), actions in many cases deemed necessary feature corresponding objective side of the offense. Almost all compositions crime provided the Criminal Code, differ chief way by the process of socially dangerous behavior. Action man is an external expression of his will. Consequently, it must be realized and designed to achieve specific objectives. Feature action as voluntary behavior does not predetermine whether or absence guilt of the person. The issue of guilt is decided depending on foresight or face the possibility of foreseeing specific harmful consequences caused by his action or the possibility of knowing or understanding of certain properties perfect actions which form the objective side of a composition of this crimes. Proceeding , can not be attributed to the actions of a man of his reflex movements and movements of patients who are in a state of delirium, because they do not under control consciousness. Devoid of criminal law values sometimes even be aware of the behavior of man if he acts under the influence of force majeure or irresistible nature of physical coercion. Action or inaction, perfect face under these conditions, are not his act, and therefore, is not a crime, because it acts (or omissions) against their will. For example, a person does not performs his duties, being deprived of the possibility of a physical act (due, devoid of action liberty) . Therefore, the person committing socially dangerous action (or inaction) under the influence of beatings should not exclude the criminal liability as a physical impact this kind can not eliminate the possibility of a person to act on their own.

Another important mental coercion. Commission acts under the influence of psychological compulsion, in a common rule does not exclude criminal liability. Psychic coercion under certain conditions can cause a state of emergency. So, the cashier is not subject to criminal liability for embezzlement of entrusted to him by services sums of money if he gave them armed robbers threatened immediate deprivation of life.

Criminal inaction - a passive behavior, expressed in not committing certain actions that the person should and could do. Corpus delict, provided that inaction rather a few. Because of the crimes committed by omission, one can distinguish the crime of omission, or the so-called pure inaction. They take place only when the law does not link the offense with stepping- harmful effects. For example, in danger abandonment, failure to render aid to the patient, etc. Another group crimes committed by omission forms the so called mixed omissions. For example,

warehouse manager did not take measures to preservation of material entrusted to him values, whereby they were corrupt. For the composition such crimes require an adverse effect as a result of omission of the person.
Inaction becomes criminally-legal value only if it is illegally, duty to act arises from the requirements of the criminal law.
The obligation to commit active actions can have different bases. Responsibility for failure to act, in addition to the duties suggests presence of a person to act. When statutes to act must be considered opportunity of the person in this particular surroundings. Often the performance of the duties depends on certain environmental conditions, sometimes by purely subjective as the culprit. In some cases, especially in the law set circumstances, limiting the obligation act. Thus, the duty to assist a person in danger to life or health (Art. 119 of the Criminal Code), binds to capabilities its rendering.
The concept of socially dangerous consequences
Criminal law can bind to the commission of the crime of direct action (or inaction) or with the onset as a result of this particular criminal consequences. Under the effect of crime must be understood those changes in the world, which are caused by the action (or inaction) of a person and which relate to the objective featured crime.
The damage caused by the subject of abuse, may expressed in different forms. They may consist of causing material damage (theft, destruction of another of property, etc.), physical harm (injury). Material damage is not always linked to the criminal law of the destruction or damage of items encroachment. Theft causes material damage, however, it is not associated with destruction or to damage property.
Criminal result may be, and intangible character. For example, violation of moral subjective rights of citizens - political, labor and other, breach normal of organizations, institutions and enterprises.
The legislator uses different technical receptions describe the harmful effects. A significant number of intentional offenses described in the law in such a way that the finished composition requires the occurrence of certain consequences of the crime - murder, theft, etc. Do not attack the consequences specified in the law in such cases means that there is only an attempt on commission crime. Sometimes the offense will take place upon the occurrence of severe consequences (eg pollution, damage to or destruction of forests - Art. 292 of the Criminal Code).
4. When the commission of so-called material crimes raises the question of the presence or absence of a causal link between the action (or inaction) of a person and matured harmful effects. Modern criminal law firmly hold your Vetch principle that harmful consequence can be incriminated person only on condition that it is in causal connection with its action and inaction. The question of causation is one of the difficult questions and discussion theory of criminal law. Address specific issues of causation in criminal law number of scientists is based on philosophical categories as an objective, is our existing communication between phenomena of nature and social life. Very often, there is no doubt about the causal relationship between the action (or inaction) of the subject and the consequent

harmful results. However, many doubts arise when the chain of causation between the behavior of the subject and there was the result of complicated relevant circumstances not directly related to the activities of the entity. In such situations, we need careful analysis of specific causal relations, the allocation of the entire mass of the objective relations of one of them - the reason. Due to that reason, it is only part of the relations between objective phenomenon, the problem of investigating all of the subject causation primarily involves the establishment line that separates causal links from other objective dependency. In deciding whether one should distinguish between the necessary and causally no-cause-casual link between events objective reality. A causal relationship should be recognized only to the necessary consequences of this action man, here we are talking about the implications of that were actually possible at the commission of the acts in the concrete situation and naturally flows out. All case-consequences of the actions of the person does not represent interest to criminal law. Causation is investigated and determined it was the same as it was in objective reality. Actions man are in communication with the outside world occurred during effects not only when these consequences directly caused by his actions, for example, when applied serious bodily harm, endangering life, as a result of which death of the victim, but and when the result is caused by exceptional causing features either the victim or the object properties effects or original development of the action, or an action features situation. An example in this regard is the case of S. Seeing thirteen K. running with a stick for a five-year daughter, S. several hit him once on the head with his hand. C. then the cows until the evening, and then fell ill and died four days later. At autopsy, no time was found that death was caused by an inflammation of the meninges, the cause of which was a blow to the head that caused the discrepancy bone seams in the presence of the old process of otitis media. Because of the state of health of the victim should recognize the cause of death for striking the head. Death K. is in causal connection with the actions of C. However, C can not be held criminally liable for absence subjective side of the offense - intent and carelessness in respect of causing death. The causal link between the action and the result there is only harmful when action precedes attacks result. Criminal result of an accidental consequence of human action, if it was not offensive logical consequence of this action. For example, it causes slight damage to human health, but he dies of infection, which occurred as a result of entering into the bloodstream infection during time wound treatment. In this case, between the actors and there was no effect of inner necessity connection, and there is only a purely external, random coincidence Soba-rd. Harmful effects may be caused not only action, but the omission of a person. Inaction in the face should comprise the necessary connection with the come the result that occurs when the criminal behavior of a person is expressed in Unsatisfied their special responsibilities. Therefore, only when available such obligation to commit Activism can talk at all about the criminal inaction and, in particular, to commit financial crime by omission. In the theory of criminal law of foreign countries certain popular two concepts of causality: concept «conditio sine qua non» and the concept of "adequate causality" Referring to the concept of «conditio sine qua

non», cause of action recognized the come man criminal rezult, when it was one of the necessary conditions for an offensive leading this result, and therefore, without the criminal result could not come. Forensics who hold this view, recognize the equality of all previous conditions of this event. Each of these conditions are considered as the cause of the come doing. This concept does not give room for chance like objective category. It considers the causal connection as an external traction events, ignoring the existence of the internal laws of causality. The perversity of this concept is that it enables the authorities to justify punitive criminal responsibility for the most distant consequences of the action. Under the concept of "adequate causality" cause may be the result of only the actions of the person who in general, and not only in this particular case, this can lead offensive criminal result. This result it is typical for this action, which he matches and that it is adequate. In terms of "adequate causality", it was necessary to recognize the absence of a causal link between the action and the result of the come in the above above example, in the case of AS, as a result of relatively light hand blows to the head K. death could occur only because the victim had inflammation of the middle ear.

5. Any offense is committed in certain circumstances (circumstances), which are expressed in the place and time, in the situation in the media, methods and instruments of the crime. These circumstances are optional features objective side. However, if any of them are included in the disposition of the criminal law, they are required for the elements of a crime that is taken into account when training. Otherwise, the above-mentioned circumstances are considered optional features objective side and considered only in sentencing as they have an impact on the nature and degree of public danger of criminal act. So, analyze each optional feature of objective side alone. Crime scene - a defined territory (space) where a crime has occurred. Criminal legal significance territory of the State in which the crime was committed, because it affects the question of State criminal law should be applied to the guilty. Time of committing a crime - it is a certain time interval (period), during which the crime is committed. Noted that the actions of the Criminal Code are rarely points while structural feature of the objective side, it is usually meant when talking about crimes committed during the period of serving the sentence, the period of military service and etc. Furnishings committing a crime - it is certain conditions, the situation in which there is crime. First of all, this feature is characterized by the circumstances mitigating and aggravating the punishment (for example, in breach of the legality of self-defense, extreme necessity, and others.). In rare cases, the Criminal Code is an indication of the environment commission of the offense (for example, under the public at defamation) and means . Cannons crime - it objects, substances, various kinds of devices with which the crime is committed. These include weapons, master keys, cars, documents, poisons, etc. It is necessary to distinguish between a tool and a means of crime: a tool used when the objective side (the direct commission of the offense), but a means to contribute to the commission of a crime (or facilitate its commission) . Availability mention in criminal law instruments or instrumentalities

7 lecture. The subject of a criminal offense.

1. Concept the subject of a criminal offense and its symptoms
2. Sane and the concept of insanity and its criteria
3.Criminal liability of persons with mental disorders not excluding sanity
4. Age as one of the common symptoms of the perpetrator
5. Special subject of a criminal offense, its classification and meaning.

1. Concept the subject of a criminal offense and its symptoms
The subject of the criminal offense is one of the essential elements of the offense, without which there can come the criminal liability.
Criminal-law characteristics of the subject of the criminal offense enshrined in hours. 1 tbsp. 15 of the Criminal Code: "criminal liability shall be only sane person over the age established by this Code."
The doctrinal definition of the perpetrator and legislatively fixed signs are practically the same, and in both cases, be sure to link it goes to three attributes: responsibility, a person who has attained the age specified by law.
One of the essential characteristics of the general subject of the crime is that the socially dangerous and unlawful act can only make an individual, ie human.
The subject of the criminal offense and the identity of the perpetrator - are interrelated concepts, since it is impossible to analyze the identity of the offender in isolation from the subject of the offense, and vice versa. But at the same time, we must distinguish that the perpetrator - a criminal law concept and identity of the perpetrator has a criminological concept. If we compare these two concepts by volume, of course, the identity of the perpetrator is much broader than the perpetrator, so more detail the identity of the perpetrator is studied criminology. However, some quality attributes of offender, also have a significant criminal legal significance. For example, in Articles 53, 54 of the Criminal Code provided the circumstances mitigating or aggravating criminal responsibility.
Based on the above it can be defined. The subject of the crime can be found sane person over a certain age, with criminal responsibility, provided that he committed the guilty socially dangerous act (action or inaction), forbidden by criminal law under threat of punishment.
2. Sanity, as one of the signs of the subject of the criminal offense
A mandatory feature of the perpetrator is his sanity at the time of committing a socially dangerous and criminally punishable act.
Sanity be construed as a narrow and a broad sense. In a narrow sense, as a criminal and legal elements of the crime as a subjective presupposition of guilt and criminal responsibility. In the broadest sense of the multifaceted concept and, as one of its aspects, the legal characteristics of offender, has a responsibility as a criterion limiting the guilty and criminal behavior committed by acts without fault.
Thus, on the basis of the above, it should be understood by sanity ability of a person aware of the social danger of the acts (action or inaction) and direct - therefore, be held criminally responsible for the crime.

The concept of insanity and its criteria

Insanity - a complex and multifaceted problem that has a special place in criminal law, as it is closely related to the categories of "responsibility," "diminished responsibility", "impunity of the mentally ill", as well as not delivered the deed to blame, except for criminal liability against insane persons, the possibility of the appointment and the use of coercive measures of medical nature to such persons.

Part 1 of Art. 16 of the Criminal Code contains a definition of insanity: "Do not be criminally responsible person who during the commission of a socially dangerous act provided by this Code, has been in a state of insanity, then there might not be aware of the actual nature and social danger of his actions (inaction) or control them owing chronic mental illness, temporary mental disorder, dementia or other mental condition. "

Insanity is basically characterized by two criteria: the medical (biological) and legal (psychological).

The medical criterion is a person has a mental disorder. Legal test determines the ability of a person to realize the actual nature and social danger of his actions (inaction) or to control them. To recognize a person of unsound mind, the court must have both criteria, while at the time of the commission of a socially dangerous act. Why not sufficient to establish a medical test. For most mental disorders is improving the mental health of the patient, the so-called disease is in remission and have different degrees of severity.

The essence of health (biological) test disclosed on the basis of the provisions of the science of psychiatry.

In criminal law, it is only some aspects of the concept of insanity. The medical criterion is a person has a mental disorder or other mental condition. Part 1 of Art. 16 sets four characteristics considered criterion, namely the presence of the person:

a) chronic mental illness;

b) a temporary mental disorder;

c) dementia;

g) any other mental condition.

Chronic mental illness is the result of intractable mental diseases, which are characterized by the occurrence of a long and tend to progression, they are virtually untreatable. These diseases are internal or external origin. By the nature of internal diseases include schizophrenia, epilepsy, manic depression, and others. The external character of diseases include such mental illness, the origin of which play an important role external factors. For example, this is due to brain injury, brain complications after suffering syphilis, etc.

Temporary mental disorder occurs in type, "short circuit", for some time (minutes, hours, days, weeks or months), the mental health person may be in a state of mental disorder, however, if such person is properly treated, then the person can recover. These states are: pathological intoxication pathological affect, ie, a mental disorder caused by severe mental shock, alcohol, narcotic and psychotropic psychosis.

Dementia is manifested in persistent decrease in intellectual activity. Dementia can be congenital (mental retardation) or acquired (dementia). Mental retardation, in

turn, divided into three groups: heavy - idiots average - imbecility, easy - debility Severe dementia practically does not occur in the judicial practice, because the idiots are completely helpless. The average form of dementia, imbeciles if they are recognized as such, can be found sane.
Problems arise insanity with mild dementia - retardation. Persons suffering from debility in the commission of certain crimes (murder, rape, robbery, etc.), can be found sane at the same time when they have committed such crimes as treason, forgery and others. They may be declared insane.
Other mental condition are all the other diseases, which are not included under the above-mentioned three groups of symptoms. These include serious forms of psychopathology. Insane can be recognized only deeply psychopathic personality with delusional disorders, as well as persons who have mental disorders due to diseases: typhoid fever, severe diseases of internal organs, and others. Whenever before the court raises the question of mental disability of the defendant, the duty of the court is to receive the forensic psychiatric examination. Having special knowledge in the field of psychiatric experts give an opinion on the presence or absence of mental disorders in the examinee. For face recognition insane judge, in addition to health, is obliged to establish the legal criterion of diminished responsibility, which, according to Part 1 of Article 16 of the Criminal Code is that a person might not be aware of the actual nature and social danger of his actions (inaction) (intelligent torque) or to control their actions (volitional moment). A person suffering from a mental disorder, as mentioned, is devoid of the ability to realize the nature of his act and at the same time also deprived of the ability to lead. Possible cases where there are painful impulse drive and thus there is a sign of intellectual law, ie the person is aware of his action, but there is no sign of a strong-willed. Examples of such deviations in the psyche are: kleptomania, pyromania and dramomaniya. In general, such persons are aware of the social danger of his actions, but are not able to control them. If a socially dangerous act committed in a state of insanity, a person may not be prosecuted and punished, since it is not subject to the offense. According h. 2 tablespoons. 16 of the Criminal Code a person found insane, the court may impose compulsory medical measures provided for in section VII of the Criminal Code.
3. Criminal liability of persons with mental disorders are not excluding responsibilities (art. 17 of the Criminal Code) Part 1 of Art. 17 provides that the responsible person, who at the time of committing a crime by virtue of mental disorder could not fully realize actual nature and social danger of his actions (inaction) or control them, is subject to criminal liability. This provision in the criminal law of the Republic of Kazakhstan today is a problem. Firstly, this is due to conflicting judgments on the most important provisions related to sanity, its powers and attributes. Second, the ratio of complex criminal legal categories of "responsibility," "diminished responsibility" and "insanity." Third, the ratio of "sanity with guilt," etc.
In legal literature, the responsibility of persons with mental disorders not excluding sanity, one is defined as "diminished responsibility", others as "diminished responsibility."

Diminished responsibility - a kind of sanity, which is different from total insanity that limited responsible person who is not fully conscious of their actions and can not fully supervise them during the commission of a crime, as it has a mental disorder that limits his intellectual and volitional features. Limited responsibility should not be considered as part of sanity, because it differs from it qualitatively and quantitatively, in its biological basis, although legally it has a lot in common. This kind of sanity is not a part of it just as a mental disorder is not a part of mental health.

Sanity persons with mental illness and insanity without respect to the criminal liability of legal equivalent, as actors in both cases subject to liability. However, the ability of the subject and the ability to act consciously to guide their actions in cases of complete and diminished responsibility are not the same. In this context, the legislator provides for the need to take this into consideration when sentencing. According to the Criminal Code mental disorder not excluding sanity is taken into account by the court in sentencing as a mitigating circumstance, and can serve as a basis for the purpose of compulsory medical measures.

Diminished responsibility has two medical and legal criteria. Medical-in-law is designated as a mental disorder, not excluding sanity. Legal criterion also includes the intellectual and volitional moments. The law marked an intellectual moment, that person could not fully realize actual nature and social danger of his actions (inaction), a strong-willed - to fully control them.

4.Age as one of the common symptoms of the perpetrator

Age along with sanity is one of the general conditions of criminal liability. In the criminal law and in the legal literature age, as a sign of the perpetrator is given different phrases. For example: "the age of the present Code" (Art. 1, Art. 15 of the Criminal Code), "the age at which criminal responsibility" (Art. 15 of the Criminal Code), "have not reached the age at which criminal responsibility" (n. "d" h. 1 Art. 55 of the Criminal Code), "at the age of fourteen years" (Art. 1, Art. 72 of the Criminal Code), "eighteen years of age" (Art. 1, Art. 132 of the Criminal Code), etc.

The phrase "age set by this Code," used by the legislator to indicate the general condition of criminal responsibility, which in turn is specified in Art. 15 of the Criminal Code, which characterizes the age criteria of criminal responsibility is 16 years - as a general rule (Art. 1, Art. 15 of the Criminal Code) and 14 years according to the legal list, which includes twenty-one type of crime (Art. 2, Art. 15 of the Criminal Code).

In the absence of proof of age, or if there is doubt about the authenticity of these documents must be in accordance with paragraph 2 of Article 241 of the Criminal Procedure Code of the Republic of Kazakhstan to appoint examination. In such cases, the birthday is considered the last day of the year, which is called by experts. In determining the age of the experts minimum and maximum number of years (for example, from 14 to 15 years), should be based on the examination of the proposed minimum age.

5. Special subject of a criminal offense, its classification and meaning. The question of the responsibility of the subject of the criminal offense, which has

more additional features, occurs when, without the establishment of special features, a person can not be held criminally responsible. Quite a significant number of articles of the Criminal Code has a reference to additional features of the perpetrator. Common symptoms of the perpetrator are not specified in the disposition of norms of the Criminal Code, to establish their need to address to become a common part of which is known to act as the hypothesis of criminal law provisions of the Special Part. Additional features that characterize the subject of crime, are usually set from an analysis of the disposition of the articles of the special part, as they stand in separate chapters, thereby creating a whole system of rules. For example, Chapter 15. Corruption and other crimes against the interests of public service and public administration and the head of the 18 military offenses. Additional features of the subject of the crime can be classified on various grounds. In legal literature, there are a number of such classifications.
1. Signs describing the legal status of persons - a soldier, to military service (art. 442 of the Criminal Code), parents, spouses, children (Art. Art. 137, 140 of the Criminal Code, etc.).
2. Demographic characteristics, physical properties of the individual perpetrator - gender (male - Art. 120 of the Criminal Code), age (a minor - Art. Art. 132, 133 of the Criminal Code), health status (a person sick with a venereal disease - Art. 117 of the Criminal Code), a person , the sick the human immunodeficiency virus (HIV / AIDS - Art. 118 of the Criminal Code), etc.
3. Signs describing the official position, the nature of the work, and the signs that characterize the profession of the person - the judge, employee of rail, sea, air and river transport, a doctor, a medical worker, etc. (Art. Art. 317, 344, 345 of the Criminal Code, etc.).
4. Signs characterizing the face with a past of anti social activities or repeatedly committing the crime - the existence of a criminal record (a person previously convicted of hooliganism - n. "In the" Part. 2, Art. 293 of the Criminal Code, and others.) Theft committed repeatedly (n . "b" Part 2 of Art. 188 of the Criminal Code), and others.
The following classification of the special subjects of the crime:
I. Legal Status:
1) officials;
2) military personnel;
3) prisoners
4) a citizen of the Republic of Kazakhstan
5) an alien
6) a person without citizenship
7) are required to face
II. According to demographic factors:
1) gender (male or female);
2) the family relationship;
3) the obligation to take care of the victim.
III. Antisocial activity

1) repeatedly
2) a criminal record.

8 lecture. The subjective side of a criminal offense.

1. The concept, characteristics and value of the subjective side of a criminal offense.
2. Concept and forms of guilt
3.Crime committed intentionally.
4.Crime committed by negligence
5.Crime committed with two forms of guilt
6. Error and its species

1.Concept, features and value of the subjective side of a criminal offense.
The subjective aspect of crime is one of the four required elements of the offense. In the science of criminal law at the subjective side of the crime the person is understood as mental activity directly related to the commission of a crime. Mental contents offense has an inner side in contrast to the subjective side of a criminal offense.. If the objective side can be directly perceived by the senses of man, the subjective side make the processes occurring in the mind of the perpetrator and not giving the perception of others.
Legally significant signs of the subjective side of the crime are the wines, the motive and purpose. Wine has a mandatory feature of any crime, but the wine nevertheless does not give a comprehensive answer to the question why the offender committed the crime. In clarifying this question it is also necessary to determine the motive and purpose, which in contrast to guilt are often optional features of the subjective side of the offense.
The motive of the crime is the inner motivation that guides a person in the commission of a crime.
The goal is the end result, a model which seeks to achieve a person in the commission of a socially dangerous and unlawful act.
2.Concept and forms of guilt
The h. 2 article. 19 of the Criminal Code stipulates that "objective imputation, that is criminal liability for innocent causing of harm is not allowed." This provision means that the wine is a necessary prerequisite of subjective criminal liability and punishment, that is, criminal law of Kazakhstan strictly adheres only subjective imputation.
The wines have a mental attitude to face it commits a socially dangerous act and its socially dangerous consequences, in the form of intent or negligence.
The elements of guilt as a mental attitude are the consciousness and the will, which in various combinations to form its content. Wines consists of two moments of intellectual and volitional. Intelligent fault point involves understanding the social danger of his actions (inaction), and foresight of all legally significant acts perpetrated properties, nature and severity of the harmful effects and etc. Strong-willed moment of guilt is determined by the ratio of the will of the subject to the

possible consequences in the real world of crime. When intentional form of guilt-willed moment manifests itself in a conscious focus action on achieving results. Feature volitional element in negligence is that the person is not properly making appropriate mental effort in order not to cause socially dangerous consequences. Wines - is the mental attitude of the person to them perpetrated socially dangerous acts in the form of intent or negligence, in which manifested negative attitudes of the offender in respect of social values.
Forms of guilt, its value
In criminal law, there are two main forms of guilt - intent and negligence. The law also provides the form of a double fault. The form of guilt - it set a different ratio of the criminal law of mental consciousness and the elements will form the content of guilt, which take place in the mind of the perpetrator. Guilty of the crime is recognized only person who committed the offense intentionally or recklessly. Every form of guilt is divided into species. Intent may be direct or indirect (Art. 20 of the Criminal Code). Negligence can be in the form of arrogance or neglect (art. 21 of the Criminal Code).
3.Crime committed intentionally. The h. 2 article. 20 determined that "A crime is considered committed with direct intent if the person realized social danger of his actions (inaction), foresaw the possibility or inevitability of socially dangerous consequences and wished their approach" . Intellectual time direct intent is characterized by two factors: firstly, public awareness the danger of his actions (inaction), and secondly, the possibility of foresight or the inevitability of socially dangerous consequences. Awareness of the social danger of his actions (inaction) means that a person must understand the social value and the actual content of the act committed by them. This suggests the presence of a person understanding of the object of the crime, which is committed to the assault, as well as the factual circumstances (time, place, the way the situation), under which the crime. Anticipation of socially dangerous consequences of mental representation is guilty of what could be harmed public relations. In direct intent foresight is an idea of the actual content of a particular social harm and upcoming changes in the object infringement, as well as awareness of causality between the wrongful act and socially dangerous consequences.
Strong-willed moment of direct intent means the direction of the will of the subject to achieve any results. The law volitional element of willful misconduct directly related to the desire of socially dangerous consequences.
Desire - there is a will, a decree aimed at achieving objectives, ie the desire for a particular outcome. Desire is the desire to certain consequences, which are aimed at achieving the effect of the culprit.
A crime is considered committed with indirect intent if the person realized social danger of his actions (inaction), expected their socially dangerous consequences, did not wish, but consciously allowed these consequences or treated them indifferently (h. 3 of Art. 20 of the Criminal Code).
Intelligent time indirect intent is similar to the direct intention: firstly, public awareness of the danger of the act committed, and secondly, the possibility of foresight of socially dangerous consequences.

Foresight indirect intent is connected only with the possibility, not the inevitability of socially dangerous consequences.
Strong-willed moment of indirect intent is indicated in the law, that person does not want, but consciously allowed these consequences or treated them indifferently.
The main difference between direct and indirect intention held by volitional moment.
Conscious assumption means that the person is its strong-willed actions related events consciously, ie, It allows the development of a causal relationship, which leads to the onset of socially dangerous consequences. Unlike the abstract wishes, which means a negative attitude to socially dangerous consequences, if conscious assumption is a positive attitude towards the consequences of approval.
When indirect intent indifference is a form of voluntary relationships subject to the socially dangerous consequences. At the same person who acts with this intention, it does not feel any emotional distress due to the onset of harmful consequences, as it does not pay its attention.
In the theory of criminal law, there are other types of intention: firstly, by the time of occurrence of criminal intent may be the sudden and premeditated; Second, depending on the definition of the view of the subject of the possible socially dangerous consequences of the acts committed intent is divided into definite and indefinite (determinatus and indeterminatus).
The sudden intent can be of two types: simple and affective.
Simple suddenly arisen intention is characterized by the fact that it arises from the perpetrator in a stable mental condition and is being implemented immediately or shortly after the occurrence.
Premeditation is characterized by the fact that the intention to commit a crime occurs in advance, etc, It takes a certain period of time during which the person formed the resolve to commit the crime. Depending on the degree of specificity of criminal consequences of the guilty and understanding of the subject of actual and committed acts of social properties, divided into specific intent (specify) and uncertainty (not to specify).
The specific intent when the perpetrator has no idea about the nature and extent of possible damage to the object. The specific intent can be simple and alternate. Just when the person has a clear understanding of any one individual determination result. For example, when murder strikes a knife in the heart. In case of no occurrence of plotting a result, the person responsible for the attempted crime that he's up to.
Alternative intention - the offender foresees the possibility of occurrence of two or more specific effects. In practice, in such cases, the qualification is made depending on the actual consequences. Uncertain intent is characterized by the fact that the perpetrator is no vision the specific consequences, ie individually defined consequences, and there is only a vision of the individual features.
4.Crime committed by negligence
According to Part. 1 article. 21 of the Criminal Code, an offense committed through negligence, an act committed recklessly or negligence.

Thus the legislator has fixed two types of negligence: the arrogance and negligence.

The h. 2 article. 21 of the Criminal Code it is determined that a crime is considered committed recklessly, if the person foresaw the possibility of socially dangerous consequences of his actions (inaction), but without sufficient grounds thoughtlessly counted on to prevent those consequences. Intellectual arrogance is characterized by the time of possible foresight of socially dangerous consequences of the acts committed. On the basis of this presumption has similarity with indirect intent. However, if the indirect perpetrator intent foresees real possibility of socially dangerous consequences, then the presumption is anticipated this possibility, likely as an abstract probability. For persons who have committed crimes recklessly, characterized by risky behavior.

Strong-willed arrogance characterized frivolous moment, without sufficient reason, the calculation to prevent socially dangerous consequences of the acts committed.

According h. 3 article. 21 of the Criminal Code the crime is considered committed through carelessness if the person did not foresee the possibility of socially dangerous consequences of his actions (inaction), but with proper care and forethought should have and could have foreseen these consequences. The essence of criminal negligence is that a person with a real possibility to anticipate the onset of socially dangerous consequences of his actions, does not exhibit the necessary care and prudence to avoid the consequences.

Intelligent moment negligence is characterized by two features: negative and positive.

Negative does not mean the person foreseeing the possibility of socially dangerous consequences; lack of awareness and foresight. Thus, negligence is the only kind of guilt when the perpetrator did not foresee the consequences of any form of inevitability, either in the form of real or abstract possibility of their occurrence.

Positive signs predictive moment negligence arises from the law itself, and is that the offender should have and could show the necessary care and caution in anticipation of actually caused harmful effects. The presence of these features characterizes criminal negligence as the legal concept. In order to clarify the content of negligence is necessary to define its criteria; where "it was" an objective criterion, and "may" is a subjective criterion (some authors refer to the scale of these criteria).

The objective criterion for negligence is normative, etc, the duty of a person to anticipate the possibility of socially dangerous consequences of his actions, subject to compulsory measures of care and foresight, established by regulation or hostel. Responsibilities of the person can come, firstly, from the direct instructions of the law; secondly, a specially established rules and instructions; thirdly, of the professional and other functions of the perpetrator; Fourth, the mandatory rules of the hostel. The absence of such obligations eliminates the guilt of the person, even in the case of harm.

However, one objective criterion is not sufficient for a finding of guilt, it is necessary to establish also a subjective criterion, only the combination of these two criteria is possible to establish criminal negligence.

Subjective criteria negligence is primarily related to the ability of a person in a specific situation, taking into account their individual qualities required by due care and forethought to anticipate the possibility of socially dangerous consequences of his actions. Individual quality, ie physical characteristics, level of development, professional experience, education, health, etc., should enable to do the right assessment of the situation and act according to the given situation.

5.Crime committed with two forms of guilt

According to article 22 of the Criminal Code, if the result of an intentional crime inflicted grave consequences, which under the law involve a stricter punishment, and are not covered by the intent face criminal responsibility for such an effect occurs only if the person foresaw the possibility of their occurrence, but without sufficient grounds confidently counted on to prevent them, or if the person did not foresee, but it should and could have foreseen the possibility of the occurrence of these consequences. In general, such a crime is considered committed intentionally. Crimes with two forms of fault in the law are constructed from the following two types: first, in the material composition as aggravating circumstance appears more serious consequences than in the starting lineup. In this case, there is a deliberate fault in relation to the destruction of or damage to property, and to the death of a person - reckless form of guilt. The second type with two forms of guilt is characterized by heterogeneous mental attitude to the action or inaction. To this type are qualified crimes, the main part of which is formal, and are skilled in serious consequences. For example, Art. 319 of the Criminal Code "Illegal abortion" .From legislative definition of crimes committed with two forms of guilt, as a whole should be considered intentional.

Innocent causing harm

In accordance with Part. 1 article. 19 of the Criminal Code a person shall be criminally liable only for those socially dangerous acts (action or inaction) and there was socially dangerous consequences in respect of which his fault, respectively, for causing harm to innocent of criminal responsibility does not come.

In the criminal law of the Republic of Kazakhstan, there are two kinds of harm to the innocent.

According to Part. 1 article. 23 of the Criminal Code the act deemed to be committed innocently if the actions (inaction) and there was socially dangerous consequences not covered intentionally person who committed it, and criminalized such acts, and the infliction of socially dangerous consequences of negligence are not available. In the theory of criminal law, this situation is referred to the case of subjective or "casus". Part 2 of Art. 23 is a subjective determination of the case, which in turn consists of two parts and is connected with the construction of a crime, that is, with evidence of objective side. One part is focused on crimes with the formal composition, the law indicated by the fact that the person was not aware of the circumstances of the case and could not be aware of the social danger of his actions (inaction). The second part is focused on the material composition of the crime, the law indicated by the fact that the person did not foresee the possibility of socially dangerous consequences and circumstances of the case should not have

been or could have foreseen them. In both parts, unlike negligence no objective or subjective criteria, there is a difference in the harm of innocent negligence.

Lecture 9 The concept of the legal system and the sources of the criminal law of foreign countries

1. The concept and structure of the legal system.
2. The concept of a legal family.
3. Types of legal families.
4. General description of the sources of criminal law of England, USA, France and Germany.
5. Sources of criminal law of England.
6. Sources of USA criminal law.

1. There are two different understanding of the legal (or legal) system - narrow and wide.
On the one hand, the right is a set of rules, i.e. mandatory rules of conduct established and sanctioned by the state and protected its coercive power, although this understanding of the law is not the only one. Some philosophers and lawyers consider the right to a certain ideal model of behavior. In particular, in Muslim countries it is the traditional understanding of Muslim law as the ideal system associated with the religion of Islam, rather than with the regulatory decisions of public authorities and management. In the narrow sense of the legal system - a system of internal national law, has a definite structure: the rule of law, a legal institution, branch of law (or a specific sphere of legal regulation).On the other hand, the concept of "legal system" covers a wide range of legal phenomena, including regulatory, organizational, social and cultural. Broadly speaking, the legal system is characterized by three teams of legal phenomena: 1) legal norms, institutions, industry (the scope of legal regulation) (standard side); 2) a set of legal institutions (organizational aspect); 3) a set of legal opinions, views, ideas, peculiar to a given society (legal culture).The legal system of each state reflects the patterns of development of the society, its historical, national and cultural features. Currently, each state has its own legal system, which has both common features with legal systems of other countries, and the differences between them, ie, specific features. In some states there are several parallel legal systems. For example, in the US, along with federal and there are relatively independent of each other's legal systems of individual states with their own constitutions, their own codes, their law enforcement and judicial authorities.
2. From the foregoing, it is clear that legal systems, at least as long as there are states. And when you consider the existence of 'competing' legal systems, it would appear that the world operates a great number of legal systems. However, some common features allow to combine them into defined groups (or types). The criteria categories include the following :principles of law, ways of expression and

consolidate the rule of law (techniques of legal technique), their interpretation, and others. These groups (types) are called legal families.Thus, the legal family - it's more or less broad set of national legal systems, which combine the closeness of origin, sources, basic concepts, techniques, legal techniques and methods of interpretation. For example, German, French, Italian and Swiss law quite similarly formulated many positions at the level of rule of law, and at the level of the legal institution, although, of course, there are some differences. In these countries, the leading source of law is the regulation of the French and Italian law, on the one hand, and the German and Swiss law, on the other, belong to the same legal family, which is called continental or Romano-Germanic. They are opposed, for example, the British and American law as a system of common law. For the Engl-American legal family is characterized by the leading role of judicial precedent as a source of law, the absence of, for example, in England, codified law and other basic features.

3. In today's world there are two major legal families, but are certainly not limited to all modern legal world.

3.1. Romano-Germanic family, originally creatures of the Roman law, the legal system combines many of the modern world community. It was formed in Europe in Latin (Italy, Spain, Portugal) and Germanic countries (Germany, France, Sweden, Norway, Denmark). By the Roman-Germanic legal family now includes the legal systems of continental Europe, all of Latin America, much of Africa, the Middle East countries. The impact of this legal family was reflected in the legal systems of Japan, Indonesia and other countries.

A distinctive feature of the said legal family - its formation, based on Roman law. In the course of the historical development of the initial difference between the so-called systems of Latin and German erased due to the reception of Roman law in Europe. In the 12-13 centuries formed on the basis of the codification of Emperor Justinian and existed until the end of the 18th century, a certain common European law which determined the unity within this family. Codification implemented in European countries in the 19th century led to a breach of this unity, however, some basic common features of national legal systems are preserved. This applies, in particular, play the foundations of Roman law, be used for similar systematization of legal rules of legal technique, general legal terms and categories, etc.

For the Roman-Germanic legal family is characterized by the following main features: a) the law and the right not to be identified, the right is closely connected with morality; b) the optimal generalized rule of law, ie, rules are formulated as certain abstract rules of conduct, they do not constitute a particular case and addressed to specific persons; c) the division of the right to independent branches - the industry; g) the existence of well-developed laws and regulations of the hierarchy; d) in the hierarchy of laws is dominated by the Constitution of the State; e) carried out the codification and systematization of the regulations; g) because the law and the law is not identified, a role played by the interpretation given by the courts; h) limited role of legal custom among the sources.

As a result of the impact of colonization of the Roman-Germanic family it has spread to large areas where there are now legal systems belonging to the family or related to it. It happens voluntary reception. Currently, in connection with the

unification of the European law certain opposition of "Latin" and "German" system it loses its meaning. This family, taken as a whole, is quite homogeneous. Although there are some major differences between national legal systems. These differences are associated primarily with the existence of non-European systems belonging to this family. And if the European countries are now seeking the construction of its laws come from the idea of the rule of law, human values, the primacy of international law, in Latin America and Africa, for various reasons this is not happening. In many of these countries were able to "learn" and adapt European law. But almost everywhere to the reception of such a right existed own regulatory system with its rules of conduct and its legal institutions. Reception in many cases was only partial (see. For more information: David R. Joffre-Spinosi K. decree. SOURCE.).

3.2. The Engl-American (or not continental) legal family is a family based on the so-called common law. Throughout history, this right was the basis of a very large legal family. Currently, it includes almost all legal systems, with few exceptions, English-speaking countries. The common law has had a great influence on the development of the legal system of the United States. Despite significant differences of modern legal systems of England and the United States, these two countries together have formed a family of common law. Common Law influenced the formation of the legal systems of India, Pakistan and a number of African countries.

It should be borne in mind that English common law is not right across the UK, because it applies only in England and Wales and does not apply to Scotland, Northern Ireland, Channel Islands and Isle of Man, with their own legal systems. English law has developed independently from continental Europe, reception of Roman law was not affected. Historic date of occurrence of English law is considered to be 1066, when the Normans conquered England. Before that there was the Anglo-Saxon law, which bore the particularistic nature, it was purely local. By the way, for this reason, very unfortunate given the family name "Anglo-Saxon". In English lawyers it is puzzling.

After the Norman conquest englsax right to retain and apply local jurisdictional authorities. However, in case of serious conflicts could apply to the Royal Court (Curia Regis), that is, in fact, to the judges, who were appointed by them to administer justice in the provinces. The jurisdiction of the royal courts is the question of public law, land ownership, and the case of particularly serious offenses. Individuals are usually not able to apply directly to the Royal Court, and had to ask for a king, but in fact - from the Lord Chancellor, the issuance of the order (Writ), allows you to defer consideration of the dispute in the Royal Court. Initially the orders were issued in exceptional cases. But over time, the number of court decisions in such cases has increased significantly and, as a result, the royal court created a new right - the right to common English. Why is the "common"? Yes, because it is right, the total for the whole of England, where previously operated local customs.

Thus, the common law (Common Law) was established by royal courts, which since the 12th century sat at Westminster. In contrast, lawyers in continental

Europe, the British royal judge did not address nor Roman, nor to canon law. Their main task was to address issues of public law with specific procedures (at the time, as the Roman law - is, for the most part, private law). Rules determining the foundations of justice, conduct of the trial, examination of evidence, enforcement of judgments, for lawyers these countries were more important than the substantive law. With time came the process of expanding jurisdiction of the royal courts, improved court procedure. At the end of the Middle Ages, they essentially were the only judicial authorities. Municipal and commercial courts considered minor affairs, ecclesiastical courts have considered a disciplinary clergy and marriage and family affairs. Historical features of formation of common law played a decisive role in the fact that English law did not know the division into public and private, categories and concepts of Roman law were not taken, the jurisprudence has developed its own category, unknown legal systems of continental Europe (the term "overt act" construction of the "reasonable man", later - "probation," etc.).

Thus, a system of common law, the essential features of which were: public and regulatory framework, particular importance to the proceedings, judicial lawmaking. To give the system stability, which in other countries, the law provides, litigation has introduced a rule binding precedent: Once formulated the judgment subsequently became mandatory for the judge issued the it, and for all the other judges. If necessary, go beyond the strict limits of the closed system established precedents, as before, was used appeal to the king, that is, in fact, to the Chancellor. Last gave his answer questions, which are not considered legal because it was made outside the scope of the common law, but meets the requirements of justice. The Lord Chancellor used the canonical principles and Roman law, which helped overcome many of the outdated common law rules and to make a fair decision. As a result, in addition to the common law had the right to justice.

As follows from the literature, by the beginning of the 17th century, a compromise was reached between the courts of common law and the court of Lord Chancellor. Currently, equity is considered by the English courts as an integral part of English law. In the 19-20 th centuries, the English criminal law doctrine to pay more attention to the substantive law, which was carried out on the basis of systematization of decisions of the general law. In the second half of the 19th century disappeared formal distinction between courts of common law and chancery courts of justice. In the 20th century, increased the role of laws and regulations. The objective requirements of economic development, trade and international cooperation resulted in some convergence between the British and continental law. In general, the differences between the English law on the rights of the Romano-Germanic family are as follows: a) the lack of English law on the division of public and private, in the division of civil, commercial, administrative law; dividing by the presence of common law and equity; b) English law less general and abstract than the norm, such as French or Italian law; c) a source of English law is the judicial practice; the courts are not only used, but also create legal norms;

g) an important source of English law currently serves as the law, ie an act of Parliament. While some systematization and held, it does not have such a

character, as in the civil law countries; d) auxiliary sources of English law is the custom, and the doctrine of justice.As well as the right to the Roman-Germanic family, the common law in a particular period is widespread in the world for the same reasons colonization or voluntary reception. Here, too, we must distinguish the European common law (England, Ireland) and non-European. Outside Europe (for example, in some Muslim countries and India), the common law was perceived only in part. Among the common law countries have, such as the United States and Canada, where there was a culture, different in many respects from the English. Therefore, the right of these countries to gain broad autonomy within the framework of the common law legal family. In the US, the common law with the settlers came from England in the 17th century. In America, it was hailed by then British law, which develop and operate here during the whole period of domination of England, until 1776. Later British and American law has developed in parallel, the effect of the legal systems of these states directly, indirectly became immediate. Currently, the US right is significantly different from the English. The American right has a peculiar national character, it reflected the differences in the social and political system, culture and traditions of the people. For example, some significant differences between the US legal system determined by the federal structure of the state, especially the mentality of American society, and others. These differences manifest themselves in the conceptual apparatus and the structure of the rights, in the formulation of specific legal norms and others. A major role in the development of the legal system of the United States belongs to the US Congress, the Supreme Court, legislative and judicial authorities of individual states. Trial practice of law as a source of the United States has historically given priority. However, the development of the American legal system has led to an increase in the value of written law, law in the proper sense of the word. Of fundamental importance for the functioning of the legal system is the US Constitution in 1787. The principle of judicial control over the constitutionality of laws is one of the most fundamental in the United States. This principle is unknown in England. Due to the increasing number of laws in the United States is working on systematization of legislation at the federal level and the state level. In most North American states banned to prosecute for an act does not establish criminal law. Romano-Germanic and Anglo-American family evolved in parallel, but not in isolation from each other. Some of the ideas and concepts of borrow. This primarily was due to the influence of Christianity, the general philosophies. Later, borrowed other ideas. At the moment is large enough role of the law in the United States, law codified acts.

Lecture 10. The concept of a criminal act in the foreign criminal law acts

1. The definition of a criminal offense in the criminal law of modern foreign countries.
2. Signs of a criminal act.

3. Classification of criminal acts.

1. The definition of a criminal offense in the criminal law of modern foreign countries.

The concept of a criminal act is the central, pivotal in any legal system. However, it is not always given in the text of the law or regulation. In English and French criminal law legislative definition of a criminal offense is missing. The concept of crime is given either in judicial decisions (England), and its relation to specific types or in the literature on criminal law (England and France).Normative definitions exist in some North American states and in the Federal Republic of Germany, however, and they are essentially of a formal nature eleven. Normative definitions. Of the countries in question to date regulations, enshrined in the laws or other legal regulations, definitions exist, as has been said, only in the North American states and in Germany. Most of the newly adopted Criminal Code and the Criminal Code states the German legal definition of the crime given in article containing an explanation of the terms used in the Code. All of these codes are set out 'the formal definition of the crime, that is, those in which was not disclosed, and the social nature of the crime is defined as the act prohibited by the law under threat of punishment. Thus, in § 15 of the Criminal Code of California the following definition: "A crime or a public criminal offense is an act which is committed or not committed in violation of the law prohibiting or mandating its commission, as well as that prescribed after conviction (guilty) one of the following punishment ... (followed by the enumeration of punishment). " The question of what should be prohibited by criminal law the conduct, what is its social orientation, in this definition is not solved."Attempt" means the behavior for which punishment of imprisonment or a fine stipulated by any rule of law of this State, or, in general, any rule of law, local law or ordinance public authority of the State, or any order, rule or instruction which adopted what- any governmental agency in accordance with the granted to him for that authority. " In this definition, the main feature of the criminal trespass - punishable acts specific criminal penalties of imprisonment and a fine. It is interesting the fact that the crime according to this definition, is the act prohibited "any rule of law."An example of a formal definition can serve as art. 40-1-104, Near To Colorado, according to which "a crime is a violation of any state law or the behavior described in this law, for which can be assigned to a fine or imprisonment." From the definition it is clear that to the fore a sign of blameworthiness as prohibited acts "any law" does not allow to distinguish the crime from other offenses. However, this definition excludes the possibility of criminal prosecution in the absence of a violation of the law (and not the "rule of law"), which is undoubtedly a positive sense. The current Criminal Code of the Federal Republic of Germany at the legislative level establishes a formal definition of a criminal act. Thus, § 11, explaining the meaning of certain terms used in the Criminal Code gives the following definition: "a wrongful act - only one that carries out the offense under criminal law" (see. P. 5). It is indicated on a sign as the presence in the actions of the person ended under criminal law.

Thus, both the American and German law to the fore put forward a formal indication of the crime - a prohibited act by the law.

12. Doctrinal definitions. In the legal literature of foreign countries, there are a variety of definitions of criminal acts. In general, all the doctrinal definition can be summarized in three groups: a) formal; b) the pragmatic; c) mixed. The British and American criminal law theory, there are a variety of opinions on what constitutes a crime. Some authors believe such illegal and punishable; others - anti-social and punishable; third - wrongful, culpable (intentional) and punishable, etc. However, the most common is the formal definition of the crime as an act prohibited under penalty of criminal law. For example, an American professor of sociology and law of New York, the University of believes that the crime - a deliberate act or omission that violates the criminal law (statutory or case) committed in the absence of circumstances exempting or punishment, and punishable State.

Attempts to give any precise and incontestable definition of the offense did not succeed in France. Today, the basis for the French lawyer put, as a rule, only the formal criterion. In this regard, a criminal act is defined by them as an act that violates the criminal law as any act provided for and punishable by criminal law (Moscow-Leningrad Russ) etc . This position, according to the French lawyers, eliminates the biggest mistake of any such determination, his divisiveness. But, nevertheless, it is recognized that this definition of lifeless and does not consider the fact that a criminal act - the act of human and social.

Widespread formal definitions in the criminal law of foreign countries is quite natural, since these determine * tion largely correspond to one of the basic principles of classical criminal law - the principle that a criminal offense and can be found just such an act that is prohibited by law. Along with the formal definition of the offense contained in the works of the neoclassical school of criminal law, there are many definitions, these representatives of the sociological trend, especially American pragmatists. Crime, under this approach, is any act or omission punishable by society as harm directed against him . At the fore not the wrongfulness of the crime, and understood in its own interests of society (pragmatism).British and American lawyers attempted to give such definitions, which combined elements of the definition put forward by both neoclassical and sociological. The crime, according to this view, is an illegal act or failure to comply with duties that are an encroachment on the interests of society and that involve the perpetrator established rules of punishment. In French legal literature can also be found more detailed definition of the criminal act than just a formal definition. For example, in the course M.-L. Russ "Criminal Law" (1987) there is "is any act provided for and punishable by criminal law in view of the fact that it" hurts "morals or disturb public order." The positive is that the definition is indicated on a sign of a criminal act as "malware," but says nothing about the nature and extent of such a "severity."

Despite the attempts of foreign lawyers to move away from the traditional definitions, dominated by determining where the fore a formal sign - prohibited acts criminal law.

2. Signs of a criminal act.

2.1. The British and American criminal law is not developed any common definition of the crime, so there is a uniform system of signs per se. The situation is complicated by the fact that each of the elements of a crime shall be interpreted in different ways.

In general, in the Anglo-American criminal law concept
involves crimes typically have two components:
«Actus reus» (objective criterion) and «mens rea» (subjective criterion). «Actus reus» - this is the behavior that resulted in a voluntary act or omission causing some damage or pose a threat of such damage. At the same time we are talking about a particular act or omission, intent to commit an offense, is not expressed in concrete material actions
basically not punishable. Definition «mens rea» (literally "guilty mind") is more complicated. This psychological element of criminal behavior, which is designated in the regulations are usually the words "with intent", "knowingly", "willfully", "careless", "deception", etc. Thus, the concept of «mens rea» close to the concept of guilt. At the same time, a sign of guilt is often absent from the definition of crimes in the Anglo-American legal literature. This is partly due to the fact that the current legislation and judicial practice does not believe the blame certainly must sign a crime. Even when you point to as a sign of guilt crime writers usually have in mind only the general rule, which is largely emasculated all sorts of exceptions. However, some American lawyers believe that guilt is necessary for criminal responsibility, but the requirement of establishing it is not constitutional, except for individual cases . In the context of the United States, this means that the criminal law establishing the punishment for an act and does not require that the act was committed guilty, may be declared unconstitutional only as an exception. English Professor G. Cooper believes that the question of the possibility of criminal liability without fault lies outside the realm of law. According to him, it is primarily a question of criminal policy, which is decided taking into account the social and cultural factors in a given era. The criminal law of England and the United States, there are crimes for which the guilty is a must. The responsibility for such a crime is called "absolute" or "strict". For criminal prosecution in this case, is enough to establish the commission of a person specified in the Statute of the action or inaction. Count the number of specific cases in which such liability is established, it is very difficult. In textbooks on criminal law can be found the assertion that absolute liability as a general rule is introduced laws providing for punishment for a minor violation of the rules governing trade, production of medicines, food, etc. In practice, things are different. Objective imputation is considered acceptable in cases where the offense is committed for which can be assigned to the deprivation of liberty, and for the long term. An example of this is the legislation establishing liability for sexual offenses against minors (rape, indecent assault, etc..), For which it may be imposed severe penalties including the death penalty In the literature, and these signs are called crimes as illegal and social orientation (or criminally punishable harm).Illegality ("legal") as an element of a crime is mentioned not only in the doctrinal, but also in the regulatory (legislative) sources, where there are determination. Requirements of the law of

criminal responsibility was one of the key provisions set out in the period of bourgeois revolutions. It has received registration in the form of the principle of «nullum crimen sine lege» - «no crime without instructions on the law." However, in England and the United States, this principle has a different sound. Crime was announced not that against the law, but that is contrary to law. Thus, under the rule of law from the outset we understood as rule of law and common law, developed by judicial practice (see. Lecture on the sources of criminal law of modern Western states).In England, it has long been conventional wisdom that the reason for criminal prosecution may serve not only as an act adopted by the Parliament, but also other sources of law. When dealing with an act which is not prohibited by law, the English court could always bring to justice the person who committed that act if another court has previously recognized the same or similar criminal offense and to punish those responsible. The limits of the use of criminal sanctions in these cases quite uncertain. In the classic work by J.. STIF "Digesty criminal law" is written: "Acts that are considered to cause harm to society, in some cases, deemed less dangerous crimes (misdimino-set), as the court considers the case, it is clear that there is an analogy between the acts and others who were considered less serious crime, although the first one is not explicitly prohibited by any rule of law and no precedent is not directly applicable to them. "The application of this rule in practice, not only led to the laying of criminal liability, by analogy, but also to the introduction of new types of crime at the discretion of the courts. In the same way on this issue for a long time passed and US criminal law. However, the US position has changed. There was a significant displacement of the unwritten rules of criminal law Scripture (legislative). US federal law and the law of certain North American states are now expressly provides that criminal liability can be imposed only on the basis of legislation. But the formal role of the case law is still great. The above par. 15 Criminal Code of the State of California to a violation of "the law", which can be understood as the rule of law, and as a rule of common law. Punishable harm is sometimes stated in the Engl-American legal literature as an element of a crime. Some authors have even put forward this character to the fore. Thus, R. Cross and F. Jones believes that the crime - a legal damage compensation which is the punishment of the offender on behalf of the state. Referring to the damage as one of the signs of a crime, some authors suggests the harm caused to society, the other part of the law or just the dangers. In many cases, this feature does not introduced into the definition of the crime, because their authors do not consider it significant. Even those authors who speak about the dangers as evidence of a crime, the harm is meant by different things. Some believe the fact of harm guilty of committing a prohibited act (formalist direction), others recognize the damage, not the act itself, and its adverse consequences in terms of loss of social values (realistic direction). Thus, under the latest means: justice and the rule of law; life, liberty, honor and money; common security, social, family and religious formation; common morality, social resources, the overall progress and personal life, etc. (See .: Criminal Law of foreign countries. The decree. SOURCE. 2).Many French lawyers give the definition of a criminal act through the transfer of its component features. For example, J. Lsvasser A. Chavannes Jean Montreuil and

in his course "Criminal Law and Criminal Process" (1988) define it as "an act or omission, provided for and punishable by criminal law, the impugned his executor and not justified by the implementation of any rights. " By this definition, a criminal act includes four features: a) material (action or inaction), b) legislative (provided and punishable by criminal law), c) psychological (imputation) and d) sign the so-called unjustified. This means that there are no reasons to justify such behavior (legitimate defense, state of necessity, etc.).

Lecture 11 Guilt and responsibility

1. Wines as a sign of a criminal offense in the criminal law of modern foreign countries.
2. The forms of guilt.
3. The concept of diminished responsibility.
4. The notion of restriction (reduced) sanity.

1. Wines as a sign of crime in criminal law of England, USA, France and Germany.
eleven. The criminal law of England and the United States wine designated Latin words "mens rea". For many centuries the existence of this term accumulated a lot of his interpretations. He interpreted the British and American lawyers as the immoral motive as vicious will, as an evil mind, and so on. N.
English Judge Devlin believes that the "mens rea" includes two elements: a) the intent to commit an offense, and b) knowledge of the circumstances which make the act a crime. In a very authoritative work Helsberi is the assertion that the "mens rea" - is "worthy, from a legal point of view, the mental state of condemnation." R. Cross and F. Jones give this concept a different interpretation: "That any mental condition ... that is directly or indirectly indicated in the definition of the crime, which is charged with ". The current Criminal Code of France also does not contain a general definition of guilt. In the doctrinal sources of criminal law design of guilt based on the concept of a common (or
minimum) of guilt, which characterizes any criminal act.
Total wine - is "at least" a psychological trait, without which there can be no criminal act. It is a simple volitional moment: because any sane person act in the absence of force majeure (or force majeure) is an act of will, to that extent in the act, as such, contains not only the material, but the psychological element of it. It is associated with the concept of the criminal act, in the sense that the latter is not the result of force majeure. In a special resolution of the Court of Cassation on 13 December 1956 it contained a provision stating that "any criminal act, even unintentionally, suggests that the perpetrator acted with intelligence and desire." This "minimum" of psychological trait in the "pure" form is present in police abuses. In other cases, a more evolved psychological trait, and it can be to intentional or unintentional fault. In this aspect of wine - is the mental attitude of

the person to commits an act and its consequences, ie. E. The wine in the traditional for the Russian legal sense. According to the Criminal Procedure Code of the French police, any violation, even in a perfect state of relapse may be the subject of a summary procedure (Art. 524). The prosecutor's office, elected by the procedure of summary proceedings, the judge passes a police tribunal criminal record. The judge makes a decision on the case without trial by making a criminal order, in

It is expressing any justification or condemnation of the appointment of a penalty.

According to French law, the judge of the police tribunal hearing the case of the violation is not only not required to prove the guilt of a special person (intent or negligence), but is not obliged even the reasons for its decision (see. Art. 526 of the CCP French). For the prosecution of police violation of a fairly general guilt. A person shall be guilty of the very fact of the violation and may be exempt from liability only if he proves that it acted under the influence of force majeure, or if there are circumstances, such as insanity, or failure to the age of criminal responsibility.

In such cases, the French lawyers say presumed fault. According to them, the act itself gives grounds to assume guilt of the person. Presumed wines are often called violation of" because it is a psychological trait, characteristic of the majority of violations. However, on the one hand, there is a sufficient number of disorders which are characterized by a more developed psychological symptom (negligence or intent) and, on the other hand, a large number of offenses of a technical nature include the "at least" a psychological trait.

The concept of guilt as a sign of a criminal act and not in the current Criminal Code of the Federal Republic of Germany. However, the Code contains a number of provisions dealing with guilt and its forms, but their definition is given.

Thus, § 15 German Criminal Code says that a criminal offense punishable by a deliberate action, if the law does not expressly provide a punishment for reckless actions.

The h. 1, § 16 contains a provision that the person is not aware of the circumstance (or circumstances), which relates to the composition provided for in the law of the law, commits an act unintentionally. In the hours. 2, § 16 states that a person misinterprets circumstances the composition provided by the law, and I think that makes a more serious crime than it actually is, liable to punishment for less serious crime (or more precisely, on a milder law - Ed.). Consequently, § 16 says the error in the knowledge of the actual circumstances of the offense.

In § 17 contains a provision on the actions of innocence of persons who erred with regard to their unlawfulness, provided that such persons could not avoid errors (in the ban). If these persons are able to avoid it, they are subject to criminal liability, but they may be assigned to more lenient than that provided by law, the punishment.

In these rules can clearly be seen understanding of guilt (intent or negligence) as a mental attitude of a person only to the actual grounds of acts, which are provided in the composition. In the previous lecture he mentioned that he and composition of German lawyers is only a formal description in the law of the external features

of the prohibited act. And because the composition includes only external signs of a crime, then 1
consciousness faces covered, according to the Criminal Code of the Federal Republic of Germany, only when these signs.
2. The forms of guilt.
2.1. In the current legislation, jurisprudence and doctrinal sources referred to England, as a rule, three | form of guilt: a) intent, b) and negligence) negligence. '
In determining the intent (intent) in English law to the fore willed moment, the goal pursued by the person committing the act. The act is considered to be intentional if it is the result of the will and if the person who commits it, 'expect consequences for and hoping for.
As a general rule, the fact that the intention of does not require special proof in view of the fact that there is a limit 'presumption according to which the wrongful acts committed by sane and sensible man, always an act of his will. Burden rebut the presumption lies on the accused. If he could not deny it, he may be convicted of an offensive result, regardless of their willingness or unwillingness.Imprudence (recklessness) is often interpreted as a subjective state in which a person deliberately ignores the possibility of harmful effects. R. Cross and F. Jones, for example, point out that the concept of negligence used in two senses. In one sense, (subjective), it means a conscious assumption of undue risk, while the second (objective) - behavior that actually involves undue risk, regardless of whether he knew about this risk or artist did not know. "
Almost negligence is a form of guilt, which is attached to any independent meaning or value, very close to what is commonly understood by intention. If we consider this form of guilt from the standpoint of strong-willed attitude of a person to his criminal behavior, the fundamental difference between it and the intention there. And intentions and inadvertently suggest that the illegal actions were an act of will. The difference between these forms of guilt British lawyers • The offered gayut look in another - in respect of the subject to the consequences of criminal behavior. The act is considered to be intentional if the subject is intended to achieve a certain goal, if he expects] the onset of a particular result, and wants it. When negligently with respect to the effects of a strong-willed subject currently offline. He does not want harmful effects, but is aware of or. I must be aware of the threat (or a high degree of availability) of their occurrence. This takes into account the ability to recognize and anticipate that a certain person has not held responsible for the crime, and an abstract "reasonable person." Practically, this means that they are recognized as a reckless act, a person foresees the consequences of his behavior, and those acts, when it did not foresee, but should anticipate them, since it is the power of "reasonable person."
The concept of negligence (negligence) - one of the least defined concepts of the General Part of criminal law of England. Determination of negligence emerged and developed, mainly in the jurisprudence in relation to the interpretation of the subjective side of the careless murder, and at a later time - in relation to other formulations. Its features are a haphazard jumble of individual points of view of the judges on various matters discussed for several centuries.

The concept of guilty or criminal negligence is determined by the courts in relation to specific incidents. For example, the "ordinary" negligence may be criminalized if it is "irresponsible", "rough", and so on. N. According to B. Stanton, "negligence to be criminalized should be rude or irresponsible. What is this negligence, shall be determined in each individual case. It may consist of reckless negligence in the commission of acts, which under other circumstances would be lawful or - in the irresponsible inaction, provided that there is clearly expressed the obligation in relation to a person who has suffered harm " .

The vast majority of the definitions of negligence is completely excluded volitional moment - the desire to commit a criminal act, and to achieve a certain result. This is the main difference between the negligence of intent. More difficult is the situation with the delimitation of negligence negligence. The fundamental difference between them is an intellectual moment, namely in anticipation or foresight harmful consequences of behavior. However, in practice to distinguish between these forms of guilt on this criterion can not be as careless act is recognized not only when the person foresaw the risk (the possibility of) the consequences, but if it did not foresee, but they should have foreseen. The latter is typical for negligence, because it represents a "deviation from the requirements of prudence", t. E. A subjective state in which the person does not foresee, but it should and could have foreseen the consequences of wrongful. Failure is defined as the line between the criminal offense of negligence, and one which does not entail criminal liability (negligence in civil law). Most of the literature indicates that first, unlike the second, must be the result of gross deviations from the requirements of prudence. The word "gross" as value category, of course, is not enough clear criterion.

2.2. Traditional Engl-American doctrine, as stated in a lecture § 5, are two main constituent element of the offense: actus reus (criminal act) - the material element that characterizes the actus reus and mens rea (guilty state of mind) - an element that characterizes the subjective side. In this case, the concept of "state of mind" is interpreted very broadly, they shall state not only the intellect, but also the will and even emotions. The teaching of these elements of the crime for the Engl-American criminal law is fundamental, and it plays the same role as the offense in other jurisdictions (such as Germany and Russia).

In the field of criminal law these elements are never mentioned, although references to them can be found in the decisions of English and American ships.

The objective characteristics of the crime, according to the doctrine, includes three "material" element: the behavior, the surrounding circumstances and the result. The rules of the current US legislation, describing the subjective aspect of a crime, formulated with regard to these elements, since the perpetrators to its behavior, its accompanying circumstances and the result may be different.The drafters of the Model Criminal Code of the United States (1962) proposed a new classification of the forms of guilt. It replaced the traditional Engl-American law doctrine of mens rea, developed under the common law. The new classification, reproduced with certain amendments to the Criminal Code of the vast majority of states, includes four forms of guilt:

1) in order; 2) with the consciousness; 3) imprudently; 4) casually. Each of these forms of guilt can be defined either in relation to all or some of the above-mentioned material elements of the crime.

To put four forms of guilt in relation to the "results", they are as follows: 1) in order to effect the one who strives to achieve this outcome; 2) consciousness operates one who is not intended to achieve this result, but is aware of the "high degree of probability" that his conduct would lead to this (or other formula, "practically convinced" that such a result occurs, ie. E. aware of the inevitability of the consequences); 3) careless actions person who deliberately ignores the "substantial and unjustified risk" offensive result (where the probability of realization of the consequences, they are not inevitable, but guilty of ignoring the danger);

4) negligent acts who are not aware of the existence of "substantial and unjustified risk" offensive result of what he should have known (in this case, the perpetrator did not wish to attack the consequences, is not aware of their probability, but had to be aware of, as it is under the force "reasonable person").

The differences between these individual forms of guilt, according to the American Bar Association, should be carried out as follows.

Actions "in order to" different from the action "with knowledge", depending on the presence or absence of a positive desire to cause the result. The difference between 2 and 3 forms of guilt is determined, above all, risk, whether it is "very likely" or just a "substantial and unjustified" in terms of "reasonable person." Negligence is different from other forms of negligence and lack of risk awareness. However, this unawareness is a gross deviation from the requirements of negligence, which would be observed "reasonable" person in this situation. "

In the case of negligence, in the opinion of many American lawyers, it is difficult to speak of a "culpable state of mind" of the negative moral evaluation of behavior and a warning about the impact of punishment. Therefore negligence is considered to be the "norm" of criminal liability and negligence - a form of guilt, the punishment for which is provided only in exceptional cases.

As for the differences between the negligence of harming the innocent, then as a criterion here again are the requirements of the doctrine of "reasonable person." A court may declare the defendant not guilty if he does not find "gross deviation" from the standard of conduct which is in its place adhered to "a reasonable person".

In many states of the Criminal Code is fixed hierarchy of forms of guilt:

if the law as an element of the crime involves negligence, which means that the responsibility is possible and if there is any "higher" forms - negligence, and so on. d., but if

contains an element of negligence, liability, "down", t. e. in the presence of negligence excluded.

Note that in some states still apply the old wording of guilt (GA). Moreover, most American judges continue to assess the guilt of the defendant is not in terms of "elemental" analysis, and from the standpoint of notions of "culpable state of mind" (E. "Mens rea").

Traditional institute "strict" or "absolute" liability remained in US law and after. reforms in the states. Such liability shall be the presence of the material elements of the offense, when he established a violation of the law and does not require proof of guilt of the offender (in France - presumed guilt). Here's how to define the concept of "strict liability" in the Criminal Code of the State of New York. In § 15.10. of the Criminal Code contains a provision that the minimum requirement for criminal responsibility is the implementation of the behavior of the person, which includes a voluntary action or failure to act that the person is physically able to perform.

Lecture 12 Inchoate offense

1. The responsibility for the preparatory actions and attempted criminal law of foreign countries.
2. Voluntary renunciation and active repentance.
3. The notion of reduced (limited) sanity in the criminal law of foreign countries.

1. The responsibility for the preparatory actions and attempt.
It is considered axiomatic that the criminal law of foreign countries punishes preliminary criminal activity only since the assassination, and earlier stages, in particular, preparation, criminal impunity.
In fact, the criminal law of foreign countries has developed a number of methods by which criminal repression extends far beyond assassination.
In Anglo-American law, for example, there are specific institutions (incitement, collusion), by which establishes the responsibility for the preparation and even more the early stages of the preliminary activities. The notion of an assassination attempt in the Criminal Code of North American states as well, it allows you to include a lot of preparatory acts.
In France and Germany, there are also cases of the criminalization of some preparatory activities as per independent criminal acts (France and Germany - the preparation for high treason, the creation of criminal groups, preparation for counterfeiting or signs of payment, preparation for counterfeiting official identity, etc. .). What are the consequences of recognition preparatory acts independently kinds of criminal acts? Firstly, there is no longer possible voluntary withdrawal, but only active repentance, since we are talking about cooking as an act consummated; Secondly, the law recognizes the possibility of a number of attempts to commit such acts (in fact - the attempt to cook). Thus, according to par. 3 § 129 of the Criminal Code of Germany, the attempt to create a criminal association is punishable. At the same time the creation of a criminal association is defined as a community organization, goals and activities are aimed at committing criminal acts. Thus, the scope of criminal liability even be extended forward with respect to the completion of the crime. It is not only a punishable preparatory action, but also an attempt on their commission. Third, recognition of such actions

autonomous offenses (misdemeanors) allows, for example, in France, to establish for them the same punishment as any act consummated.

eleven. The term "overt act" in the Engl-American criminal law.

English criminal law of the feudal period came from the fact that criminal responsibility is not enough to intention to commit a crime, you must also define criminal behavior, the concept of which is interpreted rather narrowly. Offense was considered a particular action and in some rare cases - omission that causes real damage to the right values to be protected. This is the meaning of the term "overt act" (overt act), which up until now, despite the change in the content, is considered to be a prerequisite of liability in the English criminal law. Even an attempted crime as an act which caused no real damage was considered essentially untouchable.

However, the principle of "overt acts" did not apply to political offenses. In the field of political crimes are not established common law and statutory principle offense was considered even "naked intent."The requirement for "overt act" in common criminal offenses, on the one hand, and criminal prosecution of "naked intent" in the field of political crimes, on the other, led to the fact that English criminal law has been developed for the recognition of offenses, and such acts that criminal law of foreign countries

by their nature do not cause any actual harm. Changed and the content of "overt acts". Thus, the rules on political crimes receive a broad interpretation of the scope and spread to the general criminal offenses. Several precedents in the matter, laid the foundation for standards of liability for certain types of pre-criminal activities in general. To date, the Anglo-American criminal law, there are three independent institutions: a) incitement; b) a conspiracy; c) attempt. None of them is any inchoate offense. Their common feature is that they are pre-activity without causing real harm.

For criminal responsibility in all cases, except for conspiracy required to establish their focus on damage to protected rights and interests, and thus - in a manner prohibited by other law, ie. E. The commission of another criminal act. Responsibility for conspiracy can occur in the case where the purpose of collusion is an act does not recognize the rights of the criminal.

Thus, in the Anglo-American law the concept of pre-criminal activity is not related to the stages of development of a crime, and is three, developed the common law, a separate category of crimes (in the US - mis-diminorah), which are characterized by not finishing the implementation of criminal intent in the commission in this respect any "overt action."

13. Incitement is inducing another person to commit a crime. This crime can be committed not only failed, but do not even start. Moreover, when there is a question of responsibility for instigating both autonomous offense, always refers to the incitement failed because the incitement that led to its outcome, seen as complicity and more severely. In 1881 in England, one bridge was charged with incitement to murder. Bridge was accused of publishing a newspaper article in which he expressed joy over the assassination of the Russian Emperor Alexander II and called to follow the example of the People. In the judgment the court wrote

that incitement, addressed "to the world in general, being committed by the publication of articles in the revolutionary newspaper" shall be punished similarly instigation of a particular person.
Criminal liability is established and for attempted incitement. So, in 1974 in England, a Ransford was accused of having written a letter, which contained a proposal to commit a crime, even though this letter was not received by the addressee. These actions were deemed an attack on incitement. "
Until 1977 incitement to any offense prosecuted in England, the indictment that has been repeatedly criticized by British lawyers, since in practice incitement to total crime was regarded as more serious than the one to which it was directed. After 1977 the total incitement to crime is considered a total criminal act, ie. E. Is seen in a simplified manner.
In England, incitement is punishable by the common law:
imprisonment at the discretion of the court. However, the size of the penalty can not exceed the size of the punishment provided for the offense of incitement to that carried out. The same punishment is punished and attempted incitement.
Criminal Law US plays the English law on liability for incitement. However, in contrast to this institution in England, where the crime is considered to be incitement to any offense in the United States undeniably criminal considered only incitement to serious crime (Fe Colonies), against incitement to other crimes uniform rules and a uniform judicial practice in the United States is not.
Model Criminal Code of the United States (1962) at para. 1, Art. 5.02 defines incitement as follows: "A person is guilty of incitement to commit a crime, if in order to promote • its commission or facilitating its commission, it tells another person, encourages him and asks him to take a certain conduct which would constitute a crime or an attempt to commit this would constitute a crime or his complicity in the commission of the crime or attempted to commit. " In the model of the Criminal Code specifically indicates that incitement to the consciousness of a person who incites to commit a crime, no matter for criminal prosecution under the condition that the behavior of the instigator was aimed at bringing such incitement to the consciousness of the person named.
The basis for the protection, according to the US model of the Criminal Code is the fact that the instigator of the crime before the execution of another person takes measures to prevent the crime, and the measures should lead to its result. In this case, the developers say the Model Criminal Code on voluntary refusal, although correct here, in our view, to talk about active repentance, as the crime of incitement is considered ended, regardless of the offense was committed by a person against whom it was committed incitement . According to Art. 510 (1) of the Criminal Code of Hawaii person is guilty of criminal incitement, if he tells others, to promote his or requests to commit a crime. It does not matter whether or not able to bring his incitement to the consciousness of the person who incited to commit a crime. However, there are states (Indiana, Montana, Nebraska, Ohio, and others.), In which the incitement in his understanding of what was said above, is not recognized as a criminal.

In most states of the Criminal Code, which is considered to be a separate offense incitement, the penalty for it wears off by one degree compared to the penalty for the offense to which the incitement carried out. Although previously incitement to even the most serious crimes could be punished only as a misdemeanor.

14. In English law conspiracy is a crime and a general, statutory, and (after 1977) law. Conspiracy at common law is an agreement between two or more persons 1) to commit an unlawful act, or 2) make legal action by illegal means. This offense is punishable at common law to the indictment and punishable by "discretionary" by imprisonment or a fine, or both imprisonment and a fine.

By statutory law is a criminal offense of conspiracy. Statutory collusion can not be punished by a more severe punishment than the crime for which he was sent. According to § 5 of the Law of England attempted criminal offense in 1981, which introduced changes in the concept of conspiracy, as defined by the Law on Criminal Justice in 1977, the person is guilty of conspiracy to commit a crime if it "enters into an agreement with any other person or persons that must carry out an action that, if an agreement is made in accordance with their intentions, either: a) necessarily constitute a crime or to lead to the commission a crime by one or more parties to the agreement, or: b) should be a crime, but because of the existence of certain circumstances, it is not possible. "

Collusion, as well as the incitement is not inchoate offense as criminal responsibility for it occurs regardless of whether the committed whether it was in fact planned the crime, and, moreover, because they themselves planned actions can be completely unassailable (rightly action illegal means), an agreement on such action, in general, can not be the stage of a criminal act. Conspiracy at common law may be directed to harm interests of morality or a gross violation of public decency is not a crime (see. P. 3 § 5 of the Criminal Justice Act 1977). Act 1977 to conspiracy, incitement and attempt at collusion were declared impregnable.

Collusion, as well as incitement, is considered essentially "unfinished" act. "The obvious effect", allowing to prosecute for conspiracy, in this case, the agreement itself is about to carry out any unlawful act or a lawful act by unlawful means. Member of conspiracy is punishable by virtue of the fact of agreement.

An essential element of collusion - participation of at least two persons. The peculiarity of English criminal law is that an agreement between husband and wife can not be considered collusion, because from the perspective of English law legally husband and wife recognized one person. This rule applies to Muslims: regardless of the number of wives a Muslim all agreements with them, no matter what the degree and nature of the illegality of such agreements, collusion will not be considered. There will be no collusion agreement with a person under the age of criminal responsibility, as well as the intended victim of the offense (§ 2 of the Criminal Justice Act 1977). Under English law the responsibility for conspiracy is defined as follows. If the intended crime is murder or any other crime for which the penalty is precisely defined in the law, an offense which carries a sentence of life imprisonment, an offense prosecuted to the indictment, for which no set upper limit of the term of imprisonment is guilty of conspiracy shall be punished by life

imprisonment (n. § 3 of the Law of 1977). In other cases, the punishment shall be imposed in the amount of term of imprisonment prescribed for the offense. If the agreement is aimed at the commission of two or more crimes, can be appointed provided the most severe penalties for these crimes.

For conspiracy to commit a crime, the English courts often prescribed harsher punishment than the corresponding consummated crime committed by one person, because under English law any form of illegal organizations considered more dangerous phenomenon than a crime separate litsom.UK many North American states It requires not only agreement of two or more persons, and the commission of one or more specific actions aimed at the implementation of actions planned conspiracy. The penalty for conspiracy and confined to the punishment provided for the offense itself or the appropriate punishment limits established in the law. The new criminal law states limited the purpose of collusion is only punishable commission of a crime (as opposed to England, where he is punished conspiracy to commit lawful act by unlawful means).

Under English law on criminal offense of attempted in 1981 a person is guilty of an attempt if "with the intent to commit a crime a person commits an act which is more than mere preparation to commit a crime" (p. 1, § 1).

Defining the objective side is the complexity of even the theory of Anglo-American criminal law. One problem is the demarcation of actions constituting an attack from simple cooking, which is traditionally considered untouchable.

A classic in the matter of the delimitation of the assassination attempt and preparation is considered to be a decision of the English Court in the case of Robinson (1915).

Jeweller Robinson to obtain insurance premium Enron hid his valuables, bound himself and began to call for help. Later, he told police that he had been banditry. When checking the statements of Robinson's "stolen" jewelry was he found, in connection with which he was charged with attempted fraud. The court acquitted Robinson, stating in the decision that its action is only "preparing to commit a crime, but was not made a step in the commission of it." Thus, the objective criterion to assassinate hailed "the next step" to commit a crime, which must define the difference between an attack and others unpunished manifestations of intent, including preparations. If Robinson filed a claim to the insurance company for insurance premiums, it would be considered that "the next step they made."

However, the criterion of "the next step" suffering great uncertainty.