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**Legal and doctrinal problems of determining the elements of the objective side
in crimes committed by negligence**

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**Уголовно-правовые и доктринальные проблемы определения объективной
стороны преступлений, совершенных по неосторожности**

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Abstract

Determining the objective side (actus reus) in crimes committed by negligence presents profound theoretical, doctrinal, and practical challenges across legal traditions. Unlike intentional offenses, where human agency consciously directs conduct toward a prohibited outcome, criminal

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negligence involves inadvertence, breach of duty, or unreasonable risk-taking. This study examines five core doctrinal problems surrounding the objective side of negligent crimes: (1) conceptualizing criminal omissions vs. positive acts; (2) establishing legal causation versus functional conditioning connections (обуславливающая связь) in omissions and medical malpractice; (3) demarcating multi-subject negligent infliction (неосторожное причинение) from intentional complicity; (4) applying the non-regression clause (Regressverbot), the principle of trust (Vertrauensgrundsatz), and division of labor; and (5) assessing the qualification impact of factual errors regarding objective side elements. Utilizing comparative-legal, formal-dogmatic, and normative analytical methods across Common Law, Civil Law (German, Estonian), and Post-Soviet legal systems, this research demonstrates that criminal omissions operate through a functional conditioning mechanism rather than direct physical causation. The paper advocates for the legislative recognition of careless infliction as an autonomous form of joint criminal liability, the formalization of the conditioning connection in omission offenses, and the adoption of a unified major-departure standard (gross negligence) to prevent defensive practices in specialized professions.

Аннотация

Определение объективной стороны (actus reus) преступлений, совершенных по неосторожности, представляет серьёзные теоретические, доктринальные и практические проблемы в различных правовых системах. В отличие от умышленных преступлений, при которых человеческая воля сознательно направлена на достижение запрещённого результата, уголовная неосторожность предполагает невнимательность, нарушение обязанности либо неоправданное допущение риска. Настоящее исследование рассматривает пять основных доктринальных проблем, связанных с объективной стороной неосторожных преступлений: (1) теоретическое разграничение уголовно-правовых бездействий и активных действий; (2) установление уголовно-правовой причинности в сравнении с функциональной обуславливающей связью при бездействии и врачебной халатности; (3) разграничение коллективного неосторожного причинения от умышленного соучастия; (4) применение принципа непрерывной цепи причинности (Regressverbot), принципа доверия (Vertrauensgrundsatz) и разделения труда; (5) оценка влияния фактических ошибок относительно элементов объективной стороны на квалификацию преступления. Применяя сравнительно-правовой, формально-догматический и нормативно-аналитический методы анализа в рамках англосаксонской, континентальной (германской, эстонской) и постсоветской правовых систем, исследование демонстрирует, что уголовно-правовые бездействия функционируют посредством механизма функциональной обуславливающей связи, а не прямой физической причинности. Работа отстаивает законодательное признание неосторожного причинения как автономной формы коллективной уголовной ответственности, формализацию обуславливающей связи при преступлениях, совершённых путём бездействия, и принятие единого стандарта грубой неосторожности для предотвращения оборонительной практики в специализированных профессиях.

Keywords: objective side, criminal negligence, omission, causation, conditioning connection, careless infliction, factual error.

Ключевые слова: объективная сторона, уголовная неосторожность, бездействие, причинность, обуславливающая связь, неосторожное причинение, фактическая ошибка.

1. Introduction

1.1 *The Paradigm of Culpability and the Dilemma of Criminal Negligence*

Criminal law across modern legal systems functions as an instrument of social control, justice, and order, imposing the state's most severe sanctions upon individuals who violate protected social interests (Quinney & Shelden, 2018; Chriss, 2022; Putra et al., 2026). At the core of criminal liability lies the fundamental maxim *actus non facit reum nisi mens sit rea*—an act does not make a person guilty unless the mind is also guilty (Fletcher, 1971; Mousourakis, 2021). Historically, intentional conduct (*dolus*) has constituted the undisputed core of criminal responsibility. In intentional crimes, human agency consciously chooses to do harm, coupling volition with foresight of forbidden consequences (Fletcher, 1971; Putra et al., 2026). By contrast, criminal negligence (*culpa*) has long been viewed by legal theorists as an aberrant, inferior, or problematic ground for penal liability (Fletcher, 1971). Because the negligent actor does not intend or desire to produce a prohibited harm, imposing criminal sanctions for inadvertent risk-taking raises persistent moral and doctrinal anxieties regarding just deserts, deterrence, and individual culpability (Fletcher, 1971; Putra et al., 2026).

Despite these theoretical discomforts, every major Western and post-Soviet legal system penalizes negligent violations of critical legal interests, particularly life, physical integrity, health, environmental security, and public safety (Fletcher, 1971; Mousourakis, 2021; Yanina, 2016). Rapid technological, industrial, medical, and transportation developments have multiplied the opportunities for severe inadvertent harm, making negligence offenses increasingly prominent in modern judicial practice (Putra et al., 2026; Radov, 2020). However, because negligence lacks the affirmative internal choice that defines intentionality, legal systems must rely heavily on objective standards to demarcate criminal conduct from non-criminal accidents (Fletcher, 1971; Mousourakis, 2021).

1.2 *Conceptualizing the Objective Side Across Legal Traditions*

In legal doctrine, the analysis of criminal offenses is structured around recognized models of crime definition. In post-Soviet and civil law continental systems, criminal liability requires the satisfaction of the *corpus delicti*, a structural model comprising four interdependent elements: the Object (protected legal interest), the Objective Side, the Subject (sane physical person of statutory age), and the Subjective Side (Altiyev & Ziyamov, 2026; Yanina, 2016). The Objective Side constitutes the external, tangible manifestation of the crime in the physical world. Its obligatory core elements in result-based crimes consist of: (1) a socially dangerous act or omission; (2) a prohibited socially dangerous result; and (3) a necessary causal link connecting the conduct to the result (Altiyev & Ziyamov, 2026; Radov, 2020). Optional or qualifying elements of the objective side include the place, time, method, means, and surrounding circumstances of commission (Altiyev & Ziyamov, 2026).

By contrast, Anglo-American Common Law jurisdictions traditionally follow a bipartite structure of crime, distinguishing between the objective element—actus reus (the guilty act or state of affairs)—and the subjective element—mens rea (the blameworthy mental state) (Brink, 2019; Mousourakis, 2021). Continental European civil law systems (such as Germany and Estonia) utilize a three-tier structure consisting of statutory typicality (Tatbestand), unlawfulness/wrongdoing (Rechtswidrigkeit), and individual culpability/guilt (Schuld) (Feldmanis, 2019; Fletcher, 1971). Despite these terminological and structural variations, all major legal families share a common analytical imperative: before a defendant can be scrutinized for subjective fault or blameworthiness, the prosecution must establish the existence of an objective legal transgression.

1.3 Statement of the Problem and Doctrinal Controversies

In crimes committed by negligence, determining the elements of the objective side is fraught with deep legal and doctrinal uncertainties. Because the actor's mental state in negligence is characterized by inadvertence or unjustified confidence that harm will not occur, the entire weight of distinguishing criminality from lawful risk falls upon the objective side (Fletcher, 1971; Putra et al., 2026). Five central doctrinal problems dominate contemporary penal theory and judicial practice:

1. Conduct Identification (Action vs. Omission): Determining when passive non-feasance or failure to fulfill a professional duty qualifies as a criminal act, particularly in complex medical, occupational, and organizational settings (Mousourakis, 2021; Radov, 2020). 2. The Causation Conundrum in Omissions: Resolving whether an omission physically causes harm under the traditional *conditio sine qua non* ('but for') test, or whether omissions operate through a functional conditioning connection that permits external causal forces (disease, trauma) to produce death or injury (Radov, 2020). 3. Multi-Subject Negligent Infliction: Defining the legal nature of multi-party negligence ('careless infliction'). Because statutory complicity (соучастие) strictly requires joint intentional participation, multi-actor negligent harms must be theoretically grounded in autonomous, interconnected, and interdependent acts (Yanina, 2016). 4. Intervening Causes and Risk Allocation: Navigating the non-regression clause (Regressverbot), the principle of trust (Vertrauensgrundsatz), and horizontal/vertical divisions of labor when one negligent actor contributes to a risk that is subsequently actualized by another party's negligent or intentional act (Feldmanis, 2019; Mousourakis, 2021). 5. Objective Qualification and Factual Errors: Assessing how factual misapprehensions regarding objective side elements (means, methods, target person, causal sequence, quantitative scale) affect the legal qualification of negligent offenses under statutory rules and the principle in *dubio pro reo* (Altiyev & Ziyamov, 2026).

1.4 Research Objectives

This study aims to conduct a comprehensive comparative and doctrinal investigation into the legal problems of establishing the elements of the objective side in negligent crimes. By synthesizing scholarship and judicial developments across Common Law (England, New Zealand), Continental European Law (Germany, Estonia), Post-Soviet Jurisdictions (Uzbekistan, Russia), and Civil Law (Indonesia), this paper formulates unified theoretical frameworks to resolve ongoing ambiguities in judicial qualification, expert medical assessments, and legislative drafting.

2. Materials and Methods

2.1 Research Methodology and Analytical Framework

This study employs a normative legal research methodology combined with formal-dogmatic and comparative legal analysis (Altiyev & Ziyamov, 2026; Putra et al., 2026). The normative-dogmatic approach examines positive statutory provisions, penal codes, and established doctrines of criminal law to evaluate how the objective side of negligence is formulated and applied within systems of criminal liability (Putra et al., 2026). The comparative legal method examines five major legal traditions: Anglo-American Common Law, Continental European Law (German and Estonian dogmatics), Post-Soviet Jurisdictions (Russian and Uzbek criminal codes and Supreme Court Plenums), Indonesian Criminal Law, and Japanese Penal Code provisions (Altiyev & Ziyamov, 2026; Fletcher, 1971; Mousourakis, 2021).

2.2 Methodological Synthesis

To rigorously evaluate objective side elements, the study applies a comparative heuristic model connecting interpreted statutory norms, established factual parameters, reasoned legal assessments, and the degree of social danger (Altiyev & Ziyamov, 2026). The analysis separates the objective dimension of wrongfulness/legality (*Rechtswidrigkeit*) from the subjective dimension of culpability (*Schuld*), ensuring that objective parameters are established prior to fault evaluation (Fletcher, 1971).

3. Results and Discussion

3.1 The Conduct Element: Positive Acts, Voluntariness, and Criminal Omissions

In penal doctrine, criminal conduct constitutes the primary physical component of the objective side. Conduct may manifest either as a positive act (a willed bodily movement) or as a passive omission (a failure to act when under a legal obligation) (Mousourakis, 2021). A fundamental prerequisite for both active and passive conduct is voluntariness—the actor must possess the physical and psychological capacity to exercise control over their bodily movements or to avert the prohibited risk (Fletcher, 1971). Conditions such as physical duress, reflex actions, automatism, or total incapacity negate the voluntary character of conduct, thereby precluding the establishment of the objective side altogether (Fletcher, 1971).

In result crimes (crimes requiring a tangible physical harm such as death or bodily injury), criminal liability for an omission presupposes that the actor violated a specific legal duty of care (Mousourakis, 2021). While general 'Good Samaritan' statutes exist in certain civilian jurisdictions (e.g., § 323c of the German Criminal Code or Article 450 of the Dutch Penal Code), Common Law and post-Soviet systems generally reject an undifferentiated duty to rescue strangers in peril (Mousourakis, 2021). Instead, criminal liability for an omission arises only when a particular legal duty of care is imposed upon the actor. Comparative jurisprudence establishes five primary sources of such legal duties:

1. **Statutory Obligations:** Explicit legislative mandates imposed on specific categories of persons (e.g., parents' duties to provide necessities and protect children under ss. 151–152 of the New Zealand Crimes Act 1961) (Mousourakis, 2021).

2. Status and Domestic Relationships: Natural or legal family relationships (parent-child, spouse-spouse) generating inherent obligations to shield vulnerable individuals from harm (Mousourakis, 2021).

3. Voluntary Assumption of Care: Undertaking the custody or care of a helpless or vulnerable adult, thereby secluding them and preventing others from rendering aid (Mousourakis, 2021).

4. Contractual and Professional Undertakings: Employment contracts or professional positions requiring active safety preservation, such as medical practitioners, railway gatekeepers (Mousourakis, 2021; Radov, 2020).

5. Prior Creation of a Dangerous Situation: The established legal rule that a person who innocently or negligently creates a source of risk or danger incurs an immediate legal duty to take reasonable steps to prevent subsequent harm (Mousourakis, 2021).

3.2 Causation vs. Conditioning Connection in Omission and Medical Negligence

Establishing the causal link between the actor's conduct and the prohibited result is a mandatory element of the objective side in result-based crimes (Mousourakis, 2021; Radov, 2020). In crimes committed by positive action, factual causation is conventionally established through the *conditio sine qua non* ('but for') test: conduct is a factual cause if the prohibited consequence would not have occurred as and when it did without the actor's intervention (Mousourakis, 2021). However, establishing factual causation is insufficient for criminal conviction; the prosecution must further prove legal or salient causation—that the conduct constituted a substantial, imputable cause that morally justifies attributing the result to the defendant (Mousourakis, 2021).

In crimes of omission—particularly medical negligence (iatrogenic crimes) and professional safety breaches—the application of traditional causality doctrine faces immense philosophical and legal hurdles (Radov, 2020). Non-events or passive failures to act do not initiate physical causal processes in the physical world; rather, they allow pre-existing natural processes (e.g., internal hemorrhaging, pathological disease, traumatic wound) to run their course unimpeded (Mousourakis, 2021; Radov, 2020). This has led to a long-standing doctrinal debate between scholars who assert that omissions are strictly non-causal (a-causal) and those who argue that omissions directly cause harm in the social and legal realms (Radov, 2020).

To resolve this theoretical impasse, recent legal scholarship developed by Radov (2020) demonstrates that the objective side in omission crimes does not rely on direct linear physical causality, but rather on a functional conditioning connection. Under dialectical and relativistic philosophy, a physical cause actively generates or produces a physical change in another object. In contrast, a condition constitutes an essential element of a system that permits an existing causal process to produce a harm (Radov, 2020). When a physician negligently fails to provide mandatory medical care to a stabbed patient who subsequently dies of blood loss, the physical cause of death is the mechanical trauma and hemorrhage caused by the assailant's knife. The physician's omission did not generate the bleeding, but acted as a negative condition that permitted the fatal process to finalize (Radov, 2020).

Radov reformulates the 'Golden Rule of Causality' specifically for criminal omissions: rather than mentally subtracting the omission (which yields an absurd result), the law-applier must mentally replace the negligent omission with the mandatory, required conduct prescribed by professional standards. If substituting the required conduct demonstrates that the prohibited harm

would have been prevented, a legally binding conditioning connection is established between the omission and the result (Radov, 2020). This distinction explains why forensic medical experts (who evaluate direct physical etiology) frequently report that medical omissions are not the direct physical cause of death, while courts correctly find a legally sufficient conditioning connection that satisfies the objective side of statutory offenses such as failure to render assistance (Article 124 Russian CC) or official negligence (Article 293 Russian CC) (Radov, 2020).

3.3 Multi-Subject Negligent Infliction (Careless Infliction)

A major problem in objective side determination occurs when a single negligent outcome is brought about by the combined actions of multiple individuals. In criminal law doctrine, statutory complicity (соучастие) is defined strictly as the joint intentional participation of two or more subjects in an intentional crime (Article 32 Russian CC; Putra et al., 2026; Yanina, 2016). Complicity requires subjective coordination, a shared criminal design, and mutual awareness among participants (Yanina, 2016). Consequently, legal theory unanimously rejects the concept of 'negligent complicity', as negligent actors lack a shared intentional design (Putra et al., 2026; Yanina, 2016).

However, empirical judicial practice is replete with incidents where multiple actors inadvertently contribute to a single fatal or disastrous result—such as workplace safety violations, industrial collapses, transport accidents, and multi-doctor medical errors (Yanina, 2016). In research by Yanina (2016), this legal phenomenon is conceptualized as 'Careless Infliction' or multi-subject negligent harm-doing. Careless infliction is characterized by five specific objective and subjective features:

1. Multiplicity of Subjects: Two or more independent actors fulfilling statutory age and sanity requirements (Yanina, 2016).
2. Absence of Complicity/Intentional Coordination: Each participant acts autonomously without prior agreement or shared intentional purpose (Yanina, 2016).
3. Interconnected Conduct: A objective sequence of acts or omissions committed independently by each actor (Yanina, 2016).
4. Interdependent Causation: A structural interaction where the act or omission of one negligent party influences or exacerbates the conduct of another, combining to trigger the prohibited result (Yanina, 2016).
5. Single Negligent Outcome: A unified socially dangerous consequence resulting from the combined negligent acts (Yanina, 2016).

Recognizing 'careless infliction' as a distinct objective side category ensures that all contributing negligent actors are held proportionately responsible under relevant negligent offense provisions, rather than arbitrarily prosecuting only the last individual in the causal chain (Yanina, 2016).

3.4 Intervening Causes, Non-Regression, and the Principle of Trust

In Continental penal dogmatics, the attribution of negligent outcomes across multiple actors is governed by the Non-Regression Clause (Regressverbot) and the Principle of Trust (Vertrauensgrundsatz) (Feldmanis, 2019). The non-regression clause posits that when a third party intentionally or autonomously intervenes in a causal sequence initiated by a prior actor, liability for the ultimate harm is restricted to the intervening party, relieving the original actor of responsibility (Feldmanis, 2019). However, modern penal theory recognizes vital exceptions to non-regression where the original actor violated a specific duty of care designed to prevent third-party harm:

- **Duty to Secure Hazardous Objects:** If an actor negligently leaves a firearm or toxic substance accessible to unauthorized third parties in violation of statutory safety regulations, the subsequent criminal misuse of the object does not shield the original actor from negligent prosecution (Feldmanis, 2019).

- **Recognized Preparedness for Harm:** If a third party's readiness or intent to commit a crime is objectively recognizable to a prudent person, the original actor cannot claim non-regression (Feldmanis, 2019).

The Principle of Trust (Vertrauensgrundsatz), derived originally from traffic law, dictates that an individual who complies with applicable duties of care is entitled to presume that other members of society will likewise act lawfully and carefully (Feldmanis, 2019). In organizational, industrial, and medical team settings, the principle of trust delineates the objective scope of due diligence across divisions of labor (Feldmanis, 2019):

1. **Horizontal Division of Labor:** Peers working alongside one another (e.g., a operating surgeon and an anesthesiologist) are entitled to trust that each specialist properly performs their professional duties without continuous cross-checking, unless objective grounds for suspicion arise (Feldmanis, 2019).

2. **Vertical Division of Labor:** Hierarchical relationships (supervisors and subordinates) permit superiors to trust subordinates provided the superior fulfills three organizational duties: (a) careful selection of qualified personnel; (b) issuing clear, compliant instructions; and (c) maintaining proper operational supervision (Feldmanis, 2019).

3.5 The Impact of Factual Errors on Objective Side Qualification

The qualification of an act in criminal law is the logical operation establishing exact correspondence between the factual features of a committed act and the elements of a criminal norm (Altiyev & Ziyamov, 2026). In legal theory, errors are divided into legal errors (mistake of law / *Verbotsirrtum*) and factual errors (mistake of fact / *Tatbestandsirrtum*) (Altiyev & Ziyamov, 2026; Fletcher, 1971). While a mistake of law generally does not negate criminal liability under the maxim *ignorantia juris non excusat* (except in cases of unavoidable normative inaccessibility or reliance on official administrative explanations), a mistake of fact directly alters the content of fault and changes objective side qualification (Altiyev & Ziyamov, 2026; Fletcher, 1971).

Empirical research in post-Soviet judicial practice demonstrates five major operational types of factual error affecting objective side qualification (Altiyev & Ziyamov, 2026):

1. **Error as to the Object:** Misapprehension regarding the legal nature of the target interest (e.g., attempting to steal ordinary property believing it to be military equipment) shifts qualification to an inchoate attempt according to the direction of intent (Altiyev & Ziyamov, 2026).

2. **Error as to the Person (Error in Persona) vs. Stray Blow (Aberratio Ictus):** In error in persona, the causal course develops as planned against a mistaken identity, leaving objective qualification unchanged; in aberratio ictus, the physical blow strays to a third party, requiring dual qualification for attempted intentional crime against the intended target and negligent harm against the actual victim (Altiyev & Ziyamov, 2026).

3. Error as to Means and Methods: Utilizing unsuited means or targeting an unsuited object (e.g., shooting a corpse believing the person is alive) constitutes an impossible attempt, shifting qualification from completed crime to attempted crime based on directed intent (Altiyev & Ziyamov, 2026).

4. Error as to Qualifying/Aggravating Circumstances: Under Article 38(2) of the Japanese Penal Code and modern post-Soviet doctrine, an aggravating objective feature (e.g., committing an act against a pregnant woman or on an especially large scale) may be imputed only if independent evidence proves the actor was consciously aware of the aggravating fact (Altiyev & Ziyamov, 2026).

5. Error in Causal Development: Essential deviations in the causal chain (e.g., striking a victim believing them dead and throwing them into a lake, where death occurs by drowning) sever unified intent, requiring dual qualification for attempted intentional homicide and negligent homicide (Altiyev & Ziyamov, 2026).

3.6 Reconciling Objective Legal Standards with Individual Culpability

The findings of this comparative investigation reveal that legal systems consistently grapple with a foundational paradox: how to measure criminal negligence against general, objective standards while preserving individualized fairness and respect for human autonomy (Fletcher, 1971). Common Law courts have historically leaned toward objective, external standards of negligence, evaluating conduct against the hypothetical 'reasonable person in the circumstances' (Fletcher, 1971; Mousourakis, 2021). However, as Fletcher (1971) perceptively observed, conflating the objective determination of risk permissibility with individual culpability obscures the structure of criminal liability.

Civilian Continental dogmatics (German and post-Soviet theory) resolve this paradox by rigorously distinguishing between Legality (*Rechtswidrigkeit* / Unlawfulness)—which assesses objectively whether a risk is substantial and unjustified—and Culpability (*Schuld* / Blameworthiness)—which examines subjectively whether the specific individual had a fair opportunity to perceive and avoid the risk given their personal capacities and excusing conditions (Fletcher, 1971). Applying this two-tiered framework demonstrates that negligence is not an aberrant departure from *mens rea*, but a parallel rationale of personal culpability based on the actor's blameworthy failure to utilize their capacities to perceive and avoid impermissible societal risks (Fletcher, 1971).

3.7 Policy Implications and Recommendations for Legislative and Judicial Reform

The findings of this study yield four crucial policy and legislative recommendations for modern criminal justice reform:

1. Calibrating the Criminal Negligence Threshold (Gross Negligence / Major Departure): To prevent 'defensive medicine' and the paralysis of essential professional activities, criminal liability for professional negligence must require proof of gross negligence (a major departure from the standard of care expected of a reasonable professional), as exemplified by section 150A of the New Zealand Crimes Act 1961 and *R v Adomako* (Mousourakis, 2021). Simple or ordinary civil negligence should remain strictly within the domain of tort and administrative law (Fletcher, 1971; Mousourakis, 2021).

2. Legislative Codification of Careless Infliction: General parts of penal codes should be updated to incorporate explicit statutory provisions recognizing 'careless infliction' (multi-subject negligent harm-doing) as an autonomous form of joint liability distinct from complicity, enabling fair, proportionate prosecution of all contributing negligent actors (Yanina, 2016).

3. Formalization of the Conditioning Connection in Omission Offenses: Procedural and substantive guidelines should clarify that in criminal omissions, the objective side causal requirement is satisfied by establishing a functional conditioning connection via the modified Golden Rule of replacement conduct, bridging the gap between forensic medical etiology and judicial decision-making (Radov, 2020).

4. Statutory Codification of Factual Error Rules and In Dubio Pro Reo: Penal codes should codify general rules on factual error, mandating that objective qualifying elements cannot be imputed without independent proof of the actor's awareness, and enforcing the principle in dubio pro reo at the objective side qualification stage (Altiyev & Ziyamov, 2026).

4. Conclusion

The comparative doctrinal analysis identifies five recurring challenges in determining the objective side of negligent crimes: the legal characterization of omissions, the attribution of harmful results to failures to act, multi-actor negligent harm, intervening conduct and the allocation of duties, and the effect of factual mistakes on legal qualification. In omission cases, the proposed functional conditioning approach evaluates whether performance of the required duty would have prevented the prohibited result. Where several actors contribute to one outcome, each actor's breach of duty and its connection to the result must be assessed individually rather than presumed from collective participation. The principle of trust and the limits of non-regression require attention to the applicable division of responsibilities and foreseeable risks. These conclusions support clearer statutory and judicial criteria for distinguishing criminal negligence from non-criminal error while preserving individualized culpability.

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