

MICKY SHORT NOTE CENTER
CRIMINAL LAW BOOK I short note

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UNIT-I

INTRODUCTION TO CRIMINAL LAW

What is Criminal law?

- ✓ The definition of a crime has always been regarded as a matter of great difficulty.
- ✓ Criminal Law is the body of law defining crimes against the community at large, regulating how suspects are investigated, charged, and tried, and establishing punishments for convicted criminals.

If so, what is Crime and criminal science?

- ✓ “Crime” is an offence committed by an individual who is a basic unit of a society. Therefore, Criminal Science” is a social study. The main aims of Criminal Science are:
 - To discover the causes of criminality,
 - To devise the most effective methods of reducing the amount of criminality,
 - To perfect the machinery for dealing with criminals.

What are the main Branches of Criminal Science?

- ✓ Based on these three objectives, three main branches of Criminal Science have developed. They are:

1. **Criminology:** concerned with *causes of crimes* and comprises of two different branches.
 - 1.1. **Criminal Biology:** This investigates causes of criminality, which may be found in the mental or physical constitution of the delinquent himself such as hereditary tendencies and physical defects.
 - 1.2. **Criminal Sociology:** This deals with enquiries into the effects of environment as a cause of criminality, such as the objective factors like social, political and economic conditions leading to criminality, also termed as *criminal anthropology*.
2. **Criminal Policy or Penology:** deals with treatment, prevention and control of crimes and it makes use of the information provided by Criminology.
3. **Criminal Law:** The Criminal Policies postulated by the above twin sister-branches i.e. Criminology and Penology, are implemented through the instrumentality of ‘Criminal law’. Criminal law in its wider sense consists of two branches.
 - 3.1. **Substantive Criminal Law:** lays down the principles of criminal liability, defines offences and prescribes punishments for the same.

- 3.2. **Adjective/Procedural Criminal law:** it look after the process of the administration and enforcement of the substantive criminal law.

What are the requirements to the efficient Criminal Law?

- ✓ A body of special rules regulating human conduct promulgated by state and uniformly applicable to all classes to which it refers and is enforced by punishment.” It means the whole body of criminal law to be efficient must have four important elements;
 - a. **Politically:** implies that only the violations of rules made by the state are regarded as crimes.
 - b. **Specificity;** connotes that it strictly defines the act to be treated as crime. In other words, the provisions of criminal law should be stated in specific terms.
 - c. **Uniformity:** implies its uniform application to all alike without any discrimination, thus imparting even-handed justice to all alike. The idea is to eliminate judicial discretion in the field of administration of criminal justice.
 - d. **Penal sanctions:** imposed under the criminal law that the members of society are deterred from committing crimes. It is, therefore, obvious that no law can be effective without adequate penal sanctions.

What are the major purpose of criminal law in general?

- ✓ The objectives of Criminal law are
 - a. the protection of persons and property,
 - b. the deterrence of criminal behavior,
 - c. the punishment of criminal activity and
 - d. Rehabilitation of the criminal.

What are the major purpose and function of Ethiopian criminal law?

- ✓ The specific purpose and function of Criminal Law are clearly stated in Art. 1 of the Criminal Code of the Federal Democratic Republic of Ethiopia;
- ✓ **N.B.** Function is thus a special activity or task while purpose is the ultimate objective to be achieved.
- ✓ Therefore, it follows that the Criminal Code of Ethiopia endeavors to achieve the purpose of “ensuring order, peace and security of the state and its inhabitants for the public good” through declaration of forbidden conduct, providing for suitable punishment, reform of criminals and preventive measures to control the commission of crimes.

What is wrong and morality?

- ✓ A *wrong* is an act forbidden by the society or when Society prohibits certain activities basing on the general conscience of the society, which is found in *the values and norms* of the society.
- ✓ The concept of morality explains the values of a particular society. This means that a given society declares certain acts, which offend the moral conscience of that society as forbidden.

Is the violation of all morality constitutes legal punishment?

- ✓ Since all violations of morality cannot be characterized as crimes, there is a necessity to identify the particular class of violations or forbidden acts or wrongs for the purpose of defining what 'crime' is.
- ✓ wrongs are classified in to two;
 - a. **Legal Wrong:** The wrongs prescribed by the criminal law and The state may respond to any of such acts in two different ways:
 - **Civil Wrong:** Where the state takes action against the wrong-doer at the instance of the injured party and
 - **Criminal Wrong:** Where the state by itself proceeds against the wrong-doer, the wrong is referred to as criminal wrong.

b. Moral Wrong:

What is the Relation between Morality and Criminal Law?

- ✓ Though morality and law can be precisely distinguished, they are not totally distinct phenomena.
- ✓ They are related to each other in that they both **aim at maintaining social order**. There is a category of wrongs towards which law and morality react with common hatred. They are offences like murder, rape, arson, robbery, theft, etc.

What are the basic concepts of Crimes?

- ✓ There are no easy explanations for the phenomena collectively called crime.
 - a. **Crime is deceiving concept** because it covers an enormous range of human behavior.
 - b. **Crime is multi-dimensional:** it requires the efforts of all concerned organs
 - c. To common man crimes are those acts which people in society "consider worthy of serious condemnation". Therefore, crime is an act which both forbidden by law and the moral sentiments of the society.

N.B. To understand this explanation of Penal law three questions have to be answered:

- ✓ What kind of conduct is ‘forbidden’? (Is not a static one; it changes with the change of social norms and the notion about crime also changes with time)
- ✓ What kind of ‘formal social condemnation’ is considered appropriate to prevent such conduct?
- ✓ What kinds of ‘sanctions’ are considered as best calculated to prevent officially outlawed conduct?

What is Crime?

- ✓ The word “Crime” was originally taken from a Latin term “Crimen” which means “to charge”. The Greek expression “Krimos” is synonymous to a Sanskrit word ‘Krama’ which means “Social order”.
- ✓ Therefore, in common parlance the word crime is applied to *those acts that go against social order and are worthy of serious condemnation.*
- ✓ Though there is no precise definition for crime, we can still have an understanding of the word by examining different definitions put forward by different jurists.

- a. Crime is a “Public Wrong”—Blackstone:** is “*an act committed or omitted in violation of a public law either forbidding or commanding it*”. **However,** Blackstone’s definition fails to define crime satisfactorily.

There is yet another accepted meaning of public law given by Kenny, (year) According to him, public law means all “positive law” or “municipal law” which means “any law made by the state”.

Blackstone modified definition and said, “*A crime is a violation of the public rights and duties due to the whole community, considered as a community in its social aggregate capacity*”.

In addition to that Stephen, while editing Blackstone’s Commentaries committed further error as he slightly modified the definition and reconstructed it in the following words: “*A crime is a violation of a right, considered in reference to the evil tendency of such violation as regards the community at large.*”

Critics: Stephen (year) committed two errors in modifying Blackstone’s second definition: He dropped the word ‘duties’ from Blackstone’s and the expression *evil tendency* of such violation as regards the community at large. It means that crimes are breaches of those

laws, which injure the community. However, all the acts that are injurious to the community are not necessarily crimes.

- b. CRIME is A “Moral wrong” – Stephen:** *is “an act forbidden by law and which is at the same time revolting to the moral sentiments of the society”.* Defining crime, as something against the moral sentiments cannot be accepted because there are acts though not immoral, classified as highly criminal, e.g., Treason i.e. ‘Anything done to displace the governing body of state.’
- c. Crime is A “Procedural Wrong” –John Austin:** *“A wrong which is pursued by the sovereign or his subordinates is a crime. A wrong which is pursued at the discretion of the injured party and his representatives is a civil injury”.* **Critics:** The definition does not explain a number of crimes under the Criminal Code in which the prosecution could be initiated only at the instance of injured party as is done in the case of civil wrongs
- d. Crime is a “Creation of Government Policy”:** Kenny (year) opined that, so long as crimes continue to be created by the government policy, it was difficult to give a true definition of the nature of crime. According to him “Crime” has the following three characteristics:
 - i. A crime is a harm brought about by human conduct, which the sovereign power in the state desires to prevent,
 - ii. Among the measures of prevention there is threat of punishment,
 - iii. Legal proceedings of special kind (criminal proceedings) are employed to decide whether the person accused did in fact cause the harm and is according to law to be held legally punishable for doing so.
- e. Crime Is A “Legal Wrong”:** Since no satisfactory definition of crime acceptable and applicable to all situations could be derived, penal statutes define, specifically, different criminal behaviors, which they purport to check. Even the Criminal Code of FDRE, 2005, which has codified the great bulk of the criminal law of the country, does not give any standard definition of crime. (See Art. 23(1).

What are the distinguishing features of a ‘Crime’ Distinguished from ‘Civil Wrongs’?

The major features are:

- A. Nature of wrong:** Crime is a public wrong i.e. a harm done against the society. A ‘tort’ is a private wrong committed against an individual generally or the public in a given locality.

- B. Nature of the Right Violated:** In a crime and a tort there is a breach of '*right in rem*' whereas in a breach of contract there is breach of '*right in personum*'.
- C. Origin and Nature of the Duty:** In a crime the duty not to cause harm is fixed by the state. In tort such Duty is fixed generally by the operation of law where the law of non-contractual liability remains un-codified and by the state where it has been incorporated in codified law (Art.2035ECC). In case of contract the duty limited to the parties.
- D. Consent of the Victim:** Consent of the victim to the injury caused is a qualified defense in criminal law. (Art 70 Criminal Code). In torts, consent of the plaintiff to the alleged injury nullifies right to remedies.
- E. The Element of Intention:** Intention is an essential element of crime (Art.57 and 58 of Criminal Code). Intention may form one of the ingredients of tort but not an essential precondition for the Tortious liability. In an action for breach of contract whether the breach was intentional, is an irrelevant question.
- F. The Element of Negligence:** Negligence attended with criminal lack of foresight amounts to a crime (Art.59 Criminal Code). Mere negligence may amount to a tort (Art.2029 ECC). There is no question of negligence in an action for breach of the obligation arising out of a contract.
- G. Relevancy of Motive:** Motive may be a factor for consideration in deciding the quantum of punishment in criminal liability. Motive is taken into consideration in deciding tortious liability. Motive is irrelevant (1717 ECC) in an action for breach of contract. A breach is a breach with whatever motive it was committed.
- H. Initiation of Legal Proceedings:** Criminal proceedings are conducted in the name of the state. The state steps into the shoes of the victim as the protector of interests of its inhabitants. In case of the other two civil wrongs, it is the injured party that brings the action against the wrong-doer.
- I. Remedies Available:** The punishments may range from fine, compensation through imprisonment of different kinds to capital punishment. In torts the remedies available are damages, compensation, restitution and injunction. For breach of contract cancellation of contract, damages, specific performance and forced performance of contract are the available remedies.
- J. Analogy:**

Explain the historical The Development of Criminal Law of Ethiopia?

- ✓ The history of Ethiopian Criminal law reveals the following important legislations incorporating the Criminal law of the country before the enactment of the existing Criminal Code of FDRE, 2005.

- A. The Fewuse Menfessawi,
- B. The Fetha Negest,
- C. The Ethiopian Penal Code, 1930.
- D. The Penal Code of the Empire of Ethiopia, 1957.
- E. The 1974 Revolution and Criminal Law
- F. Special Penal Code of 1981

What are the major factors that necessitated the revision of the Penal Law of Ethiopia?

1. **To Incorporate the Modern Legal Concepts:** like the changes on the, recognition of modern legal concepts by the Constitution and the international agreements ratified by Ethiopia and includes;
 - a. The equality between religions, nations, nationalities and peoples,
 - b. The democratic rights and freedoms of citizens and residents,
 - c. The Human rights,
 - d. The rights of social groups like women and Children.
2. **To Fill in the Lacunae:** The 1957 Penal Code fails to properly address some of the criminal behavior arising out of advances in technology, ilke
 - a. The High Jacking of aircraft,
 - b. Money laundering,
 - c. Crimes related to corruption and drugs,
 - d. Grave injuries and sufferings caused to women and children by reason of harmful traditional practices.
 - e. To educate and guide the public to discontinue such harmful traditional practices.
3. **To Adopt a Comprehensive Criminal Code:** It is desirable to adopt a comprehensive Criminal Code by putting together various Criminal provisions in the Negarit Gazeta in a disintegrated manner.

4. **Punishments for Certain Offences Increased:** On the basis of public opinion taken during discussions on the draft Criminal Code, punishments in respect of crimes like rape and aggravated theft have been increased.
5. **Matters Concerning the Determination of Sentence Revised:** Provisions of the Penal Code that used to make sentencing complicated and difficult have been amended. And a provision (Art. 88/4) has been introduced requiring the Federal Supreme Court to issue sentencing manual to ensure and control the correctness and uniformity of sentencing.
6. **Purpose of Criminal Law and Objectives of Punishment Redefined:**

How the crimes are classified under Ethiopian Criminal Code?

- ✓ Generally, offences may be classified based on two criteria:
 - a. **Classification based on the “Seriousness of the Crimes”** The Criminal Code of FDRE has not adopted a ‘tripartite’ distinction but simply classifies crimes into various titles on the basis of content rather than on the scale of punishment. The three variations in the deprivation of liberty, namely, ‘rigorous imprisonment’, ‘simple imprisonment’ and ‘arrest’ apparently denote a *de facto* classification into ‘very serious crimes’, ‘not very serious crimes, and ‘petty offences’.
 - b. **Classification based on the “Subject matter” of the Crime.** the criminal code provides in the following manner;
 - i. **Interests of the ‘State’:** Crimes against state or against National or international interests, Arts. 237-374.
 - ii. **Interests of the ‘Community’:** Crimes against the Public Interests or the Community Arts.378 – 537.
 - iii. **Interests of the ‘Individual’:** Crimes against the individuals and the Family Arts.538-733.

N.B. ‘tripartite’ distinction: it involves;

- a. **Treasons** are anything done in the nature of an attempt to displace the governing body is classed as Treason. It is a breach of duty of allegiance to the state.
- b. **‘Felony’** is a serious criminal offence punishable by at least one year imprisonment
- c. **‘Misdemeanor’** is a criminal offence which is less serious than a felony, and is usually punishable by no more than a year

UNIT -II

BASIC PRINCIPLES OF CRIMINAL LAW

What are the major principles of criminal law?

- ✓ The most important criminal principles embodied in our Criminal code, specifically, are the following:

1. The Principle of Legality (*Nullum crimen, nulla poena sine praevia lege poenali*)

- ✓ A Latin term and maxim *Nullum crimen, nulla poena sine praevia lege poenali* meaning, No crime (can be committed), no punishment (can be imposed) without (having been prescribed by) a previous penal law).
- ✓ This maxim states that there can be no crime committed, and no punishment meted out, without a violation of penal law as it existed at the time. Another consequence of this principle is that only those penalties that had already been established for the offence in the time when it was committed can be imposed.
- ✓ This principle first became prominent at the time of the French Revolution towards the end of the eighteenth century.
- ✓ The principle of legality was a specific reaction against this repressive device, intended to end its use by **requiring the government to announce in advance the rules of conduct it would enforce by criminal law.**
- ✓ Thus, the conduct must be deemed a crime before the act is committed. The policy behind the principle of legality is that “*fair warning*” should be provided to a criminal so that he does not inadvertently commit a crime that he has no reason to believe is illegal.

Does the principle of legality constitute the rule of lenity?

- ✓ The rule of *lenity* is a corollary to the principle of legality - it follows naturally from it. *The rule of lenity requires that all ambiguities in statutory language be resolved in the defendant's favor.*
- ✓ The policy reasons are the same as the rule of legality. Also, the rule of lenity encourages the legislature to write more clear statutes.

What is the legal status of legality in Ethiopia?

- ✓ Art. 2 of the Ethiopian Penal Code incorporate this principle. The principle, according to this provision, has three important ingredients:
 - a. “*nullum crimen sine lege*” - No crime unless specified by law, (Art. 2/1)

- b. “*nulla poena sine lege*” - No penalties other than prescribed by law, (Art. 2/2)
- c. “*non bis in idem*” – Nobody shall be punished twice for the same act, (Art. 2/5)

A. **‘nullum crimen sine lege**

What is ‘nullum crimen sine lege’

- ✓ The first ingredient of the principle of legality is that “there are no offences other than those which are expressly provided by law”.
- ✓ ‘Criminal Law’ within the meaning of Art.2 is not only the Penal Code, but any law duly passed and published, which contains penal Provisions.
- ✓ The principle “nullum crimen” conveys four different rules, namely:
 - i. **Certainty in Legislation:** Certainty in legislation does not only mean that crimes should be created by law but it also means that a prohibition must also be drafted in *clear, certain and unambiguous language*.
 - ii. **Accessibility of the law:** The Penal law must be accessible and intelligible because it is addressed to people in society who are bound to obey it on pain of punishment.
 - iii. **Rule of strict Construction,** ‘Penal statutes must be constructed strictly’. **Since all penal laws affect the liberty of the subject, they have to be constructed strictly.** Thus;
 - The court must see that the act or omission charged as a crime is within the plain meaning of the words used in the provision making that act or omission a crime.
 - The court must not strain the words used in defining a crime on any account; such as to provide for an omission (i.e., *casus omissus*) or a slip nor can the court extend the meaning of Criminal Statutes by construction.
 - Full effect is to be given to every word used in the statute.
 - “No case shall fall within a penal statute which does not satisfy all the elements of the crime as defined by the statute.”
 - The rule requires that where the ambiguous language of a statute leaves a reasonable doubt about its meaning and scope, the benefit must go in favor of the accused.
 - iv. **No retroactive effect of criminal law:** ‘no person shall be punished except in pursuance of a statute which fixes a penalty for a criminal conduct. **It means there can be no ex-post facto Criminal law** or in other words, the Criminal laws should not have retrospective operation.

Is analogy is possible under criminal laws?

- ✓ ‘*nullum Crimen*’ prohibits analogical extension of Penal statutes:
- ✓ According to ‘*nullum crimen*,’ as embodied in Art 2/1, primarily, courts cannot punish acts or omissions which are *not prohibited* by law.
- ✓ To give further effect to this principle, there is a “prohibition of analogy” inserted by Art 2/3, which states – “*The court may not create crimes by analogy*”. This means courts are not free to punish an act on the basis of similarity in its evil nature to that of a punishable act. Since the principle of legality requires ‘a legal provision specifically forbidding the conduct’ in question to attach criminal liability.

What is the legal status of the Principle of Strict Interpretation in Ethiopia?

- ✓ Under art (Art. 2/4) of the criminal code the duty not to depart from what the law prescribes for the purpose of creating new crimes does not preclude courts from interpreting the law if this is found necessary.
- ✓ As long as the courts take due precaution not to create crimes by analogy, they are empowered by Art 2/4 to interpret the law in cases of doubt. However, this provision sets out specific conditions to ensure that they do not misuse such power; for *not every legal provision is open to construction, nor should construction take place in disregard of certain basic rules.*

If so, what should be consider in the interpretation of the criminal law?

- ✓ Interpretation may be considered only in legitimate instances such as the following:
 - i. In cases of ambiguity (unclear) of the law, i.e. when the law contains provisions which are on the face of them inconsistent (contradictory), or
 - ii. Where, by reason of the language used, a provision is of such an uncertain or obscure meaning that its true sense is doubtful.

Which methods the court shall use for interpretation?

- ✓ Where a doubt arises as to the meaning or the scope of the legal provision, the court which interprets such provision must have regard to “*the meaning intended by the legislature*”. To this end, he proposes the following two methods of interpretation:
 - **Grammatical or logical interpretation**, in which the meaning is sought *from within the text* of the law, or
 - **Historical interpretation**, in this method the meaning may be sought *from without the text* of the law. Looking the drafting history.

- In either of the cases, the court should bear in mind the general purposes of the law as defined in Art 1 and the particular purposes of the provision calling for interpretation.

What is the central idea of Non-retroactivity of Criminal law?

- ✓ The rule of '*nullum crimen*' is that 'no person shall be punished except in pursuance of a statute which fixes a penalty for a criminal conduct. It means there can be no *ex-post facto* Criminal law or in other words, the Criminal laws should not have retrospective operation. (Art 5 of Criminal Code). It would be unjust that:
 - What was legal when done should be subsequently held criminal,
 - What was punishable by a certain sanction when committed should later on be punished more severely,
 - That procedure changes to the serious disadvantage of an accused and should be applied retrospectively.

What is the legal status of non-retroactive applications of criminal laws?

- ✓ Article 15 of the International Covenant on Civil and Political Rights states, inter alia:
- ✓ Article 7 of the European Convention on Human Rights
- ✓ Ethiopian Constitution on the Principle: Art 22/2 of the Constitution

How measures are applicable for crime committed under the repealed law?

- ✓ In passing the sentence on the crimes committed under the repealed law, the Court shall apply the measures prescribed under this Code. This is to give effect to the new measures which are, obviously, **adopted to be more effective to achieve the purpose of the Criminal Law.** (see art 7)

How the period of limitation are enforced?

- ✓ Article 8 provides that the periods of limitation in relation to the crimes committed under the old law shall be determined according to the new Code. And the rules of enforcement of judgments in such cases are laid down in Art. 9.

B. '*nulla poena sine praevia lege poenali*' (no punishment (can be imposed) without (having been prescribed by) a previous penal law)

- ✓ A person who has committed a crime may not be subjected to a punishment other than that which is provided for by law in respect of the crime committed.
- ✓ Thus, a court may make with regard to a convicted person only such order as he knew or should have known would be made. Therefore, with due respect to aggravating

circumstances, a court cannot at its discretion impose a sentence beyond the range of punishment stated in the law.

What is the exception for nulla poena sine lege?

- ✓ This rule *is an exception to the second component of the principle of legality i.e. 'no penalties other than those prescribed by the law'.*
- ✓ As per this provision, though the criminal is tried under the old Code for the crime committed earlier to coming into force of the new code (Art. 5/1), he shall be sentenced under the new Code if the new provisions are more favorable to him. (see art 6)

C. Non bis in idem' (Nobody shall be punished twice for the same act) (Art 2/5):

- ✓ By virtue of Art.2, sub-Article 5, a person cannot be “tried or punished twice for the same act”.
- ✓ According to Art 2 This principle forbids double jeopardy, as enshrined in Art 23 of our Constitution.
- ✓ The doctrine of double jeopardy means that *no person can be tried or punished more than once for the same crime. This is an important principle of the administration of criminal justice.*
- ✓ The rule is contained in the common law maxim “*autrefois acquit and autrefois convict*” which means “the previous acquittal or previous conviction may be pleaded by the accused as a bar to the subsequent trial”.

Is the principle of double jeopardy applies to several punishments for the same offense?

- ✓ It should, however, be noted that a single sentence may embody more than one items of punishment (e.g. Imprisonment and payment of fine). Thus, he may not allege that he is being punished more than once.
- ✓ *If punishments are for different crimes then there is no double jeopardy protection. Double jeopardy can be put into effect only in cases where the crimes have same elements.*

When the jeopardy begins?

- ✓ "Jeopardy" begins with framing of charges and ends with a suitably error-free judgment.

2. The Principle Of Equality

The principle of equality originated in the process of the development of Roman law governed by ‘*jus civile*’ (Civil Law). And ‘*jus gentium*’ (law of the nations) to rule the peoples they conquered.

What are the major elements of the principle of equality?

- ✓ All men are born equal and must be treated equally. These constitutional guarantees of equality take a great number of forms but two of the formulations are most often used. They are:

a. Equality Before The Law: subjection

- ✓ A number of distinct meanings are normally given to the provision that there should be equality before the law. One meaning is that, *equality before the law only connotes the equal subjection of all to a common system of law whatever it's content.* .

b. The Equal Protection Of Laws: treatment

- ✓ It is a more positive concept implying equality of treatment in equal circumstances. This expression is exclusively associated with written constitutions and embodies guarantees of equal treatment normally applied not only to the procedural enforcement of laws but also to the substantive content of their provisions.
- ✓ In other words, the equal protection of the laws is invariably treated as a substantive constitutional principle, which demands that laws will only be legitimate if they can be described as just and equal.
- ✓ Therefore, *“the expression equal protection of law” requires that all men must be treated alike except when there are relevant differences between them.*
- ✓ “Equality before the law and Equal Protection of the Laws” can be seen in one common dominant idea that is of *“EQUAL JUSTICE”*.

What is the legal status of the principle of equality in Ethiopia?

- Article 4 of the Criminal Code and art 25 of FDRE constitution.
- Precisely, the principle, as applicable to criminal field, means two things:
 - i. that all individuals may claim the same legal protection if they have been injured by a crime, and
 - ii. that all persons who have come into conflict with the law must be treated equally and tried exclusively in accordance with the provisions of the law they have infringed, without discrimination of any kind.

What are the major exceptions to the principles of Equality?

- Art. 4 of the Criminal Code specifically mention three exceptions to the principle of equality:

I. Immunities Sanctioned by Public International Law:

- ✓ for the officials who are protected from criminal prosecutions by virtue of the so-called diplomatic immunities founded on international usages of mutual courtesy.
- ✓ These persons are, accordingly, considered not to be subject to the laws of the state of residence or sojourn and may, therefore, not be prosecuted and punished in that state.

Is it an absolute immunity?

- ✓ In fact this is not an absolute immunity, properly speaking, as it is immunity from prosecution in Ethiopia only. Foreign diplomats who violate the laws of Ethiopia are not punishable in Ethiopia under Ethiopian law, but they are naturally liable to prosecution and punishment in their own country under their national law.

What are the remedies available for the gross violations by immune persons?

- ✓ Prosecution may be conditional upon the fulfillment of certain requirements. Normally, *if a person enjoying diplomatic immunity grossly offends or misuses his office or does an act detrimental to the country, the remedy is to make a demand of his recall by the sending state, where appropriate action may be taken against him at the discretion of the sovereign whom he represents.*

What is the effects of diplomatic immunity?

- ✓ The effect of diplomatic immunity is then merely *to create an exception to the general principle of the territorial application of the law*, as the criminal is not punishable at the place where he committed the crime under the law which he violated (Arts 11(2) of EPC and Art. 39(1) (c) of Criminal Procedure Code.)
- ✓ *Therefore, the diplomatic immunity only raises question of jurisdiction and in no way creates a situation contrary to the principle of equality before the law.*

Who are the holders of the immunity?

The immunity mainly extends to;

- Foreign Sovereigns:** ambassadors, diplomatic agents, war-ships of foreign countries are exempted from the liability before municipal (domestic) courts of the state.
- Ambassadors and Diplomats:** Ambassadors, their families, secretaries, messengers and servants also enjoy the same immunity as the sovereign or the state which they represent. *For certain purposes, the premises of the foreign missions are not considered as part of this country but as a part of the country which they represent. Therefore, crimes committed within the premises of the foreign mission cannot be tried by the local courts.*

- c. **Representatives of the United Nations** and officers of international organizations when engaged on United Nations or other international business.
- d. **Alien Enemies:** for their acts of war shall be dealt with Martial Law. If an alien enemy commits a crime unconnected with war as theft, cheating, etc., they would be triable by the local criminal courts.
- e. **Foreign Army:** When armies of any state are stationed on the land of another state with the consent of the government of that State, they are immune from the jurisdiction of the local criminal courts. This is a well settled international law practice.

II. Immunities Sanctioned By the Ethiopian Constitution:

- ✓ Articles, 54 (5) & (6) and 63, of the 1995 Constitution, declare immunities to the ‘Members of the House of People’s Representatives’ and the ‘Members of the House of the Federation’ respectively.
- ✓ *The Members of the Houses of the Federation cannot be arrested or prosecuted without the permission of the House concerned, except in the case of **flagrante delicto**.* The effects of such immunities are specified in Arts 39(1) (c) and 130 (2) (e) of the Criminal Procedure Code. It is clear that the immunities granted to these members do not conflict with the principle of equality before the law.

III. Requirements of Individualization of Criminal Justice:

- ✓ Art. 88(2) of the Criminal Code, incorporates the fundamental principle that, ***‘the penalty shall be determined according to the degree of individual guilt’***, having regard to all the circumstances of the case and not only to the material seriousness of the crime.
- ✓ The necessity of individualizing the penalty renders it inevitable that certain differences be made in the treatment of criminals, since the degree of guilt depends on circumstances which may be purely personal to the criminal, such as his age, mental condition or antecedents.

IV. Special Treatment of Women, Young Persons and the Feeble Minded:

- ✓ The expressions ‘special circumstances of the criminal’ and ‘age of the criminal’ used in the second paragraph of Article.4 make room for differential treatment of women, children and the mentally abnormal criminals.
- ✓ In case of women, the biological factors sometimes pose a serious concern while applying the law uniformly. See art Article 119 and 120 (1); 110(1),

- ✓ Similarly, the juvenile delinquents and the young criminals are given a special treatment under the Criminal Code due to the fact that this group of criminals is immature in their understanding and that they fall an easy prey for the bad influence of others.
- ✓ To achieve this objective more effectively the Criminal Code puts the young criminals under three categories.
 - a. **The infants** i.e. children under the age of ‘9 years’ are deemed to be not criminally responsible and therefore, are not punishable under the Code (Art. 52). The Code suggests that appropriate steps to correct them may be taken by the family, school or guardianship authority.
 - b. **‘The young persons:** The children between 9 and 15 under Art. 53. Children of this age group are exposed to criminal liability but the Criminal Law deals with them with more care and caution so as to ensure that they are not put to unnecessary rigor of the punishments designed for the mature individuals. Thus, the Criminal has Code devised special types of treatments that best suit the objectives of correction, reformation and rehabilitation. (See Articles 157-168).
 - c. **Transitory age:** The third group of young criminals, as per Art 56 falls between 15 and 18 years. *In criminal law 15 years is the age of full responsibility and they can be tried under the ordinary provisions of the Code.* However, preference shall be given to their treatment with the special measure designed for the young criminals unless they appear to be incorrigible or of dangerous disposition.
- ✓ **Feeble minded** people are the other group of criminals who deserve special treatment. Articles 48 and 49 lay down the principles relating to the negation of the moral ingredient in the acts committed by them and declare that they are irresponsible and thus they cannot be exposed to criminal liability. See Articles 129-131.

C. The Principle Of Individual Autonomy:

- ✓ The principle of individual autonomy is *that each individual should be treated as responsible for his or her own behavior.* This principle has factual and normative elements that must be explored.

What is the factual elements of autonomy?

- ✓ The *factual element* in *autonomy is that individuals in general have the capacity and sufficient free will to make meaningful choices.*

- ✓ The capacities assumed by the law may not be present in those who are too young or who are mentally disordered. These capacities relate to what are known as ‘preconditions of criminal liability’.
- ✓ Preconditions refer to the ability to participate in a trial as a communicative enterprise. The general assumption is thus that sane adults may properly be held liable for their conduct and for matters within their control, except in so far as they can point to some excuse for their ...for example, duress, mistake, or even social deprivation.

What is The Normative Element of Autonomy?

- ✓ *That the individuals should be **respected and treated as agents capable of choosing their acts and omissions**, and that without recognizing individuals as capable of independent agency they could hardly be recognized as moral persons.*
- ✓ A major part the principle’s emphasis is that the individuals should be protected from official censure, through the criminal law, unless they can be shown to have chosen the conduct for which they are being held liable.
- ✓ An individual should not be held criminally liable unless he had the capacity and fair opportunity to do otherwise.
- ✓ If autonomy is to be respected, the State should leave individuals to decide for themselves and should not take decisions ‘in their best interests’. (Prohibit paternalistic criminalization).

What are the Instances which can raise Dilemmas Relating to the Principle of Autonomy?

- a. **Euthanasia: *Your Body, Your Death, Your Choice***? The word euthanasia stems from the Greek words, “*euthanatos*” meaning “good death” and refers to the action of a third party, usually a doctor to deliberately end the life of an individual. The individual must give consent for the procedure, which is known as *voluntary euthanasia*. *Non-voluntary euthanasia* occurs when the individual is unable to ask for the procedure e.g. if s/he is unconscious or otherwise unable to communicate and another person makes the decision on his/her behalf. In
- b. **The Principle of Double Effect**: if a patient is in severe pain, a doctor may prescribe pain medication, the intention of which is to ease the patient’s suffering. *However, in some cases the dose of pain medication required to relieve the pain may also be sufficient to end that*

patient's life. This is known as the doctrine of double effect since the treatment provided to ease pain has the additional effect of ending the patient's life.

Does an individual have the Right to Choose How and When to Die?

- ✓ It is generally accepted that as *an expression of autonomy* i.e. one's right to make independent choices without any external influences. However, when it comes to actively ending a life via euthanasia there is widespread debate regarding the rights of an individual to make that choice.
 - a. **Proponents** argue that euthanasia allows terminally ill people to die with dignity and without pain and state that society should permit people to opt for euthanasia if they so wish. Proponents also state that individuals should be free to dictate the time and place of their own death. Finally, they argue that *forcing people to live against their wishes violates personal freedoms and human rights and that it is immoral to compel people to continue to live with unbearable pain and suffering.*
 - b. **Opponents of euthanasia**, on religious grounds, argue that life is a gift from God and that only God has the power to take it away. Others contend that individuals do not get to decide when and how they are born, therefore, they should not be allowed to decide how and when they die.

UNIT-III

JURISDICTION OF THE ETHIOPIAN CRIMINAL CODE

(Arts 11-22 of the Criminal Code of FDRE, 2005)

What is jurisdiction?

- ✓ Jurisdiction' refers to particular aspects of the general competence of states often referred to as 'sovereignty'. *Jurisdiction is an aspect of sovereignty and refers to judicial, legislative, and administrative competence.*
 - a. The '**prescriptive or legislative jurisdiction**' refers to the power to make decisions or rules.
 - b. '**The enforcement or prerogative jurisdiction**' refers to the power to take executive action in pursuance of or consequent on the making of decision and rules.
 - c. **Judicial Jurisdiction**': "the legal competence of a particular court to hear a certain type or class of cases". When it relates to the application of the law as to a place, jurisdiction implies "the geographical area covered by a particular court or legal system".

What is the meaning of jurisdiction under the criminal law?

- ✓ The provisions of the Criminal Code relating to jurisdiction are *intended to determine the scope of application of Ethiopian Criminal Law by Ethiopian Courts* and to prevent conflicts of jurisdiction.

When the conflict of jurisdictions are arise and what are their types?

- ✓ The conflicts of jurisdiction might arise when the courts of two or more places decline to try a crime, or when the courts of two or more places claim to have jurisdiction to try one and the same crime.
- ✓ These conflicts in jurisdiction may be of two kinds:
 - a. **‘Negative’ conflict of Jurisdiction:** It may arise when different courts deny the existence of jurisdiction, over the matter in question. *In this case there is the possibility of a criminal escaping punishment.*
 - b. **‘Positive’ conflict of Jurisdiction:** When different courts claim to have jurisdiction on the same crime, *there is a risk that the criminal might be exposed to “double jeopardy”.*

In which levels the conflict of jurisdictions may arise?

- ✓ The conflicts of jurisdiction might arise at different levels:
 - a. **Conflicts of Jurisdiction at National level:** Such conflicts may arise as between Ethiopian Criminal courts, which shall be settled in accordance with Arts 99-107 of the Criminal Procedure Code.
 - b. **Conflicts of Jurisdiction at International level:** These conflicts arise between an Ethiopian court and a foreign court, which can be settled in accordance with Arts 11-22 of the Criminal Code.

What are the Fundamental Principles of Application of Jurisdiction?

The major principles are:

- a. **The Principle of Territoriality:** The principle that the courts of the place where the crime is committed may exercise jurisdiction has received universal recognition. This principle has a number of practical advantages, *including the convenience of the forum and presumed involvement of the interests of the state where the crime is committed.* According to this principle all crimes committed on Ethiopian territory fall within the jurisdiction of Ethiopian Courts (Art. 11);

- b. **The Principle of Quasi-Territoriality or the Protective or Security Principle:** Nearly all states assume jurisdiction over aliens for acts done abroad which affect the security of the state, a concept which takes in a variety of political crimes, but is not necessarily confined to political acts. Currency, immigration, and economic crimes are frequently punished by the states under this principle. Art. 13 refers to certain specific crimes directed against Ethiopia to be tried in Ethiopia even though they have not been committed on Ethiopian territory
- c. **The Principle of Active Personality or the Nationality Principle:** crimes committed in foreign countries by Ethiopian citizens may be tried in Ethiopia. Under this principle, *a person becomes amenable to the jurisdiction of the country by his nationality and* it includes;
 - ✓ **Crime committed by Ethiopian enjoying immunity in foreign country (Arts. 14)**
 - ✓ **Crime against international law, in particular military crimes, 15, (2) and**
 - ✓ **Crime committed against an Ethiopian abroad or committed by Ethiopian abroad art 18 (1)].**
- d. **The Principle of Passive Personality or the Passive Nationality Principle:** aliens may be punished for acts abroad harmful to the nationals of the forum. This is the least justifiable. Art. 17(1) of the Criminal Code incorporates this principle according to which some crimes committed in foreign countries against Ethiopian citizens may be tried in Ethiopia.
- e. **The Principle of Universality or the Principle of Universal Jurisdiction:** principle allowing jurisdiction over acts of non-nationals where the circumstances, including the nature of crime, justify the repression of some types of crimes as matter of *international public policy*.
Instances of common crimes such as murder, where the state in which the crime occurred has refused extradition and is unwilling to try the case itself, and also crimes by stateless persons in areas not subject to the jurisdiction of any state, i.e. *nullius or res communis*. Hijacking and crimes related to traffic in narcotics etc. are subject to the universal jurisdiction.

Does Ethiopian criminal law incorporate the prosecution of international crimes?

- ✓ The Ethiopian Criminal Code incorporates this principle in relation to the following cases:
 - a. To try crimes committed against international law (Art. 17)

- b. To try any other crime of extreme seriousness, whether or not carried out on an international scale (Art. 18(2)), irrespective of the following facts:
- That the crime was not committed on Ethiopian territory,
 - Nor was it done against Ethiopia,
 - Nor was it done by or against one of her citizens.

What are the major jurisdiction of the Ethiopian Criminal Code?

The major jurisdictions under Ethiopian criminal law are **principal (involves territorial and extra territorial jurisdiction) and secondary jurisdictions.**

1. Principal Jurisdiction:

- ✓ The Criminal Courts of Ethiopia are deemed to have principal jurisdiction within the meaning of the code in the cases provided for by Arts. 11, 12, 13, 14 and 15(2).

Why we call it principal jurisdiction?

- ✓ The effect of these courts having principal jurisdiction is that they are entitled to try a criminal even though he may also be or has already been tried in a foreign country for the same offence.

What are the major types of principal jurisdiction?

- ✓ The principal jurisdiction of the EPC is applicable both territorially and extra-territorially.

A. Territorial Application of The Principal Jurisdiction

I. Crimes Committed on Ethiopian Territory: Art.11 ‘Normal Case’

- ✓ Within the meaning of Art. 11 when a crime is committed within the territory of Ethiopia, the code shall apply and the courts can try and punish irrespective of the fact that the person who had committed the crime is an Ethiopian national or a foreigner. This is known as “territorial jurisdiction”
- ✓ *Because submission to the jurisdiction of the court is by virtue of the crime being committed within the Ethiopian territory. Here the jurisdiction attaches with territory.*

What are the major conditions to apply territorial jurisdictions?

- ✓ For the territorial application of jurisdiction three conditions have to be fulfilled:
 - a. **Crime committed by any person:** The words any person under Art. 11 mean and include a citizen of Ethiopia as well as a non-citizen. Thus, any foreigner who enters the Ethiopian territories accepts the protection of Ethiopian laws, and submits to the operation of the laws and to the jurisdiction of the Ethiopian courts.

What are the exceptions to the application of the criminal law to any person?

- ✓ the major exceptions are provided under art 11(2),
 - Ambassadors and Diplomats:
 - Premises Occupied By The Foreign Missions: embassy's
- b. The crime must be punishable under the Ethiopian law**
- ✓ the applicability of Ethiopian territorial jurisdiction it is essential that the act committed must be the one which has been declared as 'unlawful' by the Criminal Code of Ethiopia or any other Ethiopian law containing penal provisions.
- c. The crime must have been committed on the Ethiopian territory:** This essential condition may be understood in the light of Art. 25(1) of the Criminal Code. Thus, the courts of Ethiopia have principal jurisdiction when an 'act' or 'omission' constituting an ingredient of the crime has occurred in Ethiopia, although the consequential harm might have been caused outside Ethiopia.

What does the territory of Ethiopia constitutes?

- ✓ In terms of Art 11 *"The national territory" comprises land, air and bodies of water, the extent of which is determined by the Constitution"*. Within the meaning of this provision, the crime must have been committed in any one of the following places:
 - **On the "land":** The land part of Ethiopia can be identified by the provisions of Art. 2 of Constitution of Ethiopia. Moreover, by virtue of Art 104 of Criminal Procedure Code. The following places are deemed to form part of the Ethiopian territory i.e.:
 - Ethiopian embassies abroad,
 - Ships, flying Ethiopian flag, and
 - Aircrafts flying Ethiopian flag.
 - Ships" belonging to the country whose national flag she is flying".
 - **In the "air":** According to International Conventions of 1919 and 1944, "air" i.e., the atmosphere above the land area of a country forms part of the National Territory of that country.
 - **Bodies of Water:** the vessels sailing in such waters are triable by the criminal Courts of Ethiopia.

N.B. Men of War of a state on foreign waters are exempted from the jurisdiction of the state within whose territorial jurisdiction they are. There are two theories relating to jurisdiction on ships in territorial waters.

- a) A public ship of a nation for all purposes either is or is to be treated by the other nation as part of the territory of the nation to which she belongs.
- b) A public ship in foreign waters neither is nor is to be considered as territory of her own nation.

II. Crimes by Foreigners on the Ethiopian Territory Art. 12 “Special Case”:

- ✓ These cases relate to crimes committed by foreigners on Ethiopian Territory. *However, certain practical impossibilities might arise if the ‘criminal-foreigner’ flees and takes refuge in his country of origin.* Art 12 deals with such problems:
- ✓ it is when
 - a. **Impossibility to “try” the accused-Foreigner in Ethiopia Sub-Art. (1) Of Art 12:** If his extradition cannot be obtained in accordance with Art 11(3), the Ethiopian authorities shall request that he be tried in the country of refuge. Thus, the original jurisdiction of Ethiopian courts gets delegated to the Foreign Courts, in relation to a crime committed on Ethiopian territory.
 - b. **Impossibility to ‘retry’ the accused- foreigner in Ethiopia Sub-Art. (2) Of Art.12:** Where the criminal has been tried and sentenced in the country of refuge, Ethiopian courts may not try him again for the same crime, should he subsequently be found in Ethiopia. This rule applies in the following instances:

Is there any possibility that Ethiopian courts may Resume of Delegated Jurisdiction?

- Although Art. 12(2) does not expressly say so, it is clear that Ethiopia retains her principal jurisdiction when a delegation of jurisdiction has been effected but the criminal has nevertheless *not been tried* in the country of refuge.
- *In such a case, if the criminal reappears in Ethiopia, he may be tried by Ethiopian courts under Ethiopian law as though he had never left Ethiopia and as though a delegation had never been made.*
- *The only requirement in this case is that the proceedings should not have been barred by limitation.*

- c. **“Enforcement” of Punishment in Ethiopia Sub-Art (3) of Art. 12:** Article 12(3) applies to a case where the criminal has been sentenced in the country of refuge but has escaped serving of the sentence either fully or partly. If he comes to Ethiopia without so serving the sentence, the punishment may be enforced in Ethiopia unless barred by limitation.

B. Extra-Territorial Application of the Principal Jurisdiction (Arts. 13-16):

What are the major conditions that should be fulfilled to apply extra territorial jurisdiction?

- ✓ The Criminal Code envisages three specific instances that necessitate the extra-territorial application of its jurisdiction:

I. Crimes committed by any person in a foreign country against interests of Ethiopia, Art. 13,

- ✓ Art 13 incorporates the so-called *principle of quasi-territoriality* which says that, *“when a crime is committed which infringes upon the fundamental rights or interests of a given state, the aggrieved state is entitled to protect itself and to punish the criminal under its own laws even though the crime has been committed in a foreign country and the criminal might already have been tried and sentenced in the other country”*
- ✓ The principle of quasi-territoriality is applicable only to the specified by Art. 13., namely:
 - Crimes against the state of Ethiopia, Arts, 238-260
 - Crimes against Ethiopian currency, Arts, 355-374,
- ✓ For the purposes of prosecution and punishment, the specific crimes mentioned above shall be treated as crimes committed on Ethiopian territory irrespective of the place where they have in fact been committed.
- ✓ Therefore, they may be tried and punished in accordance with the provisions of Arts 11 (territorial jurisdiction) and Art. 16 (effect of foreign sentences). This means Art. 13 operates on the following essentials:
 - a. **The criminal must be found in Ethiopia**, if he is not found in Ethiopia, his extradition shall be requested in accordance with Art. 11(3)
 - b. **If the requisition for extradition is not granted** A delegation of jurisdiction may not be effected and the provisions of Arts. 160-164 (procedures in cases of default) of Criminal Procedure Code shall apply, where appropriate.

Is it possible to refuse the extradition request?

- ✓ Refusal of extradition is possible since many of the crimes referred to in Art. 13 are so-called political crimes which are not extraditable crimes according to international practice.
- ✓ However, *the courts of the place of commission of such crimes retain their power to punish the criminal under their territorial law and the effect of Art. 13 is merely that Ethiopia has principal jurisdiction concurrently with the state where the crime was committed.*

II. “Crimes Committed in a Foreign Country by an Ethiopian Enjoying immunity”

Art. 14

- ✓ Art. 14 provides for another exception to the principle of territoriality, with a view to prevent the miscarriage of justice, when a person may not be tried under “territorial law” being under protection of diplomatic immunities.
- ✓ The provision applies to the following classes of persons who cannot be prosecuted at the place of commission of the crime by virtue of international principles of immunity. :
 - members of the Ethiopian diplomatic and consular services,
 - Ethiopian officials and agents,

What are the essential requirements?

These persons can be brought under this Article, provided the following conditions are fulfilled:

- a. The crime must not be the one covered by Art. 13
- b. The crime must be the one which is punishable under the law of the country where it was committed,
- c. The crime must also be the one punishable under the Ethiopian Criminal Code, and
- d. If the crime falls under the ‘category of crimes’ which requires filing of ‘formal complaint’ for the institution of criminal proceedings, either under the foreign law or under the Criminal law of Ethiopia, such “complaint” should have been filed.
- e. “The Crime must be punishable” both Under the foreign law and Ethiopian Law:

III. “Crimes Committed in a Foreign Country by a member of Ethiopian Defense Forces” Art.15:

- ✓ The last case where Ethiopian courts may, on certain conditions, extend their principal jurisdiction extra-territorially is where a crime has been committed in a foreign country by a member of the Ethiopian Armed Forces. Art 15 operates on two different rules:
 - a. Sub-Art. (1) Under this provision the Ethiopian Courts have *subsidiary jurisdiction only*.

- b. Sub-Art. (2) Operates on the principle of active personality like Art. 14 and here the courts have *Principal Jurisdiction*.

What are the Essential Conditions for the application of Art? 15?

Art. 15 applies only to the members of the Ethiopian Defence Forces;

- a. **Acting in the capacity of soldier:** if a retired Ethiopian captain commits a crime in a foreign country, Art. 15 is not applicable to him, for he did not commit the crime in a military capacity.
- b. **In a foreign Country:** Article 15 applies only when the crime has been committed in a foreign country. This may occur on occasions of international police action.
- c. **Violations of “Ordinary law” of the Foreign Country:** i.e. crimes of a non-military character or, in other words, a crime that may be committed by anyone, even though he is not a member of the Defense Forces. *Therefore, any crime under the ‘ordinary law’, committed by an Ethiopian soldier in a foreign country will be dealt with as though the criminal was not a member of the Ethiopian Defense Forces.* thus, Ethiopia will have subsidiary jurisdiction in these cases under the following circumstances:
- If the criminal was able to escape and take refuge in Ethiopia prior to being tried in the foreign country, and
 - His extradition is not requested or the requisition for extradition is dismissed (Art 21(2)).
 - It may be also be that criminal was prosecuted in the country where he committed the crime. If he was acquitted or discharged, no action may be taken against him on his return to Ethiopia (Art. 20(1)), except disciplinary action, where appropriate.
 - But if he was convicted and took refuge in Ethiopia in order to escape the enforcement of the sentence, the provisions of Art. 20(2) are applicable.
- d. **Violations of International law and Military Crimes: Art. 15(2):** Sub- Art. (2) Of Art. 15, such crimes are covered by the principal jurisdiction not only because they imply unsoldierly behavior, but also in view of safety of the Ethiopian Army and national interests of the country.

What is the Effect of Foreign Sentences?

- ✓ The concept of ‘Principal Jurisdiction’ seems to imply that Ethiopian courts may try a criminal even though he has already been tried in a foreign country. So, in all the cases

covered by the principal jurisdiction i.e. Arts 11, 13, 14 (1) and 15(2) a new trial is possible in Ethiopia, regardless of the fact the criminal might already have been tried for the same crime.

- ✓ This is apparently, contrary to Art. 23 of the Constitution and Art 2(5) of the Criminal Code since the principle of '*non bis in idem*' prohibits not only a person being punished twice for the same crime but also being tried twice.

What is the Effect of 'Discharge' or 'Acquittal' by foreign courts? Art. 16(2):

- ✓ The 'discharge' or acquittal' in a foreign court shall not be a bar to fresh proceedings in Ethiopia. The Ethiopian Courts are not bound by a judgment of acquittal passed by a foreign court.
- ✓ The same is true for the proceedings that has been instituted abroad but has been discontinued or where the accused has been discharged. This clearly contradicts Art. 23 of the Constitution and Art 2(5) of the Criminal Code as they categorically say that 'acquittal' also is a bar to a second trial, without any qualification.

What is Effect of 'Conviction' in a Foreign Court? Art. 16(3):

- ✓ Where the criminal was tried and sentenced abroad, and served all or part of the sentence, the rule against double jeopardy demands that the term of sentence served in the foreign country be deducted from the sentence imposed in Ethiopia. Therefore, the court which tries him in Ethiopia must have regard to the sentence passed abroad.
- ✓ The deduction prescribed by Art. 16(3) must be affected only in so far as the criminal is convicted in Ethiopia of the same crime as that with respect to which the foreign sentence was passed.

2. Subsidiary Jurisdiction: (Derivative Jurisdiction)

What is subsidiary jurisdiction?

- ✓ "Subsidiary Jurisdiction" relates to crimes that do not directly and chiefly concern Ethiopia. These crimes also are committed extra-territorially.
- ✓ *Under certain specified circumstances the Ethiopian Courts substitute foreign courts in trying criminals who ought to have been tried in a foreign country but were not so tried. This is to prevent a negative conflict of jurisdiction.*

When the derivative Jurisdictions are applicable?

- ✓ The subsidiary jurisdiction applies to the following categories of crimes:

- a. Crimes committed by members of the Defense Forces against the ‘ordinary law’ of a foreign country (Art. 15(1))
- b. Crimes committed in a foreign country “against international law or international crimes specified in Ethiopian legislation, or against an international treaty or convention to which Ethiopia has adhered (Art. 17/1/a.)
- c. Crimes committed in a foreign country “against public health and morals specified in Art. 510, 567, 605, 606, 609 or 610 of EPC. (Art. 17/1/b)
- d. Crimes committed abroad against an Ethiopian national or crimes committed by Ethiopians while abroad- if the crime is punishable under both the laws and is grave enough to justify extradition. (Art. 18(1))

What are the Conditions for Application of subsidiary jurisdiction? Art.19 (1)

- ✓ The Subsidiary jurisdiction of the Criminal Code may be applied only on the fulfillment of these conditions:
- ✓ N.B. Exemption of Conditions for application of the Subsidiary jurisdiction Art. (19) (2):
- ✓ N.B. Effects of Foreign Sentences under Subsidiary Jurisdiction is the reverse of principal jurisdictions.

Extradition:

What is “Extradition”?

- ✓ The term ‘extradition’ denotes the process whereby under a treaty or upon a basis of reciprocity one state surrenders to another state at its request a person accused or convicted of a crime committed against the laws of the requesting state, such requesting state being competent to try the alleged criminal. Requests for extradition are usually made and answered through the diplomatic channel.

Why extradition is requested?

- ✓ The following rational considerations have conditioned the law and practice as to extradition:
 - **To ensure that serious crimes do not go unpunished:** to close the net round such fugitive criminals, international law applies the maxim, ‘*aut punire aut dedere*’ i.e. the offender must be punished by the state of refuge or surrendered to the state which can and will punish him.
 - **Since the state on whose territory the crime has been committed is best able to try the criminal because the evidence is more freely available there,** and that state has the

greatest interest in the punishment of the criminal, and the greatest facilities for ascertaining the truth.

- **With the increasing rapidity and facility of international transport and communications**, extradition began to assume prominence

What is the status of extradition under international law?

- ✓ *International law concedes that the grant of and procedure as to extradition are most properly left to municipal law, and does not, for instance, preclude states from legislation so as to preclude the surrender by them of fugitives.*
- ✓ if it appears that the request for extradition had been made in order to prosecute the fugitive on account of his race, religion, or political opinions, or if he may be prejudiced there by upon his eventual trial by the courts of the requesting state.
- ✓ There are some divergences on the subject of extradition between the different state laws, particularly as to the following matters:
 1. Extraditability of nationals of the state of asylum;
 2. Evidence of guilt required by the state of asylum; and
 3. Relative powers of the executive and judicial organs in the procedure of surrendering the fugitive criminal.

What are the essential conditions for extradition?

- ✓ Before an application for extradition is made through the diplomatic channel, two conditions are as a rule required to be satisfied:
 - a. There must be an *extraditable person*.
 - b. There must be an *extradition crime*.

Who are extraditable persons?

- ✓ *There is uniformity of state practice to the effect that the requesting state may obtain the surrender of its own national or nationals of third state,*
- ✓ But many states usually refuse the extradition of their own nationals (Art 21/2 of Criminal Code of FDRE, 2004) who have taken refuge in their territory, although as between states who observe absolute reciprocity of treatment in this regard, requests for surrender are sometimes acceded to. This does not necessarily mean that the fugitive from justice escapes prosecution by the country of his nationality.

What are Extradition Crimes?

- ✓ The ordinary practice as to extradition crimes is to list these in each bilateral extradition treaty.
- ✓ As a general rule, the following offences are not subject to extradition proceedings:
 - a. **Political crimes;** (Different criteria have been adopted to identify a political crime: the motive of the crime; and the circumstances of its commission)
 - b. **Military crimes,** for example, desertion;
 - c. **Religious crimes.**
 - d. **War Crimes:**

Who has the right to decide on the extradition?

- ✓ International law leaves to the state of asylum the sovereign right of deciding, according to its municipal law and practice, the question whether or not the crime which is the subject of a request for extradition is a political crime.

What are the principles for determining the extraditable of a crime?

- ✓ **The Rule of Double Criminality:** As regards the character of the crime, most states follow the rule of *double criminality*, i.e. *that it is a condition of extradition that the crime is punishable according to the law both of the state of asylum and of the requesting state.*
- ✓ **The Principle of Specialty:** i.e. *the requesting state is under a duty not, without the consent of the state of refuge, to try or punish the criminal for any other crime than that for which he was extradited.*

Extradition under the Criminal Code of FDRE, 2004, Art.21:

How the Extradition of a “Foreigner” is taken place? Art. 21(1):

- ✓ Any foreigner who commits an ordinary crime (i.e. non-political) outside the territory of Ethiopia and takes refuge in Ethiopia may be extradited in accordance with the provisions of the law, treaties or international custom.
- ✓ However, it should be noted that if the crime with which the foreigner is accused of, falls under the scope of Art. 13 he may not be extradited. Ethiopia retains its right to prosecute him under its principal jurisdiction as the crime directly and principally concerns her.

How Extradition of “Ethiopians” is taken place? Art. 21 (2):

- ✓ An Ethiopian national cannot be extradited to a foreign country.

- ✓ However when such denial to surrender is made, he shall be tried by Ethiopian courts and under Ethiopia law. This article endeavors to protect the Ethiopian nationals from foreign jurisdictions in the following ways:
 - *If the accused has the status of an Ethiopian national at the time of commission of the crime, even if he ceases to be an Ethiopian thereafter*, he shall still fall within the scope of this provision.
 - *An accused shall be governed by this provision provided he becomes an Ethiopian by the time of request for extradition, though at the time of commission of the crime he was not an Ethiopian national.*

What are the Procedure to request for Extradition? (Art. 21/1 and 3)

- ✓ Extradition shall be granted on the application made in proper form by the state where the crime was committed provided; the crime does not directly and principally concern the Ethiopian state (Art. 13).
- ✓ Art. 21 (3) lays down that where a crime raises a question of extradition the requisition shall be dealt with in accordance with the principles of Ethiopian law and provisions of existing treaties.
- ✓ However, if the crime complained of is of a political nature, the criminal, instead of being surrendered, may be granted political asylum.
- ✓ *Extradition is made, as to a legal right, in respect of only those countries with which there is an agreement for this purpose, although countries generally do not, as a matter of international practice, even in the absence of an Extradition treaty refuse extradition.*

UNIT-IV

CONDITIONS OF CRIMINAL LIABILITY

The Crime and Its Commission

What are the Essential Elements of Crime?

- ✓ The maxim ‘*actus non facit reum nisi mens sit rea*’ makes it clear that, *“no man may be found guilty of crime and therefore legally punishable unless in addition to having brought about a harm which the law forbids, he had at the same time a legally reprehensible state of mind”*. This principle recognized that there are two essential elements of crime:

- **Physical element** (*actus reus*) (The legal and material elements can be jointly referred to as the *actus reus*)
- **Mental element** (*mens rea*)
- ✓ **Thus, it should be noted that the major** Ingredients of a Crime are: The legal element, the material and the moral element
- ✓ The “Legal” and “Material” Ingredients of Crime: (*Actus reus*) as the physical element of crime may be studied under two heads:
 - Meaning of ‘*actus reus*’
 - Causation of crime

What is the Meaning of *actus reus*?

- ✓ *Actus reus* means, the result forbidden by law brought about by human conduct. A harm brought about by evil conduct manifests the evil mind behind it. Until then the guilty mind remains hidden in man’s thought and it is impossible to detect the evil intentions of a man.
- ✓ Moreover, simply having an evil intention does not make a man punishable unless it ends in a harmful result. Therefore, *actus reus* is such a result of human conduct as the law seeks to prevent.

A. The Legal Element of Crime:

- ✓ Refers to the infringement of any law, which is a criminal nature. This, in other words, means that a law must exist and this law must be violated so as to hold a person criminally liable.
- Provided that, a particular act is a crime or an offence and that there should be a law against it; but an act is not a crime for the mere reason it is wrong. That is why Article 2 of the Criminal Code of Ethiopia provides that no act or failure to act may be regarded as an offence unless the law so prescribes.*
- ✓ *In addition to this, the law which prohibits the crime should be in force, not only when the act is committed, but when it is punished.*
- ✓ The Ethiopian Criminal Code also incorporates these essential elements in Art. 23, sub-Articles (1) & (2) and includes an act consists of the commission of what is prohibited or the omission of what is prescribed by law.
- ✓ Sub (2) of the same article provides A crime is only completed when all its “legal, material and moral ingredients are present”. The provision distinctly states the requirement of three elements of a crime:

- The legal element,
- The material element and
- The moral element

B. The Material Element:

- ✓ It *refers to the existence of some sort of conduct on the part of the perpetrator in order to make him/her liable criminally.*
- ✓ It may be defined *as a physical or muscular movement towards a given object* which may also include willful restraint from doing a given act. Since it is not to punish someone merely for his/her thoughts.
- ✓ *to put in nutshell, The phrase “material ingredients” means facts surrounding the act, such as, the type of weapon used, place and time of commission of the offence, range of shooting, the part of the body of the victim hit by the bullet, etc.*

What are the major types of Material element of the crime?

- ✓ Accordingly, the material element of a crime may be classified as *commission, omission, and commission by omission.*
- ✓ The material element (*Actus reus*) may consist of:
 - a. Deed of commission, or
 - b. Result of omission.

I. Deed of Commission:

- ✓ The word ‘*actus*’ connotes a deed i.e. a material result of human conduct. When criminal policy regards as sufficiently harmful, it prohibits such a deed and seeks to prevent its occurrence by imposing a penalty for its commission.
- ✓ Thus, ‘*actus reus*’ is constituted by the ‘event’ or the ‘result’ and not by the activity or conduct which produced the event.
- ✓ *For example, the voluntary movement of the hand with a knife is not the one that is prohibited but causing the death of a human being is. However, every harmful event produced by human conduct is not actus reus, but only such event which is forbidden by the law is an actus reus forming the basis for criminal liability.*
- ✓ *Infliction of harm is legally permitted, justified or even commanded under certain circumstances does not constitute actus reus.*

If so, which activities constitute actus reus?

- ✓ There are four categories of harmful events resulting from active conduct, of which only one category comes under the expression of *actus reus*.
 - a. **Lawful Events:** they are Events *resulting from acts “Commanded” by law: or Events resulting from acts “Permitted by law” or Events resulting from acts “Justified” by law:*
 E.g. certain acts may cause “painful bodily injuries” which are necessarily inflicted upon the subjects without which certain lawful objects cannot be achieved. Therefore, law permits the infliction of such harms subject to certain limitations.
 - b. **Unlawful Events:** *it constitute the commission of “Events” Prohibited by Law:* It is this category of harmful results of human conduct that constitutes *actus reus*. Therefore, an act or omission becomes punishable only if it produces a result that does not fall under any of the categories falling under “lawful events”. This means that producing the result that is prohibited by law, establishes the legal ingredient of crime.

II. Result of Omission:

- ✓ *The word ‘omission’ is generally used in the sense of intentional non-doing.*
- ✓ In fact the law imposes responsibility for omissions reluctantly. Omission” with reference to the performance of a duty involves the idea of conscious or willful omission. However, the expression *omission* does not connote any obligation.
- ✓ *Under the criminal law, only failures to perform legal duties can amount to criminal omissions.* Legal duties to act might arise out of relationships or contracts, or might be imposed by statutes. *However, failures to perform moral duties cannot constitute the actus reus.*

Why only the failure to perform legal duties are constitute actus reus?

- ✓ It is based on the proposition that the individual conscience, peer group pressure and other informal compulsion regulates behavior more effectively than direct criminal prosecutions. Also, it would not only be burdensome but also impossible for the criminal justice system to enforce moral obligations.
- ✓ A crime, according to Art 23/1, is also committed when a person fails to perform an act the performance of which is prescribed by law. *This means, not all omissions are punishable but only those that are in breach of a legal duty*

What are the types of omissions based on the violation of duties?

Basing on the said requirement of violation of a duty “omissions” are of two kinds:

- 1) **Crimes of Omission:** it is
 - ✓ **Where there is a Duty Imposed by Law:** The law often imposes the duty to do something, e.g. to report about the criminals, Crimes of this type are referred as “Crimes of Omission” and are *characterized by the non- performance of a mandatory act.*
- 2) **Crimes of Commission by Omission:** it is
 - ✓ **Where there is a duty Recognized by Law:** A crime is committed when a person fails to perform a duty recognized by law, such as, professional duty of a doctor. Refusal to provide professional service by a doctor, pharmacist, dentist etc., who contrary to his duty and without just cause refuses to provide his services in a case of serious need, is made punishable under Art 537 of the Criminal Code. If harm is caused by such refusal, it is a crime of commission by omission.

What is the difference between failure and refusal to fulfil the legal duties?

- ✓ The term *failure* and *refusal* at times require a careful distinction.
- ✓ For example in a case falling under Art 778, a shopkeeper expressly states his refusal to accept a legal tender (i.e. National money or currency) by saying ‘*No*’ or ‘*I won’t take*’, he has performed an act through a willful act i.e., “words of his mouth”. If his refusal takes the form of a negative sign, he has still acted through customary signs of refusal. Failure on the contrary involves non-action in violation of law.

Keep in your mind the following important points

“Actus reus” (Material element of Crime)		
Deed of Commission	Results of Omission	
Crimes of Commission “Acts”	Crimes of Omission “ <i>Failure</i> ”	Crimes of Commission by Omission “ <i>Refusal</i> ”
These are characterized by positive behavior, i.e. by actively doing something to bring about the harmful ‘result’.	It is impossible to bring about these results by positive behavior. These are the results of negative conduct omitting to act expected of him.	These offences include behaviors which include both positive and negative elements refusal to perform a duty includes a positive expression of ‘unwillingness to act’ expected of him.

C. The 'Moral Ingredients' of Crime (*Mens Rea*)

- ✓ This has got something to do with the guilty state of mind of a person which is associated with the principle "*Nulla poena, sine culpa*" which means there is no punishment without guilt.
- ✓ *This implies that a person cannot be held criminally liable for those acts he/she commits without there being any fault what so ever on his or her part unless there exists some sort of blameworthiness.* The very principle of this element is provided under Article 57 of the Criminal Code.
- ✓ According to this Article, Guilt, is an essential factor in determining whether a crime has been committed. The perpetrator should be held criminally liable and be punished if he or she acts in a blameworthy manner.
- ✓ According to Art. 23 of the Criminal Code, any crime comprises legal, material and moral ingredients, all of which must be present so that the crime may be deemed to have been completed.
- ✓ *The provisions of Arts. 57-67 dealing with 'Criminal Guilt' define this moral ingredient i.e. the state of mind of the criminal at the time of committing the unlawful act. Although there is a legal presumption that every accused is responsible for his acts, there is no presumption that every responsible accused is guilty.*
- ✓ The important principle of criminal law that requires proof of guilt before attaching criminal liability to a person is recognized by the Constitution under Art. 20(3)

What is the Meaning of Mental Element?

- ✓ These requirements of criminal liability are rightly expressed in the Latin maxim "*actus non facit reum nisi mens sit rea*" (*act alone does not make a man guilty unless his intentions were guilty*). This is a well known principle of natural justice.
- ✓ However, unlike physical element of crime the mental element poses a difficulty in its proof. Thus it is mainly proofed on the circumstantial evidence that the Court depends to establish the moral ingredients of crime.

What are the major mechanisms to determine the "Moral Ingredient" of Crime?

- ✓ The 'Moral ingredient' of a crime refers to *the 'state of mind' of an accused at the time of doing the act constituting a crime.* Thus it is the task of the court to infer from different facts and circumstances before, after and attending at the time of the commission of the crime.

- ✓ In an attempt to assess the “state of mind” in establishing a crime, the courts adopted different tests at different points of time during the history of development of doctrine of *mens rea*.
- ✓ The following are the various tests applied in investigating the working of the mind of the person at the time of doing the act resulting in crime:
 - a) **Objective standard of morality**
 - ✓ *“The facts of each case were studied to see whether the accused’s behavior did or did not reach the moral standard generally accepted and approved in the period”. This is nothing but the essence of the test of reasonable man.*
 - ✓ In this test the true question was not whether he himself thought that his conduct had been blameworthy or not, but the courts went on the assumption that their own standard of what was right or wrong was the true test.
 - ✓ The real test is that, ‘it must be known to everyone including the accused and that if facts showed that the accused had not conducted himself as a man obedient to the moral code would have been expected to conduct himself, this established his *mens rea*.
 - ✓ *However, this test is likely to magnify than reduce his liability to conviction, in case the prisoner tried to argue that he had acted upon different criterion of good and evil.*
 - b) **The Test of Subjective Standard:**
 - ✓ The courts appraised the accused’s conduct objectively giving no much opportunity to the accused to prove his state of mind otherwise”. Yet a consideration of the actual working of mind of the prisoner was necessarily involved, at least to some extent, in certain cases. *When the accused is insane or compelled by overpowering physical force to be helpless instrument in another person’s misdeed.*
 - ✓ *In such cases, he could not be reasonably said to be guilty thus criminal guilt was often negative in the courts by the argument that “what had been done was not the accused’s act”. This means that the accused had not caused the harm, as there was no mens rea on his part.*
 - ✓ *The new doctrine of subjective mens rea gave the courts a new method of avoiding excessive hardship in reasonable cases of self-defense, accident, mistake of fact etc. All these came to be accepted as grounds of excuse from criminal liability.*
 - c) **Voluntariness of Conduct:**

- ✓ The courts felt that if the man's conduct could be proved to be voluntary i.e., "the movements of his body in producing the harmful result were willful movements then his *mens rea* was established".
- ✓ In cases where he could show that his conduct was involuntary i.e., his bodily movements were not operated by his will, he would have no responsibility. Therefore, in cases of persons acting under the influence of Somnambulism (sleepwalking), insanity, intoxication or automatism the defense of involuntary conduct was available.
- ✓ However, *mens rea* in this sense relates not to the harm which the man brought about but to the movements (physical acts) by which he brought about the harm. In other words, it indicates his mental attitude to his conduct and not to his mental attitude to the consequence of his conduct

d) Foresight of Consequences:

- ✓ There should be proof that "he must have had foresight of consequences" of his conduct. A man cannot be held guilty if his voluntary actions result in harm but the harm was not contemplated.
- ✓ *Accordingly, there has developed a principle that "a man should not be punished unless he had been aware that what he was doing might lead to mischievous results"*. The nature of the precise circumstances, the foresight of which attracts criminal guilt, is fixed by law and varies from crime to crime.

What are the Common Forms of 'States of Mind'?

A. Intention:

- ✓ "To intend" is to have in mind a fixed purpose, to reach a desired objective. The noun "intention" is used to denote the state of mind of a man who not only foresees but also wills the possible consequences of his conduct.

Can intention existed independently without foresight?

- ✓ There cannot be intention unless there is foresight, since a man must decide to his own satisfaction and must accordingly foresee that to which his express purpose is directed.
- ✓ However, foresight can exist independently without intentions.

B. Recklessness (indirect intention)

- ✓ *A man may foresee the possible or even probable consequences of his conduct and yet not desire them to occur. In spite of this foresight if he proceeds on his course of action he knowingly runs the risk of bringing about the unwished result.*
- ✓ To describe this state of mind the word ‘reckless’ is the most appropriate. The words “rash” and “rashness” have also been used to indicate the same attitude. A man who is reckless may prefer that –
 - The event shall not happen, or
 - He may not care whether it happens or not.
- ✓ Nevertheless, in either case he does not desire it to happen and therefore, does not act with the purpose that it shall happen.
- ✓ Unfortunately, this is a very common attitude of mind and is found mostly in the cases of dangerous driving of motor vehicles, adulteration of food materials, drugs and medical negligence etc.,

Forms of “Moral ingredients” Under the Ethiopian Criminal Code. (Arts. 57-59)

- ✓ The cardinal principle of criminal liability, as embodied in the maxim ‘*actus non facit reum nisi mens sit rea*,’ is expressed in the sub. Art (1) of Art 57 of the Criminal Code, according to which “*no one can be punished for an offence unless ... he commits a crime either intentionally or by negligence*”.
- ✓ These states of guilty mind are defined in Arts. 58 and 59. It is a general and absolute condition of liability that the offender should have had a guilty mind for fixing criminal liability. However, there is no uniformity in the moral ingredient required for all crimes, since the same act may be an ingredient of several different crimes it must be established from case to case exactly, what the accused had in mind before one can decide the crime of which he is guilty.

I. Criminal Intention: Art. 58

- ✓ ‘Criminal intention’, constitutes the highest degree of criminal guilt and comprises of two elements in the words of Art. 58. According to Sub-Art. (1) A person intentionally commits a crime who infringes law: *with full knowledge and intent*, “la conscience” (awareness) and “la volente” (will or volition).

What constitutes Full knowledge?

- ✓ “Knowledge” or “awareness” means *the ability to foresee the nature, factual circumstances and consequence of one’s act or omission*.
- ✓ Thus, criminal intention firstly implies awareness. Therefore, it follows that: where an act is penalized by law regardless of its consequences, the person who performs this act may not be deemed to perform it intentionally unless he is aware of the circumstances which have the effect of rendering it criminal.
- ✓ Therefore, in every case, the object of the criminal’s intent must be ascertained having regard to the ingredients of the crime as laid down in the Special Part of the Code.

What constituents Intent?

- ✓ The word ‘intent’ is used in Article 58/1 to *mean ‘will’ or ‘volition’*. Every conscious act that we do is preceded by a certain state of mind. No physical act is possible without bodily motions. And every bodily motion which constitutes an ‘act’ is preceded by a desire for those motions.
- ✓ ‘Will’ involves a desired objective or active desire, i.e. desiring the result as an objective of the act or omission. Such a will exists where a person, for example, deliberately strikes another with the desire to inflict bodily injury

What is the relationship between Volition, Intention and Motive?

- ✓ These three terms are interrelated.
 - A. **Volition** The desire that impels the motion is known as volition. When an act done is preceded by a desire for the act and if such a desire is not produced by fear or compulsion we say it is a voluntary act. Thus, all bodily motions, which constitute an act, are preceded by the desire for those motions. This desire is called volition.
 - B. **Motive:** The longing for the object desired which sets the volition in motion is motive.
 - C. **Intention:** The expectation that the desired motions will lead to certain consequences. Thus, the intention is not a desire whilst motive is.

If so, what is the difference between intention and motive?

- ✓ For instance, in beating his victim the person in his act of striking intends to cause him pain.
 - **The motive here is:** causing pain may be to satisfy his revenge or cripple him against combating with the accused in a race or merely to indicate his superior strength.
 - **The Intention is** the foreknowledge of the act, coupled with the desire being the cause of the act, in as much as they fulfill themselves through the operations of the will.

What are the forms of intention under Ethiopian criminal law?

- ✓ Intention, under Article 58 is found in two different forms:

a. Direct Intention Art 58/1/Para (a)

- ✓ This category of intention is usually referred to as direct intention as there are these distinct characteristics of this form of state of mind:
 - ✓ a fixed object,
 - ✓ a clear foresight of consequences , and
 - ✓ A desire for consequences.

b. Indirect Intention (*Dolus Eventualis*): “recklessness” Art. 58/1, Para (b)

- ✓ In this state of mind, the criminal does not desire the occurrence of the harm. However, he is aware of the possible consequences and yet is unwilling to renounce his act since he has some other object in his mind.
- ✓ *In other words, though the criminal does not desire, he accepts the occurrence of possible harm in order to achieve his own object.*
- ✓ *In ‘indirect intention’, the offender does not foresee the harm as a certainty (or near certainty) but only as a possibility.*

II. Criminal Negligence Art. 59:

- ✓ “Criminal Negligence” constitutes criminal guilt of a lower degree. It is when the criminal intention must be excluded on the ground that the conditions laid down in Art. 58 are not fulfilled.

When negligence involves the criminal liability?

- ✓ *Culpable negligence is a condition for criminal liability.* Negligence is not taking care where there is a duty to take care. In negligence, there is a state of mind in which there is absence of desire to cause a particular consequence. The standard of care established by law is that of a reasonable man in identical circumstances.

What amounts to reasonable care?

- ✓ It is ‘a question of fact’ depending on the circumstances of each case.

What does negligence constitutes?

Negligence means the failure to exercise care there by causing harm (undesired by the accused) that could or should have been normally expected. Article. 59/1 and the essential elements of the provision are:

- Acting by imprudence or (inadvertent)
- Being aware that his act may cause illegal and punishable consequences acts in disregard of such consequences, or (Advertent)
- Acting by a criminal lack of foresight, or (Advertent)
- Acting without consideration of possible consequences while he should or could have been aware that his act may cause illegal and punishable consequences.(Inadvertent)

What are the different forms of negligence?

- ✓ A careful consideration of the essential elements of negligence reveals two kinds of negligence and it is the element of “consciousness” in bringing about the consequences that differentiates these two forms of negligence. *In both cases criminal lack of foresight or imprudence must be proved.*

A. Advertent Negligence :(Meaning and Distinction from Indirect Intention :)

- ✓ Acting in disregard of possible consequences defines conscious type of negligence. In this form of negligence the criminal, like in the case of in direct intention, *foresees the possibility of some harm but disregards (or rejects) its occurrence.* (in Amharic saying it is **Menem Aymetam Bakeh**)
- ✓ Under indirect intention *the criminal accepts the occurrence of the possible harm* (in Amharic saying it is **Yemetaw Yemta**) whereas in the advertent negligence *the person rejects the possibility of the harm* which in fact materializes as a result of his negligence.
- ✓ e.g. ‘A’ is driving a car and ‘B’ his passenger, points to him that he drives too fast and might hit someone, to which the driver replies ‘you needn’t worry, I am a good driver’ ... no police at this time and I am good driver to escape...

B. Inadvertent Negligence: Meaning and Distinction from Advertent Negligence:

- ✓ Acting without consideration represents the unconscious type of negligence. Under inadvertent negligence *the accused is not aware of a possible harm. The offender does not foresee the result at all.* e.g. The accused believing that the gun is unloaded pulls the trigger and to his surprise finds some one injured. His failure to take care makes him liable for negligently injuring the person.
- ✓ In the same example, if the offender having foreseen the possibility of hitting ‘B’ but disregarding the same, shoots at a certain target and unfortunately injures ‘B’, his state of mind may be described as advertent negligence.

What does Criminal Lack of Foresight mean?

- ✓ Denotes want of care with which people of reasonable prudence are expected to act and want of which is culpable. These acts are done in haste without due deliberation and caution. These acts produce a result the criminal never expected and which he may most regret.
- ✓ But he is punished not for the effect produced which he could not perhaps foresee, but for the manner of doing the act which was fraught with danger. It is his attitude towards his conduct that is blameworthy.

What is the Standard of foresight and Prudence under Art.59/1/ (b)?

- ✓ The law does not expect the same degree of care and caution from all persons irrespective of the position they occupy. This means the objective standard cannot be purely ideal because as rightly put forward by Art.59/1/(b) due consideration has to be given to subjective factors such as the “age, experience, education occupation and rank” of the accused.
- ✓ The care that is reasonably expected of an accused person as per the “reasonable man’s standard”, therefore, does not denote an abstract mythical model, but refers to the “prudent man” under the circumstances of the accused.
- ✓ Due care and attention” implies genuine effort to reach the truth and not the ready acceptance of an ill natured belief.

What are the major factors that determines the lack of foresight?

- ✓ The determination of lack of foresight may be said to have dependent on 3 important factors:
 - a) The nature of the act done by the accused,
 - b) Magnitude and importance of the act done; and
 - c) The facility a person has for the exercise of care and attention.

When there is a criminal Liability to Punishment in Case of Negligence?

- ✓ One can infer from art Art. 59/2 that negligence is not punishable unless a specific provision under consideration expressly embodies negligence as its component part. e.g. Arts. 543, 559 expressly incorporate negligence as an ingredient of the offence.
- ✓ There are other provisions such as Arts. 493, 541, etc, which do not distinctly refer to intention or negligence. *Yet, because the punishment of negligence requires an express inclusion of ‘negligence’ such provisions invariably imply criminal intention*

Art. 58 Criminal Intention		Art. 59 Criminal Negligence	
Direct Intention	Indirect Intention	Advertent Negligence	In advertent Negligence
1. There is full knowledge i.e., awareness of consequences accompanied by with (intent).	There is awareness of consequences and unwillingness to renounce the course of conduct.	There is awareness of consequences but disregards the possibility	There should or could have been awareness of consequences but lack of consideration of the same
2. The foresight is certain or nearly certain as to the consequences.	The foresight is not certain but awareness of the possibility of the consequences is present.	There is awareness of possibility of consequences.	Failure to foresee the consequences.
3. There is desire for the consequences.	There is no desire for consequences but disregards and runs the risk of possible harm. i.e. accepts the occurrence of possible harm Uncertain	Rejects the occurrence of the possible harm.	Lack of fore sight i.e. failure to exercise care. Does not foresee at all.
4 Clear foresight of consequences.	foresight	Criminal lack of foresight.	Imprudence

III. Accident:

When there is an accident?

- ✓ An act is said to be an accident *when the act by which it is caused is not done with intention of causing it and when its occurrence as a consequence of such act is not so probable that*

a person of ordinary prudence ought under the circumstance in which it is done, to take reasonable precaution against it.”

- ✓ Art. 57 (2) of the Criminal Code of FDRE provides A person’s act is not deemed to be a criminal act if he infringes the law under circumstances that amount to accident or force majeure. This means, in order to make a person criminally liable, his act must have been committed or omitted by his guilty act.
- ✓ The act must have been performed either intentionally or by negligence within the meaning of Art 57(1).

What are the essential conditions to defend on the ground of accident?

- ✓ Generally speaking, the essential conditions for pleading a case of accident are:
 - a. **Misfortune or accident:** Accident involves injury to another; misfortune implies as much injury to the author as to another unconnected with the act. Accidentally, when it is neither willfully nor negligently caused.
 - b. **Absence of both intention and negligence:** For the purpose of establishing the defiance of accident, the presence of both the forms of mental elements ‘intention’ and negligence should be negated.
 - c. **Act Done with Proper Care and Caution:** if A is at work with an axe. The head of the axe suddenly flies off and hit a person standing nearby injures him seriously. There is no negligence on the part of A. He can claim the defence of accident here provided he had taken proper care of fixing the axe before he starts working with it.

Relationship of Cause and Effect: Causation in Law

On which points the cause and the effects should relate?

- ✓ Art. 24. of Criminal Code, lays down the principle that, “a person is answerable for the consequences of his act or failure to act only in so far as **there exists a relationship of cause and effect between his act or failure and the consequences.**
- ✓ *A ‘factor’ is said to have caused a particular event if, without such factor the event would not have happened.* From this, it would follow that a man can be said to have caused the *actus reus* of a crime if that *actus* would not have occurred without his participation in what was done.

What are the major Tests to Establish the Relationship of Cause and Effect?

- ✓ the following are important ones:

a. **Sine qua non Test or the Theory of Absolute Causation:**

- ✓ ‘Sine qua non’ is a Latin term which means “*without which not*” – an indispensable condition or an important prerequisite. The test says, “*An act in the absence of which the result would not have been achieved is deemed to be the cause of such result*”.
- ✓ This theory, known as the theory of absolute causality, *goes too far because it mixes up ‘causes’ and the ‘occasion’ of the harm*. However, it makes it clear that no person can be liable for harm unless he did something, which was necessary condition of this harm. Therefore, another test has been evolved to establish ‘cause’ and ‘effect’ more distinctly.

b. **Adequate or Proximate Cause Test:**

- ✓ The second paragraph Art. 24/1 incorporate this principle and only the proximate cause shall be taken for the effects of certain activities.

What are the essential conditions to apply “proximate cause rule”?

- ✓ two things have to be fulfilled:
 - i. The criminal’s behavior that brought about the result, and
 - ii. A relevant condition of the harm resulted.

Is all causal Circumstances are Capable of Bringing the criminal Result?

- ✓ **No criminal liability to occurrence of the harm, in the ordinary course of their nature, are not capable of bringing about such harm.** See Art. 24(1)
- ✓ e.g. ‘A’ simply pretends to shoot at ‘B’ with his gun and ‘B’ who has a weak heart dies of “fright”. In this case, two possible considerations have to be made: In the ordinary course of things, one cannot kill a person by pretending to shoot him, but if B dies by frightening the gun to death A act can be defined as the cause for the death of the victim.

Shall the prosecutor proof the causal relationships?

- ✓ The presumption is probably meant to operate in favor of prosecution. This means that, it is sufficient for the prosecutor to prove that acts of the same kind as “the acts charged”, when done in the same circumstances as those in which the accused acted, are ordinarily capable of brining about the harm done in the particular case.
- ✓ Thus, *He need not prove that this causal relationship also existed in the present case. It would be the burden of the defendant to rebut such a presumption by adducing sufficient evidence to the contrary.*

What are the Factors That Might Break the Chain of Causation?

- ✓ Art. 24(2) provides for the circumstances in which the cause and effect must be excluded because a chain of causation does not exist or is broken. This may happen in the following occasions:

- a. **Preceding Causes:** The chain of causation would cease to exist if there exists a cause prior to the act or omission of the accused and makes a material difference in the consequences foreseen or ought to have been foreseen by the accused. This means that the presence of the preceding cause brings an extraordinary result for the acts or omission of the accused.
- b. **Concurrent Causes:** it is when, through or despite the application of the relevancy test, two or more persons are found to be eligible for liability. Here the problem arises when a given result may be attributed to two or more simultaneous causes.
- c. **Intervening Causes:** Here, the problem arises when a given result may be attributed to a multiplicity of causes. The difference between this case and the case of concurrent causes lies in the time element involved. The task is to know which of the two or more consecutive (not simultaneous) events has caused the harm in issue.
- d. **Cumulative Effect of Different causes:** According to Art. 24(3), where the result achieved is the cumulative effect of different causes mentioned in Sub. Art. (2) The cause and effect relationship shall be presumed irrespective of the fact that none of these causes can independently produce the result in question.

What are the circumstances and Difficulties in the Assessment of “Physical Element” Of Crime?

- ✓ It can be most conveniently examined under the following heads:

- A. **Where there is no Physical Participation:** A man may be held fully liable although he has taken no physical part at all in the actual commission of the crime. Thus, the law has, from the very early times, attached to the one who procures or advises another to commit a crime at least an equal responsibility with that of “the actual perpetrator of the deed”.
- B. **Where Participation is Indirect:** A person will be held fully “responsible if he has made use of an “innocent agent” to commit a crime. In these instances, the innocent agent is guiltless and is not responsible criminally, but the one who had brought about such results intentionally or recklessly is held criminally liable

- C. Where another Person has intervened:** In such circumstances, the prisoner has been exonerated (absolved from liability), the reason being given that the harm was not the consequence of what the prisoner did, but was the consequence of what the intervener did.
- D. Where Victim's Own Conduct has Affected the Result:**
- E. Contributory Negligence of the Victim:** This is an important principle in Civil Law that, "When the plaintiff by his own want of care contributes to the damage caused by the negligence or wrongful conduct of the defendant, he is considered to be guilty of "contributory negligence".
- F. Where the Participation is Superfluous:** An intentional participation in a crime is not excused by the fact that it would have taken place irrespective of the co-operation of the accused. In such a circumstance, a man is involved in responsibility for the *actus reus* though his assistance in it was superfluous, and even though any opposition which he might have offered to it would have been quite ineffective.

Concurrence of Crimes- Guilt In Case Of Concurrence Crimes Art. 60-67

When concurrence of crime are occurred?

- ✓ Concurrence of crimes occurs in either of the following two ways:

A. Concurrence of Crimes: (Material concurrence)

- ✓ Several Criminal acts may also constitute one or more crimes. Such concurrence is referred to as material concurrence in Art 85. *There is a case of material concurrence due to the criminal's successive acts.*

What are the major types of material concurrence?

- ✓ Materially concurrent crimes may be; *'Independent' or 'related'*. *In concurrent related crimes, a criminal commits a crime with the intention of causing or facilitating the commission of another punishable crime (Art 63).*
- ✓ In some cases, related crimes whose components fall under different provisions are in combination embodied in a special aggravated crime (185/2) For instance, Coercion (Art- 582) and 'theft' (Act. 665) is embodied in 'robbery' (Act. 670).
- ✓ But there are related crimes that are not embodied in an aggravated special crime. In such, cases criminal law resorts to aggravation of penalty by concurrence (Act-65, 185/1) if the crime under consideration is at least attempted.

B. Concurrence of Criminal Provisions (Notional Concurrence):

- ✓ *A single criminal act or omission may give rise to concurrent crimes by violating two or more provisions in Article 85.*
- ✓ *When a single criminal act results in several punishable crimes, it is classed as Simultaneous Notional Concurrence.* Under this type of concurrence, if the criminal is proved to have caused one of them with criminal intention or negligence, he is held guilty of all the crimes because they invariably occur at the same time from the same causal relation.
- ✓ *'Notional concurrence' may also include a non- simultaneous combination of crimes as stated in Art. 66, where by causation and the particular state of mind must be proved independently for each of those crimes.*

What are the instances of combined notional concurrence?

- ✓ There are three possibilities of combined notional concurrence, namely:
 - Concurrence of intentional crimes, Art.66/1/a
 - Concurrence of intentional and negligent crimes. Art. 66/1/b, and

- Concurrence of negligent crimes, implied in Art. 66/1/c.

What are the major Rules Regarding Determination of Punishment in Cases of Concurrence?

- ✓ *Cumulative of punishment is not allowed in all cases of concurrence because under certain circumstances the cumulated punishment may go beyond a person's lifetime. The only exception where cumulative punishment is permissible is in case of material concurrence of petty offences as stipulated in Art. 768.*
- ✓ Upon finding concurrence of crimes, the court, according to Arts. 184-187: Imposes a penalty on the most severe crime, and aggravates the penalty without exceeding the maximum limit allowed in Art. 184.

What are the advantages of aggravating penalty?

- ✓ This mechanism of 'aggravation' has two specific advantages:
 1. It discards an unseasonable cumulative of punishments,
 2. It avoids the absorption of lesser penalties.

When Unit of Guilt and Penalty is taken place? Art. 61:

- ✓ When certain acts constitute a single crime though they may seem concurrent at first glance. For example, a storekeeper who has stolen 50 wristwatches over a period of 6 months (by taking advantage of his status) commits the crime of aggravated theft under Art. 669/2/d, the very day he took the first wrist watch.

What are the instances of imperfect concurrence?

- ✓ Art. 61 states the following three instances of imperfect concurrence where by the seemingly concurrent crimes are merged (united) by the same criminal guilt and purpose.
 - a. Single Act or Combination of Criminal Acts:** By virtue of Article 61/1, a criminal cannot be charged and punished under two or more concurrent provisions of the same nature if the following 3 conditions are satisfied:
 - If a single act or a combination of criminal acts are committed,
 - Against the same protected right,
 - Flowing from a single criminal intention or act of negligence.
 - b. Successive non-concurrent acts:** According to Art.60/2, a person who commits a so-called successive offence is guilty of, and punishable for only one offence and not for each of the act which he repeatedly does. Under this sub-article the essential elements are:

- Successive or repeated acts done.
 - Against the same protected right.
 - Flowing from the same criminal intention or act of negligence, and
 - Aiming at achieving the same purpose.
- c. **Ancillary (subordinate) Acts:** *Any subsequent act the offender performs for the purpose of carrying out his initial criminal scheme shall not constitute a fresh offence liable to punishment and are merged by the unity of intention and purpose.* E.g. the putting into circulation of counterfeit coins, or the use of forged documents.

When the Renewal of Guilt and Penalty of the accused in concurrent crimes? Art. 62.

- ✓ Here is the case *when the offender becomes punishable where there is repetition of acts or omissions with renewed criminal intention or negligence.*

Periods of Limitation:

- ✓ This refers to the cessation for the application of the Criminal Law for the purposes of conviction and punishment.
- ✓ This period of limitation may be provided with by the constitution or by the Criminal Code. Accordingly, Articles 216-228 of the Criminal Code provides the principles of lapse of period of limitation.

Corporate Criminal Liability (Art 34)

What are the major Goals of Corporate Criminal Liability?

The main goals of criminal liability of corporations are similar to those of criminal law in general as enumerated below:

- a. **Deterrence**—effective prevention of future crimes.
- b. **Retribution** and reflects the society's duty to punish those who inflict harm in order to "affirm the victim's real value."
- c. **Rehabilitation** of corporate criminals.
- d. **Clarity, predictability, and consistency** with the criminal law principles in general.
- e. **Efficiency**, reflected by the first three goals mentioned above, but also by the costs of implementing the concept.
- f. **Promoting general fairness.**

What are the major Principles of Corporate Liability?

A company can be held liable for its wrongful acts by virtue of two legal principles:

1. **Vicarious liability:** *The general rule in the criminal law is that there is no vicarious liability. however, In the criminal law, corporate liability is an exception that determines the extent to which a corporation as a fictitious person can be liable for the acts and omissions of the natural persons it employs.* It is sometimes regarded as an aspect of criminal vicarious liability.
2. **Direct liability:** *The idea that a company is a legal person that could sue and be sued in its own name, has given way to the law maker superimpose its individualistic conception of criminal liability to legal persons.* In such circumstances the company as well as the individual could be criminally liable. This is known as the identification doctrine.

UNIT-V

DEGREES IN THE COMMISSION OF CRIME

What are Different Stages in the Commission of Crime?

- ✓ The material element of the crime may result in a completed or incomplete offence and the stages include Intention, preparatory acts, attempt, renunciation, active repentance, impossible offence and special cases of attempt.

A. Preparation:

- ✓ Criminal law punishes “overt acts” and not mere intentions. A criminal intent, no matter how immoral it may be, is beyond the grip of criminal law until it is manifested by external conduct.
- ✓ The requirements of Art. 23 imply that a mere criminal intention does not in itself constitute a crime and is not punishable. This prohibition exists in Art. 23 of the Criminal Code, which lays down that a crime, is not completed unless all its legal, material and moral ingredients are present.
- ✓ *Therefore, the Criminal Code does not apply unless a person crosses the line of demarcation between the mental and the material phases.* A criminal crosses this line firstly by preparing the commission of a crime within the meaning of Art. 26.

Is all preparatory activities are punishable?

- ✓ *Not every preparatory act is punishable, since we cannot be certain about a person's criminal intent unless the prospective criminal himself tells us.* This uncertainty is

inevitable because preparatory acts are “remote” from the ultimate harm and unequivocal design and the determination to carry it out.

- ✓ Most Criminal Laws including Ethiopian Criminal Code do not in principle punish preparatory acts. Preparatory Acts are defined under Art. 26 of the Penal Code of Ethiopia.

Is intent to commission or preparation is punishable?

- ✓ Art 26 encompasses all those situations where he/she from the moment that a person conceives the idea of committing a crime up to its consummation. This process includes formulation of intent to commit a crime.
- ✓ *This intent may also be supported by external acts like collecting the means required to commit the offence and creating the conditions that may facilitate for the realization of the crime and these preparatory acts are not punishable as a general principle.*

Why preparatory acts are not punishable as a general rule?

- ✓ For four main reasons.
 - a. A preparation apart from its motive is generally an harmless act;
 - b. It would be impossible in most cases to show that preparation was directly towards a wrongful end or was done with an evil motive or intent. Therefore, if mere preparations were punishable it would cause unnecessary harassment to innocent persons as there is a *locus poenitentiae*, and the doer may have changed his mind;
 - c. It is not the policy of law to create and multiply crimes. If preparations were to be punished, innumerable crimes will have to be created;
 - d. A mere preparation does not and cannot ordinarily affect the sense of security of the individual to the wronged, nor would the Society be disturbed or alarmed as to rouse it sense of vengeance.

What is the Legal Effects of Preparatory Acts?

- ✓ *Punishing preparatory acts is therefore an exception than a rule under Ethiopian criminal law.*
- ✓ Nevertheless, the Criminal Code has a mechanism of precaution against preparatory acts where a person behaves or is likely to behave in a manner which threatens peace or security of the public or citizen (Art. 141). In such cases dangerous articles are seized (Art. 140) and the person who poses a threat is required to enter into recognizance.

If so when preparatory acts are punishable?

- ✓ *Preparation is punishable only when it has reached such an advanced stage and is close to an attempt that there is no doubt as to the purpose of the arrangements made and as to the willingness of the person who made them, to carry them further if he is given the chance of doing so.*
- ✓ There are two situations where preparatory acts are punishable.
 - i. Where the Preparatory Acts Constitute a Crime in Themselves (Art 26/a):**
- ✓ A person who buys a gun as a preparatory step towards homicide is punished for the completed “petty offence” of retaining a gun without license (Arts. 808, 809)
- ✓ Even though he is not punishable for his preparatory act; the act of keeping a gun without a license itself is a petty offence.

- iii. Where the Preparatory Acts Constitute a “Special Crime” by Owing to Their Gravity (Art 26/b):**

- ✓ *Certain preparatory acts are expressly constituted a special crime by law owing to their gravity or the general danger they necessarily bring upon the society.*
- ✓ For example, material preparation of offences against the state (Art. 256, 257), preparing a mutiny or seditious movement (Art. 300) and preparing machinery and means of counterfeiting currency (Art. 371) are expressly stated to constitute special crimes.

B. Attempt (Art 27)

When is attempt taken place?

- ✓ Attempt is the second degree in the material element of the crime.
- ✓ *It is a substantial but unsuccessful effort to commit a particular offence. It is a willful effort but without success.*
- ✓ The effort must be unsuccessful because a person cannot be prosecuted for both an attempt and completed crimes as the attempt can be considered to have been merged with the completed offence, thereby abrogating itself.

What are the essential requirements for an attempt to exist?

- ✓ In a nutshell, attempt includes three most important requirements to exist that include:
 - i. Intent:** *An act to constitute an attempted offence shall be preceded by purely internal mental process*, which begins with the thought of executing an offence and ends with the decision to commit it, but which does not manifest itself by any overt act. The

convictions of attempt rests upon the doctrine that “Voluntas reputabitur pro facto- the intention is to be taken for the deed.

- ii. **Overt act:** This goes with the known principle of Penal Law that it does not punish mere thoughts, as a breach of the law can't occur in the absence of a given behavior. *A person, therefore, can be held liable criminally if he/she manifests his/her intent by some open deed tending to the execution of his/her intent*
- iii. **Failure to achieve the result.**

Explain the different forms of attempt?

- ✓ *Basing on the 'reason' for the failure to achieve the intended result* attempts can be classified into three categories:
 - a. **Incomplete Attempt:** If the accused chooses not to do or is prevented from doing the last act of the crime, the attempt is said to be incomplete.
 - i. **Voluntary withdrawal:** The words “... do not pursue ... his criminal activity to its end” in Article 27 define “incomplete attempts” because of voluntary withdrawal. The part of the provision that reads,
 - ii. **Involuntary withdrawal:** *the term unable to pursue his criminal activity to its end*”, on the other hand, indicates an incomplete attempt because of external interventions, that is outside the volition or will of the accused.
 - b. **“Complete Attempt”:** *when the wrongdoer has performed everything on his/her part, which is considered to be necessary without, however, result having occurred.* The reasons for the failure to achieve the result may be of two types:
 - **Impossible offence:** The achievement has not occurred due to situations beyond his/her control.
 - **Active repentance** Due to the active involvement of the perpetrator him/herself.
 - c. **“Impossible Attempt”** Art. 29: *where a criminal attempts “to commit a crime by means or against an object of such a nature that the commission of the crime was absolutely impossible”.*

Is it absolute or relative impossibility should be taken?

- ✓ *Article 29 covers the cases of absolute impossibility and not relative impossibility where the circumstances in which the criminal acted are unable to cause the criminal's intended harm due to the means used or because of the object against which the act is committed.*

- ✓ E.g. Failure to achieve result because of an unloaded gun is an absolute impossibility due to the means used. Poisoning a person with an insufficiently fatal poison is a case of relative impossibility due to insufficient means.
- ✓ Such a distinction between absolute and relative impossibility is significant because free mitigation (Art. 180) may be allowed under cases of absolute impossibility.

Explain the requirements of *Mens rea* in Attempts?

- ✓ The mental element assumes paramount importance in attempts, because sometimes *actus reus* may be a perfectly innocent and harmless act,
- ✓ e.g. 'D' intending to murder 'P', puts sugar in his tea, believing that it is Arsenic the act is absolutely harmless. His 'Object' failed only because of his mistaken appreciation of the material circumstances. Therefore, without establishing his guilty intention it is impossible to make him liable for an attempt. As long as the consequence is intended, erroneous appreciation of the material circumstances may not alter the liability for attempt.

What is the Importance of Distinction between Preparation and Attempt?

- ✓ The relative proximity between the 'act' done and the 'evil consequences' contemplated largely determines the distinction. the major distinctions are:
 - The fact that all attempts are always punishable (Art. 27(2)) where as all preparatory acts are not punishable (Art. 26).*
 - Preparation consists in devising or arranging the means or measures necessary for the commission of the crime; while an attempt is the direct movement towards the commission of the crime after preparations have been made.*

How we can identify the stages of attempt?

- ✓ Some tests have been evolved by the courts to determine at what stage an act or a series of acts done towards the commission of the intended crime would become an attempt. These tests are:
 - Reasonable Inference test or Unequivocally Test:** According to this test, *".... an act done with intent to commit a crime is not a criminal attempt unless it is of such a nature as to be in itself sufficient evidence of the criminal intent with which it is done"*.
If the only reasonable inference that can be drawn from the overt acts of the accused is that he would have completed the crime had he not been interrupted, then there can

be no doubt that he is guilty of an attempt to commit a crime". The interdependence between intent and behavior is apparent in this test.

b. The Commencement of Execution Test: *there is an attempt as of the moment the accused begins to commit the crime. "An act amounts to the beginning of execution when the intention behind it is irrevocable. The doer should, therefore, go beyond what might be called the point of no return.* This test is basically subjective. Yet, it does not disregard objective considerations, because the objective overt act of the 'decisive step' serves as a landmark in embarking upon the subjective point of no return.

What is the position of Ethiopian criminal code?

- ✓ *The Ethiopian Criminal Code defines attempt in Art. 27/1 Para 1, as the intentional act of beginning to commit a crime and thus has much in common with the "commencement of execution test".* The second paragraph of the provision states what is meant by the act of beginning to commit as offence.
- ✓ The term "**clearly**" is intended to mean an act unequivocally aims at a desired harm where the doer's criminal intent and determination clearly or unequivocally aim at the completion of crime.
- ✓ A given act normally manifests two things namely:
 - Intent (the doer's subjective state of mind)
 - The acts' material (objective) proximity or remoteness to the intended consequence.
- ✓ *If the term "... clearly" refers to the doer's subjective state, of mind the term "direct" can logically be presumed to apply to the objective location of an act in the path towards the desired result.*

c. Proximity test: An act of attempt must be sufficiently proximate to the crime intended, it should not be remotely leading towards the commission of a crime. *The act of the accused is proximate if, though it is not the last act that he intended to do, it is the last act that was legally necessary for him to do, if the contemplated result is afterwards brought about without further conduct on his part.*

d. Locus poenitentiae Test: The Latin term 'locus' that means '**place of repentance**' i.e. a point at which it is not too late for one to change one's legal position; the possibility of withdrawing from a contemplated course of action, esp. a wrong, before being committed to it. *An act would amount to preparation and not an attempt, if a person*

voluntarily gives up the idea of committing a crime before the criminal act is carried out.

- e. Social Danger Test:** The seriousness of the crime attempted and the apprehension of the social danger involved is taken into account to distinguish an act of ‘attempt’ from that of ‘preparation’. ‘A’, gives some pills to a pregnant woman to procure abortion, but it had no effect because the drug turned out to be innocuous. ‘A’, would be guilty of attempt to cause miscarriage since the acts of such kind would cause an alarm to society and will have social repercussions.

C. Accomplishment or Completion of Crime:

- ✓ When the intended consequences are achieved by the conduct of the accused, the crime is said to have been completed and thus making the accused liable to punishment for full fledged crime.

D. Renunciation And Active Repentance:

When Renunciation exists? (Art 28(1))

- ✓ *It refers to situations where a person abandons the pursuit of his or her criminal activity by his or her own free will without completing the act required producing the result.*
- ✓ Renunciation exists when the criminal activity is abandoned absolutely. As it is in an attempted crime, it must be accompanied by guilty state of mind in the form of intent. There is also no doubt that the act should not achieve the result. In such a case, the person is held criminally liable for an attempted offence,
- ✓ but there is a possibility of reduction of punishment within the limits of the law as per Article 179 of the Penal Code, or beyond the limits of the law as provided under Article 180 of the same code which reads as:

When Active Repentance is existed?

- ✓ When, after having performed all the acts to bring about the desired result, the perpetrator himself either prevents or contributes for the prevention of the result. see Article 28(2)

UNIT- VI

PARTICIPATION IN THE COMMISSION OF CRIME

What are the level of participation of the criminals in certain crime?

- ✓ The following are the major levels of participation?

A. Participation in Principal Capacity:

- ✓ Participation is defined differently in different legal systems. Some legal systems define it narrowly and only include those persons who involve themselves in the commission of the offence physically or personally.
- ✓ Some other legal systems, however, define it broadly not only to include material offenders but also those persons who take part in the commission of the offence either morally or indirectly.

When the principal participations is said to exist?

- ✓ In any case, principal participation *exists where those persons who do the act or acts constituting the offence or abstain from acting when they are bound to act.*

What is the position of Ethiopian criminal code?

- ✓ In Ethiopia, principal participation is defined broadly that it takes the forms of material, moral and indirect offenders. see Article 32 of the Criminal Code
 - a. Material Criminal: Article 32(1) (a)**
 - ✓ *It exists when the one, who, with the requisite mental state, personally engages in the act or omission concurring with mental state which causes the criminal state.*
 - ✓ Such form of principal criminal can commit the offence either directly or indirectly.
 - i. **Direct:** when every person directly, physically or personally commits the offence.
 - ii. **Indirect:** when the perpetrator commits the crime by using instruments like animals or natural force (like fire).

Is it only the intention of the offender is relevant to call principal offender?

- ✓ *It is also possible for a person to be regarded as a material criminal if he or she negligently performs an act and produces a forbidden harm.*
- ✓ This is to mean that a person should not always commit the crime intentionally in order to be regarded as a principal party in the form of material criminal.
 - b. Moral Criminal:**
 - ✓ *Moral Criminal is a person who fully associates himself/herself with the commission of the crime and takes the crime as his or her own even though he or she is not present at the time when and the place where the crime was committed.*
 - ✓ Moral criminal is a person who plays no part physically in the commission or omission of the offence. Persons who involve in the commission of the crime in such a way are considered to be *working brains or master minded.*

- ✓ He/she just *takes part in the process by designing plans, providing means, facilitating everything necessary for the commission of the offence*, as it is dealt with under Article 32(1) (b) of the Criminal Code.

c. Indirect Criminal: see Article 32(1) (c)

- ✓ *When the party to a crime uses an intermediary to commit a crime.* In this case, the intermediary is a mere instrument and the originating actor is the principal participant in the form of indirect criminal.

Who are the intermediaries?

- ✓ It includes; compel another to commit a crime. This is the case a party to the crime;
 - Employ mentally deficient persons in the course of the execution of a crime.
 - Use an irresponsible person that can come under Articles 48-50.
 - Use infants who are immature persons as provided under Article 52.
 - Use another person by taking the advantage of his or her mistake or ignorance as per Articles 80 and 81 of the Criminal code.

What is the Legal Effects of Participation?

- ✓ A person who involves himself or herself in the commission of a crime in different forms of participation as material, moral or indirect criminal is liable for the crime committed being considered as a criminal in the first degree.
- ✓ Of course, all principal criminals may not be subjected to the same degree of punishment as personal circumstances and degree of individual guilt may be taken into account as per Articles 35 and 41 of the Criminal Code

Co-criminals:

What happens if several persons involve in the commission of a crime together?

- ✓ Co-offenders are defined the Ethiopian Criminal Code, broadly so as to *include all principal parties who involve in the commission of the crime either as a material criminal, moral criminal or indirect criminal.*
- ✓ Accordingly, co-criminals are dealt with under Article 32 and 33 of the Criminal Code of Ethiopia.

What is the difference between Co-Criminals in general Crimes and special Crimes?

- ✓ Persons may also be categorized as co-criminals in general crimes and special crimes.

- a. **Co-criminals in general terms:** Several persons may be considered as co-criminals in crimes in general when the crime in question can be committed by any one.
- b. **Co-criminals in special crimes:** when the crime in question requires special qualification. Art. 33 of the Criminal Code. The person in this case has equal physical or moral involvement with the original criminal. That means he or she fully associates himself or herself with the crime. He/she adopts the criminal intent as his or her own and work towards achieving the result. This kind of co-criminals require some elements to be fully understood:

Mention the possible instances under art 33 and special crimes?

- ✓ An accused person may be prosecuted as a co-criminal when, by his/her acts he/she fully participated with knowledge and intent in the commission of a crime which can be committed only by certain specified persons such as members of the Armed forces or officials or only by male persons as in the case of rape.
- ✓ In desertion, it is required that the perpetrator be member of the military
- ✓ In adultery-the person shall be married to involve himself in his principal capacity as a material offender
- ✓ In incest-the actor shall be relative of the other so as to be considered as a principal material offender
- ✓ In corruption-the actor can be said to have committed the crime materially if he or she is a public servant

What are the requirements under art 33?

- ✓ The crime should only be committed by specified person who has special qualifications. When the crime to be committed requires the person to possess special qualification, those without the same may be said to have participated in the crime as co-criminals under Article 33 of the Criminal Code.

B. Participation In The Secondary Capacity:

- ✓ **This relates to incitement or complicity, which are also called accessories either before or during the commission of the crime.** Thus, Secondary participation refers to incitement and complicity.

i. Incitement:

- ✓ This form of participation is secondary before the commission of the crime. It is dealt with under Article 36 of the Criminal Code as:

What are the essential elements to the incitement to exist?

- ✓ **At least two persons.** These are the inciter/instigator and the incited/instigated.
- ✓ **The instigator or instigators should convince the principal criminal/criminals** until the latter reaches a determination or decision to commit the crime based on the inducement/instigation/incitement. Pre-existing intention of the principal criminal is irrelevant as long as it is proved that the same would not have committed the crime had he not been persuaded by the instigator.
- ✓ **The provocation or inducement must be carried out intentionally.** The instigator should have the knowledge of what he incites. This is to mean that there is no negligent incitement.
- ✓ **There shall be causal relationship between what the instigator does and the act of the principal criminal.** This in other words means that the incited must be convinced and commit the crime as is intended by the instigator.

When the causal relationship exists between the criminal act and the provocation?

- ✓ Causation in incitement involves the following three chains of events:
 - That there shall be an act of incitement by the instigator to induce or convince the other person
 - That the principal criminal takes his or her decision as a result of the inducement
 - That the principal criminal should commit the crime
 - Finally, the crime should be committed or at least attempted.

ii. Complicity or an Accomplice

- ✓ It is also a secondary participation which may exist either before or during the commission of the offence as provided under Article 37 of the Criminal Code
- ✓ A person participates in the commission of a crime in his or her secondary degree as an accomplice if he or she gives assistance to the principal criminal either before or during the commission of the crime with the intent thereby to promote or facilitate the commission of a crime.

Criminal Conspiracy

When conspiracy existed?

- ✓ *The crime of conspiracy is completed at the moment when two or more persons have agreed that they will do at once or at some future time an act which is unlawful.*
- ✓ *Therefore, the crime of conspiracy is said to be completed even if there is no further act to put the agreement into effect.*

Is conspiracy an independent crime in Ethiopia as a rule?

- ✓ In the Ethiopian law, *conspiracy, as a rule, is not considered to be an independent crime. Rather, it is a ground for aggravating punishment when persons participate in the commission of a crime based on prior agreement* as per Article 38(1) of the Criminal Code of Ethiopia.

What are the exceptions to regard conspiracy as independent crimes?

- ✓ Though our law disregards the act of conspiracy as an independent crime, Article 38(2) provides exceptions that it is taken as an independent crime;
 - When persons conspire to commit crimes against the state as per Article 257 (b).
 - Art 274. Provocation and preparation: (Crimes in Violation of International Law)
 - Art. 300 – Concert or Conspiracy to raise a Mutiny.
 - Conspire to commit offences which are of serious in nature as per Article 478.

Why we punish conspirator?

- ✓ The reason to hold conspirators criminally liable is that collective action towards antisocial behavior involves a greater risk to the society.
- ✓ The more parties there are the larger the probability for the commission of the crime, the greater the threat to the community for conspirators may encourage each other. may feel bolder than if they were on their own. may fear reprisal from the other may not want to loose face from the others.

Accessories After The Fact: Art.40

- ✓ Accessory refers to a person who gives assistance to the principal criminal after the realization of the crime. The form of assistance may be, hiding and aiding the criminal as per Article 445 of the Criminal Code.
- ✓ Receiving or hiding a property, which is obtained by a crime committed by the criminal as per Art. 682 also involve accessory.
- ✓ It also involves helping a person to escape from prosecution as per Article 460.

What are the legal effects of being accessory after the fact?

- ✓ *Such a person cannot be considered as an accomplice, which is one form of participation and hence cannot be treated under Article 36 because there is no participation in the commission of a crime once it has been completed. So an assistance given to the criminal after the commission of the crime is independent crime.*

Does failure to report constitute participation in the commission of the criminal offences?

- ✓ Failure to report refers to situations where a person fails to inform the concerned authority about the preparation, attempt or commission of a crime.
- ✓ Such a person cannot be said to have participated in the commission of the crime. He is, rather, treated as an independent criminal when the law expressly provides so as in the cases provided here under.

What are the situations that leads to failure to report to be prosecuted as independent crime?

- Art. 254 Indirect Aid and Encouragement:
- Art. 335. - Failure to report Crimes against the Armed Forces and Breaches of Military Obligations:
- Art. 443. - Failure to report a crime.

IT IS YOURS....