PART I

CHAPTER I

DEFINITION AND PRINCIPLES OF NON-CONTRACTUAL LIABILITY LAW

Definition- Non-Contractual Liability Law is a law that gives remedy by awarding compensation to the victim or ordering restitution or injunction.

Principles or requirements art 2141

-act or omission - damage

-The existence of casual relationship between the act or omission and the damage suffered by the victim - this damage should be a kind of harm recognized as attracting legal liability

CHAPTER II

CONSTITUTIONAL RIGHTS

Personal Security- 2038(1) of CC & art 16 of the FDREC, everyone has the right to protection against bodily harm.

Interest in property- art 40(1) FDREC, every Ethiopian citizen has the right to the ownership of private property.

Moreover, an interest in property can be affected by the negligent act of another. This as well is protected under Extra Contractual Liability Law. Art 2055- 2059.

Economic Interest- 41(1) of the FDREC, evey Ethiopian has the right to engage freely in an economic activity and pursue a livelihood of his choice anywhere within the national territory.

Reputation and privacy- 24 & 26 respectively. Art 2044 & 2109- where a person's reputation is damaged by untrue speech or writing then they may have an action in the tort of *defamation*

CHAPTER III

CONDUCT THAT GIVES RISE TO LIABILITY

Conduct is a person's behavior in a particular place or in a particular situation. In legal sense, conduct is classified into two: Act and omission. Act is defined as an external manifestation of the actor's will.

Intention and Negligence- Intention refers to the defendant's knowledge that the

consequences of her conduct are bound to occur, where the consequences are desired or, if not desired, are foreseen as a certain result, art 2029

Hence, Intention exists where:

a) The defendant knows that the consequences of her conduct are bound to occur; or
b) Where the defendant desires the consequences or
c) Where the defendant may not desire but foreseen the result of her action or omission.

if a person failed to act in a reasonable manner, we say that person acted negligently.

1. The defendant must have owed the plaintiff a duty;
2. The defendant must have breached that duty;
3. The breach of that duty must be the actual as well as the "legal" cause of the plaintiff's injury.

4) That injury must be one that the law recognizes and for which money damages may be recovered.

Reasonable 7 Prudent person- objective standards or requirements r knowledge, investigation and judgment.

the exceptions 4 z reasonable and prudent man standard is ***unforeseen harm.***

Statutory Standard- The objective standard is not free from subjectivity for there is a subjective element in that it is left to the individual judge to decide what a reasonable or what could have been foreseen"[1] Hence the law introduces statutory standard.

CHAPTER IV

CAUSATION AND REMOTENESS OF DAMAGE

CAUSATION. To determine the cause for the damage [death] the judge may, among the many tests, uses "but for" tests. "According to this principle the plaintiff will have to show that she would not have been injured in the way she was but for the defendant's conduct"

Remoteness of Damage- if the kind of damage was an unforeseeable consequence of the act, the damage is said to be too remote.

Exception to the Foreseeability Test-

[1] Michael P.192

1)The egg -shell -skull rule- whether a certain act causes a physical injury, which is different and much worse than the ordinary injury that would have been caused in the course of events.

2)Economic loss consequent on physical injury- where one single conduct causes two injuries, and the one is not foreseeable by the tortfeasor.

In Ethiopian Law a victim who suffers both physical and economic loss should sue the defendant for both at the same time (simultaneously).

3) Psychiatric Illness- if a physical injury brings about the victims psychiatric illness, even though the defendant will not foresee that, she will be liable for the psychiatric illness.

4) Intentional torts- the one which is committed by an actor who knows what she is doing & committed intentionally. Examples for this are ***malicious falsehood***. If someone makes maliciously false statement about someone to a third party.

5) Statutory Torts- eg. discrimination based on race, religion, or sex.

CHAPTER V

Boundaries of Non– Contractual Liability Law

Non-contractual liability law v Contractual law

In case of contracts, the obligations emanate from the agreement made between the parties,[2] while the obligation of Non – Contractual Liability Law emanates from the law. in case of Contract Law there are certain people who are exempted from performing their part of obligations, for instance, a minor. No exception is, however, made in Non – Contractual Liability Law. 2033, 317, 2099

breach in contract is established by simply showing that the performance promised has not been materialized without showing the promisor's fault. Exception is article 1795. In Non – Contractual Liability Law, however, Liability is established by demonstrating the defendant's fault within the meaning described to that term by articles 2021, 2030

[2] CCE article 1675

where it is established that the breach is intentional or due to "grave" fault, [3] the compensation shall be increased to cover the damage, which is greater than the normal damage. However, in the absence of intentional fault non – contractual compensation for wrongful harm may sometimes be decreased.1801(2), 2091, 2101.

Non- Contractual Liability Law v Criminal Law

liability from both wrongs emanates from the law

The criminal wrong doer may end up in jail or be punished with fine or both. In case of non – contractual wrong, the wrong doer may not go to jail.

the primary function of the criminal law is to protect the interests of the public [while] the primary function of the law tort is to provide of redress for individuals who have suffered a loss.

The parties are different.

PART II

Ethiopian Non – Contractual Liability LAW

CHAPTER VI

SOURCES AND TYPES OF LIABILITIES

1)Fault (offence)- 2028 – 2065

- professional fault
- intent to injure another
- Chain of Command (If she is aware of the illegal nature of the order, If she knew the order was given without authority & the criminal nature of the act ordered.
- Non – Performance of a contract (eg. 2037 vs 2533)
- diversion of power to his or 3rd parties
- Infringement of Laws

2)Activities one engages in or things possessed by a person- 2066 – 2089

3)Where a third party for whom a person is responsible incurs liability- vicarious liability- 2124-2132

Special cases on fault

[3] Ibid article 1801(2)

1)Trespass to person , it consists of

-Physical Assault [Battery] – 2038, defenses 2039

-Interference with the liberty of another [false imprisonment]- 2040 , defenses, 2041-43

- Defamation (jeopardize his credit, his reputation or his future)- 2044 vs 2109, defenses 2046-2048

*Defamation could be committed by way of publication, criminal & civil liability 2049

2) Trespass in goods- Our Civil Code uses trespass to indicate trespass to land or a house, 2053, while trespass to movables is referred to as assault to property, 2054.

CHAPTER VII

Interference Against Economic Interest

Articles 2055 to 2064

1) Pre contractual Negotiations [2055]

2) Inducement to breach of contracts [2056]

3) Unfair competition [2057] vs 126 com code

4) Simulation (2058)

5) False Information (2059)

6) Witnesses [2061]

7) Advice or recommendations (2062)

8) Seizer of another's property or Distrait (2063)

9) Execution of a court order (2064)

10) Prescription 2065- it is z time limit in which one is supposed to bring an action,1845. If she does not, she is barred from bringing her action by prescription.

CHAPTER VII

Other Interests

1) Injury to the Right of Spouses (2050)
2) Duty to Educate and Supervise (2052)- a good example to a fault by omission

CHAPTER IX

Liability Irrespective of Fault

Strict Liability (2066-2089)

Liability for the types of activities which the defendant peruses (2066-2089)

1. Liability for bodily harm or injury (2067)
2. Liability for the types of instruments that cause damages (2071_2085). These are further classified into:

A. Liability for animals (2071-2076)

B. Liability for buildings (277-2080)

C. Liability for motor vehicles or machines (2081-2084)

D. Liability for manufactured goods (2085)

Defenses or justifications for strict liability 2086

CHAPTER X

VICARIOUS LIABILITY

Vicarious liability is "..liability imposed on one person for the wrong doing of another."

- under the Ethiopian tort law parents and others listed under article 2125 are liable for the wrongs done by a minor child.

-The state is liable for its civil servants and employees acts 2126

-bodies corporate are liable for their representatives, agents or paid workers act 2129

- The employers are held liable for the acts of their employees 2130

- The managing editor of the newspaper, the printer of the pamphlet or publisher of a book is liable for defamation committed by the author of the printed text 2135

The Rationale why one is held liable vicariously

1) The control test: This theory attributes to those who are made liable the ability to control the behavior and precise manner of the wrong doers. Eg. the employer

-4(1) of Labor Proclamation No 377\2003, *under the authority of the employer*; *follow instructions given by the employer* as per article 13(1).

2) *Analogy with causation*- The state, the employers or the bodies corporate are those who..set the whole thing in motion and that, therefore, they should bear the consequences of a third party who suffers through their employees wrongful conduct.

Eg art 12 of z procl

3) *Deep pockets-* the father, the state, bodies corporate and the employers are richer. Hence they should pay. "So making A vicariously liable in respect of B's tort will help to ensure that those who have suffered loss. because of B s tort will be able to sue someone of substantial means for compensations for their losses.

4) *Economic and moral consideration-* This theory is based on the fact that "..the person who drives a benefit from the activity of another should also bear the risk of the damage inflicted by those acts."

5) *Loss spreading-* The employer does this "Either by charging his customers slightly higher prices or by making a claim on his liability insurance.

PART III:

REMEDIES TO EXTRA CONTRACTUAL WRONG

Chapter XI

Introduction to the Basic Notions of Damage

Conceptual Analysis of Damage- if an action for compensation is based on the provisions of extra contractual liability law, the plaintiff has the responsibility to prove that he has incurred damage because of acts or circumstances for which the defendant is liable under the law.

-proving damage is a prerequisite for compensation. The cross reading of Articles 2092 and 2102(2)

The word "damage" is derived from a Latin word "*damnum*" meaning loss or species of loss. It is a harm or injury caused to a person's legitimate interest, material (pecuniary) or moral (non pecuniary).

Classifications of Damage

A)Material Damage- is an injury caused to a person's economic or financial interest.

has two important components. These are present (actual) material damage and future material damage.

*present (actual) material damage covers the loss occurred from the date of the commencement of the injury up to the date of final assessment by the court.

-Present material damage can be further classified into two: a *damnum emergens*, a

Latin term, which denotes the occurrence of a loss (diminution of estate), or a lucrum cessans, the Latin term, which denotes the prevention of a gain (non-increase of estate).

*Future material damage- the damage that will occur certainly or with a higher probability after the date of judgment. *damnum emergens and lucrum cessans* may affect both the past and the future damage.

-the dividing line between present damage and future damage is drawn in terms of time. The dividing date is that of the judgment assessing the damage.

assessment of future damage is very problematic because it is not related to the actual occurrence of loss at the time of assessment but only to the non-occurrence of expected future earnings or gainful opportunities.

under the *res judicata* prohibition of article 2151, he may be unable to bring a fresh action after the final prognosis for the plaintiff is technically prohibited to split his claim for present damage and future damage.

B) Moral Damage- the harm or injury inflicted to a person's feeling or non-pecuniary interest. It is an injury caused to a person's honor, reputation or personal feelings of the victim.

Chapter XII

Modes of Compensation

Modes of Compensation for Material Damage

1) The Rule of Pecuniary Compensation- Article 2090- it means compensation by means of money, the damage inflicted to the pecuniary interest of the victim has to be quantified and valued in terms of monetary equivalence so that the harm will be made good by the award of compensation expressed in terms of money.

2) Non-Pecuniary Compensation- may be awarded by the court in exceptional circumstances 2090(2)

Article 2118 through Article 2123 provides a partial enumeration of the "other modes of compensation" other than payment of monetary compensation.

Restitution, reparation in kind, retraction of defamatory publications, enjoining cases

of unfair competition and injunction, not exhaustive but illustrative

Modes of Compensation for Moral Damage

A)The Rule of Non-Pecuniary Compensation- moral damage cannot be assessed in monetary terms. Article 2105

For example, an injury caused to a person's reputation through defamatory publications can be made good through an order of retraction of the defamatory publication.

B) Pecuniary Compensation as an Exception-the phrase in 2105(2) "only in cases expressly provided by law" indicates the exceptional nature of awarding pecuniary compensation for moral damage.

-2105(2) is applicable only to such nominated cases of moral injury enumerated in Article 2106 through 2115 of the civil code. It may also apply to other moral harms expressly stated to such effect in other pertinent provisions.

* in the assessment of moral damage, Ethiopian courts have discretionary power in two respects: in awarding the compensation and in fixing the amount of compensation.

Chapter XIII

Quantum/ Extent of Compensation

Quantum of Compensation for Material Damage

The Rule of Equivalence- The principle of equivalence between material damage and compensation is incidentally mentioned in Article 2090 and explicitly laid down in Article 2091 of the civil code.

there are no rules and standards set under the law to regulate the methodology of assessment of damage. While assessing the damage sustained by the victim, both the material and the moral aspect of the damage must be quantified and valued in terms of money

However, there are situations where compensation that is less than the damage may be awarded.

Departures from the Rule of Equivalence- For various policy reasons

A)Compulsory Mitigation art 2098- are stipulated to the benefit of the defendant, that is, the defendant as of right can invoke them.

B) Discretionary Mitigation Articles 2099-2103 and 2157- The defendant can invoke them where relevant, but he is not as of right entitled to the mitigation.

C) Optional Mitigation Articles 2074, 2075 & 2078 - its application does not depend on the discretion of the court but on the discretion of the defendant himself.

there are alternatives other than paying money, therefore, the defendant can opt for an alternative to that of paying the damages otherwise due by him.

D) Nominal Damages Without the need to proving any real or actual damage, a very small fraction of money can be awarded to the victim simply as a recognition or declaration of his rights violated or infracted by the defendant. such as trespass, but has not shown there is any actual loss.

The term "nominal" connotes the symbolic (unreal) and insignificant nature of the award that does not correspond to any real damage sustained by the claimant.

Quantum of Compensation for Moral Damage- principle of equivalence of article 2090(1) cum 2091 is practically impossible in the case of moral damage.

our civil code uses the word "equitable" rather than equivalent as a standard for fixing the quantum of compensation for moral damage. Art 2106-2126

In Ethiopia there seems a general consensus among the general public, the legislature and the judiciary concerning the inadequacy of the one thousand birr which is set as a ceiling amount for compensating moral damage under the CC.

Eg. Article 34(4) of the Copy Rights and Neighbouring Rights Proclamation fixed minimum of 100,000 br.

Compensation for personal Injuries

***General Damages vs. Pecuniary Loss**

-General Damages- synonymous with moral damages refers to the monetary award granted to a person who suffered loss of amenity (the reduction in the capacity to enjoy life), pain and suffering due to the tortuous acts of another person.2067,2113.

It is logical to say that the quantum of the compensation should depend on the nature and gravity of the injury for equity to be meaningful in the objective sense.

-Pecuniary Loss resulting from personal injury - loss of earnings, medical expenses

and other outlays to date and future pecuniary losses.

***Injury of an employee-** In order to determine the quantum of compensation for the pecuniary loss sustained by an employee, it is a prerequisite to calculate the economic loss suffered by the employee due to the bodily injury. Based on the classifications made under Article 99 proc No. 377/2003.

For the purpose of assessment of bodily injuries suffered by employees, we have already classified disabilities into those that cause physical/mental injury of various degrees, and injuries resulting in death. Where a person suffers personal injuries other than death, the nature and extent of the harm can be assessed having regard to surrounding circumstances of the case and the interest frustrated by the injury.

***Injury of self-employed Persons -** do not work for wages pursuant to Article 2512 ff. but for remuneration or income as an independent entrepreneur pursuant to Article 2610 one doing intellectual work pursuant to Article 2632 ff., one in the medical profession pursuant to Article 2639 ff. ,an innkeeper (Article 2653 ff.), publisher (Article 2672 ff.),

However, depending on the nature of the bodily injury, the victim's pecuniary injury can be roughly assessed having regard to his pre-injury earnings. But the plaintiff may have kept no accounts.

*** Injury of Non-Employed Persons-** persons who are neither employees nor self-employed individuals.

The reasons for their unemployment could be lack of incentive, opportunity for permanent work, or ability to work.

***Compensation for Fatal Accidents 2095-** the purpose is to provide the widow and other dependants of the deceased, as would have been provided for them out of the earnings of the deceased had he not been killed by the tortuous of the respondent.

'annual dependency' refers to the amount of annual support provided by the deceased to the dependent at the date of the former's death due to the fatal accident.

'number of years purchase' refers to the number of years such support may continue, that is, the period between the date of the deceased's death and that at which he would have reached normal retiring age.

Finality of Assessment and Appeals Article 2150- assessment of the extent of

damage is a prerequisite for determining the quantum of compensation.

Modes of Payment

1)Lump sum Payment: the Rule- From the very wordings of 2054(1) inference can be made that lump sum payment of compensation is the ordinary rule of compensation in Ethiopia.

As an exception to this rule, the court is conferred with a narrow discretion to order payment of compensation awards in the form of periodical allowances only for strong justifications.2054(2)

2)Periodical Allowance: Exception- Having regard to the nature of the damage to be made good and other relevant circumstances, the court is at liberty to order the damage to be made good in the form of periodical allowance (structured settlement).

Chapter XIV

Action for Compensation

Who May Claim Compensation?

Independent Claimants- those who can institute a civil action for compensation on their own behalf

-The Victim Himself 2146(1), 2114 and 2115,

-Next of Kin in Case of Mortal Accidents (Dependants of the Deceased for Compensation of Material Damage 2095, Family of the Deceased for Compensation of Moral Damage Art 2116 & 2117)

The strong reason behind Article 2095 may be just to help persons enumerated there to get compensation for the material benefit frustrated because of the death of a person within the relationship defined there due to the tortuous act of another person.

Derivative Claimants- persons who can bring action for compensation by by subrogating (substituting) the victim (contractual or legal)

- Heirs of the Victim exceptions Article 2144(2), 2113

- Creditors of the Victim Article 2145(1)

Who May Be Sued in Tort? a person, be it physical or juridical, can sue and be sued

A)The Author of the Damage- The basis of his liability is his own faulty conduct or in exceptional circumstances his faultless activities or engagements. Art.2136. but

2142(1)

B)The Vicarious Defendant- the author of the tort and the vicarious defendant (person answerable under the civil law) are jointly and severally liable for the damage caused to the victim. Article 2136(1) & 2155(1)

C) Heirs of the Person liable- liable claiming compensation for the material damage

Immunities – Art 2137 "Negus Aykesess Semay Aytaress", Art 2138. But the provisions has to be construed in line with the existing administrative structure of the Federal system of Ethiopia.

Period of Limitation- Article 2143, there are two types

*the two years period that is stipulated under sub-Article 1.

*the period of limitation provided under the penal code Art. 2143(2).

Where the period of limitation prescribed under the penal law for the particular offence is less than two years, then the period of two years provided under 2143(1) becomes operative.

Whereas when the period of limitation set under the penal law for such criminal offence is longer than two years, this period becomes operative to the advantage of the victim of the tort.

However, in order for the longer period of limitation prescribed under the penal code to operate, the tortfeasor has to be convicted criminally for the same act that gives rise to tort liability.

PART IV

Chapter XV Unjust Enrichment

Doctrinal Foundation- Some authorities labeled this law as the third branch of civil liability along with contract and torts.

But some other authorities treat the law of unjust enrichment as a 'gap filler', that is, a law that only comes into operation when the laws of contract, property and tort fail to provide appropriate remedy for one or another reason in their respective province.

It is built upon the doctrine which prescribes "a person who has been unjustly enriched

at the expense of another is required to make restitution to the other."

It is recognized as a separate ground of civil action in Ethiopia.

General Provisions Applicable to Unjust Enrichment 2162

Grounds of Unjust Enrichment

A)Undue Payment- *2164(1)*

B) Expenses- Article 2168