

## Law of extra contractual liability

This is also known as the law of damage,( How are we to deal with damages in society)

Loss distribution sustained by society non contractual liability deals with who and why compensation in some jurisdiction it is also known as tort law so basically this course is about liability this term is here used to refer to action or omission of individuals for instance violation of contractual promises results in contractual liability same story applies to violation of criminal provision

Now, in addition to these two sources of liability we will welcome another source of liability that is extra contractual liability but the question is from do liabilities emanate from to hold someone extra contractually liable?

Let's take the contract issue again what is the source of contractual liability? Obviously, promises or an agreement and failure to meet the promise results in compensation, specific performance or even up to cancellation. How about for the criminal liability? Criminal liability here too will emanate from violating criminal law provision with the necessary intention that is if that particular crime requires intention and cannot be established by negligent then punishment with the all the different form will come in criminal law liability is towards the society and settled by the public justice administrative officials from begging to an end unlike the case of a private suit such as contractual obligation should contract and criminal law be enough source of obligation?

Extra contractual liability you don't have contract and may not violate criminal provision but still could be held liable on the basis of violation of social standard or commission of fault.

Sometimes, some faulty conduct will be faulty but may not be covered by criminal law provisions but are still unwanted by the society in extra contractual liability we are not mainly interested in crimes but on fault. If someone commits socially unacceptable behavior, he will still be liable to society. This is the point of extra contractual liability so sources of extra contractual liability is fault based but is not only fault that gives rise to extra contractual liability sometimes there things called strict liability which are liabilities emanating irrespective of fault

Thirdly, there are vicarious liabilities which are again liabilities for the action for the action of others which is 3<sup>rd</sup> party liability

Contractual liabilities are incentives given for keeping promises and that the respect of contractual obligation is meet by the same token criminal law too is interested to keep social peace and order as far as the purpose of extra contractual liability is concerned there two goals

1. Insurance goal and
2. Deterrence goal.

The insurance goal says that someone one injured by the fault of another should be made good or compensated by the fault doer while the deterrence goal says that if someone is aware of fault giving rise to compensation and making the damage good others will deter from doing the same these are the two goals of extra contractual liability of any nations

## **Liability and its sub branches (day two) 10/17/2011**

We have liability towards God as it is in the case of religion, political liability, administrative liability such as disciplinary measures and legal liability which is a liability that is mostly administered by court e.g. of legal liability are criminal liability, civil liability, civil liability again divided into contractual liability and non- contractual liability

### **Non- Contractual liability**

It is a mode of civil liability meaning that is a liability towards individuals/ victims of the action /omission. the scope here is compensating damage to the extent money is able to do so. As have already been said, there are two goals of extra contractual liability.

1. **Deterrence goal** from this goal we can obtain the following function of an extra contractual liability
  - I. Compensating person sustaining loss/harm as a result of another person's conduct
  - II. Placing the cost of the compensation on those responsible but with some sort of justification and are ought to bear it
2. **Insurance goal** this goal in turn we have injured and the plaintiff, though action is the main theme of liability, in some cases, omission too will be source of liability. And making the damages good could be the goal. The wrong one is held accountable to insurance the compensation should lie on him but some sort of grounds should be there to make him accountable this is where the cause and effect relation must be established and serve as justifiable grounds for the compensation or making the damage good.
3. Sometimes the law will have a principle known as the "deeper pocket principle" which is a principle of identifying individual to be liable from the perspective of better position. Sometimes we have property under custody though we may not be at fault, our property such as the custodial animal like horse and dog does cause some harm this is called victims fault if the victim has a fault, he will not be compensated from his own misdeeds but the problem arises when both are not at fault. Say the horse stamped the kid then, the law will select the owner of the horse the justification? The owner derives benefits from the use of the horse and so he should also be held accountable for the misdeeds of it too.

### **Preventive/deterrence goal**

By compensating someone who was injured, we are in effect discouraging others from doing the same in the future. These are the main functions of extra contractual liability. **Compensating the injured is a common objective of both contract and extra contractual liability. Preventing future harm is another scenario giving extra contractual liability the feature of criminal law so in conclusion here, we are saying that extra contractual liability is a double face or has a grey area between contract and criminal law but if it wasn't for the deterrence function it's all the same with the contractual obligation and is more of private nature rather than public matter like that of criminal**

|                            | <b>Criminal law</b>                                                                                                                                                                                                                                                                                                                                                                         | <b>Contract law</b>                                                                                                                                                                                                                                                                                                                                      | <b>Tort law</b>                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Source of liability</b> | <b>Violation of Criminal law provision with the necessary intention if so required</b>                                                                                                                                                                                                                                                                                                      | <b>Failure to meet Contractual agreement failure to keep promises</b>                                                                                                                                                                                                                                                                                    | <b>Commission/ omission of faulty conduct we use conduct instead of action for it will be too narrow here, violation of law in general with the exception of contract since tort falls outside the realms of contract but other than that, violation of any law in general could be source of tort liability the reason why contract fall outside is that violation of contractual agreement is assessed by the terms of the contract itself</b> |
| <b>remedy</b>              | <b>Punishment/ penalty of different kinds</b>                                                                                                                                                                                                                                                                                                                                               | <b>*Compensation to the breached</b>                                                                                                                                                                                                                                                                                                                     | <b>*Compensation to the breached</b>                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>proceeding</b>          | <b>Public crime spotted by police-then investigated by him-investigation file will be prepared for the public pros.-prosec. Has two option to either go on an institute a charge or request police for further evidence but assuming he succeeds he will take it to court and prison will be the end from the beginning to the end suits are dealt with by state justice administrative</b> | <b>Private act but could be dealt with advocate it's just the cost will have to be dealt by the private party. The proceeding goes like this, the dissatisfied party takes the issue to court with a proper jurisdiction- pays court fee for the opening of a file as well as 10% cut for the attorney- civil bench hears the case- gives chance for</b> | <b>With the exception of traffic accidents which are dealt with foe evidentiary purposes by the traffic police, it's a private matter and dealt the same way as has been said for contract proceedings the points said for contract law concerning the extra judicial right to deal with one another and withdrawal suits from court at any stage is possible too in the case of extra contractual liability suit</b>                            |

|                                         |                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                      |
|-----------------------------------------|--------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
|                                         | <b>machineries</b>                                           | <p>appeal- even with absence gives its verdict unlike the case of criminal bench which require presence for a verdict so from begging to the end it's instituted by a private individuals unlike the criminal law case here unlike criminal law, if the party decided to settle their dispute outside of court, using extra judicial settlement it is possible at any stage in crime suits it may not be done so even more the effect of the agreement of both of the party could not replace court though it might have some sort of effect on the analyses of penalty since it could be taken as a sign of regret</p> |                                                                                      |
| <b>Effect of death of the plaintiff</b> | <b>Terminates the case as per art. 214 of the penal code</b> | <b>Passes down to its legal heirs and it's continued as per art 1896 of the civil code</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>Continued like the case of contract law as per art. 2144(3) Of the civil code</b> |

|                         | Contractual liability                                                                                                                                                                                             | Extra contractual liability                                                                                                    |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Relationship of parties | Presupposes pre-existing relation b/n the parties prior to breach, there was some sort of r/n ship b/n them.                                                                                                      | Happens between strangers as in the case of traffic accidents pre-existing relationship is not conditional                     |
| principle               | Generally fault isn't essential but is so for existence of breach 1791 (breach) is the principle while 1795 (fault based liab.) is the exception                                                                  | Fault based liability is the general principle 2027(1), 2028 liability irrespective of fault is the exception 2028             |
| Damage assessment       | Damage could be liquidated/non liquidated amount liquidate means parties may in advance of the breach set the amount of damage when breach occurs no need for process of estimating rather the amount is enforced | Since there is no prior r/ship difficult to come with liquidated amount court will determine it means damage is non liquidated |
| jurisdiction            | Court will have several forum place where signed debtors residence and the place of execution are forums available                                                                                                | Limited by the place where the wrong was done                                                                                  |
| Period of limitations   | 10years unless provided otherwise                                                                                                                                                                                 | 2years art 21 unless compensation is related to crime in that the pl of the crime will apply                                   |

\*Each has its own unique features

### **Sources of Extra contractual liability**

#### **Article 2027**

Each of the sub articles in this article is a single source of extra contractual liability

Irrespective of any undertakings on his part, person shall be liable for a damage he causes by an offense this is the basic principle of tort law **irrespective** means even if he did not enter into a contract here we have to be aware of the technical errors of the code the original French version uses the word fault instead of offense which is a word of crime damage caused to another (this obviously implies that it's not our interest for harm done to oneself), 2028

Structure of the civil code at this point goes as follows :

- 2027(1)- extends from 2028-2065
- 2027(2)- extends from 20
- 2027(3)- extends from 2124-2136

Essential elements are fault based, damage from the side, causation connecting the two. What is the yard stick to say that someone is at fault? The standard of the **reasonable person which the societies expectation of its members conduct as it's believed to**

**be that all ordinary men are aware of as to the principles of that given societies generally accepted standards**

2028-65 fault based liability

2027(2) person shall be liable where the law so provides or the damage be caused to another by an activity/ by an object he possess **apart from any fault of his** italic Added on 2027(1) is the exception 2027(2) we have this phrase “provided by law” bill be determined by case to case not all objects, acts, but those stated by law 2026-229 strict liability

2027(3) person shall be liable where on third party for whom he is answerable in law incurs liability **arising out of fault** or resulting from the law 2027(3) combines the two sources of liability to a third party vicarious defendant, victim principal offender there is a legal link between the two the relationship here is analogous to that of parent and child relationship so if the child does something stupid his parents will be held vicariously liable but this answerability would not be the case unless there is a fault of their part if the case had been a criminal one since criminal liability is does not have wide scope and limited to the doer of the action but the story is different in civil case. Another illustration is the relationship seen in an author publisher relationship as the publisher will be held accountable of any defamatory statements written by the author 2124-2136 by the above provision the law has already established a connection non-transferability is the principle in criminal law but not so with extra contractual liability

**2027(1) fault based liability** starts with 2028 in relatively clear and precise manner as follows. “Who so ever causes damage to another by his fault shall make it good ( shall compensate OR REPAY FOR THE INJURY this is the general principle during the emperor’s time article 2134 was an exception to this general principle which excluded the king since he was “above the law” can we extend this to the president in today’s context/ why and why not?

First and most 2134 is an exception and exception had to be interpreted narrowly and extending to a president Girma would be against basic principles of law and secondly the system and government structure varies so much that it just simply impractical to apply in a democratic system as it had been intended for a centralized mode of monarchical government

### **Liability arising from fault**

It must be made crystal clear from the very start that fault based liability is the major source of liability for tort. Art 2028 says **shall make good** of the damage in this major principle of non contractual liability we have fault, damage and causation so these are the elements required to say someone is non-contractually liable so what is the yard stick for this? At what point in time do we consider someone to be liable? Fault is human conduct either to mean action/omission either the faulty conduct will be revealed or failure to do something expected by society in that particular circumstances in criminal law, someone will be liable for omission/action the significant part of it is action but we do have criminal liability arising

out of omission as in the typical case of failure to aid or report a scene of a great crime it could be said that 95% of liability in criminal law emanates from action while in the case of non contractual liability both omission and action have equal footing. This is seeing it from the conduct vantage of view

From the mental point of view fault the faulty conduct could be intentional negligent as seen on article 2029 what is the difference between criminal liability and that of extra contractual liability?

Under criminal liability **intentional crimes** are by definition punishable as it is envisaged under article 58(2) of the criminal law with few exceptions what about negligence in criminal law?

When it comes to negligent conduct it is punishable in exceptional way that is only if the law provides thereto it

Negligent in **non contractual liability** is equally liable as it was with the case of criminal liability as per article 2029 fault may consists .... Mere negligence not even a requirement for a gross of it rather minor negligence is sufficient in order to establish non contractual liability this seems to be the reason why in some other jurisdiction it's so called as the law of negligence the justification they offer is that since intention is covered by criminal law provision but since community still needs to be protected from negligent people as well.

The important thing here is that fault is predominantly negligent conduct but when do we say someone is negligent? Negligent has been dealt with different field of studies such as economics and sociology and each offer their own version of it of course this is on top of what the law says what it wishes to say on its behalf.

From the point of view of Economics, a person is said to be negligent if he fails to take precaution in the instant where the cost of accident, prevention is lower than the cost of the accident if and when it occurs. For example if there is a certain eminent harm such as traffic accident that could be assessed as follows first of all we need to have technically qualified vehicles and equally important too well trained and disciplined drivers of the vehicles but each require some amount of money to attain that the probability of accident happening is there for all the practical purpose we could ever think of in our mind perhaps movement of cars, pedestrian's size and are some of the variables there. Say for instance that in order to have technically fit driver we incur cost of ,3000.00 birr for the training but this driver drives only in a situation when cost ( accident is minimal) and here economist say that if this guy's cost ( accident ) is somehow around 2000.00 and in this phenomena it would amount to these tenants as fool but if we reverse the situation to a point where the cost will be greater as for instance being ; cost if a person is not willing to prevent an accident that would amount to 5000 while prevention of this scenario amounts to 3000.00, then this guy is negligent from the angle of prevention and accident with the use of economical mechanisms of rational procedures.

### **Sociologist point of view on negligence**

for them negligence is piece of conduct which would not have been pursued/committed by a **prudent** person placed in a similar external circumstances to them this factious prudent person is the yard stick the question is then settled by what that prudent person of theirs

would have done in a similar circumstances so here it must be understood that it's not extra ordinary intelligence but of an ordinary prudent person in a same shoe.

Lawyers have their own yard stick but same ideology applies here. They have what they call the standard of the reasonable person and the same concept of the prudent man goes here no need for a redundancy but we must be certain to the fact that that the scenarios must necessarily be of the same kind as it would not be fair to evaluate using this method if the circumstances are not the same in nature otherwise we will reach at a biased conclusion i.e. tort does not expect extraordinary super intelligence creatures but of an ordinary law abiding citizen this super man intelligence is not required for it would be a risk to lots of members of the community

- I. The standard of reasonable person applies only to ordinary fault if it's a professional fault it will be measured against the reasonable professional person of that particular profession and assessed based on the code of ethics as almost every disciplined has one including the law controlling legal officers in our country

This is the crude idea of fault. The fact that someone will be held faulty is not settled what affects are likely to come and the like must be assessed to along the way. And what do we mean when we say damage? As we may recall from our criminal law study, causing injury is not an essential element since even the level of attempt ends up in criminal ability nor is the requirement of damage is an essential element intention is the key but in non **contractual liability injury is a must these injuries could be**

### **material damage**

### **bodily damage**

### **moral damage**

anyone or many of these sort of damages must necessarily be met in order to established to hold someone non contractually liable sometimes a single incident could be incarnated into all forms of damage. For instance a traffic accident causing severe injury that in turn will hamper working capacity of the victim due to the permanent features of the accident brings forth a moral damage as well this is to assert that damage in non contractual liability has different features then, need **causation** between the plaintiff and the defendant but too sad since the civil code does not lay the principles so as to how to establish causation but the principles of criminal law could be used here and would the conduct of the defendant bring the effect of removing ----- conditions? መከሰሻ ብቻ ሳይሆን ማርከሻም ያሻናል!!!

### **Points of Defense**

- A. He may claim that he is not at fault by showing that reasonable person would do the same thing in the kinds of circumstances to the satisfaction of the court
- B. Even if he accepts of him being at fault, he may argue that there is no liability since no damage done again to the satisfaction of the court to that effect.
- C. At last, he may again raise the need for causation of the fault even if he admits to this level. For example a car is driving without a license plate and a guy was struck by a wind and lost his tooth. Here it's unlawful to drive a vehicle without a license

plate and there is damage on the person who lost a tooth but there is no causation between the two. So the driver is not liable.

- D. Even if all this is satisfied in favor of the judgment creditor we still have one lost option in favor of the defendant that is the concept known as **Victim's fault/** contributory negligence in some jurisdiction. Contributory factor for the occurrence of the damage will be a point to deduct compensation to that effect meaning that to the extent of his contribution he will not be compensated. We not interested just on compensation but of the fairness and equality too on both sides for the justifiable compensation. And this concept of equality requires limiting liability of the defendant and equity dictates that no one should be benefited from his own faulty conduct.

So here, again, we stress that our interest is not just compensation but also extending liability to those who commit fault be it the defendant or plaintiff in the case where the victim has contributed to the damage he is his own insurer to that amount.

**The Ethiopian conception of Reasonable man Standard** does not take age mental condition and other factors into consideration even minor's faulty conduct is sufficient enough to held and treated with the adult's reasonable man standard individual in criminal law, age, and mental conditions will be considered and have their own impact on the case. But article 2030(30 stipulates contrary to the principle of the criminal law.

Some argue saying that the Ethiopian extra contractual liability is as good as strict liability despite the argument and the criticisms it has its own justifications which are plausible at least to the instructor. If we are to put exceptions and consideration of age, mental issue and the like in the consideration of an extra contractual ability in a nation like ours where vital statics are not well kept and are simple to obtain though not accurate and misleading, it will be like playing with the victims who have been victims of damage and even if we held the child and the mentally incapacitated persons liable, it would be guardian who will deal with it so in a way, it's indirectly telling these individuals that are vicariously liable to these kinds of people see article 2052 for more details on this issue it is the custodial that will be liable at the end of the day.

Other nations such as the US, mental conditions and age will be taken into consideration in the determination of tort liability the reasonable man's standard will not be applied uniformly even to children as it is the case with our legal system there, rather each set of responsible will be held liable and assessed based on the reasonable man/ child to that particular scenario they will not be assessing a child's fault on the light of the reasonable standard of and adult as we do here. In criminal law when someone is punishable by negligent, it will be dealt with subjective standards meaning individual factor like mental condition will be considered ( subjectively dealt with) and not objectively ( treating everyone in a same way without considering individual conditions ) article 59(1) but the case in tort law, not only negligent amounts to liability, it will be dealt with objective standards. And here the concluding point is that in Ethiopia extra contractual liability is assessed using objective standard

The stipulation of 2031 is not for ordinary individuals rather for professionals that might have written/ written private source or public source of professional code of ethics which governs each profession when we say public sources we are referring to proclamation, directives, and regulations for example lawyers have regulation thus, the public may be a source of these professional code of conducts again private parties too may become a source of these code of conducts governing professional duties such as the case of an association and it's code mind you here these could be written or unwritten as it would be the case with lawyer's conduct code and the typical assistance commonly offered by drivers to one another during flat tire and the like.

In addition to dealing with these two sources in order to determine the reasonable professional standard we must also know that society expects the update of these professionals.

Then reasonable professional standard will come into the play. The question here is again would reasonable profession of the same field would have done the same in that particular circumstances in which that fault has been committed

Usually relying on professional testimony alone is not fruitful as the court is not able to understand the real trick behind every profession what it actually does when a certain professional related issue comes in to it is call upon expert testimony but for all the reason we can think of they, don't tell the truth that would affect their coworker's interest this in turn affects the victim from getting the required compensation but there is a solution to this problem the Latin term known as actio in rem which means action speaks of itself i.e we expect higher standard from professionals unlike it was the case with the ordinary man evaluated under the ordinary reasonable man standard not only that, we also expect professional to update themselves as time goes by too. There are also other forms of standards like

1. Intent to injure (mental element) this too will make someone at fault as it is so with the criminal law principle. But the issue here is how do we determine the intention? Well, the way out is to determine on particular act
  - A personal gain
  - B disproportionate gain sustained by the other

Sometimes intent injure is related with right elements of possession's principle of rights including the right of abuse of one's own property as it was understood classically but at later stage, limit to these rights were set mainly the right not to interfere with the right of the other

Someone has the right to appeal when he is not satisfied by the decision of court of law but he may abuse his right if the intent was a dilatory tactic to increase the cost and burden of the other party in the dispute. The illustration he told us about a farmer who hijacked an ox that was found eating someone's farm that happened to a neighbor whose in bad term with the farmland owner and when the owner of the ox understood the customary practices of keeping/ hijacking the animals until it's compensation of the misdeed was paid, went and requested the release of his ox but never the less, the guy said no and kept on arguing that he wants to keep his good reputation by not taking the compensation but still decided to

obtain the exact plants eaten by the animal( trying to revenge) finally the judge told him to take his plants but not an ounce of blood shall be shaded from the ox this is a clear intent to injure and abusing the right of a property another illustration is the issue of business & economic injury what is the problem of a pure competition in business? Well, fault will come into the picture when the stiff competition targets it to do so for loss or non proportionate benefit but this will depend on the party proving to that effect and with the satisfaction of the court. Not only in determination of fault but also in the assessment of the damage will be based on higher threshold ( burden of proof) upon the one claiming to be a victim of a fault.

**Abuse of Power** the same principle of the above applies here as well. We may be granted with the power to work for the benefit of others the source of these obligations maybe private (as it is with the case of juridical acts such as will/ testament, contract, etc) and public law such as the state of being a civil servant the other mechanisms which will enable us to detect fault is violation of law. Here we mean law in its wider sense of the term implicit and explicit provision of the law. Including Decree( we don't have them any more as they were enacted the during the emperor's time when the parliament was not in session) proclamation and so on

Extra contractual liability is becoming one of the enforcement mechanisms of all laws other than contract law( when the issue is contractual it is governed by provisions of contract law and we may say that the hands of extra contractual law does not reach contract law) for example violation of criminal law automatically becomes issue of extra contractual too so long as there's is damage by virtue of 2035 ignorance of the law is not a defense this leads us to some of the prominent headaches of our legal system.

1. Only proclamations are printed in negarit Gazzeta
2. Even for those laws which are printed dissemination is still very acutely short
3. In the old days, price of these laws that are blessedly published used to be fixed meaning that a law with 60 pages and a law with 6 page would be the same and the logic behind is that they compensate each other but now Berhan ena Selam Printing Press is selling with the price of any News Paper too bad we don't see the most life affecting news paper in the hands of those who circulate news paper

On top of this, drafting process too is becoming more and more sophisticated. In conclusion, article 2035 is the bridge but serves to establish just one element( fault) and leaves us with assignment to establish the other elements mainly damage and causation. Exception to the law of contracts by virtue of 2037 other laws will be regulated

Assignment: read 2036&2037-2065 and read 2036 with 71-74 of the penal code and try to see the difference between the principles of criminal law and the principles of an extra contractual law.

11/4/11

How is fault relevant in areas of chain of command? Now, we have chain of command (superior subordinate relationship) the subordinate is duty bound to obey order so f his superior and on the other hand, he has to obey the law as well. (Double subordination) and required to obey the order of his superior. We have no problem when the order of the superior and the law are in conformity with each other. The issue is to understand the

situation and how he must react when the order of his superior and the law are not in conformity with each other.

Different jurisdiction responds to issues like this differently. The solution may or may not vary from what the criminal law stipulates. We have basically three approaches to this issue.

1. The rule of law approach
2. The strict obedience approach/ line obedience approach
3. Intermediate approach

**The rule of Law approach:** this principle says that at any time and at any cost the law should be respected no matter what, and the law must prevail over anything else including over the orders of the superior. Therefore the existence of a superior order **should not under any circumstances be a defense** to a tort action against the subordinate. There is no such as things as saying what I have been told to do so in the rule of law approach

To what extent is this approach feasible? Could we possibly imagine anything bad about strictly following the law?

Well, it may seem perfectly fine to stick to what the law says on every matter and neglect the orders of a superior that are not lawful to execute but this will leave gap as the subordinate would be forced to check the lawfulness of an order from his superior and that is not practically possible ( to check the lawfulness of every order given ) as it consumes times and leaves gap in orders which do not give enough time to allow the subordinate in checking conformity with what the law says. Smooth functioning of society will be at risk as a result of this approach and as a result of the negative consequences that rose in this approach some legal system to the second approach.

**The strict obedience Approach/line obedience Approach.** For subordinates, orders ought to prevail **over laws** and therefore the existence of the superior order/ specific order/ **should normally constitutes a defense** to a tort action against the subordinate Under this approach the superior order is the law. So if a specific order from a superior is given to him, this serves as a law as far as at least a tort action is concerned.

What are the cons of this approach?

It has a negative connotation of reducing the subordinate into a robot like creatures and the human factor needs to be respected. This might help efficiently using state machineries but it's heavily criticized for the human factor is reduced into a machine. This was the defense raised by the Nazi officials in the Nuomberg's trial but that defense did not serve even in criminal law. We saw this situation being treated likely to the Dreg officials in our country.

**Intermediate Approach** the previously mentioned approaches were the two extreme sides but here, the positive elements from the two approaches are brought together in an attempt to moderate the principle. Law should be obeyed in preference to orders but certain circumstances will force subordinate to execute unlawful acts and are justifiable meaning hybrid of the two approach. In principle laws should be respected but it's also not quite logical to waste time in checking and rechecking lawfulness of every order that flows from the superior toward the subordinate in the day to day function of state machineries.

**What is the position of the Ethiopian criminal code? What are some of the points that were raised in the course of criminal law?** Is a superior order a defense in our law? Article 73 and 74 try to regulate this scenario awareness of the illegality in particular that if he knew the order was given without authority and if the order was manifested unlawful. What about the extra contractual approach? Article 2036(1) principally, is the rule of law approach. Particularly the manifestation of the unlawfulness of the order defense lies in (3) of the same article. The implication of (2) is that subordinate may go free provided that he acts with limit. So our approach is the hybrid approach.

- II. Sometimes there is confusion between superior in authority and superior in rank. Are these two terms interchangeable? What is superior in rank? They are entirely different. Superior in authority refers to chain of command while superior in rank does not refer to the superiority in authority. Superior in rank does not give the power to give orders to someone who is superior in authority as it's seen in article 2036 we are here interested with superior in authority and not in rank it does not matter

### **Structures of the code concerning liability based on fault**

This type of liability begins from article 2028 and extends up to article 2037 Paragraph one) and the special part from article 2038-2065 the structure is important since it provides us with clue both are fault based liabilities

2028-2037 attempt to establish fault in general with different parameters under general circumstances as we will see at later stage in due course. But paragraph two considers particular fault by the law. So called in some jurisdiction as nominal fault. (2038-2065). This seems to have a common law origin and has two approaches

If we go to the French legal system we have law of torts 2028 from that a particular is fault or not will be determined case by case. But on the common law system they have different approach. Which is good as criminal liability the difference is here, civil remedy is provided. Nominated torts are actionable person which means the fact THAT PARTICULAR INCIDENT IS MET even if no damage has not been incurred, the plaintiff will be entitled to compensation damage is not an essential element since he could even be entitled to nominal (symbolic) compensation) but upon the existence of damage, special damage will be awarded to him. David's intent is not known for inserting this concept of the common law system in the code most of these are found in protecting fundamental rights 2038 is protection of bodily integrity we have the same stipulation in the FDRE Constitution under article 14? If the substantial provides these types of general principle it is up to the subsidiary laws to regulate the mechanisms enshrined as such. If we try to look at article 2014, faulty imprisonment which is an attack on freedom of movement, defamation on article 2044, (the right to reputation and Honor as laid down under article 24FDRE), injury to spouses( kind of protection to the institution of marriage), article 34 FDRE Constitution how is the family protected? 2050 we need to know that 2038 is the principle while 2039 is the justification

Organizational structure of the code

\*2038 and 2039 are closely related ( they are principle and justification)

2038 መከሰኝ 2040 1 principle

2039 ማርከሻ 2041 2 lawful authority

2042 3 penal offense

2043 4 bail

2044 1 principle

2045 2 absence intention to injury

2046 3 matters of public concern

2047 4 truth alleged facts

2048 5 immunity

2049 6 excuse

Does article require damage to be shown or actionable person that is a debating issue by lawyers in some parts it seems actionable person while on the other side it seems as requiring damage to be shown 2104 court could invoke for violation of right( fundamental nature of the violated right)

**Statutory fault** ( fault by law) in our case they are only necessary to establish fault these are special because

- A. The Reasonable man standard does not apply to them
- B. They are semi-criminal and particular incidents are categorized as fault unlike the stipulation in 2028. E.g. defamatory statement, marriage law etc
- C. Extra contractual remedies for violation of the fundamental rights.

eg. trespass to person (related to the inviolable factor of human being), battery 2038, tress pass to liberty ( with the restriction of freedom of movement) 2040, tress pass to honor and reputation( the law on defamation 2044), trespass to marriage( protection to the right of spouse 2050) and tress pass to private ownership which has two provisions i.e. when property is immovable 2053 and as in the case of trespass to land and 2054 if the property is moveable good ( tress pass to Goods) these are in effect the special case (2038-265) protecting fundamental rights. How is the right to personality protected? 2038 is the principle and 2039 is the defense available so the two are strongly and consecutively connected provisions. **Person commits fault he intentionally imposes a contact upon the body of another against the latter's will** there are three elements that are required here

1. It should be an intentional conduct (here there is no negligence assault as opposed to negligent..
2. Imposes contact battery requires positive action
3. Against( UNWANTED contact) or un invited contact so as to say (የነጠለዬን ጫፍ አትነካትም)

We are here heavily and solely interested on the on the very personality of a person and not on actual damage. The contact may have different modality i.e. direct or indirect contact እንደ መነሻ መወሰዱ ለማህበራዊ ግንኙነት ጠንቅ አይሆንም ወይ; ህፃናት የመስተዋት ስባሪን በመጠቀም በሰዎች አዩን ላይ የፀሀይ ብርሃንን የሚንፀባርቁት ከሰተት battery ነው ብለን መውሰድ አንችላለን ወይ? ሊቃሉ ይቅርታ አድርጉልኝና በመንገድ ላይ ስታልፉ አንድ ሰው አጣቢ

በደፋባቸው (typical case of battery) አሊያም በተፋባቸው? The injury might be minimal since our interest is not actual damage rather on the inalienability of the human personality. This is somehow little bit relaxed under the stipulation of article 2039 since defense will be available. For the sake of social co-existence, the relaxation in the form of defense as laid down under article 2039 is needed.

Possible defense

1. Prior relationship will be taken into account.
2. The act was done in reasonable manner legitimate defense suffice even in the case of loss of life

But the issue stipulated under article 2039 (3) (C) invites debate is there such a thing as a reasonable corporeal punishment? Is this out dated or valid provision of the code?

There are additional defense like for example if the person is dangerous and insane possible to cause harm if he is left alone and preventable detention is allowed he could not claim and say it's against my will. There could also be contact with will. We need to appreciate the purpose of the law for it does not disregard social relationship because with too much extreme prohibition, the reality on the ground will be neglected and that's not what the law is trying to do rather it is attempting to strike the balance between these two competing interest.

### **Freedom of movement**

This is a fundamental right which is also protected constitutionally. Examples include but not limited to arbitrary arrest also known as false imprisonment in the common law legal system the restraint of liberty is fault when it is done in unlawful manner in contrary to the constitutional right unlike 2038 where contact is essential, here mere instruction is even sufficient enough if the arrest is without lawful authority it is covered by 2040. So the issue will be does the individual possess the power or not. In the absence of such power he will be responsible for his action so it's not absolute right in a sense. Detaining may also be regulated by other law such as lawful detention as it's in the case bail. 2040 principle while 2044 is a defense provided for such.

**Flagrant reason** even here the police intuitions should be taken into account it's lawful and proper to hold someone in flagrant issue but the police should be given the issue immediately as possible. Even the police has to take the offender/ wronged one to a court of law within 48 hours 2043 covers different scenario from this let's say someone wants me to be his bail for a sum he owed to someone and is payable two weeks from now and when a week remains to effect the payment, I learnt that he was on the verge of preparing to escape the campus and clearing out, in this case the law allows me to detain him till that day and (prior relationship will be taken into consideration as a defense for the detention)

### **The law of defamation 11/07/2011**

Previously we had made an attempt to protect physical integrity but law of defamation is not as such concerned with the tangible aspect of the personality rather here we are interested on non tangible aspect of the personality the protection is actually forwarded in favor of reputation and honor and in fact in modern days, defamation is crucially important concept and there are three types of it now

1. Traffic accident these are the three most important subjects in tort law of modern days.
2. Product liability damage arising from manufactured goods as we will see on later part of our study mainly on strict liability, is a very controversial issue today
3. Defamation the media law here too is another controversial area of tort law in modern days. The media world is sometimes intrinsic into private lives and due to its growth, media industry today is attacking privacy and adding importance for the need of law of defamation as a regulatory mechanism as such. It's in some part of the world, an owner of separate course and in our case it still at infant level

The law of defamation is becoming important and most controversial law why? Because there are two contending interest that need to be balanced these contending interests are the right to reputation and honor versus the freedom of expression

The contending level comes when we want society to be free to express its view in day to day activity on the other hand, if we allow this to lose point, the privacy aspect of society will be affected so much in the name of freedom of expression and vice versa. So this will create

1. New road
2. Market of idea will be there as a benefit for society by this society will have the opportunity for the better idea and use it in the daily lives the individual is not the only one benefiting from the individual assurance of freedom of expression but the society at large. Since society will be benefiting from the free **market of idea**.

When the freedom of expression does become a threat? The extreme sides of both is not obviously needed and the law of defamation attempts to strike a balance between the two.

The Ethiopian law of defamation (2044-<sup>1st source</sup> 2049) due to its relation with the freedom of press, consulting the press proclamation 2nd <sup>source</sup> is a must thirdly, the constitutional provision article 24 vs., 29 are the substantial law to that effect which are the sources of the very conflict of the competing and contending interest (freedom of expression versus the reputation and Honor)

Another important thing that we must mention here in relation to defamation is that it **has a criminal aspect** it's a crime upon complaint so article 607-619 of the criminal code (4th <sup>source</sup>) are to be consulted this is the criminal aspect of non contractual liability but we must not forget that this is a crime upon complaint

2044 is the principle and if the elements stipulated there are satisfied, fault will be established and positive action is required which could have different modalities under the common law system there was a distinction between **utterance???** And slander utterance is defaming someone through a written instrument and slander is defaming orally or via written instrument even if damage was not there **actionable person** suffice it slander was not a crime on the other hand, it was rather tortuous action and unlike the actionable person, establishing damage was necessary the Ethiopian legal system does not seem to create this sort of distinction between the two (slander and **Levin???**) And equal source of liability is entailed any way. In modern days, the distinctions between written/ oral defamation are getting absurd. But previously the written defamation was evaluated on grounds like it was taken to be more serious, durability and the consideration that it's likely

to reach many people was an aggravating factor to the situation but like we have said, it's now impractical to use these modalities so it be it written, oral or other means, as it might be possible to defame someone through the symbolic means common to society we can mention here the dirty butter finger and so on used to defame someone in symbolic manner. This is what is meant by "other means".

The action must be something that will make someone contemptible ridiculed. Defamation is thus, triangular relationship. We have the author of the defamatory statements the wronged one, the victim who is the plaintiff in this case and the third party who are to make use of the defamatory statement and form a certain negative opinion on the plaintiff. If it's **bilateral relation unlike the above, it's not defamation** rather, it's an insult. So communication to third party is necessary to establish defamation and this communication to third party is what makes it different from that of an insult. Here when we say third parties it doesn't necessarily mean that it must be communicated to multitudes even a single person in the line of communication of defamation will be considered as a third party another key point worthy of mentioning is that defamation is not in the interest of the individual person rather it's what the society around us regard us and it's not self esteem at all.

Is establishing notoriousness necessary fact to establish and show that the good name has been defamed? Not really, good name in prima face of the presumption of innocence, so is the case with presumptions of good names for everyone by the law. So far as there is a defamation / utterance communicated to third parties it will lead to negative opinion by the third parties towards the plaintiff, it amounts to defamation what are the possible defenses here?

#### Defense of defamation/ justification

These are the possibilities that are there to neutralize the issue the civil code is intended to protect living person but could also be used for physical person aside of the debate that will come (the teacher seems to favor the possibility of invoking it to physical person as well but this is just my view and perception) so he said መቶ ወያኝን አያመለከትም but there could be situation where defamation of the deceased could indirectly affect those who are alive the civil code does not have remedy for such and we resort to the criminal code and under article 619 of the penal code, we find remedies and when defamation is to the deceased, it happens as if it was an issue of succession the spouse will present their suit on their absence children and it goes on like that. 2035

Even though deceased are not protected less than 2044, we can use this cumulatively with 619 of the penal code, and by applying the famous bridge article of the civil code (2035), we can provide the remedy. By this we just made a criminal matter into a civil matter thanks to the bridge article that connects the laws from different corner 2044 happens to give due emphasis to the individuals wouldn't this create restriction upon the freedom of expression and secondly, wouldn't this protect even those who are not worthy of it ? What's so unlawful about calling a thief a thief?

1. Truths is a defense in the case of defamation (what I have said is right and honest statements) serves as a defense to a reasonable extent. Provided that it is not accompanied with the intent to injure, truth by virtue of article 2047 will serve as a possible defense “አንደ መርህ ሰው ሁሉ መልካም ስም አለው ብለን እንነሳለን (2044) መልካም ስም አለመኖሩን ካረጋገጥን

ስመ ብልሹነት እንደ መከላከያ ቢያንስ እንኳ reasonable standard ድረስ መከላከያነቱን ማንሳት ይቻላል ተዲ ይሄ በስሜት ሳይሆን በማስረጃ መረጋገጥ ያለበት ጉዳይ ብቻ ሳይሆን መረጃውም የመጉዳት ሃሳብን እምብዙ ብሎ ያለዘለና ቁስል ለማካከል ታሰበ መሆን የለበትም” meaning that the fact should not originate from previously sentenced crime of a past history of the individual

### **Different category of people treated differently**

- A. Public officials
- B. Public figure
- C. Ordinary people like us

Are the two terms similar in concept (public officials and public figures? What is their deference and similarity?

Public official: person having public office through election appointment or so and have an official position

Public figures: people who publicly known by their act such as the athletic community and are just figures not decision givers to the public as opposed to the officials holding a public office. Public figure requires care too. Comment on public figure is a comment on public and the right to privacy of a public officer is limited to reasonable standards ordinary person like us does not need to be bothered much with his private life as it is with the one occupying public office, using state resource and the like here he can't complain in equal footing with the ordinary person who pays his tax to keep him running. And with the public figures since by their personal effort have achieved a status of a role model of the society, we are in effect telling them be careful for our sake so this is to say that **matters of public concern** is also a possible defense which gives it wider dimension to freedom of expression.

Then there are privileged / immunity/ members this too is again associated with public interest. 2048. Parliamentary debate and judicial proceedings meaning the legislative and the judiciary branch of the government are given such a privileges parliamentarian may say in deliberation “what you have just said is a pure lie the justification? If we apply the law of defamation in these two organs, the members will not be free to do their job and criticize a policy and stand in the interest of those who have elected them here society needs to choose scarifying individual right not to be defamed in a parliamentary deliberation since it will hinder them in doing their job but intent to injure still should not be there though very difficult to prove the existence of the intent to injure will qualify to defamation

The other area that is serving as defense is the media law. There are of sort of instating action which could be taken as a remedy and resolve the need for instituting an suit in a court of law due to defamation in the media industry. These are the situation given to person who is defamed through media a chance to defend himself through the same mechanisms and reply to that effect if a person is defamed thorough a printing media he should be given in that same printing media to reply to that effect and defend himself. But this right of reply must be treated equally with the defamed statement like if the defamation was made on the front page and the defense reply was given a section in deeper part of the printed media perhaps with smaller font, it's not an equal treatment so equal treatment is a crucial here and even from the side of the one who is given the right to reply he should not write his life story on it rather reply needs to stick to precision and straight to the point as printing cost and other factors are to be considered too.

Another option here is to use apology section we apologize for the past edition concerning statement made on ... this too is an alternative and serves as a defense to reasonable standard. And this how the law intends to strike the balance between these two competing interests

At last, another issue which we have to talk about in relation to defamation is **Group defamation is there such a thing and if so could individual member of the group claim compensation what if the teacher makes such statements such as “this batch is a collection of worthless rat who are wasting my time., it will take miracle if anyone of these will be any good in graduating in law?!!**

Assignment read 2050 and the following we might not have class for next session stick to the notice board for details and read the assigned provisions any way.

- 
- ❖ Protection against family interest 2050, 2052 and 2053
  - ❖ Protection against property interest 2053 and 2054
  - ❖ Protection against interference in economic interest/ against pre-contract relation article 2055, 2056, 2057, unfair competition. These are called economic interest

Now we resort to another source of liability **strict liability. This is the liability to mean the liability that exists regardless of fault. Under 2077(2), it says person shall be liable by an activity or an object he possesses. There are two tracks here**

- 1. activity that he engages causes here strict liability**
- 2. Object he possesses**

**If the object he possesses causes damage, he will still be liable even if it was not at fault the same is true for an activity leading to damage and resulting in liability ( strictly ) even in the absence of establishing a fault.**

- ❖ **There is an important phrase here which we have to consider duly from the wording of 2077(2) i.e. “when the law so provides. Meaning that it’s only possible to establish strict liability only when those objects and activities clearly stated by law are possessed and done. So not all objects and activities will be source of strict liability**
- ❖ **2066-2089 activity giving rise to strict liability**
- ❖ **2071-2089 objects giving rise to strict liability**

These are the grounds spelt by law to be source of strict liability article 2066 necessity, even if you don't have fault established, the author will be liable strictly for the bodily damage he has acted as an author.

Dangerous activity

Objects could be

1. living or non things
  2. Animal in custody 2071
  3. Buildings 2077,
  4. Machines and motor vehicles 2081??
  5. manufactured goods 2085
- ❖ Nothing outside than these activity or objects gives rise to strict liability

The defendant here cannot avoid liability by showing that he was not at fault as opposed to liability arising from fault. Rather he may say

1. Specific provisions have their own approach( mekshesha markesha approach)
2. Victims fault this is a strong defense not only for strict liability but for fault based liability as well.

Activity: when you take an action in state of necessity, as we may recall from our discussions in criminal law class, state of necessity is justified by law. Under the civil part of liability, when we take action due to state of necessity, we may not be at fault. Since reasonable person in the same circumstance would have done the same. But this fact may not exempt us from damage unlike criminal law. Example, imagine a scenario where bus number 17 is fully packed without a space even for breathing and had a break problem. The driver understanding this had two options one was to smash everything down and take it to meskel square which will render collateral damage beyond imagination or smack the bus into one of the container near the university where a kiosk is there. This is clearly a state of necessity in criminal law but what are we to say for the owner of the kiosk? Bad luck? In criminal law we will say the driver he has indeed acted as responsible enough from saving the society from greater harm that was beyond the control of the driver but in the civil part of liability we can't say to someone who was injured sorry you have been a price tag for the interest of the larger society rather we compensate him from the one who was told to go free from the criminal liability even in the state of necessity. This takes us to consider thing as such called private necessity as it was "public necessity" consider another case an old woman's wagon was on fire while it was running and the driver found a blanket found hang on a nearby and took it down to extinguish the fire of the car these are issues we will consider. Should property be compensated unless victim's fault? A person shall be liable for any damages the driver in the above example took necessity action in order to save the huge damages that would have occurred otherwise in both cases though the case of the owner of the kiosk in our hypo does not fit the conclusion since it is rare to assume the likelihoods of a situation such as his to find it being of victim's fault, no liability should exist with the victim's fault. As it is possible to imagine to our guy with the blanket that was hanged in the middle of the road thus telling us that he was at fault (victim's fault.)

Bodily harm 2067 when you inflict bodily harm on another. Bodily injury even with the absence of fault, defense here would be by law, legal defense and the like what about them

doctors that actually tear apart a given tissue every single day is that not harm? Yes but their defense would be ordered by law, legal defense, and victim's faults are possible defense in favor of medical practitioners.

The fact that I was not at fault will not be defense here. The Amharic version even goes saying not only ordered by law but permitted by law. What circumstances can we imagine that a bodily infliction will be permitted by law? Our criminal code of the recent years have excluded flogging from it and preserved death penalty. The logical explanation of removing flogging was the need to value life and dignity in the place of inhuman treatment but is taking the life as in death penalty that still reserved in our law one of the many ways to skin a cat?

20677(1) Applying this every time medical doctors would not have a room to operate. So defense would be acts provided by law and legitimate defense but could be liability if a fault is established. In other source of liability and not in strict liability area 2068 associated with bodily injury is sporting activity. The body contact is higher here. So bodily injury resulting from such an event will not render liability unless it's possible to show deceit, and violation of the rules of that game

What is voluntary assumption of risk? (If he said I will fight and entered into a fight/ sport), what can we really do? As we have said enough concerning the immunity we would entitle the parliament's debate session in relation to defamation, the same logic applies here. If we say you will be liable for the bodily injured likely to occur in sporting activity such as boxing and so on unless the clear violation or deceit as the law says are to be established, it will hinder the sporting itself. E.g. if a ball hit one of the audience in a stadium, voluntary assumption of risk will be taken into considerations

We now resort to another source of activity entailing liability i.e. dangerous activity.

### **Dangerous (Ultra Hazardous activity)**

Sometimes people involve in beneficial activities. But these activities may bring undesirable harm to societies case in point would be pesticides, poisonous substances and industrial remnant, construction of dam, and the like do have benefits to society but they are likely to cause damage too.

- ❖ If they have the possibility of causing damages, should we abandon them or welcome them despite of the risk?

In some legal system, when a given activity is beneficial but still likely to cause dangerous result? There will be requirement of insurance prior to building such a thing, and the insurance will be dealing with loss and damages when they occur. In other cases they put them in strict liability such as the case in Ethiopia.

Since laying the burden of proof on the plaintiff is inappropriate, the law in our case makes it strict liability but allowed the construction or activity such as the ones we have discussed above. 2069 says abnormal risk, by using and storing explosives, high tension electric transmission line, etc are socially significant in value and the damage they are likely to cause when not handled properly is another thing. And the two must come to some point read 2071-2089 for the coming class.

**Dangerous activity** results from manmade and the creator needs to be responsible meaning that cost benefit analysis is there. 2069. Under extra contract law, force majeure is not a defense as opposed to what we know in contract law. 2086. In Ethiopia wing to our underdevelopment status this issue of dangerous industrial work is not much of a problem for us right now but is in the coming years when our nation will flourish in the advancement of technology and industry but for now can we consider the work of Kera Butchery service as an industrially dangerous activity? Assuming it is so, who should be entitled to receive the compensation from the company those who went there following the company, those who were there even before the company was there or are we going to entitle compensation who have built an illegal house nearby? Would it make a difference if the government has given a constructional license to built business/ homes near Kera?

Ok let's take this issue to the country side conditions in the constructions of dams near to a farm land? First of all is construction of a dam falls here in the modifying the land surface be covered under 2069? 2017 which is the natural flow from 2069 which is the principle says potential risk and 2017 is telling us that risk should be actual and not potential. And potential risk is not to be covered under 2069 as it is common to see land cost is affected by infrastructure. An establishment of a gun and explosive company will reduce the value of land cost while the establishment of socially desirable goods will increase the value of land cost. So the spirit of article 2017 is saying that risk coming from potential risk can't be source of responsibility (liability unless fault can be established and that would of course fall outside of strict liability

Let's now go back to the traditional or agrarian society. 2069 as repeatedly said does not cover the potential risk

Animal in custody. Traditionally this liability was under the concept of thing liability if it was not possible to be shown that the poser was at fault, it was used to be the animal itself that would be at fault and this is called naxal surrender. The "faulty" animal would be given to the victim and avoid liability. That was the traditional concept of thing liability. But through time thing liability was transferred to persona liability. And not to the animal but to the one whom the animal has been domesticated for. Te Feha Negest had a different say on this it used to say watch you piercing ox and leash your biting dog.

There is different approach to this issue. In some legal systems they classify animals in different category.

- a. Wild animal
- b. Domestic animal
- c. Animals of savage nature
- d. Animals that are normally harmless

These categories are in turn used to entail different liabilities basing this classification. Example UK has a classification of animals into wild and domestic a person whom has a wild animal under his custody and committing fault would be strictly liable while fault basely liable if it is a domestic animal. So distinction is important so as to determine the extent of liability. Under the USA legal system, it's rather the nature of the animal that will be taken into consideration so instead saying wild and domesticity they use savage nature and animals that are harmless to attach liability to the owners thus, owner of savage nature animals will be strictly liable while an owner of an animal considered to be harmless causes

fault, the owner will be liable fault based wise. Then they have special legislation for some categories of animals at zoo, circus and laboratory special legislation for each due to the social benefit they provide and are destined to serve. So fault based liability for such animal.

The French legal system we don't have this distinction all animals regardless of their nature liability is held strictly. 2071-276 of our civil code deals with this matter so which approach does the Ethiopian code adopts?

Every time the owner is liable, after the owner pays compensation, he may resort to the possessor. At other legal system they say we don't care on who possessed it and entitlement is irrelevant here still in other legal system, if it was the owner who posed it at time of fault fine but in other case the control is important. In some legal systems they create joint liability between the two. Suit can be brought to both. At the same time what's our approach? How does our law regulate this matter? Come with answer for next class.

Last class ended with the question whether that someone either possessor or custodial would or would not be liable can the owner reject liability saying it was not under my control? As some legal do so?

- i. Even if the animal was not under the control of the owner but of the custodial, he will have two options
  - a. Proceed against the owner 2071 cum 2073 by virtue of
  - b. Proceed against the possessor 2072
  - c. He can still bring joint suit both to the possessor and the custodial as per article 2155.

Unlike other nations, with single track, for the benefit of the victim, we have multiple track

What is the legal relevance of post such as "watch out for Dogs and Keep out Electrical hazardous fence?" what does this mean? Does it mean that if you are bitten by the dog the owner will be free of liability since it has already posted that sign somewhere in the fence where pedestrians will see it without any trouble?

The argument is that that post will be in favor of the owner and serve him as a defense for action taking place inside the premises but not so outside of the premise as it's his duty to keep the animal under his control. Today many nations have given up the notion of the thing liability and now the liability is rather personal and the principle of noxal surrender (rendering the animal who is said to be "faulty" and be free of the liability of the thing), does not work anymore and liability is upon human but the Ethiopian civil code seems to follow the principle and an owner provided that he did not commit fault will relieve himself of the liability by surrendering the animal to the wronged person but this is so for the owner if he's the possessor, the way out, is by paying the equivalence and here the point is that liability will be limited in the case of noxal surrender so long as fault is not proved. The distinction between wild and domestic animal becomes important here.

The principle of noxal surrender works only for domestic animals. If it's wild animal noxal surrender will not have any help so as to reduce liability as it would do so in the case of domestic animals. And degree of the liability will be limited for domestic animals and is unlimited for wild animals. 2074 (3), attempts to define what domestic animals are as a result it says only those animals for pleasure and gain are said to be domestic animals

What does this mean? Take for instance a cat blinding a child and a dog biting a pedestrian, are the owners in this case free of their liabilities by surrendering the cat and the dog to the victims? Well the face value of the provision includes the two as domestic animals and thus the principle of noxal surrender suggests so but how could we say the use of the two animals meet the definition/ well a cat has the pleasure of looking good and giving a gracious looks of the sofa as far as the poor are concerned she's the predator of their enemy

The safest way to see this provision is to understand that it's open to different interpretation

2076 gives some sort of self help mechanisms when animals cause damage, detaining animal that caused the wrong are detained until till it's equivalent is paid. The law is saying that the owner should control but the law had other options as well like for instance "fence your plot as it's the case in the US. And the present federal structure of our polity, should it

have been determined by each regional state in relation to its practical situation and the question of how to interpret 2077 still remains as a question

### **Building**

2077 is the principle while 2078 is the remedy. 2079 talks about preventing measures and article 2080 deals on object falling from it the general approach in building is concerned with the occupier and the owner.

When it collapses and causes damage, which should be responsible? And when building collapse it could be as a result of

1. Defective construction
2. The need for maintenance and the lack of periodical repair

The victim may not have the necessary information as to why the collapse had taken place and the legislator said fault needs to be presumed and victim is not required to show fault. Rather the action speaks for itself. In some legal system the owner is always liable in others, the occupier if had failed to report on timely basis under our law, the owner is responsible to the victim but after payment to the victim he can proceed against the contractor, occupant etc. 2080 covers the issue and the only area where the occupier will be responsible for objects falling from the building in case like this the liability will be on the occupier provided that he is not the owner but if the owner is the occupant no problem as such. here again the principle of noxal surrender was given the same position here. If the government's claim land and what will be the benefit of the victim from the ruins of a building? Read an article from the Ethiopian journal of law vol 12. Liability arising from manufactured goods.

In relation to building and object falling from its parts or from it are two different things

2080 gives liability to the occupier with strict liability take the current fashion in Addis there's now a usual habit of building full or largely covered glass building and as a nation with 13 month of sunshine, can we consider the reflection caused from these building as such?

### **Machines and motor vehicles**

**Another area where modernity becomes a threat to society's welfare. What is the difference between motor and vehicles and machines? Mobility is the defining aspect of motor vehicles while the stationary aspect is that of the motors.**

**Motor vehicle due to the fast mobility, pedestrians is exposed to dangers perhaps one of the most common aspects of Tort is that of traffic accidents. But in our case, both the drivers and the pedestrians are annoyingly hyperactive in some legal system the issue of motor vehicles accident is regulated under dangerous activity (2069 in our case), but still other systems make it bit mild and include**

1. Regulate it under rules like 2069
2. Regulated under ordinary negligence rule the victim has to establish fault. And thus it's fault based liability so in the case of traffic accident bi lateral care is required
3. Strictly liability and regulated outside of dangerous activity 2081 and this the approach our law has taken

Defense for the owner if the car is stolen he will be free of liability but we had a case few years ago the merit of the case are as such

There was already who had been living with her nephew who happens to be a teenager the lady owns a car and as the kid found it fun he used to sneak in and take the car to a party at night after making sure that the lady was not aware. It was no big problem to him since the keys were left in the ignition but on one unfortunate day he had an accident and the lady was called to meet the liability but she alleged saying that she could not be liable since her car was stolen at that moment of the accident. Lower court approved her claim but the supreme court quashed the decision of the lower courts the holding of the courts were the determination of the issue of whether the kid was authorized driver or not and not an issue of thief and made the lady liable the reporting of a missing car to the police has a double benefit to the owners

1. Assist them in recovering the lost car
2. Creates evidentiary role which may serve them a s defense in the exemption of liability arising from an accident while the thief operates it

We are to finish this part as of Monday and make sure you read the provisions and that article on liability of manufactured goods