

CHAPTER I

DEFINITION AND PRINCIPLES OF NON-CONTRACTUAL LIABILITYLAW

Therefore, Non-Contractual Liability Law is a law that gives remedy by awarding compensation to the victim or ordering restitution or injunction. When those interests, which are protected by the Constitution and other laws, are violated, courts will award a sum of money, known as damages (compensation) for infringement of protected interest. Alternatively, the court may issue injunction. Injunction is a court order given to the defendant to refrain from doing something”. Restitution is the third form of remedy.

Principles: To make a person liable under this law, four requirements which are called principles of Non-contractual Liability Law are essential. The first one is act or omission. The second concerns damage. The existence of casual relationship between the act or omission and the damage suffered by the victim is the third principle. Finally, this damage should be a kind of harm recognized as attracting legal liability.

CHAPTER II

CONSTITUTIONAL RIGHTS

1. **Personal Security:** As per article 16 of the FDRE Constitution, everyone has the right to protection against bodily harm. Moreover as per article 17 of the FDRE Constitution any, Ethiopian or foreign national lawfully in Ethiopia has the right to liberty of movement.
2. **Interest in property:**As per article 40(1) of the FDRE Constitution, every Ethiopian citizen has the right to the ownership of private property. This right includes the right to acquire, use and dispose of such property by sale or bequest or to transfer it otherwise.

3. **Economic Interest** :As per article 41(1) of the FDRE Constitution, every Ethiopian has the right to engage freely in an economic activity and pursue a livelihood of his choice anywhere within the national territory.

4) **Reputation and privacy**:The FDRE Constitution recognizes every one's reputation and privacy under articles 24 and 26 respectively. Accordingly, under article 29(6) of the same, limitation on the right of thought, opinion and expression are put where these rights go against honors and reputation of individuals.

CHAPTER III

CONDUCT THAT GIVES RISE TO LIABILITY

In legal sense, conduct is classified into two: Act and omission. Omission is failure to act where the law requires you to act in a certain way. This is known in legal terms as *nonfeasance*.

Intention and Negligence

Hence, "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"

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 foresees the result of her action or omission.

On the other hand, if a person failed to act in a reasonable manner, we say that person acted negligently. Thus to say negligence exists, four conditions are supposed to exist:

- 1. The defendant must have owed the plaintiff a duty;(DUTY TO CARE)
- 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

DUTY TO CARE: We all have a duty to protect other persons from harm. The question is what degree of duty exists? The degree of duty is the reasonable and prudent person standard. So we all have a “reasonable duty to avoid liability causing behavior”. As members of a community, a certain standard of care is expected from us when we act. ***The standard of care expected from us is that of the reasonable man. It is objective.*** To that effect, it does not take into account the particular way of behaving, thinking, etc or weaknesses of the defendant. Let us assume Chala is a learner driver. While, He is to be judged by the same standard as that required of any other driver, namely that of a reasonably competent and experienced driver. This reasonable man standard is embodied in our Non – Contractual Liability Law as well.

This reasonable and prudent man standard is not without exception. One of the exceptions is **unforeseen harm**. Hence, “If a particular danger could not reasonably have been anticipated, the defendant has not acted in breach of duty of care, because a reasonable man would not take precaution against unforeseeable consequences.

Statutory Standard; The objective standard is not free from subjectivity for ... “[t]here is a subjective element in that it is left to the individual judge to decide what a reasonable or what could have been foreseen”. In some cases the law solves the problem of subjectivity by providing a standard contained in a statute. For example, when it begins to get dark, all drivers are required to turn on their headlights. If, while traveling, any driver without her lights on, hits and injures a pedestrian, the law will conclude that she breaches a standard of reasonableness, no matter what she gives as an excuse. The majority rule is that breaching the

statutory standard is negligence *per se*. Negligence *per se* is inherent negligence, i.e. negligence without a need for further proof.

CHAPTER IV

CAUSATION AND REMOTENESS OF DAMAGE

The two concepts are separate but interconnected.

CAUSATION;It is not difficult to determine the cause for a damage where there is only one cause and that is established. “A causation problem, therefore, usually occurs when we look at the damage and see that it was actually caused by a number of different factors, or to put it another way, that a number of factors combining together brought about the damage.” Even in the presence of duty to care, its breach & damage, if there is no causation there will be no liability.

THE ‘BUT FOR’ TEST: To determine the cause for the damage z law uses “but for” test. “According to this principle the plaintiff will have to show that *he would not have been injured in the way he was but for the defendant’s conduct*”.

For instance, the wife supposed to show that her husband would not have died but for the defendant’s negligence. **Illustration;** Suppose that Chala committed a tort in relation to Chaltu and Chaltu subsequently developed cancer. Suppose further that it is claimed that Chala’s tort caused Chaltu to develop cancer. Suppose finally that it is hard to tell whether Chaltu would have developed cancer in the way she did had Chala not committed his tort. In this sort of case, the courts, have to determine whether the “but for” test is satisfied by using a balance of probabilities test. They ask: Is it more likely than not that Chaltu would not have developed cancer in the way she did had Chala not committed his tort? If the answer is yes then the courts will find that Chaltu would not have developed her cancer but for Chala’s tort and Chala will usually be held to compensate Chaltu for the fact that she has developed cancer. If the answer is “no” then the courts will find that Chaltu would have developed her cancer in the way she did even if Chala had not committed his tort,

with the result that Chala will usually not be held liable to compensate Chaltu for her cancer.

causation is a link between the defendant's conduct and the plaintiff's damage. To that end the law uses the "but for" test to determine whether that connection is established or not. Now we will discuss remoteness of damage, which is "used to set the limit of legal accountability of the defendant"

Remoteness of Damage: As a matter of principle once the conduct of the tortfeasor causes the damage, the tortfeasor will be obliged to make that damage good. There are, however, conditions where "even if the defendant's act caused the damage liability can still be excluded." That is, if the kind of damage was an unforeseeable consequence of the act, the damage is said to be too remote.

Illustration: The defendant drove negligently on the motorway and his car severed and left the road. The car landed on a railway line. A mainline railway train was derailed by the car. The train struck a dam, which burst, flooding a small town.

Here the defendant had set in motion a chain of events. The court has to terminate the defendant's liability at a particular point. The point could be after the damage to the train. Any damage beyond that point is too remote.

Exception to the Foreseeability Test: Previously we have seen how we use foreseeability test to determine the remoteness of damage, and we said that the judge put a reasonable man standard and determine whether the damage is foreseeable by a reasonable man or not. In addition, if the consequence of an act is foreseeable by a reasonable man, that damage may not be referred too remote a damage and the defendant shall make the damage good. There are, however, exceptions to the foreseeability test. The following are the exceptions in which a defendant is liable even if a damage is unforeseeable:

- **The egg-shell-skull rule ;** Here the issue is 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.

- **Economic loss consequent on physical injury;** This is a condition where one single conduct causes two injuries, and the one is not foreseeable by the tortfeasor. As per the Ethiopian Non – Contractual Liability Law a victim who suffers both physical and economic loss should sue the defendant for both at the same time. Otherwise as per article 2151 of the Civil Code of Ethiopia the victim may not bring a fresh action for compensation for other damage she has suffered unless such damage was caused independently of that for which she has already claimed compensation. even z economic loss, consequent on physical injury, is unforeseeable z defendant is liable to pay damages.
- **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.
- **Intentional torts;** where the act is intentional, even if the result is reasonably unforeseen the offender will be liable for the remote damage.
- **Statutory Torts**

CHAPTER V

Boundaries of Non– Contractual Liability Law

Non-contractual liability law v Contractual law:

- the sources of obligations are different. In case of contracts, the obligations emanate from the agreement made between the parties, 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 (articles 2030(3) and article 317. But Consult article 2099 (1)).

- 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. liability without fault under Non – Contractual Liability is an exception applying only where the law specifically so provides(article 2027(2) cum section 2.).
- Limitation of action in contract is 10 years while in case of Non – Contractual Liability it is 2 years(article 1845, 1846 and 2143). Finally, a court that has jurisdiction in a case of contract is a court at the place where the contract is made or to be performed(Art.24 sub.1 civ.pc) while in the case of Non – Contractual Liability the court at a place where the wrong was done has jurisdiction(27 sub.1civ.pc)

Non- Contractual Liability Law v Criminal Law

- liability from both wrongs emanates from the law, unlike that of contractual wrongs, which emanates from agreement. Moreover criminal wrong gives rise to Non – Contractual Liability
- they have different purposes;the primary function of the criminal law is to protect the interests of the public while, the primary function of the law of tort is to provide of redress for individuals who have suffered a loss.
- Z consequences or punishments are different.
- The parties are different. In criminal case, the parties are the offender and the state(representing the public through the public prosecutor). In tort case, the parties are the victim and the offender who are civilians.

CHAPTER VI

SOURCES AND TYPES OF LIABILITIES

The sources of Non – Contractual Liability Law are three:

1. Fault (offence) ; the liability is referred to as fault liability. article 2028 – 2065
2. Activities one engages in or things possessed by a person (strict liability) :referred to as Liability in the absence of fault (article 2066 – 2089).It consists of Dangerous activities, liability for animals, liability related with building , machines and motor vehicles and one article for manufactured goods.
3. Where a third party for whom a person is responsible incurs liability,(vicarious liability): We may classify it into liability of families and others for a minor child, liability of State, liability of Bodies Corporate and Employers for their Employees .

Liability for Fault (Art.2028 & z ff)

This type of liability is an ordinary while Strict and Vicarious Liabilities are exceptions, for they arise when the law says so. in assessing the fault the law is very strict (regard shall be had to reasonable man standard without consideration of subjective status of offender(see Art.2030)). However, when assessing the damages or the consequence the law takes into consideration the mental and the age of the defendant. Hence though in principle it is stated under article 2091 that the amount of compensation is equal to the damage suffered by the victim, the court shall take into consideration those elements mentioned under article 2099(3). Furthermore, article 2099 is applied when the wrong doer is not aware of the consequence of her act.

Let's discuss each fault article now;

Professional Fault (2031); A person practicing a profession shall observe the rules governing that practice (Art.2031 sub.1). Therefore, if he fails to observe the rules of the said profession fault is committed. The rules for the profession could be written or it may not be written but is simply recognized by the professionals. If the professional rules are not written, we should call in an expert witness.

Intent to Injure (2032); Where a person either injures another intentionally without personal gain or intentionally causes damage in seeking personal gain, which is less proportional to that of the damage, we say he is at fault

Diversion of power (abuse of power)[2033]; if a person who is conferred with power in z interest of another or for public interest ,uses the power in his interest or to the benefit of a third party we say he is at fault

Purpose of Rights (2034);If one exercises her rights under article 2032 and 2033, though they are within the economic or social purpose of the thing, one could be at fault. Let us assume there is a shortage of house to be leased. A lesser locked her house and made it idle. Even though this act is against the economic and social purpose of the house, no one can question the owner of the house on the way she handled her house. However, if we can prove that she was doing that with the intention to harm, then she is at fault as per article 2034.

Infringement of Laws (2035); aperson comits fault where he infringes any specific & explicit provision of law. IGNORANCE OF LAW IS NO EXCUSE. the infringed law should not be exposed to various interpretations. It should be explicit. The fault should not be regulated by other Non-Contractual Liability Law or Contractual provisions.

Chain of Command (2036)

There are three approaches concerning the relationship in hierarchical order;

- 1) **Obeying the law**; this is what the rule of law says and it is true where it is assumed everybody knows the law. The approach is not free from criticism.
- 2) **Obeying the order and forgetting the law**. It is a *blind obedience approach*. According to this approach, it is up to the superior to give order as per the law. The presumption is that the superior knows the law.

- 3) **Obeying both the law and the order.** Article 2036 seems to have adapted this approach. It is, therefore, the *intermediate approach*.

Non – Performance of a contract (2037); The mere fact that a person does not perform contractual obligation does not amount to non-contractual fault. Under such circumstance, the plaintiff should apply the provisions concerning to non performance of contracts but not tort law .

Under Article 2036, the subordinate is liable where :

1. If she is aware of the illegal nature of the order;
2. If she knew the order was given without authority
3. If she knew the criminal nature of the act ordered.

Is there a possibility for the subordinate not to be at fault under the above circumstances ?

the subordinate may know the illicit and criminal nature of the act. But as it is stated under article 2036(3) if in the circumstances of the case and particularly under disciplinary compulsion it was practically impossible for the subordinate to discuss the order or disobey, i.e. act otherwise than she did, he is not at fault. so the conclusion is that where the subordinate was in such fear of imminent harm as to make it “practically” impossible for her to disobey she would not be a fault as per article 2036(3) of CC. This, however, does not mean she is not liable, for she will be liable under article 2066. However, it makes no sense to say that a person is not at fault while at the same time making that person liable. The law is taking this course, possibly, to compensate the victim.

Special Cases

Up to now, we have been discussing fault in general and its classifications. The relevance of a reasonable man was also discussed. In this part, we are going to discuss special cases.

Trespass To Person

Trespass to person consists of

1. Physical Assault [Battery] ,Art.2038
2. Interference with the liberty of another [false imprisonment]
3. Defamation

Physical Assault [Battery] ,Art.2038 : To say a person has committed a physical assault, first, there has to be contact to the person of the victim. This contact could be made by having direct personal contact or by utilizing other objects, which could be a living thing or a non – living thing. The contact should, however, be done intentionally. In other words if the contact is made negligently or it is careless contact there is no physical assault. we may say physical assault is invoked whether the contact has caused bodily harm or not(2038(1)).

Defenses:

- 1) **Unforeseen objection (2039)(1)**
- 2) **Self defense Art.2039 (2)**
- 3) **Corporeal Punishment [2039(3)]** :This act consists in a reasonable corporeal punishment inflicted by the defendant on his child, wards, pupil or servant. The Constitutionality of this sub article is questionable for the FDRE Constitution states under article 36 (1) (e) that children are free of corporal punishment or cruel and inhuman treatment in school and other institutions responsible for the care of children.
- 4) **A dangerous Lunatic (2039[4]):** where the plaintiff is a dangerous lunatic whom it was necessary to prevent from doing harm and the act was done in reasonable manner. If a notoriously insane person is categorized as dangerous lunatic those people with whom he lives or his family would restrict his liberty of moving.
- 5) **Any other justification (2039[5]):**This is where the act of the defendant is justified in the eyes of a reasonable person.

Interference with the Liberty of another(false imprisonment) Art.2040

It is a detention of one person by another against the will of the former and without just cause.

DEFENSES

- ***Lawful authority (2041).***
- **Criminal offence (2042):**a person who interfered with the liberty of another is not committed fault where he shows that he has a good reason to believe that the plaintiff had committed a criminal offence.
- **Bail Art. 2043:**If the person who stood surety for a person has a good reason to believe that person is about to abscond and prohibits that person from leaving his residence, the one who interfered with the liberty may not be said has committed fault.

Defamation (2044)

The means utilized for the purposes of defamation could be words, writings or any other means.

The consequences of defamation are to make a **living person** detestable, contemptible or ridiculous and jeopardize his credit, his reputation or his future. So defamation is related to living person. not to a deceased one.

Nevertheless, it seems that our law makes differences between defamation and insult. Defamation exists when the defamatory words or statements are communicated to a third party. If the words or statements are limited to the victim herself, they are said to be insults not defamation. Their consequences, however, as you can see from article 2109 are all the same, i.e. awarding of fair compensation to the plaintiff or to a charity named by the plaintiff.

There is no group defamation(if not referring a particular person it is not defamation) as per article 2045(2). For example, all lawyers are crooks .

Defenses (Article 2046 – 2049)

- **Public interest [2046]:**expressing an idea of public concern or interest is not defamation. The statement should be, on its face, statement of opinion, not a statement of fact.

- **Truth of the Alleged Fact (2047)** :In principle if what someone states is true, there is no defamation provided this is not done with intent to injure.
- **Immunity (2048)**:Accordingly no liability shall be incurred in respect of utterance made in parliamentary debates or in the course of legal proceedings.
- **PUBLICATION (2049)**: Defamation could be committed by way of publication. In such a case there will be no liability when z defendant; I) has acted without intent to injure and without gross negligence. II)At the request of the plaintiff, he publishes immediately a withdrawal and an apology.

Trespass to Goods

Our Civil Code uses trespass(20543) to indicate trespass to land or a house while trespass to movables is referred to as assault to property(2054).

Trespass [2053]: Accordingly,there is trespass where without due legal authority, someone forces her way on the land or into the house of another against the clearly expressed will of the lawful owner or possessor of the land or house. Forinstance,A notice could be put on a door or fences of some ones holding which reads "Stay away. This is private property" or you may have a notice saying "Dangerous water. No swimming" which are written expressions.If someone fences a piece of land under his possession, he is expressing his will by conduct. If you force your way into the land by passing that fence you are a trespasser.

Assault on property [2054]:This is a trespass to movable property. Accordingly, a person commits an offence where, without due legal authority, she takes possession of property against the clearly expressed will of the lawful owner or possessor of the property.

CHAPTER VII

Interference Against Economic Interest

(Article 2055 to 2064)

the items we are going to discuss in this part are :pre-contractual negotiations(2055), inducement to breach of contract, unfair competitions, simulation, False Information, Exception, Witnesses, Advice or recommendations ,Seizer of another's property or Distract ,Execution of a court order ,Prescription.

- **pre-contractual negotiations(2055)**
- **Inducement to breach of contracts [2056]:**As per article 2056, whosoever is aware of the existence of a contract between two other persons commits offence where she enters into a contract with one of those persons thereby rendering impossible the performance of the first contract.
- **Unfair competition [2057]:**publishing inaccurate information about other competitors or any false statement in the course of business with a view to discredit a competitor; misleading customers by using the same trademark, or name is unfair competition, which is generally a dishonest practice used by the defendant. Hence a person commits an offence where, through unfair competition, he compromises the reputation of a product or the credit of a commercial establishment.
- **Simulation (2058)**
- **False Information (2059):** Accordingly, a person who intentionally or by negligence, supplies false information to another commits an offence where:
 - I) He knows that the person to whom the information is supplied or another given person will act upon the information and thereby suffers damage.(in case where the information supplier is not bound by the rules of her profession to give correct information)
 - II) he is bound by the rules of his profession to give correct information.

See exception under 2060.

- **Witnesses [2061]:** Thus witnesses who testify to the occurrence or the non-occurrence of a given event or to the existence or the non-existence of a given fact shall guarantee the accuracy (exact or without error) of their statements. If they could not do that they would be liable to those who acted on the faith of such statements.
- **Advice or recommendations (2062):** Where a person renders advice or makes recommendations to another he may not be liable.
- **Seizer of another's property or Distract (2063):** The creditor, in order to secure payment of a debt, holds the property of the debtor. If the property that is held by the creditor is disproportionate to the value of the debt this act is a fault.

Execution of a court order (2064): the execution officer who seizes the property of judgment-debtor to execute the court order shall not be at fault provided he carries it out in accordance with the order. however, he shall be liable where he executes the court order that is not made in a prescribed form

CHAPTER VII

Other Interests

Injury to the Right of Spouses (2050): This is a condition where someone induces one of the spouses to leave the other against the will of the other spouse. **Illustration:** Chala and Chaltu have just concluded their marriage irrespective of opposition from Chaltu's family who invoked Chala's poor income. To make Chaltu leave Chala, Chaltu's family offered Chaltu visa to the USA. As a result, Chaltu left Chala and went to the USA. In this case, Chaltu's family had committed an offence for they induced Chaltu to leave Chala against Chala's opposition.

even if you induce one of the spouses to leave the other where there is no opposition from the spouse there is no commission of offence for spouses can agree to live separately (Art. 55(1) RFC.).

The act of receiving, harboring or detaining a married woman in full knowledge of the husband's opposition shall be a fault (2050(3)).

Duty to Educate and Supervise (2052); this Article is a good example to a fault by omission. As per article 2052 a person could be entrusted to the charge or supervision of another by law or in conformity with the law. Thus, parents' custody of their children emanates from the law. This obliges them to educate and supervise their children. If the parents or legal guardians fail to educate and supervise their children, they are at fault. Similarly, schools have the custody of children for the time the children are at school. During this time, the schools have responsibility to educate and supervise the children at school.

CHAPTER IX

Liability Irrespective of Fault

Strict Liability (2066-2089)

- 1) **Necessity (2066);** When there is imminent danger against property, oneself or another person, one may cause harm to another person to avoid that danger. where a person acts on necessity he may not be criminally liable, however, civilly liable.
- 2) **Bodily Harm (2067);**a person shall be liable where by his act he inflicts bodily harm on another.**except where;** i) Where the act causing the harm was ordered by law ii)Where it was done in legitimate self-defense. iii)Where the harm is due solely to the victim's fault.
- 3) **Sport Activities [2068];**In sporting activities, one may injure another who is taking part in the same activity or a spectator. unless there is, a deceit or gross infringement of the rules of the sport, the person who causes the injury shall not be liable. The

rationale behind this is what is called **voluntary assumption of the risk**.

- 4) Dangerous Activities [2069] ;Creation of abnormal risks ;The activities are enumerated as follows under article 2069.1) Storing or using explosives or poisonous substances. 2) Establishing high-tension electric transmission lines. 3) Modifying the natural lie of the land. 4) Engaging in exceptionally dangerous industrial activities.

engaging in those activities by itself does not make those who engage in those activities liable. They shall be liable where the danger they have created materializes thereby causing damage to another,”

- 5) Liability for Animals (2071_2076)

the owner of an animal shall be liable for any damage caused by the animal notwithstanding *that it has eluded his control accidentally or the damage caused was unforeseeable*.

Custodian (holder)(2072): The holder is a person who uses the animal for her personal benefits or hired to take care of an animal. he is liable for any damage caused by that animal while it is under his holding.

in case of the owner, she can relieve herself of her liability by surrendering the ownership of the animal to the person who suffered the damage provided that the damage is not the consequence of a fault committed by the owner or by a person for whom he is liable (child or employee) or where the animal is domestic animal¹In case of a person in whose charge the animal is (custodian) he can relieve himself by paying the value of the

animal at the time when the damage was caused provided the animal is a domestic animal & z custodian committed no fault.

Victim's guarantee (2076); The owner or posseser of land may seize the animals as a guarantee until compensation for the damage is paid, when z animals cause damage. Even, he may kill z animal to avoid dis proportionate damage to z value z animal.

6) Liability For Buildings (2077 – 2080)

The owner shall be liable for any damage due to the building, even for unforeseeable damage.however, z occupier shall be liable for any damage due to objects falling from z building.

Where the reason for the damage is the fault committed by the person who built the building or occupier, the owner, after paying the compensation to the victim, may claim compensation from those persons as per article 2077 (2).Similar to the owner of an animal, the owner of a building may relieve himself of liability by surrendering the ownership of the building to the person who has suffered the damage as per article 2078 (1).

7)Machines and motor vehicles

The owner of machines and motor vehicles are liable for the employees in accordance with the labor proclamation 377/2000 while for others the owners of a machine or vehicle shall be liable for any damage caused by the machine or vehicle in accordance with extra contractual liability. They are liable even if the damage was caused by a person who was not authorized to operate, or handle the machine or drive the vehicle. In other words, the fact that the machine is operated or the vehicles driven by a person who is not authorized cannot be a defense. The only defense to relieve the owner from being liable is where the damage is due solely or partly to the fault of the victim. Moreover, the owner shall not be liable where he

proves that, at the time when the damage was caused, the machine or vehicle had been stolen from her. And also, a person who has taken possession of the machine or vehicles for purposes of personal gain shall be liable for any damage caused by the machine or vehicles while the machine or the vehicle is in his possession. An agent who has charge of the machine or vehicle for the owners account or for the account of another person shall be liable if the machines or vehicles caused damage due to her fault.

Finally, two motors could collide in a road accident. When it is not proved the accident was due, entirely or chiefly, to the fault of one of the drivers, it shall be deemed each driver has contribute equally to the accident. Consequently, they shall bear half the total amount of the damage resulting from the accident(2081).

Liability for manufactured goods(2085)

*A person who manufactures goods and **sells** to the **public** for **profit** shall be liable for any damage to another person resulting from the **normal use of goods**.see z exception under Art.2085(2) i.e z buyer empter princeple*

Examples for manufactured products are, cars, radios and computers. manufactured products do not,ristrected, simply refer to food and drinks.

Defenses or justifications for strict liability

- where the damage is due solely or partly to the fault of the victim; whether the claimant acted reasonably, with the amount of self-care that a resonable person would have exercised in the circumstances
- contractual relations
- Disinterested relation ship,Art.2089
- order by the law and legitimate self-defenses as justifications in case of nessity (Art.2067(2))
- if the vehicle or the machine is stolen.in case of Art.2081

NB: those grounds enumerated under sub article (l) of article 2086 may not be invoked by those persons who are legally declared liable to relieve themselves from liability

CHAPTER X

VICARIOUS LIABILITY

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

Some authors refer to vicarious liability as another instance of strict liability in the sense that one person is made liable for another without herself committing any fault.

Thus under the Ethiopian tort law parents are liable for the wrongs done by a minor child. The state is liable for its civil servants and employees acts. Similarly, bodies corporate are liable for their representatives, agents or paid workers act. The employers are held liable for the acts of their employees. Finally, 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.

The Rationale why one is held liable for the wrong *committed by another*

- *The control test*
- *Analogy with causation*
- *Deep pockets*
- *Economic and moral consideration*
- *Loss spreading*

Liability of parents and others(article 2124) ;

read this article with art.34 FDRE cons which ensures equality of men & women. parents shall be liable under the law where there minor child incurs liability. One of them is liable where s/he exercises the guardian authority alone.

Parents are either jointly liable where both exercise parental authority or separately liable in case one alone exercises the authority. This is true where the child lives inside the family home. Where the child lives outside the family home, however, the person in whose charge the child is placed shall be liable.

Liability of the state, Art.2126

While giving services civil servant or government employee may commit fault. This fault could be personal or professional fault. Where the fault is personal, the state shall not be liable. Where the fault is professional, however, the victim may claim compensation from the state. Nevertheless, the state may subsequently claim it from the servant or the employee at fault. The difference between personal and profession fault is given under article 2127.

Liability of bodies corporate and employers [2129-2133]

bodies corporate are those associations established in accordance with Memorandum of Associations and Statutes with a view to obtaining a result other than the securing or sharing of profits.eg,trade unions & church.

These bodies corporate are liable for their directors, servants or employees where the directors, servants, or employees are at fault while executing their functions, which is referred to as discharge of duties. What we have been discussing about bodies corporate and their agents, paid workers and representative is applicable to employee – employer relationship. However,if a person is an independent worker or contractor, though he is working for the employer, the latter is not liable for the faults by an independent worker or contractor. (an independent worker or contractor undertakes to produce a given result, under there own responsibility).

DEFAMATION, Art.2135

the managing editors of the newspaper, the printer of the pamphlet or publisher of the book shall be liable for defamation committed by the author of a printed text. Hence, the authors are liable for positive acts under article 2049 for they have primary responsibility for the defamatory matter. And the managing editor, the printer and the publisher may be liable for either approving the defamatory matter or as accomplices.

the person who caused the damage and the person whom the law declared to be liable for such damage shall be jointly liable to repair the damage.

REMEDIES TO EXTRA CONTRACTUAL WRONG

Chapter XI

Introduction to the Basic Notions of Damage

Proving the existence and the extent of liability are cumulative mandatory requirements in an action for compensation in extra-contractual liability law. In Ethiopia, proving damage is a prerequisite for compensation.

Based on the nature of the interest harmed, **damage can be classified into two: material damage and moral damage**. Material damage is a damage which affects the person's pocket (an injury caused to a person's economic or financial interest).whereas harm to his moral interests affects his feelings or emotions. moral damage refers to the harm or injury inflicted to a person's feeling or non-pecuniary interest. However, the usual classification of damage in common law systems is pecuniary and non-pecuniary, which is equivalent to material and moral damage respectively.

Material damage may have two important components. These are present (actual) material damage and future material damage.

Present material damage refers to the material or pecuniary loss sustained by the victim of the tort that covers the loss occurred **from the date of the commencement of the injury up to the date of final assessment by the court**. It can be measured by the difference between the plaintiff's present estate and what would be now his estate had the harmful fact for which redress is sought not occurred.

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 is the other main component of material damage. It is a damage that is going to occur in the future. future damage includes the damage that will occur certainly or with a higher probability after the date of judgment.

Although future damage was not present at the time of a judgment, it is compensable without waiting for it to materialize provided that it is certain to occur.

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**. Where the judgment as to the amount of compensation is appealed and varied, it is the date of the new assessment on appeal that separates present from future harm.

As compared to present damage, assessment of future damage is very problematic.

Chapter XII Modes of Compensation
Modes of Compensation for Material Damage
The Rule of Pecuniary Compensation

The material damage sustained by a person due to the tortuous act of another person can be compensated or made good in different ways. as stipulated in Article 2090 of the civil code, can be categorized into **pecuniary**(compensation by means of money.) or **non-pecuniary** compensation.

Article 2090 of the civil code that deals with “Modes of Compensation” for material damage laid under sub-article one is as follows: “As a rule, the damage is made good by compensating the victim by means of an equivalent sum of money”.

Pecuniary (monetary) compensation is the rule, whereas non-pecuniary compensation is the exceptional mode of compensation for material damage.

Non-Pecuniary Compensation:

The exception to the rule of pecuniary compensation is laid down under Sub-Article two of Article 2090 of the civil code, which reads: “The court may, subject to the liberty of persons and to the right of third parties, order in lieu or in addition to money damages other appropriate measures to make good or limit the damage”.

Article 2118 through Article 2123 provides a partial enumeration of the “other modes of compensation” other than payment of monetary compensation to the victim. Restitution, reparation in kind, retraction of defamatory publications, enjoining cases of unfair competition and injunction are prominent among such non-pecuniary modes of compensation that can be granted in addition to or as alternative to monetary compensation in appropriate cases envisioned in Article 2090(2) of the civil code.

non-pecuniary compensation shall not be granted where:

- the personal liberty of the defendant is at stake.

- the rights of a third party are at issue(at stake)

Modes of Compensation for Moral Damage

The Rule of Non-Pecuniary Compensation

moral damage refers to the injury caused to a person's feeling or honor, reputation. Therefore, it cannot be assessed in monetary terms. It is difficult to set monetary equivalence for an injury caused to a person's feeling. Thus, as a rule, the mode of compensation for moral damage is non-pecuniary, (see Art.2105). This is because injury to a person's feeling cannot be measured in terms of money. In addition to the difficulty to measure an injury caused to a person's feeling in terms of money, the other strong reason may be that moral damage may be better made good by non-pecuniary forms of compensation than by monetary awards. 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.

the Ethiopian extra contractual liability law allows monetary compensation as a redress of moral damage only for exceptionally nominated types of moral harms, 2105 (2).

Chapter XIII Quantum/ Extent of Compensation

Quantum of Compensation for Material Damage

The Rule of Equivalence : While dealing with modes of compensation for material damage, Article 2090 incidentally states that: “as a rule, the *damage is made good by compensating the victim by means of an equivalent sum of money.*”

“The compensation due by the person legally liable is equal to the damage caused to the victim by the fact giving rise to the liability.” Article 2091

Compensation in Ethiopia can in no circumstance exceed the damage sustained by the victim of the tort. So, our law under no circumstance allows an award of compensation that exceeds the damage incurred by the victim due to the tortuous act for which the defendant is called to account. However, there are situations where compensation that is less than the damage incurred by the victim may be awarded.

The victim of tort should be put in a position he would have now had not the injury causing event been occurred. The purpose is not to restore the victim to his pre-injury creditworthiness, it is rather to put him in a position he would have been now had not been for the injury.

But there are arguments against the above line of interpretation. In an appeal lodged to the Federal Supreme Court (Civil Appeal file no. 4265/92 E.C.), the appellant stated that his minibus was rendered completely useless because of a collision caused by another person’s insured car and requested the court in his memorandum of appeal to award him Birr 70,000 (seventy thousand) as the estimated monetary value of the destroyed minibus at the time of injury and Birr 84,150 (eighty four thousand one hundred and fifty) for the gainful opportunity he alleged to suffer due to the prevention of the 250 birr daily income of the minibus from the date of collision up to the date of filing the appeal. The defendant in this case opposed the plaintiff’s claim for compensation of the prevented gain (income)

stating that there is no legal basis to claim compensation under the guise of prevented income in addition to claiming the full value of the minibus at the time of collision. Since the minibus was destroyed completely, according to the defendant, it could not have the capacity to generate income. The Supreme Court accepted the appellant's claim 250 for Birr 70,000 (seventy thousand) compensation as a value of the minibus destroyed but rejected the other claim based on the so called prevented gain.

As per Article 2150(1) of the civil code, the assessment of the damage has to be made on the day on which the court renders its final judgment. The date of assessment, the court is required to determine what the estate of the plaintiff would be but for the destruction of the property. Thus, on the date of assessment the court should not consider only the market value of the property but also the prevented gain (net economic gain that would have been derived by the plaintiff from the use of the property until the date of judgment).

Departures from the Rule of Equivalence: For various policy reasons, the rule of equivalence between damage and compensation may be subject to several exceptions.

- Compulsory Mitigation
- Discretionary Mitigation
- Optional Mitigation
- Nominal Damages

A. **Compulsory Mitigation:** They are stipulated to the benefit of the defendant, that is, the defendant as of right can invoke them. The concept of compulsory mitigation is incorporated in Article 2098 of the civil code. According to this provision, where the damage is caused to the victim due to his own partial (contributory) fault, then he is entitled to partial compensation. In this case,

the liability of the defendant could be fault-based liability, strict liability or vicarious liability.

B) Discretionary Mitigation: These provisions depend for their application on the court's largely free (discretionary) decision. The defendant can invoke them where relevant, but he is not as of right entitled to the mitigation. This can be inferred from the wordings of Articles 2099-2103 and 2157, which use "powers of equity" as a parameter for exercising such discretion and the word "may" in Articles 2099-2101 that indicates the discretionary nature of mitigation. These provisions shall be discussed in turn. Article 2099 talks about a case where the court may reduce the amount of compensation regardless of the principle of equivalence provided in Article 2091, where the fault giving rise to the liability is committed by a person who was not in a state to appreciate the wrongful nature of his conduct. Article 2100 states another instance where the court may reduce the amount of compensation for damage caused under the "chain of command". Unforeseeability of the damage as stated in Article 2101 is another ground for reduction of the amount of damage.

C) Optional Mitigation: In optional mitigation cases 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. Cases of optionally mitigating circumstances are covered in Articles 2074, 2075 & 2078. As stated in these Articles, the defendant may surrender the animal or surrender building that caused the damage to another or pays an equivalent sum of money due. The defendant may choose to surrender the animal or building instead of paying an equivalent sum of money where the value of the animal or building is less than the monetary value of the overall damage sustained by the defendant. The defendant cannot exercise this options where

the damage was caused by his fault or that of a person for whom he is answerable. (Article 2074(2) cum Article 2078(2))

D) Nominal Damages: As a rule, a claimant in extra contractual liability law has the burden to prove the nature and the extent of the harm he sustained and the circumstances that render the defendant liable to make it good. But this is not the case in an action for 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 infringed by the defendant. 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. Nominal damages are awarded when the claimant has established his case, particularly in relation to torts actionable per se, such as trespass, but has not shown there is any actual loss. The award marks his success.

Quantum of Compensation for Moral Damage

It is not as such easy to award a monetary compensation for a victim in case of moral damage because of the immeasurability of one's feeling in money terms. So the principle of equivalence does not apply to moral damage. Hence the solution adopted is compensating the victim based on equity. The word equity in this context refers to standards of fairness and justness.

The compensation awarded for moral injury may in no case exceed one thousand Ethiopian birr, Art. 2116(3).

Under Article 34(4) of the Copy Rights and Neighbouring Rights Proclamation (proclamation no. 410/2004), the House of Peoples'

Representatives fixed a **minimum of one hundred thousand Ethiopian Birr** compensation for moral injury caused due to the infringement of the copy rights laws.

The Cassation Bench of the Federal Supreme Court in one case (civil cassation file no. 11042) awarded Birr **ten thousand** in the form of moral compensation to a woman whose marriage is terminated due to an act of adultery committed by her husband during marriage.

Compensation for personal Injuries

General Damages vs. Pecuniary Loss

The term “general damages” which may be taken as synonymous with moral damages refers to the monetary award granted to a person who suffered loss of amenity, pain and suffering due to the tortuous acts of another person. Loss of amenity is in essence the reduction in the capacity to enjoy life. It will depend in part on the nature of the injury, so that it will be greater where there is permanent loss of mobility, or of an organ or limb. It will also depend in part on the characteristics of the claimant

Damages are awarded not to punish the wrongdoer but to compensate the person injured, and a dead man cannot be compensated: *H. West & Son v Shephard* [1964] A. C. 326. . this author deny compensation to a person rendered unconscious due to a serious injury by analogizing him with a dead person.

It would be unjust to deny a person rendered unconscious due to a serious injury by analogizing him with a dead person. It deems also immoral to equate a person rendered unconscious with a dead person and deny him general damages.

Pecuniary Loss: Personal injuries, in addition to causing loss of amenity, pain and suffering, usually result in pecuniary loss (loss of earnings, medical expenses and other outlays) to date and future pecuniary losses to the victim.

It is clearly relatively easy to assess present pecuniary loss. On the other hand, it is extremely difficult to assess future loss. While assessing future pecuniary loss, the following three key variables need to be considered:

- (a) the future progress of the injury;
- (b) the impact of all the other vagaries of life, such as unrelated illness, on the claimant;
- (c) the claimant's future employment prospects.

Article 2102: 1) Where the exact amount of the damage cannot be ascertained, the court fixes it equitably, taking into account the ordinary course of events and the measures taken by the injured party. 2) Nevertheless, **no indemnity shall be awarded in respect of a damage of which** the very existence, and not only the amount, **is uncertain.**"

Article 2150(2): *Where it is impossible to finally assess the damage sustained by the victim on the date of judgment, the court has the discretion to grant a provisional judgment that may be reconsidered within a period of two years upon the application of the parties.* Within this period of two years, the medical prognosis concerning the nature and the gravity of the injury may be completed.

Injury of an employee

Based on the classifications made under Article 99 of the "Labour proclamation No. 377/2003", bodily injuries that decrease or impair the capacity of the person injured to work have the following effects:

- (a) Temporary disablement; impairs the working capacity of the worker partially or totally for a limited period of time
- (b) Permanent partial disablement; It refers to incurable bodily injuries that decrease, but not absolutely impair the victim's future working (earning) capacity.
- (c) Permanent total disablement and; means incurable employment injury, which prevents the injured worker from engaging in any kind of

remunerated work. Thus, the economic loss caused to the injured worker in this instance is absolute in its nature.

(d) Death.

Injury of self-employed Persons

Assessment of material damage incurred by self-employed persons resulting from bodily injuries is much more difficult than loss of wages from an employee. Even where pre-injury pecuniary earning cannot be determined exactly, it can be fixed equitably having regard to surrounding circumstances. The peculiar problem related to the assessment of the material damage incurred by a self-employed person is bound in the determination of that person's pre-injury earning.

Injury of Non-Employed Persons

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

Compensation for Fatal Accidents

in bodily injury cases, it is only the direct victim of that injury who is entitled to claim compensation for moral and material injuries suffered by him due to tortuous acts committed by another.

As a principle, no action for compensation lay for the death of another except by dependants nominated under the law. Article 2095 entitled specified dependants of the victim of a mortal accident with the right to institute a civil action for compensation for the loss of the economic support they suffered by the death of the person providing such support.

equitable moral damages may be awarded to close relatives of the deceased, not in the real sense of compensation for any pecuniary loss; rather as recognition of the grief and distress they suffered, (see Article 2095 cum Article 2113 civil code).

Finality of Assessment and Appeals

As discussed earlier, assessment of the extent of damage is a prerequisite for determining the quantum of compensation.

Two types of judgments are envisioned under Article 2150. The first is a provisional judgment that can be granted by the court in exceptional circumstances where it is impossible to finally assess the damage on that date.

So, until such complications are resolved and having regard to the conditions of the claimant, the court can provisionally fix the amount of compensation award. In this case any of the parties are at liberty to apply to the court for reconsideration of the **provisional judgment** within a period of two years from the date when the provisional judgment was granted. In the absence of any application to such effect within the time bound, the judgment would be final.

The other judgment is final from the very beginning. Where the extent of damage is ascertained and valued in terms of money, the court is required to pass its final judgment concerning the quantum (amount) of compensation awards. It is this court judgment that is stated as “final” in Article 2051(1) of the Civil Code. Finality in the context of this provision seems to imply two things. Firstly, it implies *re judicata*. Secondly, it implies the absence of statutory right of appeal as stated in Article 2152. This provision is reproduced as follows: “No appeal shall lie against the judgment of the court of first instance relating to the amount of compensation.”

Depending on the amount of the claim, extra contractual action for compensation can be instituted either before the Federal First Instance or the Higher Court or any of the Regional Courts having jurisdiction. The judgments passed by the courts under their respective original (first instance) jurisdictions relating to the amount of compensation are non-appealable, except for the reasons specified under Article 2153 of the Civil Code as follows:

- (a) the court has considered circumstances which it should not have taken into account or has failed to consider circumstances which it should have taken into account; or
- (b) the amount of compensation fixed by the court is manifestly unreasonable and could only have been inspired by prejudice or anger; or
- C) Such amount is due to an error of calculation on the part of the court.

Modes of Payment

(how payment of the compensation award fixed by the court should be executed)

Lump sum Payment(the Rule),Periodical Allowance(Exception)

As a principle, lump sum payment of compensation is widely recognized in almost all jurisdictions as an appropriate mode of disposition of awards for civil wrongs. Our Civil code also, although lacks clarity to the desired degree, seems in line with this principle. Pertinent provision in this regard is Article 2154, which deals with the possibilities where the court may order compensation awards to be disposed in the form of periodical allowance in appropriate cases.“ Where such mode of payment is justified by the nature of the damage or other circumstances, the court may order the damage to be made good by means of a periodical allowance", Article 2154(1).

advantages of payment of compensation in lump sum:

- easy for execution
- avoids further complications in the relation of the judgment debtor and judgment creditor
- It avoids any sense of insecurity on the part of the judgment creditor

When the court is convinced to order periodic allowance, it has to make sure first that the judgment debtor can produce adequate security for the payment of the allowance. Sub-Article two of Article 2154, which says: “In such a case, the debtor shall provide security for the payment of the allowance”

the nature of the damage to be made good is a key element in determining the mode of payment of compensation awards.

Forinsance, the determination of future damage (pecuniary loss), particularly the overall pecuniary losses suffered by dependants in the case of fatal accidents is more than difficulty. The quantum of compensation fixed in advance based on a number of uncertain assumptions might not accurately measure the future loss. Thus, in order to make the quantum of compensation fit to the extent of the damage, circumstances dictate the court to order periodic allowance as a mode of payment. The important essence of periodic allowance is that it is amenable to changes occasioned by the changes in the assumptions made during the assessment of the damage. according to Article 2095(2), the mode of payment of compensation in case of fatal accident shall be periodic allowance.

Chapter XIV: Action for Compensation

Who May Claim Compensation? Claimants (plaintiffs) in Law of torts can be classified into:

- 1) independent claimants; those who can institute a civil action for compensation on their own behalf. *The plaintiff must show vested interest in the subject matter of the suit.*
- 2) derivative claimants; institute action by subrogating the victim of the tort. The basis of the subrogation could be contractual or legal.

Persons who are independent claimants;

- i. **The Victim Himself ;** In a case where a non-mortal bodily injury is caused to a person or where an injury is caused to any person's material interest, only that person whose interest is at stake can sue the harm doer for

compensation. the right to institute action for compensation is personal by its nature,(see Article 2146(1)). This very right *per se* cannot be transferred or assigned to a third party. But once the victim himself took his case before a court of law and won it, he is at liberty to assign fully or partly the compensation awarded to him to a third party. However, there are exceptional circumstances where a person can institute an independent action for compensation on his own behalf for the non-mortal bodily injury ensued to another person. These persons are stated under Articles 2114 and 2115 of the civil code. Sub-Article 2 of Article 2114 states “where a girl or a woman has been raped, equitable compensation may also be awarded to the husband of the woman, or to the family of the girl.” This refers to the amount that may be independently claimed in the form of compensation by the husband of the woman or the family of the girl raped apart from the compensation awarded to the direct victim. The other exception provided under Article 2115 deals with a bodily harm to a wife. As per this article, where the companionship of the wife is rendered less useful or less agreeable to the husband because of tortuous act of another person, apart and in addition to the compensation awarded to the woman for the bodily injury she sustained, the husband of the woman can institute an independent action for compensation against the harm doer.

ii. **Next of Kin in Case of Mortal Accidents**

- A) **Dependants of the Deceased for Compensation of Material Damage:** As provided under Article 2095(1) when a person dies from an accident caused to him, some of his specified dependants(spouse,ascendants & descendants) are entitled to institute an independent action for compensation against the person liable. for the material damage they have sustained because of the death of the victim. No other persons shall have independent claims to be compensated because of a mortal accident. brothers and sisters who were dependents of the victim of mortal accident cannot claim compensation for the loss of support they forgo.

B) Family of the Deceased for Compensation of Moral Damage, Art. 2116(3).

Derivative Claimants

This term refers to persons who can bring action for compensation by substituting the victim of the tort. As stated earlier, the victim's claim against the person liable may not be assigned so long as it has not been upheld by a judicial decision and the amount fixed (Art. 2146). However, there are circumstances where a person may derive the right to institute an action for compensation from the victim of the wrong. The source of this right could be a contractual or legal subrogation.

- A. ***Heirs of the Victim:*** according to Article 2144, heirs of the victim may institute action for compensation for material damage suffered by the victim by substituting z deceased. However, unless otherwise provided by law, heirs of the victim cannot claim compensation for the moral damage sustained by the victim, unless the victim has initiated an action to such effect during his lifetime. while under **Art.2113**, family of z deceased can claim compensation for the moral damage sustained by themselves not by z victim.
- B. **Creditors of the Victim:** According to Article 2145(1), the creditors of the victim may exercise the debtor's action where the debtor has, after the date on which they became his creditors, suffered a damage affecting **solely his pecuniary interests**. The creditor of the victim can subrogate the latter by virtue of the law.

Who May Be Sued in Tort?

a person, be it physical or juridical, can sue and be sued before court of law. For example, minors can sue and be sued in their own names in tort through the help of their agents.

- 1) **The Author of the Damage:** the author of the wrongful damage is liable to make good the damage he caused to another by his fault or sometimes-faultless behavior regardless of whether or not there is another third party answerable under the civil law (Art.2136).
- 2) ***The Vicarious Defendant:*** In addition to the author of the damage, the victim of the tort can also sue the vicarious defendant for compensation

jointly and severally with the author where there is a relationship recognized under the law between the author of the damage and the vicarious defendant and the damage is caused by the former during the course and within the scope of such relationship. Article 2136(1) & 2155(1).

- 3) Heirs of the Person liable: This goes with the principle that a person shall not inherit only the rights of the deceased person but also the obligations attached to such rights. However, the liability of an heir may not exceed the value of the property devolved to him by virtue of the succession.

Period of Limitation: As per Article 2143 of the civil code, there are two types of period of limitations within which an action for compensation may be instituted before the court of law. The first one is the two years period that is stipulated under sub-Article 1. And the second is the period of limitation provided under the penal code for the particular criminal offence that gives rise to civil claim, tort (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 Sub-Article 1 of Article 2143 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.

Chapter XV Unjust Enrichment

Doctrinal Foundation: The law of unjust enrichment is built upon the basic maxim of the doctrine which prescribes “a person who has been unjustly enriched at the expense of another is required to make restitution to the other.” Based on this fundamental tenet, the law of unjust enrichment, which is inappropriately named as “unlawful enrichment” under the civil code, is recognized as a separate ground of civil action in Ethiopia.

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. Accordingly, they subordinate the law of unjust enrichment to other areas of private law, namely contract, tort and property laws.

Often times the law of **unjust enrichment and restitution** are treated as synonymous. However, there is a sharp difference between these two legal terminologies. While unjust enrichment refers to the ground or basis of the claim, restitution refers to the claim itself. When resources belonging to one person are used by another person against the interest and at the expense of the former without any justification, the act may be treated as unjust, which is the basis for the owner or lawful possessor of the resource to claim restitution of the benefit derived by the other in an unjust manner.

General Provisions Applicable to Unjust Enrichment

Based on the maxim that says, a person who has unjustly enriched himself shall make restitution to the other. Article 2162 of the civil code sets the general principle as follows: “Whosoever has derived a gain from the work or property of another without a cause justifying such gain, shall indemnify the person at whose expense he has enriched himself to the extent of the latter’s impoverishment, and **within the limit of his own enrichment.**”

when the gain is equal to the impoverishment caused to the right holder, there is no problem as all such gain has to be restituted to the right holder. where the gain derived by the defendant is greater than the impoverishment caused to the right holder, the liability of the former is limited to the extent of the latter’s impoverishment. But where the gain derived is less than the impoverishment caused to the right holder, the liability of the defendant is limited to the actual gain he derived.

*Article 2163 under the title “**Loss of enrichment**” provided in Sub-Article 1 that: “Restitution is not due to the extent to which the defendant can show that he is no longer enriched at the time of the claim for restitution.” This means, even if the plaintiff proved that the defendant enriched himself at his expense, **the defendant would not be liable** to indemnify the plaintiff if he succeeded to prove that **the benefit or enrichment had already gone from him**. But this defense cannot stand valid where the defendant has parted with the enrichment in bad faith or where, at the time of parting with it he should have been aware that he was bound to make restitution (Article 2163(2)). So the defendant can raise Sub-Article 1 as a defense validly only if he has parted with the benefit in good faith before the time when a claim for restitution is brought before the court. . Where the unjust enrichment has been transferred gratuitously to a third person, the claim for restitution may be brought against the third party (Article 2163(3)).*

In a nutshell, the law of unjust enrichment comprises three basic elements. These elements are:

- (a) Benefit acquired by the defendant
- (b) At the plaintiff’s expense (from the plaintiff’s resource)
- (c) In an unjust manner (injustice)

Where these cumulative elements are met, the person who has been impoverished by the unjustified act of another can successfully institute an action for restitution based on the law of unjust enrichment.

Grounds of Unjust Enrichment

A. Undue Payment(Art.2164-67)

B. Expenses(Art.2168-78): This part is no more concerned with restitution of benefits (enrichments) from the acquirer to the person at whose expense such benefit is acquired. Rather it is concerned with the rights of the person bound to make restitution of the thing in controversy to demand reimbursement for some expenses he has made to preserve the thing and/or the right to retain increments made on the thing.

Reimbursement of necessary Expenses: Article 2169 of the civil code states: “Whosoever is bound to make restitution shall be reimbursed of the expenses he has incurred in preventing the loss or deterioration of the thing, unless such expenses were not useful, or were rendered necessary by his own fault.” *However, the person bound to make restitution is not entitled to any indemnity for the cost of maintaining the thing or for the taxes he has paid because of possessing it, save contrary stipulation under the law or contract (Art. 2170 cum Art. 2168).*

Where restitution of the increments becomes impossible for one or another reason, the defendant shall pay to the plaintiff their fair market value in terms of money (Art.2178 (2) cum Art. 2164(2)).

Reimbursement of Expenses or Investments made on the Thing: Where the person bound to make restitution is able to prove that he has made expenses or investment on the thing in good faith and because of such expenses or investment the value of the thing has increased, he is entitled to the reimbursement of the cost of such investment within the limit of the value added to the thing because of such expenses (Art.2171 civil code).

Right of Retention: As a security for the payment of his claims for indemnity and until the plaintiff (person claiming restitution) effected such payment or produced a security to such effect, the law grants the defendant (person bound to make restitution) to retain the thing. But it has to be noted that a person who has taken control of the thing illegally, like theft, or a person who, at the time when he took possession of the thing, knew that he had no valid contractual or legal right to the thing cannot exercise this right of retention (Art. 2174) as he does not have any right to claim restitution from the very beginning.