

UNIT-I

INTRODUCTION TO CRIMINAL

LAW

Introduction:

Criminal Law is the body of law defining crimes against the community at large, regulating how suspects are investigated, charged, and tried, and establishing punishments for convicted criminals.

By the end of this unit, the students will be able to:

- explain the meaning of the character, function, purpose, and principles of criminal Law.
- distinguish Criminal Law from Private Law and Morality.
- have a basic understanding of the historical development and the Criminal law of Ethiopia.

note the Classification of Crimes under the Ethiopian Criminal Code.

Section 1: General Considerations:

1.1 The Place Of Criminal Law In Criminal Science:

“Crime” is an offence committed by an individual who is a basic unit of a society.

Therefore, study of crime i.e. Criminal Science” is a social study. The main aims of Criminal Science are:

1. To discover the causes of criminality,
 2. To **devise** the most effective methods of reducing the amount of criminality,
 3. To perfect the machinery for dealing with criminals.
- Criminal science has three branches:-
- a. **Criminology:** It is the study of crime and criminal punishment as social phenomena. This branch of criminal science is concerned with causes of crimes and comprises of two different branches.

a) **Criminal Biology:** **This** investigates causes of criminality, which may be found in the mental or physical constitution of the delinquent himself such as hereditary tendencies and physical defects.

b) **Criminal Sociology:** This deals with enquiries into the effects of environment as a cause of criminality. This branch focuses on the objective factors like social, political and

economic conditions leading to criminality, also termed as *criminal anthropology*.

2. Criminal Policy or Penology: This branch of Criminal Science is concerned with limiting harmful conduct in society. It makes use of the information provided by Criminology. Therefore, the subjects of Criminal policy for investigation are:

- a) The appropriate measures of social organization for preventing harmful activities,
- b) The treatment to be given to those who have caused harm, whether the offenders are to be given warnings, supervised probation, medical treatment, or more serious deprivations of life or liberty, such as imprisonment or capital punishment.

This branch of study is also termed as 'Penology' and deals with treatment, prevention and control of crimes.

3. Criminal Law: The Criminal Policies postulated by the above twin sister-branches i.e. Criminology and Penology, are implemented through the instrumentality of 'Criminal law'.

Branches of Criminal law: Criminal law in its wider sense consists of two branches.

a) **Substantive Criminal Law**, (lays down the principles of criminal liability, defines offences and prescribes punishments for the same.)

b) **Adjective/Procedural Criminal law.**
(The procedural criminal law is to administer the substantive criminal law and give enforcement to it.) Without procedural criminal law, substantive criminal law is worthless.

Criminal law' falls under the branch of substantive criminal Law.

1.2. Nature And Scope Of Criminal Law:

The whole body of criminal law to be efficient must have four important elements, viz.,

- **Politicality**, (implies that only the violations of rules made by the state are regarded as crimes.)
- **Specificity**, (connotes that it strictly defines the act to be treated as crime.)
- **Uniformity**, (implies its uniform application to all alike without any discrimination)
- **Penal sanctions** (imposed under the criminal law that the members of society are deterred from committing crimes. It is, therefore, obvious that no law can be effective without adequate penal sanctions.)

1.3. General Objectives Of Criminal Law:

The objectives of Criminal law are the protection of persons and property, the deterrence of criminal behavior, the

punishment of criminal activity and rehabilitation of the criminal. (Art. 1 of cr. code)

1.4. Criminal Law, Private law and Morality-Distinguished:

For a proper appreciation of the distinction between criminal law, civil law and morality, it is necessary to understand the “concept of wrongs” and their classification.

A **wrong** is an act forbidden by the society. In other words, it is a violation of rules, which are accepted by the society.

- *All moral wrongs are not wrongs in the legal sense.*

Since all violations of law cannot be characterized as crimes, there is a necessity to identify the particular class of violations or forbidden acts or wrongs, to understand the concept of crime.

Classification of Wrongs:

- **Moral wrongs**(Interference of law is considered as unnecessary)
 - **Legal Wrongs**(where the interference of law is necessary)
 - **Civil wrongs**(Law interferes at the instance of the injured party)
 - **Criminal wrongs**(State as a matter of right interferes in most of the cases)
- #### **Relation between Morality and Criminal Law:**

They are related to each other in that they both aim at maintaining social order.

Section 2: The Concept Of Crime:

2.1. Crime is a Deceiving Concept:

The concept of crime has always been dependent on public opinion.

According to Terence Morris, “Crime is what society says is crime by establishing that an act is a violation of the criminal law. Without law there can be no crime at all, although there may be moral indignation which results in law being enacted.” Therefore, in order to know the nature and the content of crime we must first of all know what ‘Law’ is, because the two questions “Crime” and “Law” are so closely related with each other that it is very difficult to understand one without knowing the other.

“**Law**”, is the aggregate of rules set by men politically superior, or sovereign, to men as politically subject. Law is a command enjoining a course of conduct to be observed by all the members of the society and is backed by a sanction.

Therefore, **crime** is an act which both **forbidden by law** and **the moral sentiments of the society**.

▪ **Forbidden Conduct:**

The concept of forbidden conduct is not a static one; it changes with the change of social norms. The very definition and concept of crime is not only according to the values of a particular group and society, its ideals, faith, religious attitudes, customs, traditions and **taboos** but also according to the form of government, political and economic structure of society and a number of other factors.

The notion about crime also changes with time.

The concept of crime is ever changing.

- social changes affect the criminal law in many ways, such as:
 - Through changes in structure of society, especially in its transition from rural self-contained and relatively sparsely populated to a highly urbanized and industrial pattern.
 - Through changes in the predominant moral and social philosophy.

- Through developments in science especially in Biology and Medicine.

2.2. Crime is A Multidimensional Problem:

Crime is not just the responsibility of the police, the courts, and the prisons. Crime cannot be controlled without the active support of individual private citizens, schools, businesses, and labour unions. This is so because crime has its effects on everyone-not just the criminal and his victim. Therefore, the problem of crime has been the concern of more than the law enforcement machinery.

Clearly, then, crime has many dimensions: the **student of crime**,

to the **victim**, to the **police**, to the **judge**, and To the **legislator**.

2.3 Definition of Crime:

➤ Literal Meaning of Crime:

The word “Crime” was originally taken from a Latin term “Crimen” which means “to charge”. The Greek expression “Krimos” is synonymous to a Sanskrit word ‘Krama’ which means “Social order”. Therefore, in common parlance the word crime is applied to *those acts that go against social order and are worthy of serious condemnation*.

➤ **General Meaning of Crime:**

Crime as “an act punishable by law as forbidden by statute or injurious to public welfare”. (Oxford English Dictionary)

☞ **Crime is a “Public Wrong”—
Blackstone:**

“An act committed or omitted in violation of a public law either forbidding or commanding it”. Thus, according to Blackstone crime is an act in violation of public law.

☞ **CRIME is A “Moral wrong” –
Stephen:**

According to Stephen (year) crime is “an act forbidden by law and which is at the same time revolting to the moral sentiments of the society”. Defining crime, as something against the moral sentiments cannot be accepted because there are acts though not immoral, classified as highly criminal, e.g., Treason i.e. ‘anything done to displace the governing body of state.’ Treason is graded as a crime in the highest degree and considered as a heinous crime by all Penal Codes. This is not because the moral sentiments of the society are being affected but for the security and stability of the government. Similarly, there are acts, which are highly immoral but not criminal. For example, an expert swimmer stands by the

side of a river and sees a child drowning in the river and makes no effort to save the child and the child dies by drowning. His act may be highly immoral but it is neither a criminal nor a civil wrong.

☞ **Crime is A “Procedural Wrong” –
John Austin:**

Austin (year) and some writers (e.g....) define crime in terms of the proceedings adopted in such cases. Austin defined crime while making a distinction between civil and criminal wrongs. He observed, *“A wrong which is pursued by the sovereign or his subordinates is a crime. A wrong which is pursued at the discretion of the injured party and his representatives is a civil injury”*.

However, this definition does not explain a number of crimes under the Criminal Code in which the prosecution could be initiated only at the instance of injured party as is done in the case of civil wrongs.

☞ **Crime is a “Creation of
Government Policy”:**

In fact, criminal offences are basically the creation of a criminal policy adopted from time to time by those sections of the community who are powerful or astute enough to safeguard their own security and comfort by causing sovereign power in the state to repress conduct which they feel may endanger their position”.

The person who commits treason is called a traitor; and anyone who slew him was held guiltless.

According to Kenny, crime has the following three characteristics:

- ✓ A crime is a harm brought about by human conduct, which the sovereign power in the state desires to prevent,
- ✓ Among the measures of prevention there is threat of punishment,
- ✓ Legal proceedings of special kind (criminal proceedings) are employed to decide whether the person accused did in fact cause the harm and is according to law to be held legally punishable for doing so.

☞ **Crime Is A “Legal Wrong”:**

“A crime is an act which is prohibited and made punishable by law.(Art. 23 of cr. code) In this Code, an act consists of the commission of what is prohibited or omission of what is prescribed by law.”

This provision is nothing but a statement of fact, which is made for the purposes of the Code, and cannot be regarded as a definition of crime. It refers to the specific kinds of

conduct prohibited under the Special Part of the Code.

2.4. ‘Crime’ Distinguished From ‘Civil Wrongs’:

“Crimes” are said to be harms against the society and are therefore, considered as graver wrongs. “Torts” (cases of non-contractual liability) are wrongs against individuals and are treated as lesser wrongs.

“Tort” is a private wrong and the remedy available is reparation for the injury suffered and not punishment.

The state will not be involved in the dispute or litigation other than legislating the legal framework that facilitates contractual transactions, providing remedies in case of non-performance and adjudicating over the case if the creditor files a suit.

Moreover, the remedies unlike criminal law do not involve punishment but performance of obligations and payment of damages.

- In short, criminal liability invariably requires moral guilt (intention or negligence) and personal act or omission while non-contractual liability doesn’t.
- Another important difference lies in the fact that “analogy” is forbidden in criminal cases (Art. 2 (1), The Criminal Code, 2005), but may be

permissible in Civil (i.e. contractual and tort) cases where legal provisions embody illustrative (rather than exhaustive) lists.

- The distinction between the two also lies in the degree of certainty of evidence. Criminal cases require certainty beyond reasonable doubt while the preponderance of evidence in the balance of probability suffices in civil cases.

In addition to these, the following are some more important legal aspects which distinguish these legal wrongs:

1. Nature of wrong:

Crime is a public wrong i.e. a harm done against the society. A 'tort' is a private wrong committed against an individual generally or the public in a given locality.

2. Nature of the Right Violated:

In a crime and a tort there is a breach of '*right in rem*' whereas in a breach of contract there is breach of '*right in personum*'.

3. Consent of the Victim:

Consent of the victim to the injury caused is a qualified defence in criminal law. (Art 70 Criminal Code). In torts, consent of the plaintiff to the alleged injury nullifies right to remedies. A contract is founded upon consent. Therefore, if there is consent to the breach of any term or condition of the contract, the plaintiff forgoes his right to claim the remedies.

4. The Element of Intention:

Intention is an essential element of crime (Art.57 and 58 of Criminal Code). Intention may form one of the ingredients of tort but not an essential precondition for the Tortious liability.

5. The Element of Negligence:

Negligence attended with criminal lack of foresight amounts to a crime (Art.59 Criminal Code). Mere negligence may amount to a tort (Art.2029 ECC). There is no question of negligence in an action for breach of the obligation arising out of a contract.

6. Relevancy of Motive:

Motive may be a factor for consideration in deciding the quantum of punishment in criminal liability. Motive is taken into consideration in deciding tortious liability. Motive is irrelevant (1717 ECC) in an action for breach of contract.

7. Initiation of Legal Proceedings:

Criminal proceedings are conducted in the name of the state. The state steps into the shoes of the victim as the protector of interests of its inhabitants. In case of the other two civil wrongs, it is the injured party that brings the action against the wrong-doer.

8. Remedies Available:

The criminal is punished by the state. The punishments may range from fine, compensation through imprisonment of different kinds to capital punishment. In torts the remedies available are damages, compensation, restitution and injunction.

Section 3. The Development Of Criminal Law Of Ethiopia

3.1. Historical Background:

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

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

A. The Fewuse Menfessawi (The Canonical Penance):

The first attempt to compile the law was made by the emperor zar'a Ya'equob (r.1434- 1468). Desiring to govern his realm by a written law rather than by amorphous customary law and oral tradition, the emperor ordered distinguished Ethiopian Orthodox Church Scholars to compile an authoritative written law.

B. The Fetha Negest (The Law of the Kings):

The failure of the Fewuse Menfessawi led to the next codification by the same Emperor Za'ra Ya'eqob . The Fetha Negest is a very interesting legal compilation.

Fetha Negest included the following important criminal law principles :

- those concerning “intention” and “negligence”,
- relating to the proportion between the fault and sanction,
- the individualization of punishment,
- the forgiveness and redemption of offenders, and
- the sharing of guilt case of fighting etc.

The Fetha Negest was formally incorporated into the Ethiopian legal system in 1908 by Emperor Menelik II. It can be said that in most cases, the Fetha Negest has attempted to incorporate the most suitable legal principles, which could be conceived in the epoch of its emergence.

However, it suffered from the following drawbacks:

- It lacked the systematization and other characteristics of modern codes,

- Neither the 'specific' is differentiated from the 'general' nor the 'exception' from the 'rule',
- Aggravating and extenuating circumstances were not clearly provided for,
- In general, the arrangement of the provisions is so haphazard that it is hard to locate the most relevant provision ,and
- The Fetha Negest was accessible and understandable only to those who continuously studied it i.e. the clergy.

C. The Ethiopian Penal Code of 1930:

The Penal Code of 1930 reflects the norms and values of the old absolutist monarchy of the generation of Emperor Menelik II and Emperor Zewditu (i.e. the era between 1889 and 1930). It was also drawn up in a less systematic and clear manner and did not follow the rules of a modern codification process.

The main attributes of the Code were as follows:

- The crimes and respective punishments were defined in exact fashion, and
- The penalties were considerably softened and improved by setting the fines in proportion to the then economic and monetary situations of Ethiopia.

- The Code under its Special Part protected the three great classic categories of interests. These were:

1. The state and Community,
2. Persons, and
3. Property.

D. The Ethiopian Penal Code, 1957:

The task of drafting a new comprehensive penal code was entrusted to **Jean Graven** , a Swiss jurist who at that time had been the Dean of Faculty of Law and President of the Court of Cassation in Geneva , Switzerland.

The Sources and the Merits of the Penal Code Of 1957:

The primary source of the Code was the Swiss Penal Code of 1937 and the pre- 1957 Swiss Jurisprudence. The secondary sources were the French Penal Code of 1810 with respect to general format, the Yugoslav Penal Code of 1951 in relation to military offences, and more generally the code of Norway, Denmark, Poland the Federal Republic of Germany, the Netherlands, Portugal, Spain, Italy, Brazil and Greece. Some provisions of 'the Universal Declaration of Human Rights' and 'the Red Cross Geneva Convention' were also incorporated in the 1957 Penal Code of Ethiopia. The incorporation of the latest principles of law in present day jurisprudence made the penal code of Ethiopia one of the

modern and sophisticated criminal codes of the time.

Now the draft penal code came up with new proposition with principal objective of that the prevention of crime and rehabilitation of criminals.

In this code, there are so many things are introduced:-

- ✓ **Collective punishment is abolished**

Where an offence is committed by a group of persons, the persons who proved to have taken no part in the commission of the offence shall not be punished.

- ✓ **Mutilation of Human Body As Punishment-Abolished**

According to the old practice, habitual offenders were punished by mutilating the human body so as to give it the maximum deterrent effect. There was a general consensus not to incorporate this form of punishment.

- ✓ **'Presumption of Innocence'- Introduced**

- ✓ **Rules Applicable to Young Offenders:**

In the past, all offenders who were thought to have the capacity to discriminate between what is good and what is bad were brought before the regular courts. In the modern penal law,

on the otherhand infants are completely exonerated from criminal provisions.

- ✓ **Probation and Suspension of**

Sentences: In the past all forms of sentences were executed. Present-day penal legislation provides that certain offenders may, under defined circumstances, be granted release on probation or the sentence may be suspended for a fixed time.

- ✓ **The Personal Nature of Criminal**

Punishments And Measures: If a convicted person died before the execution of a sentence, there was, according to customary laws, the possibility of proceeding against his property or the property of his next of kin. This was not retained in the Penal Code of 1957. The principle is that, 'crime is personal to the one who is found to have committed it.

3. 2.The Criminal Code of the Federal Democratic Republic of Ethiopia, 2005 Proclamation No. 414/ 2004

The 1957 Penal Code of Ethiopia, was on 9th May of 2005, and a new Criminal Code was brought into enforcement. The factors that necessitated the revision of the Penal Law of Ethiopia are as follows:

1. To Incorporate the Modern Legal Concepts: like;

- ✓ The equality between religions, nations, nationalities and peoples,
- ✓ The democratic rights and freedoms of citizens and residents,
- ✓ The Human rights,
- ✓ The rights of social groups like women and Children.

2. To Fill in the Lacunae: The 1957 Penal Code fails to properly address some of the criminal behavior arising out of advances in technology, the complexities of modern life as well as sufferings caused by reason of harmful traditional practices. Some such areas are:

- The Hijacking of aircraft,
- Money laundering,
- Crimes related to corruption and drugs,
- Grave injuries and sufferings caused to women and children by reason of harmful traditional practices.

2. To Adopt a Comprehensive Criminal Code:

3. Punishments for Certain Offences increased: punishments in respect of crimes like rape and aggravated theft have been increased.

4. Purpose of Criminal Law and Objectives of Punishment Redefined: the purpose of Criminal Law is to

preserve the peace and security by preventing the commission of crimes and a major means of preventing the commission of crime is punishment. Punishment can deter wrongdoers from committing other crimes; it can also serve as a warning to prospective wrongdoers.

3.3. Scheme of the Criminal Code of FDRE, 2005:

The Criminal Code of 2005 has incorporated the Ethiopian Criminal law systematically, coherently and comprehensively. The Code is organized into three main parts.

- Part I of the Criminal Code is entitled “General Principles of Criminal Liability”, Part II Special Part and Part III is Petty Code. The General Part has two Books, namely:

Book. I. Arts. 1-86 “Crimes and the Criminal”. It lays down the general principles relating to “Criminal law and its Scope”(Art. 1-22), “The Crime and its Commission” (Art. 23-47), and the “Conditions of Liability to Punishment” (Art. 48-86). The General Part of the Criminal Code is the most technical part of the Code and the basic tool in the interpretation of any provision that embodies a specific crime. Issues such as the principle of legality, negligence, criminal

responsibility, participation, lawful acts, justifiable and excusable acts, extenuating and aggravating circumstances etc, are covered in Book I.

Book. II (Arts. 87-237) is titled **“The Criminal punishment and its Application”**. This book deals with calculation of sentences, kinds of punishment, ordinary punishments applicable to adults, special measures applicable to adults, penalties applicable to young persons and also rules regarding determination , suspension, discontinuance and extinction of penalty.

II. The Special Part:

The “SPECIAL PART” of the code embodies ‘**Specific Crimes**’ which are organized under different titles systematically.

❖ Relation between General and Special Parts of the Code:

The ‘**General Part**’ of the Criminal Code sets out the general principles of liability which are common to all serious crimes. This part explains what is meant by a criminal intention, negligence, imprisonment, probation and the like. The ‘**Special Part**’ describes the various acts which are deemed to be ‘criminal’ and lays down the penalties applicable to them. It defines the essential elements of each crime such as murder, theft, robbery etc, and prescribes appropriate punishments for each of such crimes.

3. 4. Classification of Crimes under the Criminal Code

Generally, offences may be classified based on two criteria:

1. Classification based on the “Seriousness of the Crimes”.
2. Classification based on the “Subject matter”/content of the Crime.

▪ The Petty Offences:

A ‘petty offence’ is an infringement of a mandatory or prohibitory provision of a law or regulation issued by a competent authority or a minor offence which is not punishable under the Criminal Law. Such acts or omissions are made punishable under the Petty Code.

Unit Summary:

Criminal Law is the body of law defining crimes against the community at large, regulating how suspects are investigated, charged, and tried, and establishing punishments for convicted criminals. The criminal law identifies, defines and declares the conducts that it seeks to prevent and prescribes the appropriate

punishments for them too. To prevent a crime from happening, or to deal effectively with a crime once it has occurred, we have to know 'what the crime is' and 'what the related legal ramifications' are. The study of criminal law aims at having an understanding of these concepts.

The study of crime i.e. Criminal Science" is a social study that has three important branches namely, criminology, criminal policy and criminal law. Criminal Law has two divisions substantive criminal law and procedural criminal law. The law incorporated in the Criminal Code forms part of the substantive criminal law. Procedural criminal law provides for the procedure for enforcement of the rights and liabilities embodied in the substantive criminal law. Without procedural criminal law the substantive criminal law is totally ineffective.

The objectives of Criminal law are the protection of persons and property, the deterrence of criminal behavior, the punishment of criminal activity and rehabilitation of the criminal. The provisions of the Criminal Code are aimed at achieving these important objectives.

Criminal law, private law and morality may be distinguished on the basis of some of their legal aspects. For a proper appreciation of the distinction between criminal law, civil law and morality, it is necessary to understand the "concept of wrongs" and their classification. Moral wrongs are those which are detested by the general conscience of the society but all such wrongs are not worthy of legal interference and remedies. The body of wrongs that calls for legal interference and appropriate legal remedies are called legal wrongs.

Crime is a deceiving concept because it covers an enormous range of human behaviour. It is not even static. It keeps changing with the ideology of the society and the developments that take place in the advancement of knowledge. It changes from society to society and from time to time. This transient nature of crime makes it difficult to define crime. In spite of the several attempts made by various legal scholars the undeniable fact that remains is that 'crime is the creation of government policy'. History has a lot of evidences to this truth.

The history of Ethiopian Criminal law reveals six important legislations incorporating the

Criminal law of the country before the enactment of the existing Criminal Code of FDRE, 2005. They are, the Fewuse Menfessawi, the Fetha Negest, the Ethiopian Penal Code, 1930, the Penal Code of the Empire of Ethiopia, 1957, the 1974 Revolution and Criminal Law, Special Penal Code of 1981. The Penal Code of Ethiopia, 1957 has been repealed as from the 9th May of 2005, and a new Criminal Code has been brought into enforcement. Of many different reasons for the revision of the criminal law, the need to recognize the modern legal concepts adopted by the Constitution and the international agreements ratified by Ethiopia is the most important one. The other major features of the new Criminal Code are: redefining the objectives of punishment, including harmful traditional practices, hijacking of air crafts, cyber crimes etc., in the list of punishable conducts under the special part of the Criminal Code.

The classification of crimes under the Code may be identified on the basis of the punishments entailing them. The three variations in the deprivation of liberty, namely, ‘rigorous imprisonment’, ‘simple imprisonment’ and ‘arrest’ apparently denote a *de facto* classification into ‘very serious crimes’, ‘not very serious crimes, and ‘petty offences’.

UNIT -II

BASIC PRINCIPLES OF CRIMINAL LAW

The most important of such principles embodied in the Criminal law, specifically, are the following:

- The Principle of Legality
- The Principle of Equality
- The Principle of Individual Autonomy

☞ The principle of legality requires that prosecutions and punishments for crimes should be strictly in accordance with a pre-existing legal provision. A person cannot be made criminally responsible for producing a harmful consequence if such harm is not declared as a prohibited one by legal classification. The principle also requires that wrong-doers should be punished strictly within the prescriptions of law.

☞ The principle of equality requires that all those who violate the law should be dealt with equally in terms of **trial** and **punishment**. There should not be any discrimination in the application of Criminal Laws.

The principle of legality.

☞ *Nullum crimen, nulla poena sine praevia lege poenali* ([Latin](#), No crime (can be committed), no punishment (can be imposed) without (having been prescribed by) a previous penal law) is a basic [maxim](#) in [continental European](#) legal thinking.

This maxim states that there can be no crime committed, and no punishment meted out, without a violation of penal law as it existed at the time. Another consequence of this principle is that only those penalties that had already been established for the offence in the time when it was committed can be imposed.

Art. 2 of the Ethiopian Penal Code incorporate this principle. The principle, according to this provision, has three important ingredients:

- *“nullum crimen sine lege”* - No crime unless specified by law, (Art. 2/1)
- *“nulla poena sine lege”* - No penalties other than prescribed by law, (Art. 2/2)
- *“non bis in idem”* – Nobody shall be punished twice for the same act, (Art. 2/5)

The principle “nullum crimen” conveys four different rules, namely:

- Certainty in Legislation,
- Accessibility of the law,
- Rule of strict Construction,
- Non-retroactivity of penal laws.

Non-retroactivity of Criminal law Arts. 5-10

❖ Ethiopian Constitution on the Principle: Art 22/2 of the Constitution

The concept of non-retroactivity has been incorporated in the Constitution of Ethiopia under article 22(2) Which reads:

“Notwithstanding the provisions of sub Article 1 of this Article, a law promulgated subsequent to the commission of the offence shall apply if it is advantageous to the accused or convicted person.”

Section 2: The Principle Of Equality

“All men are equally the children of god and Equal in his sight despite their widely differing Temporal circumstances”

Harris, ‘The Quest for Equality’

Roman citizens were governed by ‘*jus civile*’ (Civil Law).

The Romans developed a special set of laws called the ‘*jus gentium*’ (law of the nations) to rule the peoples they conquered. They based these laws on principles of justice they believed would applying to all people

i.e. worthy of universal application. Such principles are known as 'natural laws'.

2.1. Meaning Of The "Equality"

Principle:

All men are born equal and must be treated equally.

- "Equality before the law" and
- "The equal protection of the laws" should not be denied.

The formulation equality before the law gives rise to the following derivations:

- Equality means the denial of any special privilege or status in the sphere of the law's enforcement by reason of characteristics such as language, religion, political or other opinion, race, color, sex, and the like,
- That all are subject to the ordinary law of the land as administered by the ordinary law courts.
- That all enjoy equal access to society's legal tribunals and other dispute resolving agencies.
- That all are entitled to impartiality in the administration of justice.
- That there should be no special privileges in litigation in favor of a particular classes or individuals

barring certain lawful and reasonable exceptions.

- That there should be independent tribunals to which all may resort.
- That state and individual before the law should be equal. (Marshall) Officials and others are not exempt from the general duty of obedience to the law resting upon others.
- That law should define any special public powers. Discretionary powers, so necessary today for carrying on modern government, must not be abused.
- That any excess or abuse of authority by the organs of the state and any other wrongful acts on the part of public officers should be under the supervision and subject to the eventual control of the courts or other appropriate law enforcing agencies. The task of superintending their employment falls upon an impartial independent and fearless judiciary.
- That the argument of state necessity can provide no defense to prosecutions for crime or civil actions in respect of legally wrongful acts.

That among equals the laws should be equal and should be equally administered that is, “like should be treated alike”.

2.1.2. The Equal Protection Of

Laws:

“Equality consists in treating equals, equally and unequal unequally.” --ARISTOTLE.

The concept of ‘Equal protection of laws’ leads the following inferences: (Art. 4 Of cr. Code and Art. 25 of FDRE constitution)

- That all persons in similar circumstances shall be treated alike, both in the privileges conferred and liabilities imposed by the law.
- That equal law should be applied to all in the same situation. That there should be no discrimination between one person and another. As regards the subject matter of the legislation their position is the same.
- That the like should be treated alike and not that unlike should be treated alike.
- That law cannot be uniform and that almost all legislation must make numerous distinctions and classifications between persons, things and situations.

- That a modern state may adopt political and legal measures and policies in order to promote either a just and fair society, or more specifically, greater equality in advantages, burdens and protections for various classes and sections of its population.

Therefore, “the expression equal protection of law” requires that all men must be treated alike except when there are relevant differences between them and the person or authority must prove the relevance of the supposed differences responsible for the distinctions under investigation.

To conclude, the essence of the principle of equality contained in the above two expressions, “Equality before the law and Equal Protection of the Laws” can be seen in one common dominant idea that is of “EQUAL JUSTICE”.

2.2. Exceptions By Virtue Of Recognized Immunities: (Art. 4 of cr. Code; second paragraph)

- Immunities sanctioned by Public International law,(diplomatic immunities)
- Immunities sanctioned by Constitutional law,

and (Articles, 54 (5) & (6) and 63, of the 1995 Constitution, declare immunities to the 'Members of the HPR' and the 'Members of the HF' respectively.) (Except in the case of *flagrante delicto*. The effects of such immunities are specified in Arts 39(1) (c) and 130 (2) (e) of the Criminal Procedure Code.)

- **Requirements of individualization of Criminal Justice.** (Art. 88(2) of the Criminal Code, incorporates the fundamental principle that, 'the penalty shall be determined according to the degree of individual guilt', having regard to all the circumstances of the case and not only to the material seriousness of the crime.)

The diplomatic immunity only raises question of jurisdiction and in no way creates a situation contrary to the principle of equality before the law.

Section 3. The Principle Of Individual Autonomy:

3.1. Meaning of the Principle:

Each individual should be treated as responsible for his or her own behaviour. This principle has factual and normative elements that must be explored.

3.2. The Factual Element of Autonomy:

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

3.3 The Normative Element of Autonomy:

The individuals should be respected and treated as agents capable of choosing their acts and omissions, and that without recognizing individuals as capable of independent agency they could hardly be recognized as moral persons.

“Three main features characterize the autonomy-based doctrine of freedom. First, its primary concern is the promotion and protection of positive freedom which is understood as the capacity for autonomy, consisting of the availability of an adequate range of options, and of the mental abilities necessary for an autonomous life. Second, the state has the duty not merely to prevent the denial of freedom, but also to promote it by creating the conditions of autonomy.

Third, one may not pursue any goal by means which infringe people's autonomy of the people or the others."

3.4. Some Instances which can raise Dilemmas Relating to the Principle of Autonomy:

➤ Euthanasia:

▪ Your Body, Your Death, Your Choice?

The word euthanasia stems from the Greek words, "*euthanatos*" meaning "good death" and refers to the action of a third party, usually a doctor to deliberately end the life of an individual. The individual must give consent for the procedure, which is known as *voluntary euthanasia*. *Non-voluntary euthanasia* occurs when the individual is unable to ask for the procedure.

Terminology

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

It is generally accepted that as *an expression of autonomy* i.e. one's right to make independent choices without any external influences, a competent adult can

refuse medical treatment, even in situations where this could result in his/her death. However, when it comes to actively ending a life via euthanasia there is widespread debate regarding the rights of an individual to make that choice.

Principle of Respect for Autonomy:

Autonomy is the capacity for self-determination. Being autonomous, however, is not the same as being *respected* as an autonomous agent. To respect an autonomous agent is to acknowledge that person's right to take choices and take action based on that person's own values and belief system. On his account, respect involves not only refraining from interfering with others' choices, but sometimes entails providing them with the necessary conditions and opportunities for exercising autonomy. The principle of respect for autonomy implies that one should be free from coercion in deciding to act, and that others are obligated to protect confidentiality, respect privacy, and tell the truth.

Unit Summary

It is necessary that certain safeguards should be provided to the accused as he is put under the peril of his life and liberty. The most

important of such principles embodied in the Criminal law, specifically, are the Principle of Legality, the Principle of Equality and the Principle of Individual Autonomy. These principles are enshrined in the Constitutions and International Conventions.

The principle of legality requires that prosecutions and punishments for crimes should strictly be in accordance with a pre-existing legal provision. A person cannot be made criminally responsible for producing a harmful consequence if such harm is not declared as a prohibited one by legal classification. The principle also requires that wrong-doers should be punished strictly within the prescriptions of law. The principle of equality requires that all those who violate the law should be dealt with equally in terms of trial and punishment. There should not be any discrimination in the application of Criminal Laws. Principle of individual autonomy considers the extent to which the criminal laws encroach upon the personal freedom of individuals in the name of ensuring law and order and the justifiability of such encroachment.

The principle of legality is that, 'there is no crime or punishment without a pre-existing law that prohibits that crime'. Thus, the

conduct must be deemed a crime before the act is committed. The policy behind the principle of legality is that "fair warning" should be provided to a criminal so that he does not inadvertently commit a crime that he has no reason to believe is illegal. The principle as incorporated in our Criminal Code has three important ingredients namely, *nullum crimen sine lege*" - No crime unless specified by law, (Art. 2/1)' "*nulla poena sine lege*" - No penalties other than prescribed by law, (Art. 2/2), "*non bis in idem*" — Nobody shall be punished twice for the same act, (Art. 2/5). Another rule of '*nullum crimen*' is that 'no person shall be punished except in pursuance of a statute which fixes a penalty for a criminal conduct. It means there can be no *ex-post facto* Criminal law or in other words, the Criminal laws should not have retrospective operation. (Art 5 of Criminal Code).

The cardinal principle of criminal law i.e. the principle of equality requires that, all men are born equal and must be treated equally. This principle has its roots in the Roman jurisprudence. Clauses directed against arbitrary discrimination and aiming to ensure equal rights are contained in almost all modern constitutions. These constitutional guarantees of equality take a

great number of forms but two of the formulations are most often used namely, that there should be “Equality before the law” and that “the equal protection of the laws” should not be denied. However, the principle of equality before the law does not prohibit certain differences from being made in the treatment of criminals. Art. 4 of the Criminal Code specifically mention three exceptions to the principle of equality. They are in the form of immunities sanctioned either by Public International law or Constitutional law, and the requirements of individualization of Criminal Justice.

The purpose of discussing the philosophical principle of individual autonomy is to identify those interests that warrant the use of Criminal Law which sometimes gives the impression of interfering with an individual’s freedom to a certain extent. The principle requires that each individual should be treated as responsible for his or her own behaviour. This principle has two elements, the factual and the normative. The factual element in autonomy is that individuals in general have the capacity and sufficient free will to make meaningful choices. The second element of the principle is normative which says that the individuals should be respected and treated as agents

capable of choosing their acts and omissions, and that without recognizing individuals as capable of independent agency they could hardly be recognized as moral persons. There are certain areas of law which challenge the principle of autonomy and invoke serious debates such as euthanasia, AIDS and the law, conducts involving sexual behaviour, obligation of the personal income taxpayers to submit so-called proprietary declarations to tax offices, etc.

UNIT-III

JURISDICTION OF THE ETHIOPIAN CRIMINAL CODE

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

INTRODUCTION

‘Jurisdiction’ refers to particular aspects of the general competence of states often referred to as ‘sovereignty’. Jurisdiction is an aspect of sovereignty and refers to

judicial, legislative, and administrative competence. The '*prescriptive or legislative jurisdiction*' refers to the power to make decisions or rules. '*The enforcement or prerogative jurisdiction*' refers to the power to take executive action in pursuance of or consequent on the making of decision and rules.

'Jurisdiction', generally, means "the legal competence of a particular court to hear a certain type or class of cases". When it relates to the application of the law as to a place, jurisdiction implies "the geographical area covered by a particular court or legal system".

'Jurisdiction', generally, means "the legal competence of a particular court to hear a certain type or class of cases". When it relates to the application of the law as to a place, jurisdiction implies "the geographical area covered by a particular court or legal system". The provisions of the Criminal Code relating to jurisdiction are intended to determine the scope of application of Ethiopian Criminal Law by Ethiopian Courts and to prevent conflicts of jurisdiction. The conflicts of jurisdiction might arise when the courts of two or more places decline to try a crime, or when the courts of two or more places claim to have jurisdiction to try one and the same crime. These conflicts in jurisdiction may be of two kinds:

1. 'Negative' conflict of Jurisdiction:

It may arise when different courts deny the existence of jurisdiction, over the matter in question. In this case there is the possibility of a criminal escaping punishment.

2. 'Positive' conflict of Jurisdiction:

When different courts claim to have jurisdiction on the same crime, there is a risk that the criminal might be exposed to "double jeopardy".

The conflicts of jurisdiction might arise at different levels:

Conflicts of Jurisdiction at National level:

Such conflicts may arise as between Ethiopian Criminal courts, which shall be settled in accordance with Arts 99-107 of the Criminal Procedure Code.

Conflicts of Jurisdiction at International level: These conflicts arise between an Ethiopian court and a foreign court, which can be settled in accordance with Arts 11-22 of the Criminal Code.

Section 1: Fundamental Principles Of Application Of Jurisdiction:

➤ **The Principle of Territoriality:**

The principle that the courts of the place where the crime is committed may exercise

jurisdiction has received universal recognition.

According to this principle all crimes committed on Ethiopian territory fall within the jurisdiction of Ethiopian Courts (Art. 11);

➤ **The Principle of Quasi-Territoriality or the Protective or Security Principle**

Nearly all states assume jurisdiction over aliens for acts done abroad which affect the security of the state, a concept which takes in a variety of political crimes, but is not necessarily confined to political acts. Currency, immigration, and economic crimes are frequently punished by the states under this principle. Art. 13 refers to certain specific crimes directed against Ethiopia to be tried in Ethiopia even though they have not been committed on Ethiopian territory

➤ **The Principle of Active Personality or the Nationality Principle:**

- Nationality, as a mark of allegiance and aspect of sovereignty, is also generally recognized as a basis for jurisdiction over extra-territorial

acts. According to this principle, crimes committed in foreign countries by Ethiopian citizens may be tried in Ethiopia [Arts. 14, 15, (2) and 18 (1)]. Under this principle, a person becomes amenable to the jurisdiction of the country by his nationality.

➤ **The Principle of Passive Personality or the Passive Nationality Principle:**

According to this principle, aliens may be punished for acts abroad harmful to the nationals of the forum. This is the least justifiable, as a general principle, of the various bases of the jurisdiction, and in any case certain of its applications fall under the principles of protection and universality considered above. Art. 17(1) of the Criminal Code incorporates this principle according to which some crimes committed in foreign countries against Ethiopian citizens may be tried in Ethiopia.

➤ **The Principle of Universality or the Principle of Universal Jurisdiction:**

A considerable number of states have adopted, usually with limitations, a principle allowing jurisdiction over acts of non-nationals where the circumstances, including the nature of crime, justify the repression of some types of crimes as matter of

international public policy. Instances of common crimes such as murder, where the state in which the crime occurred has refused extradition and is unwilling to try the case itself, and also crimes by stateless persons in areas not subject to the jurisdiction of any state, i.e. *nullius in terra*. Hijacking and crimes related to traffic in narcotics etc. are subject to the universal jurisdiction.

Crimes Under International Law:

The Ethiopian Criminal Code incorporates this principle in relation to the following cases:

- a) To try crimes committed against international law (Art. 17)
- b) To try any other crime of extreme seriousness, whether or not carried out on an international scale (Art. 18(2)), irrespective of the following facts:
 - i. That the crime was not committed on Ethiopian territory,
 - ii. Nor was it done against Ethiopia,
 - iii. Nor was it done by or against one of her citizens.

1.1. Application Of The Criminal Code As To Place:

The jurisdiction of the Ethiopian Criminal Code may be studied under the following heads:

1. Principal Jurisdiction

- A. Territorial Jurisdiction
- B. Extra-Territorial Jurisdiction.

2. Subsidiary Jurisdiction

1.1.1. Principal Jurisdiction:

The Criminal Courts of Ethiopia are deemed to have principal jurisdiction within the meaning of the code in the cases provided for by Arts. 11, 12, 13, 14 and 15(2). The effect of these courts having principal jurisdiction is that they are entitled to try a criminal even though he may also be or has already been tried in a foreign country for the same offence.

- For the territorial application of jurisdiction three conditions have to be fulfilled:

1. Crime committed by **any person**, (nationals or foreigners) (exception to any person; ambassador and diplomats; Art. 11/2

and Premises Occupied By
The Foreign Missions)

2. The crime must be

punishable under the Ethiopian law (The principle of legality prohibits Ethiopian Courts from trying a person who does an act which is not declared unlawful by the territorial law of the country.

the applicability of Ethiopian territorial jurisdiction it is essential that the act committed must be the one which has been declared as ‘unlawful’ by the Criminal Code of Ethiopia or any other Ethiopian law containing penal provisions.)

3. The crime must have been ***committed on the Ethiopian territory***, (the courts of Ethiopia have principal jurisdiction when an ‘act’ or ‘omission’ constituting an ingredient of the crime has occurred in Ethiopia, although the consequential harm might have been caused outside Ethiopia. Art. 25/1 cr.code)

Meaning of Ethiopian ‘National Territory

a) On the “land”:

The land comprises not only that portion of the earth within the boundaries of Ethiopia, but by virtue of Art 104 of Criminal Procedure Code. The following places are deemed to form part of the Ethiopian territory i.e.:

- a) Ethiopian embassies abroad,
- b) Ships, flying Ethiopian flag, and

c) Aircrafts flying Ethiopian flag

b) In the “air”:

c) Bodies of Water

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

These cases relate to crimes committed by foreigners on Ethiopian Territory. In fact, by virtue of place of commission of the crime, the original jurisdiction lies with Ethiopian Criminal Courts. However, certain practical impossibilities might arise if the ‘criminal-foreigner’ flees and takes refuge in his country of origin. Art 12 deals with such problems:

- **Impossibility to “try” the accused-Foreigner in Ethiopia Sub-Art. (1) of Art 12:**

If his extradition cannot be obtained in accordance with Art 11(3), the Ethiopian authorities shall request that he be tried in the country of refuge. Thus, the original jurisdiction of Ethiopian courts gets delegated to the Foreign Courts, in relation to a crime committed on Ethiopian territory.

- **Impossibility to ‘retry’ the accused- foreigner in Ethiopia Sub-Art. (2) of Art.12**

This provision gives effect to the rule '*non bis in idem*'.

This rule applies in the following instances:

- ✓ When the criminal has been tried and convicted or acquitted abroad by judgment which has become final, and
- ✓ When the sentence passed abroad has been remitted by pardon or amnesty, or
- ✓ If the prosecution or sentence has been barred by limitation

Resumption Of Delegated Jurisdiction:

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

▪ “Enforcement” of Punishment in Ethiopia Sub-Art (3) of Art. 12:

Article 12(3) applies to a case where the criminal has been sentenced in the country of refuge but has escaped serving of the sentence either fully or partly. If he comes to Ethiopia without so serving the sentence, the punishment may be enforced in Ethiopia unless barred by limitation on the following conditions:

1. If the punishment given in the Foreign Court and the one prescribed for the crime under the Criminal Code, differ in nature or form, such punishment as is closest to one that is imposed by the foreign courts shall be enforced.
2. The criminal cannot be made to serve in Ethiopia a penalty of a kind which does not exist in Ethiopian Law.

1.1.1.2. Extra-Territorial Application Of The Principal Jurisdiction (Arts. 13-16):

The Ethiopian Criminal Code extends its principal jurisdiction to not only the crimes committed on the territory of Ethiopia but also to certain special kinds of crimes committed outside her territory.

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

1. Crimes committed by any person in a foreign country against interests of Ethiopia, Art. 13,
2. Crimes committed by an Ethiopian enjoying immunity in a foreign country Art. 14,
3. Crimes committed by a member of Ethiopian Defence Forces in a foreign Country, Art 15 (2).

▪ **“Crimes Committed in a Foreign Country by an Ethiopian Enjoying immunity” Art. 14**

Art. 14 provides for another exception to the principle of territoriality

The provision applies to the following classes of persons:

- ✓ members of the Ethiopian diplomatic and consular services,
- ✓ Ethiopian officials and agents,

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

1. The crime must not be the one covered by Art. 13

2. The crime must be the one which is punishable under the law of the country where it was committed,

3. The crime must also be the one punishable under the Ethiopian Criminal Code, and

4. If the crime falls under the ‘category of crimes’ which requires filing of ‘formal complaint’ for the institution of criminal proceedings, either under the foreign law or under the Criminal law of Ethiopia, such “complaint” should have been filed.

Essential Conditions for the application of Art. 15:

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

a) Acting in the capacity of soldier

if a retired Ethiopian captain commits a crime in a foreign country, Art. 15 is not applicable to him, for he did not commit the crime in a military capacity.

b) In a foreign Country

Article 15 applies only when the crime has been committed in a foreign country.

Application of Art. 15

1) Violations of “Ordinary law” of the Foreign Country:

Crimes of a non-military character or, in other words, a crime that may be committed by anyone, even though he is not a member of the Defence Forces.

Any crime under the ‘ordinary law’, committed by an Ethiopian soldier in a foreign country will be dealt with as though the criminal was not a member of the Ethiopian Defence Forces. Ethiopia will have subsidiary jurisdiction in these cases under the following circumstances:

- ✓ If the criminal was able to escape and take refuge in Ethiopia prior to being tried in the foreign country, and
- ✓ His extradition is not requested **or** the requisition for extradition is dismissed (Art 21(2)).

2) Violations of International law and Military Crimes: Art. 15(2)

Sub- Art. (2) of Art. 15, extends the principal jurisdiction of the Criminal Code to cover crimes against International law and military crimes defined in Arts. 269-322, committed by the members of Armed Forces while in abroad. These crimes are covered by the principal jurisdiction not only because they imply unsoldierly behavior, but

also in view of safety of the Ethiopian Army and national interests of the country.

1.1.2. Subsidiary Jurisdiction:

“Subsidiary Jurisdiction” relates to crimes that do not directly and chiefly concern Ethiopia. These crimes also are committed extra-territorially. Under certain specified circumstances the Ethiopian Courts substitute foreign courts in trying criminals who ought to have been tried in a foreign country but were not so tried. Therefore, it is also referred to as **derivative jurisdiction** as the Ethiopian Courts derive the jurisdiction from the foreign courts.

The subsidiary jurisdiction applies to the following categories of crimes:

- 1) Crimes committed by members of the Defence Forces against the ‘ordinary law’ of a foreign country (Art. 15(1))
- 2) Crimes committed in a foreign country “against international law or international crimes specified in Ethiopian legislation, or against an international treaty or convention to which Ethiopia has adhered (Art. 17/1/a.)
- 3) Crimes committed in a foreign country “against public health and morals specified in Art. 510, 567,

605, 606, 609 or 610 of EPC. (Art. 17/1/b)

- 4) Crimes committed abroad against an Ethiopian national or crimes committed by Ethiopians while abroad- if the crime is punishable under both the laws and is grave enough to justify extradition. (Art. 18(1))

Conditions for Application of subsidiary jurisdiction Art.19(1)

▪ Effects Of Foreign Sentences Under Subsidiary Jurisdiction

1. Effect of “Discharge” and “Acquittal” Art 20:

1.2 Place and Time of Crime: Art. 25

Art. In the ff manner”...when the criminal performed the act penalized by criminal law or failed to perform act required by criminal law.”

a. The General Rule: Sub-Art. (1)

- I. The *place* commission of a crime is where the prohibited act has been performed or where the failure to perform the required act has occurred;

- II. The *time* of commission of the crime is at the time when the prohibited act has been performed or when the failure to perform the required act has occurred

b. With regard to Non-Instantaneous Crimes: Sub- Art. (2)

Where the act and the criminal result do not coincide in terms of time the crime is said to be a non-instantaneous crime. In other words, the result of the act is not immediate it may take time to give the desired result. In such a case the crime is deemed to have been committed both at the place of the unlawful act and that of the result.

c. In cases of combination or Repetition of Acts: Sub- Art. (3)

This provision refers to the following instances:

1. Where a crime is the result of several acts committed at different points of time, Or,
2. Where repetition of criminal acts may be an element of an ordinary or aggravated crime as defined in Art. 61,or

3. When the act is pursued over a period of time.

In these instances:

- The **time** of commission of the crime is the time **when** any one of those combined or repeated acts or part of the acts pursued is committed;
- The **place** of commission of the crime is **where** any one of those combined or repeated acts or part of the acts pursued is committed;

2. Time and place of crime in case of an attempted crime:

The place and time of an attempt are to be decided as per the following rules:

1. As a general rule, the place where and the time when the criminal performed or failed to perform the preliminary acts which constitute such an attempt.
2. In case of non-instantaneous crimes, an attempt is deemed to have been committed both at the place where the criminal attempted the crime and the place he intended the result to be produced.

Section 2: Extradition(Art. 21 of cr.code)

Meaning of the term “Extradition”:

The term ‘extradition’ denotes the process whereby under a treaty or upon a basis of reciprocity one state surrenders to another state at its request a person accused or convicted of a crime committed against the laws of the requesting state, such requesting state being competent to try the alleged criminal.

The following rational considerations have conditioned the law and practice as to extradition:

- A) The general desire of all states to ensure that serious crimes do not go unpunished:

Therefore, to close the net round such fugitive criminals, international law applies the maxim, ‘*aut punire aut dedere*’ i.e. the offender must be punished by the state of refuge or surrendered to the state which can and will punish him.

- B) The state on whose **territory** the crime has been committed is best able to try the criminal because the evidence is more freely available there, and that state has the greatest interest in the punishment of the

criminal, and the greatest facilities for ascertaining the truth.

International law concedes that the *grant of* and *procedure* as to extradition are most properly left to municipal law, and does not, for instance, preclude states from legislation so as to preclude the surrender by them of fugitives, if it appears that the request for extradition had been made in order to prosecute the fugitive on account of his race, religion, or political opinions, or if he may be prejudiced there by upon his eventual trial by the courts of the requesting state. There are some divergences on the subject of extradition between the different state laws, particularly as to the following matters:

- a) a) Extraditability of nationals of the state of asylum;

- b) Evidence of guilt required by the state of asylum; and
- c) 3. Relative powers of the executive and judicial organs in the procedure of surrendering the fugitive criminal.

Before an application for extradition is made through the diplomatic channel, two conditions are as a rule required to be satisfied:

- a. There must be an *extraditable person*.
- b. There must be an *extradition crime*.

As a general rule, the following offences are not subject to extradition proceedings:

- i. Political crimes;
- ii. Military crimes, for example, desertion;
- iii. Religious crimes.

❖ The Rule of Double Criminality:

As regards the character of the crime, most states follow the rule of *double criminality*, i.e. that it is a condition of extradition that the crime is punishable according to the law both of the state of asylum and of the requesting state.

Substantial similarity of the alleged extradition crime to the crime punishable according to the legal system of the state of refuge is sufficient to bring into effect the double criminality rule so as to justify a grant of extradition.

❖ The Principle of Specialty:

A further principle sometimes applied is known as the '*principle of specialty*', i.e. the requesting state is under a duty not, without the consent of the state of refuge, to try or punish the criminal for any other crime than that for which he was extradited.

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

2.3.1. Extradition of a “Foreigner” Art. 21(1):

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

2.3.2. Extradition of “Ethiopians” Art. 21 (2):

An Ethiopian national cannot be extradited to a foreign country. No person having the status of Ethiopian national at the time of commission of the crime in a foreign territory may be handed over to that country. However when such denial to surrender is made, he shall be tried by Ethiopian courts and under Ethiopia law. This article

endeavors to protect the Ethiopian nationals from foreign jurisdictions in the following ways:

- If the accused has the status of an Ethiopian national *at the time of commission of the crime*, even if he ceases to be an Ethiopian thereafter, he shall still fall within the scope of this provision.
- An accused shall be governed by this provision provided he becomes an Ethiopian *by the time of request for extradition*, though at the time of commission of the crime he was not an Ethiopian national.

2.4. Procedure to request for Extradition (Art. 21/1 and 3)

Extradition shall be granted on the application made in proper form by the state where the crime was committed provided; the crime does not directly and principally concern the Ethiopian state (Art. 13).

Art. 21 (3) lays down that where an crime raises a question of extradition the requisition shall be dealt with in accordance with the principles of Ethiopian law and provisions of existing treaties.

Unit Summary:

Jurisdiction means the 'legal competence of a particular court to hear a certain case or class of cases'. The power of the domestic criminal courts has to be clearly defined in order to avoid conflicts of jurisdictions. There may be negative conflicts of jurisdiction that arise when different courts deny the existence of jurisdiction, over the matter in question. In this case there is the possibility of criminal escaping punishment and positive conflict of Jurisdiction where different courts claim to have jurisdiction on the same crime; there is a risk that the criminal might be exposed to double jeopardy. These conflicts may arise at national as well as at international levels. The former type of conflicts is taken care of by the Criminal Procedure Code and the later type is the concern of the Criminal Code.

There are five popularly accepted principle of jurisdiction. They are the principle of territoriality, the principle of quasi-territoriality or the protective or security principle, the principle of active personality or the nationality principle, the principle of passive personality or the passive nationality principle, the principle of universality or the principle of universal jurisdiction. The Ethiopian Criminal Code incorporates them in the provisions relating to jurisdiction.

The jurisdiction of the Ethiopian Criminal Code may be studied under the head of principal jurisdiction where the Ethiopian Criminal Courts have the primary right to try a case. In case of any difficulty in trying such a case the right may be delegated to a foreign court which then tries the case on behalf of Ethiopian Courts. Under subsidiary jurisdiction the Ethiopian Courts derive authority to try a case from a foreign court. Obviously these are the cases in which the Ethiopian Courts don't have any direct or primary interest to try.

Territorial application of the principal jurisdiction extends to the crimes committed by any one on the land area of Ethiopia, in the bodies of water found within the national territory of Ethiopia and in the air above the national territory of Ethiopia. Extra territorial application primarily includes the crimes committed by any person in a foreign country against interests of Ethiopia, crimes committed by an Ethiopian enjoying immunity in a foreign country, crimes committed by a member of Ethiopian Defence Forces in a foreign Country.

Subsidiary jurisdiction of the Criminal Code applies to crimes committed by members of the Defence Forces against the ordinary law of a foreign country, crimes committed in a

foreign country against international law or international crimes specified in Ethiopian legislation, or against an international treaty or convention to which Ethiopia has adhered, crimes committed in a foreign country against public health and morals, crimes committed abroad against an Ethiopian national or crimes committed by Ethiopians while abroad provided that the crime is punishable under both the laws and is grave enough to justify extradition.

‘Extradition’ is a political act which is done in pursuance of a treaty or some **ad-hoc arrangement** in which one state surrenders a person belonging to another state who has committed a crime within its territory. Requisition for extradition is made upon the determination of the domestic courts of the state.

Any foreigner who commits an ordinary crime (i.e. non-political) outside the territory of Ethiopia and takes refuge in Ethiopia may be extradited in accordance with the provisions of the law, treaties or international custom. However, he may not be extradited where the crime directly and principally concerns Ethiopia; she retains her right to prosecute foreign-criminal under its principal jurisdiction. An Ethiopian national having that status at the time of

commission of the crime in a foreign territory or at the time of request for the extradition cannot be handed over to the requesting state. However when such denial to surrender is made, he shall be tried by Ethiopian courts and under Ethiopia law.

Normally, a request for extradition may be acceded to only if the crime is an extraditable crime. It is a universally accepted international practice not to extradite in cases of political crimes. Whether or not a war crime is a political crime is a debatable question. The principle of double criminality and the principle of specificity are the other important rules governing extradition. The crime should be punishable according to the law both of the state of asylum and of the requesting state is the requirement of double criminality and as per rule of specificity, the requesting state is under a duty not, without the consent of the state of refuge, to try or punish the criminal for any other crime than that for which he was extradited.

UNIT-IV

CONDITIONS OF CRIMINAL LIABILITY

Introduction:

Generally, criminal law is concerned with blaming a conduct and imposing punishment on perpetrators of harmful actions. However, the law determines whether a certain act is punishable or not by considering the circumstances or conditions under which the act is committed or omitted. A person's act does not make him criminally liable for the mere fact that he committed a wrong.

The elements of criminal liability are the legal, material and mental elements of the crime. The Legal element consists of sub-principles that include: the principle of legality, non-retroactive effect of Penal Laws, jurisdiction and period of limitation.

The material element of the crime includes preparation and attempted offences. It also covers causation in cases where the offence requires a result to be constituted. Causation is required to establish a link between the act and the result and helps to identify the final stage of the material element of the crime. The mental element of the crime is also one of the important prerequisites for a crime to exist. This element covers the general principles regarding mental element: intention in the form of direct or indirect with its legal effects, negligence in the form of conscious or unconscious with its legal

effects, and the standards of measuring negligence.

❖ General Principles of Criminal Liability:

Section 1. The Crime And Its Commission:

1.1. The Essential Elements of Crime:

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

- Physical element (*actus reus*)
- Mental element (*mens rea*)
- The legal and material elements can be jointly referred to as the *actus reus* i.e. the physical element of crime and the moral element refers to the *mens rea* i.e. the mental element of crime.

❖ Ingredients Of A Crime:

These are: The legal element, the material and the moral element

- **Meaning of *actus reus*:**

Actus reus means, ***the result forbidden by law brought about by human conduct.***

Simply having an evil intention does not make a man punishable unless it ends in a harmful result.

Thus, *actus reus* in terms of Art 23 includes the following:

- Whether the offender's act or omission has caused (This forms the material element of crime)
- Whether bringing about such a result or state of affairs is prohibited by law. This is the legal element of crime.

1.1.1. The Legal Element of Crime:

This ingredient of the crime refers to the infringement of any law, which is a criminal nature. This, in other words, means that a law must exist and this law must be violated so as to hold a person criminally liable.

In the absence of prohibition by the law, no act is a crime even if it may seem wrong to the individual conscience. That is why Article 2 of the Criminal Code of Ethiopia provides that no act or failure to act may be regarded as an offence unless the law so prescribes. Therefore, a person who performs an act which is not penalized by any law, such as prostitution or intoxication

commits no offence. (**art. 23/1 and 2 of cr. code**)

1.1.2. The Material Element:

Material Element is also called the criminal act or *actus reus* which normally is a pre-requisite for criminal liability. It refers to the existence of some sort of conduct on the part of the perpetrator in order to make him/her liable criminally. It may be defined as a physical or muscular movement towards a given object which may also include willful restraint from doing a given act.

Accordingly, the material element of a crime may be classified as commission, omission, and commission by omission.

The material element (*Actus reus*) may consist of:

1. Deed of commission, or
2. Result of omission.

The phrase “material ingredients” means facts surrounding the act, such as, the type of weapon used, place and time of commission of the offence, range of shooting, the part of the body of the victim hit by the bullet, etc.

- **Deed of Commission:**

The word ‘*actus*’ connotes a deed i.e. a material result of human conduct.

When criminal policy regards as sufficiently harmful, it prohibits such a deed and seeks to prevent its occurrence by imposing a penalty for its commission. Thus, ‘*actus reus*’ is constituted by the ‘event’ or the ‘result’ and not by the activity or conduct which produced the event.

The precise distinction between the three different methods of bringing about a harmful result may be appreciated as follows:

“ <i>Actus reus</i> ” or the physical element of Crime		
Deed of Commission	Results of Omission	
Crimes of Commission “Acts”	Crimes of Omission “Failure”	Crimes of Commission by Omission
These are characterized by positive behavior, i.e. by actively doing something to bring about the harmful ‘result’.	It is impossible to bring about these results by positive behavior. These are the results of negative conduct omitting to act expected of him.	• Failure to appear before courts as a witness or an accused person Art. 448 • Failure to lend aid to another, Art 575. • Failure to perform a duty includes the positive expression of ‘unwillingness to act’ expected of him. • Failure to provide the maintenance allowances stipulated under Article 658. • A parent’s gross neglect in bringing up a child. Art 659

1. Crimes of Omission: Where there is a Duty Imposed by Law:

The law often imposes the duty to do something, e.g. to report about the criminals, to register the birth of a child, etc. and penalizes the failure to carry out these duties. Crimes of this type are referred as

“Crimes of Omission’ and are characterized by the non- performance of a mandatory act.

The following are some of the crimes by omission under the Criminal Code:

- Failure to report the preparation, attempt or commission of a crime Art. 39.
- Failure to report the preparatory acts of treason and mutiny Art. 254-256
- Failure to inform of a crime punishable with death or life sentence, Art. 443.
- Failure to report danger in time of emergency, general mobilization or war Art 308.
- Failure to obey enlistment or mobilization,

• Failure to appear before courts as a witness or an accused person Art, 448

• Failure to lend aid to another, Art 575.

• Failure to perform a duty includes the positive expression of ‘unwillingness to act’ expected of him.

• Failure to provide the maintenance allowances stipulated under Article 658.

• A parent’s gross neglect in bringing up a child. Art 659

• Failure to report the possession of counterfeit money, Art. 779

• Failure to exercise proper supervision over dangerous persons or animals. Art. 824.

• Failure to notify the competent authority and concealment of property. Art. 855

2. Crimes of Commission by Omission: Where

**there is a Duty
Recognized by Law:**

A crime is committed when a person fails to perform a duty recognized by law, such as, professional duty of a doctor. Refusal to provide professional service by a doctor, pharmacist, dentist etc., who contrary to his duty and without just cause refuses to provide his services in a case of serious need, is made punishable under Art 537 of the Criminal Code. If harm is caused by such refusal, it is a crime of commission by omission.

1.1.3. THE ‘MORAL INGREDIENTS’ OF CRIME (*mens rea*)

This has got something to do with the guilty state of mind of a person which is associated with the principle “*Nulla poena, sine culpa*” which means there is no punishment without guilt.

“No one can be punished for an offence unless he has been found guilty there of under the law. A person is guilty if, being responsible for his acts; he committed an offence either intentionally or by negligence. Art. 57 of cr. code”

The provisions of Arts. 57-67 dealing with ‘Criminal Guilt’ define this moral ingredient

i.e. the state of mind of the criminal at the time of committing the unlawful act.

“actus non facit reum nisi mens sit rea”
(act alone does not make a man guilty unless his intentions were guilty).

Unlike physical element of crime the mental element poses a difficulty in its proof. Since, it is a known fact that we cannot know what was going on in the mind of a person at the time of commission of the crime and it is natural that we cannot expect him to confess what was on his mind, it is mainly on the circumstantial evidence that the Court depends to establish the moral ingredients of crime.

**❖ Attempts to Determine the
“Moral Ingredient” of Crime:**

The ‘Moral ingredient’ of a crime refers to the ‘state of mind’ of an accused at the time of doing the act constituting a crime.

The following are the various tests applied in investigating the working of the mind of the person at the time of doing the act resulting in crime:

1. Objective standard of morality,
2. Test of subjective standard,
3. Voluntariness of conduct, and

4. Foresight of consequences.

☞ **Common Forms of ‘States of Mind’:**

1.2.1. Intention:

“To intend” is to have in mind a fixed purpose, to reach a desired objective.

“Intention” is used to denote the state of mind of a man who not only foresees but also wills the possible consequences of his conduct.

Recklessness (indirect intention)

Intention cannot exist without foresight, but foresight can exist without intention.

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

The cardinal principle of criminal liability, as embodied in the maxim ‘*actus non facit reum nisi mens sit rea*,’ is expressed in the sub. Art (1) of Art 57 of the Criminal Code, according to which “no one can be punished for an offence unless ... he commits an crime either intentionally or by negligence”. These states of guilty mind are defined in Arts. 58 and 59.

- **Criminal Intention: Art. 58**

‘Criminal intention’, constitutes the highest degree of criminal guilt and comprises of two elements in the words of Art. 58.

According to Sub-Art. (1) a person intentionally commits a crime who infringes law:

- with full knowledge and (awareness)
- intent. (will or volition)

- **Volition, Intention and Motive:**

These three terms are interrelated.

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

- **Direct Intention Art 58/1/Para (a)**

The existence of will accompanied by awareness proves criminal intention as per Art. 58/1, Para (a)

This category of intention is usually referred to as direct intention as there are these distinct characteristics of this form of state of mind:

- a fixed object,
- a clear foresight of consequences, and
- a desire for consequences.

- **Criminal Negligence Art. 59:**

“Criminal Negligence” constitutes criminal guilt of a lower degree.

1.2.2. Negligence:

‘Negligence’ is another form of mens rea. Negligence is not taking care where there is a duty to take care. In negligence, there is a state of mind in which there is absence of desire to cause a particular consequence.

The essential elements of the provision are:

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

- **Advertent Negligence** :(Meaning and Distinction from Indirect Intention :)

Acting in disregard of possible consequences defines conscious type of negligence.

In this form of negligence the criminal, like in the case of in direct intention, foresees the possibility of some harm but disregards (or rejects) its occurrence. Under indirect

intention the criminal accepts the occurrence of the possible harm whereas in the advertent negligence the person rejects the possibility of the harm which in fact materializes as a result of his negligence.

- **Inadvertent Negligence: Meaning and Distinction from Advertent Negligence:**

Acting without consideration represents the unconscious type of negligence. Under inadvertent negligence the accused is not aware of a possible harm. The offender does not foresee the result at all.

- **Liability to Punishment in Case of Negligence:**

Art. 59/2 provides that, “crimes committed by negligence are liable to punishment only if the law so expressly provides by reason of their nature, gravity or the danger they constitute to society”. Accordingly, negligence is not punishable unless a specific provision under consideration expressly embodies negligence as its component part.

“Due care and attention” implies genuine effort to reach the truth and not the ready acceptance of an ill natured belief. The determination of lack of foresight may be

said to have dependant on 3important factors:

- The nature of the act done by the accused,
- Magnitude and importance of the act done; and
- The facility a person has for the exercise of care and attention.

- **Distinction between Different Forms of
mens rea Under the Code**

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

- **Accident:**

- **Meaning of Accident:**

- **Stephen** observes, “An effect is said to be an accident when the act by which it is caused is not done with intention of causing it and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought under the circumstance in which it is done, to take reasonable precaution against it.”

- Art. 57 (2) of the Criminal Code of FDRE provides:

“No one can be convicted under criminal law for an act penalized by law if it was performed or occurred without there being any guilt on his part, or was caused by force majeure, or occurred by accident.”

Generally speaking, the essential conditions for pleading a case of accident are:

1. The act must be an accident or misfortune.
2. The act must have not been done with any criminal intention or knowledge.
3. The act must have been done with proper care and caution.

Section 2: Relationship of Cause and Effect:

Art. 24. of Criminal Code, lays down the principle that, “a person is answerable for the consequences of his act or failure to act only in so far as there exists a relationship of cause and effect between his act or failure and the consequences.

The general meaning of the term ‘cause’ is the ‘act’ or ‘the agency’ that has caused or produced an effect. The doctrine as to the connection of causes and effects is known as causation in law.

There may be several causes bringing about one result of which the nearest possible cause affords a good ground for criminal liability.

2.1 Tests to Establish the Relationship of Cause and Effect:

- *Sine qua non* test
- Adequate or proximate cause test.

☞ Sine qua non Test or the Theory of Absolute Causation:

‘Sine qua non’ is a Latin term which means “without which not” – an indispensable

condition or an important prerequisite. The test says, “An act in the absence of which the result would not have been achieved is deemed to be the cause of such result”.

For example, if ‘A’ strikes ‘B’ and ‘B’ gets injured. ‘C’ drives ‘B’ to a doctor but the car crashes on the way and ‘B’ dies in the crash, ‘A’ will be held liable for B’s death. The test tries to explain that, had ‘A’ not wounded ‘B’ he would not have had to be driven to a doctor and would not have lost his life in the car accident.

This theory, known as the theory of absolute causality, goes too far because it mixes up ‘causes’ and the ‘occasion’ of the harm.

However, it makes it clear that no person can be liable for harm unless he did something,

Criminal liability cannot be established through the sine qua non test quite clearly.

Therefore, another test has been evolved to establish ‘cause’ and ‘effect’ more distinctly.

☞ **Adequate or Proximate Cause Test:**

according to the “proximate cause rule”, two things have to be fulfilled:

1. The criminal’s behavior that brought about the result, and

2. A relevant condition of the harm resulted.

❖ **Circumstances not Capable of Bringing the Result in the Normal Course of Things:**

2.2. Factors That Might Break the Chain of Causation:

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

- Existence of preceding causes,
- Existence of concurrent causes,
- Intervention of extraneous causes

● **Preceding Causes:**

A preceding cause is the one that exists even before anything is done by the accused towards commission of the crime. The chain of causation would cease to exist if there exists a cause prior to the act or omission of the accused and makes a material difference in the consequences foreseen or ought to have been foreseen by the accused. This means that the presence of the preceding cause brings an extraordinary result for the acts or omission of the accused.

- **Concurrent Causes:**

Art. 32 regarding co-offenders.

- **Intervening Causes:**

The difference between this case and the case of concurrent causes lies in the time element involved. The task is to know which of the two or more consecutive (not simultaneous) events has caused the harm in issue.

For instance, if 'A' beats up his child and inflicts on him an injury that, though not fatal, makes it necessary that he is admitted to. The child, while under treatment at the hospital, catches some deadly infectious disease and dies. There is no doubt that the efficient cause of the child's death is not the injury, but the disease. The latter is an intervening cause, the effect of which is that no chain of causation exists between the beating up and the death since, the initial act done by 'A' could not, in the normal course of things, produce the result eventually achieved.

Thus, the chain of causation might be broken either by preceding causes, concurrent causes or by intervening causes altering the liability of the accused.

Cumulative Effect of Different causes:

According to Art. 24(3), where the result achieved is the cumulative effect of different

causes mentioned in Sub. Art. (2) the cause and effect relationship shall be presumed irrespective of the fact that none of these causes can independently produce the result in question.

For instance, 'A' and 'B' simultaneously/ consecutively shoot 'C' with the intention to kill him. 'A' shoots in his leg whereas, 'B' shoots in his upper arm and death ensues due to excessive bleeding from the wounds. The cause and effect relationship can be presumed to exist between the acts of both 'A' and 'B'. Both are equally liable for the crime of homicide.

2.3. Difficulties in the Assessment of “Physical Element” Of Crime:

An analysis of the attempts which have been made by the courts to assess the physical element in criminal liability and the illustrative cases reveals the difficulties in establishing the causal relationship. It can be most conveniently examined under the following heads:

1. Where there is no Physical Participation:

A man may be held fully liable although he has taken no physical part at all in the actual commission of the crime. Thus, the law has,

from the very early times, attached to the one who procures or advises another to commit a crime at least an equal responsibility with that of “the actual perpetrator of the deed”. The law relating to such situations comes under the special heads of principals and accessories, incitement and conspiracy. In these cases, the accused may not be present on the scene of occurrence and even sometimes be far away from the place of occurrence.

2. Where Participation is Indirect:

A person will be held fully “responsible if he has made use of an “innocent agent” to commit a crime.

In these instances, the innocent agent is guiltless and is not responsible criminally, but the one who had brought about such results intentionally or recklessly is held criminally liable.

3. Where another Person has intervened:

Cases might arise in which it would appear that the harm would not have occurred but for an act or omission of the accused, but in fact it could be established that the more direct and immediate cause of the harm was the intervention of some other person. In

such circumstances, the prisoner has been exonerated (absolved from liability), the reason being given that the harm was not the consequence of what the prisoner did, but was the consequence of what the intervener did.

R. vs. Hilton (1838) 2 law. 214 (T. A. C)
Transport Accident cases:

Facts: The prisoner, who was an in-charge of a steam Engine, had stopped the engine and gone away. During his absence, some unauthorized person has set the engine in motion and it has killed the deceased. He was indicted (charged) for manslaughter.

4. Where Victim’s Own Conduct has Affected the Result:

Principle: Although there is no definite test laid down by authority, it appears that the accused should be convicted so long as it is reasonably certain that the result of the conduct of the accused with which he is charged would have occurred:

- a) Even if nothing had been done subsequently by the victim i.e. the event would have occurred, irrespective of the conduct of the victim after the act responsible for the result has been committed, or

- b) The event did occur although it might have been prevented if the victim has taken some remedial action.

However, as is always possible in a criminal trial, the prisoner can be acquitted on the “benefit of doubt” if in the opinion of the Jury, it appears to be reasonable on the evidence.

5. Contributory Negligence of the Victim:

This is an important principle in Civil Law that, “When the plaintiff by his own want of care contributes to the damage caused by the negligence or wrongful conduct of the defendant, he is considered to be guilty of “contributory negligence”.

6. Where the Participation is Superfluous:

An intentional participation in a crime is not excused by the fact that it would have taken place irrespective of the co-operation of the accused.

E.g. ‘A’ and ‘B’ two strong men were engaged in beating ‘C’ to death. ‘X’ a stranger rushed in unasked and undesired by them and gave some small blows to the victim. If ‘C’ dies ‘X’ would be guilty of the murder of ‘C’ just as ‘A’ and ‘B’ are responsible of the murder, if it can be established that each of the three offenders foresaw that the death of ‘C’ would be the

result of the general attack which has been made upon him.

Unit Summary:

In This chapter presented and discussed the elements that constitute Criminal Liability in general and under Ethiopian Law in particular. It has also identified the basic requirements of criminal liability. The principles of modern criminal law require the establishment of certain essential elements to fix criminal liability to an accused person. All crimes, whatever their nature or seriousness, have some elements in common.

The elements of criminal liability are the legal, material and mental elements of the crime. The Legal element consists of sub-principles that include: The principle of legality, non-retroactive effect of Penal Laws, jurisdiction and period of limitation. The general meaning of the term ‘cause’ is the ‘act’ or ‘the agency’ that has caused or produced an effect. The doctrine as to the connection of causes and effects is known as causation, in law. It is an investigation of act which caused effect. Preceding causes,

concurrent causes and intervening causes are the circumstances that can break the chain of causation. There can be concurrence of crimes and concurrence of criminal provisions leading to aggravation of criminal punishment.

Recently, developments have been made in criminal law with respect to wrong doings by legal persons. In law, personality is manifested not only in natural persons but also in legal persons. The application of the doctrine that companies are legal persons separate from the individual persons involved in its operations, is that a company can commit many offences of strict liability.

Accident is a valid defence for criminal liability. In the absence of intention or negligence on the part of the accused while committing the act that resulted in the harmful consequences can be claimed as a defence for criminal liability.

UNIT-V

DEGREES IN THE COMMISSION OF CRIME

Arts. 26-30 lay down the principles relating to the liability of offenders in various stages of commission of the crime.

This chapter deals with degrees in certain cases at the time of the commission of an offence in which the law intervenes by reason of their gravity or the danger they entail. It also discusses about acts which may be done from the day when a criminal intent comes into being until the day it materializes.

Section.1. Different Stages In The Commission Of Crime:

1.1 Preparation (Art. 26)

Criminal law punishes “overt acts” and not mere intentions. A criminal intent, no matter how immoral it may be, is beyond the grip of criminal law until it is manifested by external conduct. The requirements of Art. 23 imply that a mere criminal intention does not in itself constitute a crime and is not punishable.

Various phases normally precede acts. The phases of desire, decision and initial

planning (in the thoughts of the criminal) are mental that do not involve exterior acts.

Every preparatory act is not punishable.

Most Criminal Laws including Ethiopian Criminal Code do not in principle punish preparatory acts.

- **Legal Effects Of Preparatory Acts:**

Article 26 of Criminal Code reads:

“Acts which are committed to prepare or make possible a crime, particularly by procuring the means or creating the conditions for its commission are not usually punishable, however, such acts are punishable where

- a) In themselves they constitute a crime defined by law; or*
- b) They are expressly constituted a special crime by law by owing to their gravity or the general danger they entail”.*

Punishing preparatory acts is therefore an exception than a rule under Ethiopian criminal law. Nevertheless, the Criminal Code has a mechanism of precaution against preparatory acts where a person behaves or is likely to behave in a manner

which threatens peace or security of the public or citizen (Art. 141). In such cases dangerous articles are seized (Art. 140) and the person who poses a threat is required to enter into recognizance. The remedy of such precautionary measures is available for unpunishable preparatory acts. But this is not always so because preparatory acts are punishable under the circumstances stated in Article 26.

There are two situations where *preparatory acts* are punishable.

1. **Where the Preparatory Acts Constitute a Crime in Themselves (Art 26/a):**

A person who buys a gun as a preparatory step towards homicide is punished for the completed “petty offence” of retaining a gun without license (Arts. 808, 809) even though he is not punishable for his preparatory act; the act of keeping a gun without a license itself is a petty offence.

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

Certain preparatory acts are expressly constituted a special crime by law owing to their gravity or the general danger they

necessarily bring upon the society. For example, material preparation of offences against the state (Art. 256, 257), preparing a mutiny or seditious movement (Art. 300) and preparing machinery and means of counterfeiting currency (Art. 371) are expressly stated to constitute special crimes.

Preparation is punishable only when it has reached such an advanced stage and is close to an attempt that there is no doubt as to the purpose of the arrangements made and as to the willingness of the person who made them, to carry them further if he is given the chance of doing so.

1.2 Attempt:

Attempt is the second degree in the material element of the crime.

It is a willful effort but without success.

In a nutshell, attempt includes three most important requirements to exist that include: intent, overt act, and failure to achieve the result.

Attempt obviously implies more than preparation.

1.2.1. Kinds of Attempt:

Basing on the 'reason' for the failure to achieve the intended result attempts can be classified into three categories:

a. "Incomplete Attempt":

If the accused chooses not to do or is prevented from doing the last act of the crime, the attempt is said to be incomplete. The words "... do not pursue ... his criminal activity to its end" in Article 27 define "incomplete attempts" because of voluntary withdrawal.

Article 28/1 gives due credit to an offender who renounces the pursuit of his criminal activity by allowing reduced punishment (Art. 179), free mitigation (Art. 180) "if circumstances so justify" or no punishment "if the renunciation was prompted by honesty and high motives".

In cases where the withdrawal occurs due to external circumstances, the non pursuance of criminal activity is involuntary.

b. "Complete Attempt":

An attempt is said to be complete when the perpetrator has done all that he/she intended to bring about the result, but the desired result has not followed.

The reasons for the failure to achieve the result may be of two types: one, it may

happen that the offender did every thing that was necessary to bring about the result but the achievement has not occurred due to situations beyond his/her control.

Attempt could also be felt to achieve the result due to the active involvement of the perpetrator him/herself. This is known as active repentance.

Where the accused has done the last act, which he expects to carry out, and which he thinks causes the harm intended, the attempt is said to be complete. Complete attempts may take the forms of voluntary undoing or involuntary failure to achieve the result.

Section 2. Importance of Distinction between Preparation and Attempt:

The fact that all attempts are punishable (Art. 27(2)) whereas all preparatory acts are not punishable (Art. 26),

Firstly, preparation consists in devising or arranging the means or measures necessary for the commission of the crime; while an attempt is the direct movement towards the commission of the crime after preparations have been made.

An attempt is manifested by the acts, which would end in the consummation of the crime, but for the intervention of certain circumstances independent of the will of the party. Secondly, preparations are generally

not punishable, whereas attempts are always punishable. The reasons why preparations are not punished are fourfold, namely:

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

2.1 Identification Of The Stage Of Attempt:

Every case is to be judged according to the facts and circumstances of its own. However, some tests have been evolved by

the courts to determine at what stage an act or a series of acts done towards the commission of the intended crime would become an attempt. These tests are:

➤ **Reasonable Inference test or Unequivocality Test:**

In this test, the nature and circumstances of the act must give a reasonable inference of the attempter's criminal intent. According to this test, "... an act done with intent to commit a crime is not a criminal attempt unless it is of such a nature as to be in itself sufficient evidence of the criminal intent with which it is done".

If the only reasonable inference that can be drawn from the overt acts of the accused is that he would have completed the crime had he not been interrupted, then there can be no doubt that he is guilty of an attempt to commit a crime". The interdependence between intent and behaviour is apparent in this test. Overt acts emanate from intention and in turn verify criminal intent and determination.

➤ **The Commencement of Execution Test:**

According to this test, there is an attempt as of the moment the accused begins to commit the crime. "An act amounts to the beginning of execution when the intention behind it is irrevocable.

The execution of the crime includes the doing of an act, which in the criminal's plan

amounts to a decisive step towards the achievement of the result, after the taking of which there is normally no possibility of drawing back..."

This test is basically subjective.

The Ethiopian Criminal Code defines attempt in Art. 27/1 Para 1, as the intentional act of beginning to commit a crime and thus has much in common with the "commencement of execution test". The second paragraph of the provision states what is meant by the act of beginning to commit as offence. It reads:

"The crime is deemed to be begun when the act performed clearly aim, by way of direct consequence, at its commission".

A given act normally manifests two things namely:

- a. Intent (the doer's subjective state of mind)
- b. The acts' material (objective) proximity or remoteness to the intended consequence.

➤ **Proximity test:**

An act of attempt must be sufficiently proximate to the crime intended, it should not be remotely leading towards the commission of a crime.

➤ ***Locus poenitentiae Test***

The Latin term 'locus poenitentiae' means 'place of repentance'. i.e. a point at which it is not too late for one to change one's legal position; the possibility of withdrawing from a contemplated course of action, esp. a wrong, before being committed to it.

An act would amount to preparation and not an attempt, if a person voluntarily gives up the idea of committing a crime before the criminal act is carried out. So long as the steps taken by the accused leave room for a reasonable expectation that he might, either of his own accord, or because of the fear of the consequences that might befall him as a result, desist from the act to be attempted, he would still be treated on the stage of preparation.

➤ ***Social Danger Test:***

The seriousness of the crime attempted and the apprehension of the social danger involved is taken into account to distinguish an act of 'attempt' from that of 'preparation'.

Accomplishment or Completion of Crime:

When the intended consequences are achieved by the conduct of the accused, the crime is said to have been completed

and thus making the accused liable to punishment for full fledged crime.

2.1. Renunciation And Active Repentance:

• Renunciation:

Renunciation is provided under Article 28 of the Penal Code as "if an offender of his own free will renounce the pursuit of his criminal activity the court shall reduce the punishment within the limits provided by law (Art. 179) or may reduce it without restriction (Art. 180) if circumstances so justify.

No punishment shall be imposed if the renunciation was prompted by reasons of honesty or high motives." It refers to situations where a person abandons the pursuit of his or her criminal activity by his or her own free will without completing the act required producing the result.

• Active repentance:

The failure to achieve the result after the completion of the act may also occur when, after having performed all the acts to bring about the desired result, the perpetrator himself either prevents or contributes for the prevention of the result. This is what is

called active repentance which is dealt with under Article 28(2) of the Penal Code that reads: If an offender, having completed his or her criminal activity, of his or her own free will prevents, or contributes to prevent the consequent result, the court may without restriction reduce the punishment (Art. 180).

Unit Summary:

In this chapter we have seen the various degrees in the commission of crime. These include preparatory acts, attempt, renunciation, active repentance, and impossible offence. We have also discussed the distinctions between each stages of committing crime and the legal effects at each stage. The material element of the crime may result in a completed or incomplete crime.

Criminal law punishes “overt acts” and not mere intentions. A criminal intent, no matter how immoral it may be, is beyond the grip of criminal law until it is manifested by external conduct. Most Criminal Laws including Ethiopian Criminal Code do not in principle punish preparatory acts. Punishing preparatory acts is therefore an exception than a rule under Ethiopian criminal law. The

Criminal Code has a mechanism of precaution against preparatory acts where a person behaves or is likely to behave in a manner which threatens peace or security of the public or citizen.

An attempt is always punishable under the Criminal Code. Attempt obviously implies more than preparation. However, the difference between the two is not always apparent since there is in both cases a movement towards the commission of a crime. There are three different kinds of attempt namely, incomplete attempt, complete attempt and impossible attempt. Proof of the mental element of the accused is crucial for the punishment at the stage of an attempt. Renunciation exists when the criminal activity is abandoned absolutely. As it is in an attempted crime, it must be accompanied by guilty state of mind in the form of intent. The failure to achieve the result after the completion of the act may also occur when, after having performed all the acts to bring about the desired result, the perpetrator himself either prevents or contributes for the prevention of the result.

UNIT- VI

PARTICIPATION IN THE COMMISSION OF CRIME

Introduction:

It is obvious that a crime should not always be committed by single persons. A crime can be committed by several persons who participate in the commission of a crime at different or same capacities. It is therefore important to determine the degree of involvement and the role played by such persons in the commission of the crime.

Section.1. Participation In Principal Capacity:

In Ethiopia, principal participation is defined broadly that it takes the forms of material, moral and indirect offenders. These forms of principal participation are provided under Article 32 of the Criminal Code, which states that “a person shall be regarded as having committed a crime and punished as if:

- (a) he actually commits the crime either directly or indirectly, in particular by means of an animal or a natural force; or (b) he without performing the criminal act itself fully associates himself with the commission of the crime and the intended result; or*

(c) he employs an infant or a person who is mentally deficient or unaware of the circumstances, for the commission of a crime or compels another person to commit a crime.

(2) Where the crime committed goes beyond the intention of the criminal he shall be tried in accordance with Article 58(3).

(3) Where two or more persons are involved as principal criminals in the commission of a crime, each shall be liable to the punishment attaching thereto. The Court shall take into account the provisions governing the effect of personal circumstances (Art. 41) and those governing the award of punishment according to the degree of individual guilt (Art. 88).

1.1 Material Criminal:

This form of participation is dealt with under Article 32(1) (a) of the Criminal Code. It exists when the one, who, with the requisite mental state, personally engages in the act or omission concurring with mental state which causes the criminal state. A person is a material criminal in a crime of homicide if he or she takes the life of another. Such form of principal criminal can commit the offence either directly or indirectly.

1.3 Moral Criminal:

Moral Criminal is a person who fully associates himself/herself with the commission of the crime and takes the crime as his or her own even though he or she is not present at the time when and the place where the crime was committed. Moral criminal is a person who plays no part physically in the commission or omission of the offence.

1.2. Indirect Criminal:

This form of principal party is contained under Article 32(1) (c) of the Criminal Code. Such a party to a crime uses an intermediary to commit a crime.

Indirect criminal refers to a person to the persons listed below:

1. Compel another to commit a crime.
This is the case when Tariku, under a gun point orders Fekadu to cause bodily injury upon.
2. Employ mentally deficient persons in the course of the execution of a crime.
3. Use an irresponsible person that can come under Articles 48-50.
4. Use infants who are immature persons as provided under Article 52.
5. Use another person by taking the advantage of his or her mistake or

ignorance as per Articles 80 and 81 of the Criminal code.

- **Legal Effects Of Participation:**

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

1.4. Co-criminals:

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

Accordingly, co-criminals are dealt with under Article 32 and 33 of the Criminal Code of Ethiopia as “where several co-criminal are involved, they shall be liable to the same punishment as provided by law (32/3)”. An accused person may be prosecuted as a co-criminal when, by his/her acts he/she fully participated with knowledge and intent in the commission of a crime which can be committed only by certain specified persons such as members of the Armed forces or officials or only by male persons as in the case of rape.

1.4.1. Co-Criminals in general Crimes and special Crimes

Persons may also be categorized as co-criminals in general crimes and special crimes. Several persons may be considered as co-criminals in crimes in general when the crime in question can be committed by any one. This relates to homicide, theft, robbery, bodily injury and so on. Persons are co-criminals in special crimes when the crime in question requires special qualification. Art. 33 of the Criminal Code points out this situation as *“an accused person may be prosecuted as a principal-criminal when, by his/her acts, he/she fully participated with knowledge and intent in the commission of a crime which can be committed only by certain specified persons, in particular by a member of the Defence Forces in the case of military crimes, or by a public servant in respect of crimes against public office, or only by male persons as in the case of rape”*. This Article refers to a person who intentionally involves himself/herself in a crime which is committed or omitted by another which he or she cannot commit it materially as the crime requires special qualification. The person in this case has equal physical or moral involvement with the original criminal. That means he or she fully

associates himself or herself with the crime. He/she adopts the criminal intent as his or her own and work towards achieving the result. This kind of co-criminals require some elements to be fully understood:

Section.2. Participation In The Secondary Capacity:

This refers to the involvement of persons in the commission of a crime in the second degree. This exists either before or during the commission of the crime.

Secondary participation refers to incitement and complicity.

2.1. Incitement (Article 36)

This form of participation is secondary before the commission of the crime.

From the point of Art. 36 we can infer;

- Incitement requires at least two persons. These are the inciter/instigator and the incited/instigated. The incited is the one who actually commits the crime either in the form of material, moral or indirect criminal. The instigator is the person who initiates the idea of committing the crime by the principal by using different means.
- The instigator or instigators should convince the principal criminal/criminals until the latter reaches a determination decision

to commit the crime based on the inducement/instigation/incitement.

- Such provocation or inducement must be carried out intentionally. The instigator should have the knowledge of what he incites.

➤ **The legal effect of being an instigator:**

The instigator will be liable to punishment under the law for the intended crime under Article 36.

What if the *incited* goes beyond the intention of the instigator?

Art 36/4

The principal offender is punished alone for what goes beyond the intention of the instigator. This is the case that the incitee /principal/ criminal is alone liable for the rape he committed while he was persuaded to commit robbery.

2.1. Complicity:

It is also a secondary participation which may exist either before or during the commission of the offence as provided under Article 37.

For complicity to exist, the following elements should exist:

One, it requires at least two persons i.e. the accomplice and the principal criminal.

Two, assistance must be given to the principal criminal.

Three, such assistance may be material or non-material. It is material when the assistance relates to guns, money, supplies, instrumentalities, being at a look out, ran the gateway car, signal the approach of the victim, send the victim to the actor, prevent a warning from reaching the victim, facilitate the crime by getting the victim, or possible witness away from the same. It is non-material when it relates to advice, command, counsel, encourage, and so on.

Four, the assistance given to the principal criminal should always be intentional i.e., the accomplice should have the knowledge that he/she is giving help or assistance to the principal criminal in order to realize the latter's criminal design.

Five, the assistance should relate to the crime for which it was rendered.

➤ **What are the legal effects of complicity?**

The following are the legal effects of complicity:

1. The accomplice is liable for the punishment under the law regulating the intended crime.

2. The accomplice will not be liable for what goes beyond his intention.

3. Punishment may, however, be reduced within the limits of the law as per Article 179 of the criminal code.

2.3. Criminal Conspiracy:

Conspiracy is defined as an agreement between two or more persons to effect something unlawful.

The crime of conspiracy is said to be completed even if there is no further act to put the agreement into effect. Agreement in conspiracy refers to the meeting of two or more minds. It is the understanding of the parties each other to perform an act which is forbidden.

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

➤ The Rationale For Holding A Person Criminally Liable For conspiracy:

It is clear that a person may not be punished for what he or she intends to do or for what

he or she has planned in his or her mind only. Rather, a person is punished when three basic elements under Article 23 are established.

Conspirators, however, commit a crime for their intentional agreement. The reason to hold conspirators criminally liable is that collective action towards antisocial behavior involves a greater risk to the society. The more parties there are the larger the probability for the commission of the crime, the greater the threat to the community for conspirators

- may encourage each other.
- may feel bolder than if they were on their own.
- may fear reprisal from the other

may not want to loose face from the others.

2.5. Accessories After The Fact:Art.40

Accessory refers to a person who gives assistance to the principal criminal after the realization of the crime.

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

Such a person cannot be considered as an accomplice, which is one form of

participation and hence cannot be treated under Article 36 because there is no participation in the commission of a crime once it has been completed. So an assistance given to the criminal after the commission of the crime is independent crime.

➤ **Failure to Report:**

Article 39. Failure to Report:

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

These situations include:

Art. 254 Indirect Aid and Encouragement:

Art. 335. - Failure to report Crimes against the Armed Forces and Breaches of Military Obligations:

Art. 443. - Failure to report a crime.

MODEL EXAMINATION

I. MULTIPLE CHOICE QUESTIONS:

5x2=10 MARKS

- John approaches Job with a proposal that Job help John sneak into the Computer center at night, located in the main shopping complex of the Dire Dawa City, and pour acid on the computers rendering them useless. Job agrees to the idea but warns John that he gets very nervous and that probably he couldn't assist him during the actual break-in and property destruction. However, he agrees that he will purchase the acid and get it to John.

1. At this stage the crime/s committed by John and Job is/

- a. Conspiracy b. Conspiracy and preparation to the crime intended
- c. Attempt to the crime intended
- d. None of the above

2. In addition to the above facts, Job purchased the acid and handed it over to John:

- a. The stage of attempt has already reached
- b. The stage of attempt has not yet reached
- c. There is still scope for the application of the *unequivocality* test

d. Both (b) and (c)

3. After Job has supplied acid to John, we can establish his criminal liability as:

- a. An instigator b. Accomplice
- c. Conspirator d. None of the above

4. Now, both John and Job proceeded to the shopping complex at 11:00Pm in the night and jumped over the compound wall in pursuance of their criminal intention. While Job was standing and watching and John was trying to open the window the security guards spotted them and tried to caught them successfully. At this stage the following charges can be brought against them:

- a. Both of them can be charged for the attempt of the intended crime
- b. Only John can be charged for the attempt
- c. They are still in the preparatory stage because there is still time for repentanc
- d. The facts are insufficient to decide the stage of crime

5. If in the above case while John and Job were being chased by security guards, their friend Richard who was passing by in his car picks them up quickly and takes them to his home to give them shelter. Shortly afterwards, the police reach there and arrested all the three. On

conviction the following will be their liabilities and punishments:

- a. Since John and Job are principal criminals both of them are punishable serious
- b. Only John is punishable as principal as Job was simply standing there and watching
- c. In the absence of personal circumstances special to any of them all are punishable equally for the intended crime
- d. Richard's punishment could be much less than that of the other two since he is only an accessory after the fact

II. FILL IN THE BLANKS:

5x2=10 MARKS

1. The main objectives of the Criminal Law are:

a. _____

b. _____

c. _____

d. _____

2. Following are the important ingredients of the principle of *nullum crimen sine lege*

a. _____

b. _____

c. _____

d. _____

3. The 'Territorial Jurisdiction' of Ethiopian Criminal Code includes the following:

(Mention the relevant legal provisions)

a. _____

(i) _____

(ii) _____

(iii) _____

b. _____

c. _____

4. These are the factors that can break the chain of '**causation**':

a. _____

b. _____

c. _____

5. As highlighted by Jean Graven, **Fetha Negest** included the following important modern principles of Criminal law:

➤ _____

➤ _____

➤ _____

III.

PROBLEM

NO.

I

20 MARKS

While walking down a rural road, Abel and Baker come upon Victor, obviously intoxicated, lying on railroad tracks running parallel to the road. Abel says, "Let him lie. Don't touch him," but Baker drags the man off the tracks onto the shoulder of the road. Abel and Baker go on their way. 15 minutes pass; a train comes by; Victor is not harmed, though he would have been killed if Baker had not moved him. 30 more minutes pass; Victor crawls onto the roadway in front of an oncoming truck; Victor is struck and killed because the driver is speeding and not paying attention. Discuss the liability of Abel and Baker for Victor's death.

1. What is *mens rea*? Explain the specific states of mind of Abe and Baker basing on the facts givem above.
(10 Marks)

2. What is 'causation of crime'? Explain whether or not causation could be established in the given case?
(10 Marks)

IV. PROBLEM NO. II
20

Andy and Bob decided to rob a grocery store. They borrowed Charlie's car. When Charlie asked what they wanted it for, Andy said, "to rob a grocery store." After Andy and Bob left Charlie had second thoughts and called the police. He told the police that Andy and Bob were going to rob a store and described his car. Because Charlie didn't know the intended location the police were unable to stop the robbery.

Bob gave Andy a loaded pistol and waited in the car while Andy entered a Convenient store and robbed the store of Bir.5000.00 by pointing the gun at clerk David. Andy also robbed a customer of Birr.200.00. As Andy was leaving the store, David, the clerk, tried to stop him then Andy shot and killed him.

- 1. What are the crimes committed by Andy, Bob and Charlie? How do you Charge them?**

(10 Marks)

- 2. Identify the different kinds of participation in the given facts and explain their individual liabilities.**

(10 Marks)

- V. Write an essay on the principle of 'individualization of criminal justice' as has been incorporated in the Criminal Code of Ethiopia.**
(10 Marks)