NON- CONTRACTUAL LIABLITY LAW

CHAPTER ONE: GENERAL OVERVIEW

1.1. NAMING AND DEFINITION OF Non contractual liability law

Q. Who can try to define Non contractual liability law ?

Naming : The subject has been indentified with d/t terminologies :

And all the terminologies have their own limitations

- **Non contractual: it is out side of the sphere of contract- relatively correct**
- **Extra contractual: seems to pre suppose the existence of contract b/n the wrong doer and the victim. But there are plenty of examples in which a wrongful act may also be made in the absence of contractual r/ship**
- **Tort: used in French legal system to connote wrong. Translated in English it is a legal wrong in which the law provides remedies. It is illusive as it does not indicate the nature and sources of wrong. A wrong may arise from contractual obligation or criminal act.**

-NB: The Ethiopia law opts to connote 'Extra contractual liability law as it is provided in title XIII of the civil code.

❖The purposes of Non contractual liability law

Non contractual liability law said to have three main goals

- compensating a person sustaining loss or harm as a result of another persons conduct
- Loss spread or lose shifting: placing the cost of loss to the tort feasors.
- prevention of future loss and harm(avoidance of economically inefficient behaviors: it provides negative incentive and deter the wrong does from committing future tortuous acts.

❖Definitions

Ethiopian civil code does not define Non contractual liability law.

When constitutional rights are violated there are remedies available mainly by criminal law. Though different in purpose, Non contractual liability brings about civil remedies.

- **Non contractual liability law is defined as law of civil obligation that provides remedies in the from of compensation to the victim, ordering restitution and/or injunction in the absence of contractual relation between the victim and tortfeasor (wrong doer).**
- It is a law that provides remedies for civil wrong primarily and exceptionally for public wrong. From this definitions one can pin point the following elements:
- **Civil obligation**: an obligation that emanates civil wrong

➢Remedies in the forms of:

- **Compensation**-in the form of money or non pecuniary values
- **Restitution**-bringing back the property or the right taken away
- **Ordering injection**- ordaining the defendant to refrain from doing something

➢**Obligation in the absence of contractual relations** between the wrong doer and the victim. The wrong has to be inflicted out of contract.

The standard of proof: In principle the standard of proof is reasonable man standard

- Reasonable man standard is an objective standard and does not take in to account the particular way of behaving, thinking, etc or weaknesses of the defendant. Instead, ***a standard of ordinary skill and care is required.*** (2030 (3) in assessing public morality without regard to the age or mental state of the person concerned).
- ***But still the objective standard is not free from subjective.***

E.g. If Chala is a learner – driver & crashes into a wall and causes injury to other trainer who seats on the front seat. The defendant is to be judged by the same standard as that required of any other driver, namely that of a reasonably competent and experienced driver not as learner.(see also art.2030 of CIVIC.

Exceptions:

subjective(statutory standard) :-the parameter is qualified taking in to account the profession, experience educational back ground and other factors of wrong doer (tort feasor).

Notes: ***All Non contractual wrong do not call for existence of negligent and intention.*** **Fore instance, in strict liability the plaintiff is not required to prove intention and negligent on the part of defendant(atr.2086(2), the owner of animal, machine or building can not raise absence of intention and negligent as a defense), what is required are only causation and damage**.

Causation: their must exist causation between the act or omission and the damage suffered by the victim.

- Causation should not be remote and when the causation is too remote the liability could be avoided.
- Proving causation becomes difficult when more than one factor brought to a single damage.

e.g. 'A' inflicted ob B bodily harm. And while 'B' was brought to hospital the taxi w/c 'B' was in collide with bus thereby resulted the death of 'B'. Which conducts causes death?

Causation …cont'd

- The "but for test": the ptt is supposed to show that s/he would not have been injured in a way s/she is now but for the defendant's conduct (the activity in w/c s/he engages, the objects s/he posses or the 3p's conduct to whom the defendant is answerable)
- In vicarious liability the plaintiff is further required to prove the legally recognized relationship b/n the person who caused the damage and the one who the law makes liable. E.g. The existence of Employee-Employer r/nship, child- guardian relationship etc
- **4.The damage should be a kind of harm attracting liability**. The intersect can be protected by a court awarding a sum of money, known as damages, for infringement of protected right.

1.3. Enforcement of constitutional rights in Non k+ law

➢The government owed constitutional obligation of respect and enforcement of human rights (atr.13 of the constitution). The gov't discharges those obligation:

➢ by criminalizing all violation of human rights and punishing perpetrators

➢ But still, the obligation of government can't be accomplish through punishment and punishment only.

➢ Besides, victims have to be compensated and the tortfeasors have to make good the damage. Hence, Non K+L law implements constitutional rights.

Here are some instances of practical application of Non K+L law in safeguarding **constitutional rights and freedoms:-**

1.3.1 . **Personal Security(art.16 of the constitution + 2038(1) of CV**C). As per article 16 of the FDRE Constitution, everyone has the right to protection against bodily harm. what if the right is violated ? First, the victim or the government can initiate proceeding to rectify the misdeed and in turn punish criminals. Secondly, the victim could bring action as per art.2038(1), under assault, if one makes a contact with another intentionally against the other person's will. If ,however, the rage is beat, then the person being hit may have an action under bodily harm as per sub art. 2067 of CIVIC as well

1.3.2 *Interest in Property(atr. 40 of the constitution Vs art.2053 and 2053 of CVC).*

Pursuant to 40(1) of the FDRE Constitution, every Ethiopian citizen has the right to the ownership of private property. No one, therefore, has the right to interfere with this constitutional right other than as it is provided by law.

If someone infringes this constitutional right by:

- forcing his way into the land under the possession of another, or house of another
- taking possession of another's movable property=the tort feasor shall be sued under trespass(article 2053) and under assault on property under article 2054 respectively.

1.3.3 *Economic Interests(art41(1) of the constitution) Vs art.2055-2059 of CVC)*

Pursuant to art. 41(1) of the FDRE Constitution, ever *Ethiopian has the right to engage freely in an economic activity and pursue a livelihood of his choice anywhere within the national territory. Therefore , any act or omission that adversely affect the exercise or enjoyment of right is violation of the economic interests of person or principles of freedom of contracts*.

So, Non K+L law, in making liable persons who disregard contractual liability under art. 2056 for disregard of contractual liability and the one who compromises the reputation of a product or commercial establishment through publication or any other means under atr.2057, safeguard constitutional rights.

1.3.4 Reputation and Privacy(art.24&26,constituion Vs 2044&2109)

- Our constitution recognizes every one's reputation and privacy under articles 24 and 26 respectively.
- Hence, "where a person's reputation is damaged by untrue speech or writing, victims may have action for defamation,atr.2044 of CVC and indemnified with fare compensation(2109)

1.3.5. **Accountability of government(art 12(2)) Vs. abuse of power(2033 cvc)**

- As envisaged in the constitution any public official or an elected representative is accountable for any failure in official duties.
- Contrary to this principle a person may turn to his own advantage powers conferred up on him on the interest of another.
- In such a case, the power holder shall be bound to borne criminal, administrative as well as Non contractual liablities liabilities as per art.2033.

1.4 Boundaries **of Non- Contractual Liability Law**

Non contractual liability law is not mutually exclusive from other branches law. Instead it has both alliance and point of difference.

1.4.1 **Non K+L law Vs. contract law**

common denominator:-

- both regulates civil obligations as are classified in book of Ethiopian Civil code.
- Purpose: both aims at redressing civil wrong the victim.

Point of difference

- Source of obligation:-contract is emanated from agreement of parties(1675) whereas Non K+L law emanates from law:(fault,(2028-2065),(strict (2066- 2089),(vicarious(2114-2136))

❖**The amount of damage**:-under contract law the amount of damage may be increased when damage is due to intentional fault of the debtor.(art.1801(2)) i.e, compensation ≥ damage

•**In Non K+L** law compensation by no means is greater than damage(2090). Contrary to up ward derogation ,the amount of damages (compensations) could be mitigated (2098, 2099, 2074)

❖**Period of limitation and jurisdictions (1845Vs. 2143):-**

➢action for performance contract, action based on non performance of contract and action for invalidation of contract shall be barred if not brought with in ten years.

➢Action in Non K+L law shall be brought with in two years from the time at which the victim suffered damage(2143)

- **Bases to assume jurisdiction** in contract is place where the K+ is concluded or assumed to be performed(24(1) of CPC)).The place where the wrong was made is the base to assume jurisdiction in Non K+L law.
- **Exemptions**: there are discharging obligations in Non K+L law including minors obligations. But such exception is not made in Non K+L liability law
- **Conditions of compensations**: In contract showing the promised has not been performed is suffice. However, in tort, the plaintiff has show the elements provided under article 2028-2065 as a rule.

This rule is expected in establishing breach of in strict and vicarious liability.

1.4.2 Criminal Vs Non contractual liability law

- **Common denominator:-source obligation: both obligations emanate from law and some times crimial liability may give rise to Non K+L**
- **Coverage on similar offence: Criminal wrong may give rise to NonK+L: In deciding whether a civil offence has been committed, the court taking the matter shall not be bound by an equitable or discharge by the criminal court(Art.2149)**

❖**Point of different**

➢Purpose: while Non K+L law aim at redressing the victim, Criminal law seek to maintain peace and security at large.

➢Consequences on the wrong doer: Non K+L law give compensation in the form of money, restitution and/ or ordering injunction order. In criminal proceeding the consequence will be imprisonment, death penalty and/or fine

➢Parties to the suit (2095,2145):- in Non K+L law case parties to the suit are always the victim(2146) or their substitutes, e.g. heirs of the victim, creditors of the victim) and the wrong doers.

➢They are individual persons . Whereas parties in criminal are offenders and the state represented by public prosecutor.

Chapter Two: conditions of Tortuous liability

2.1 Conducts: act or omission

- Conduct is a person's behavior in a particular place or in a particular situation
  - **Act** is defined as an external manifestation of the actor's will.
  - In legal terms this is known as ***Misfeasance*** and it is a positive act.
  - Omission on the other hand is failure to act where the law requires you to act in a certain way. This is known in legal terms as ***nonfeasance***

Mental element: principle

- A conduct may be committed intentionally or mere negligently. (refer article 58 and 59 Revised criminal law respectively).
- Intentional conduct
- **Intention exists where**:
  - The defendant knows that the consequences of her conduct are bound to occur; or
  - Where the defendant desires the consequences or
  - Where the defendant may not desire but foreseen the result of her action or omission.

Types of intentional act

- **Direct intention** when defendant performs an unlawful act with full knowledge and intent. It is direct intention as he has a full knowledge and desire.
- **Indirect intention :**when the defendant being aware that his act may cause damage to 3p, commits the act regardless that such consequence may follow. Here, the defendant has knowledge about consequence of his act, but not desire result to happen.

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E.g. Abebe is a soldier. He practices how to target an enemy using a big stone. One day, when he practice on the same object, the soldier saw a man just besides the target. The soldier regardless of the possibility of shooting the person, keep on practicing.Unfortunately,the practice end up with taking the life of individual missing the target.

•Negligent(art.59),

- ✓ **advertent negligent**: where by lack of foresight or imprudence he acts without consideration or in regard to the possible consequence of his act.
- ✓ The defendant may know the possibility that his conduct may cause some unlawful result though he believes that the care he is exercising is enough so as not bring the result. The defendant does not accept the result.

E.g. In the above case, let us assume that the soldier shout at the stone believing, though he knows the possibility that the man can be shot, that he is an excellent targeter and would not injure. All of a sudden, he missed his target and shot the person.

Negligent cont'd

- **In advertent negligent**: When the defendant fails to take such precautions as might be reasonably be expected in the circumstances of the case and having regard to his age, profession, education, occupation and rank. But the defendant, does not totally now or foresee that his act will cause some unlawful damage.

E.g. In the above example let as assume that the stone which the soldier targets is located in an area where people do not normally move. When he shot at the tone, his slightly missed his target and injured a person, who was unexpectedly around collecting fire wood.

Q; **what is the similarity and difference between indirect intention and advertent negligent?**

The effect of intention and negligent

- It has an impact on the assessment of damages(2101+2159). The court may where equity requires so reduced the compensation to be paid by a person who caused a damage in a consequence of unforeseeable circumstance.
- **But**, no reduction may be ordered when the damage arises from intentional offence.
- It claims the defendant to indemnify moral damage. Intentional offence attracts moral damage.(2106)

Standards of measures

A. REASONABLE AND PRUDENT PERSON

- The standard of care expected from us is that of the reasonable man. It is objective criteria that does not take into account the particular way of behaving, thinking, etc or weaknesses of he defendant

- **Who is reasonable man?**

  ✓It is an ordinary average prudent or wise person, he is average careful person.

  ✓He is a factious person in the society who has a good and proper behavior

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- E.g. *Let us assume Chala is a learner – driver. While on training, he crashes into a wall and causes injury to his trainer who seats on the front seat.*
- *Here, Chala is not to be judged as a learner driver. He is to be judged by the same standard as that required of any other driver, namely that of a reasonably competent and experienced driver.*

B. Statutory standard

- This is a standard provided by law.
- ***For example,*** when it begins to get dark, all drivers are required to turn on their headlights. If, while traveling, any driver without her lights on, hits and injures a pedestrian, the law will conclude that she breaches a standard of reasonableness, no matter what she gives as an excuse.

2.2. CAUSATION

- As a condition of non-contractual liability law, their must exist reasonable causation between the conduct of wrong doer and the resultant damage.
- Establishing causation is very important when a number of factors combining together brought about the damage.
- **THE 'BUT FOR' TEST**
  - To determine the cause for the damage the judge may, among the many tests, uses "but for" tests.
  - According to this principle the plaintiff will have to show that she would not have been injured in the way s/he was but for the defendant's conduct.

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- E.G. Suppose that Chala committed a tort in relation to Chaltu and Chaltu subsequently developed cancer. Suppose Further that it is hard to tell whether Chaltu would have developed cancer in the way she did had Chala not committed his tort.
- In this sort of case, the courts, have to determine whether the "but for" test is satisfied by using a balance of probabilities test.

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- They ask: Is it more likely than not that Chaltu would not have developed cancer in the way she did had Chala not committed his tort? If the answer is yes then the courts will find that Chaltu would not have developed her cancer but for Chala's tort and Chala will usually be held to compensate Chaltu for the fact that she has developed cancer.
- If the answer is "no" then the courts will find that Chaltu would have developed her cancer in the way she did even if Chala had not committed his tort, with the result that Chala will usually not be held liable to compensate Chaltu for her cancer.

2.3. Foreseeable damage

- As a matter of principle, the wrong doer will be obliged to make good foreseeable damages.
- The judge put a reasonable man standard and determine whether the damage is foreseeable by a reasonable man or not.
- If the consequence of an act is foreseeable by a reasonable man, that damage may not be referred too remote damage and the defendant shall make the damage good
- There are, however, conditions where "even if the defendant's act caused the damage liability can still be excluded.
- This is when the kind of damage was an unforeseeable consequence of the act, the damage is said to be too remote.

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

- Here, the defendant had set in motion a chain of events. The court has to terminate the defendant's liability at a particular point. The point could be after the damage to the train. Any damage beyond that point is too remote.
- It is, for example, beyond reasonable man's limitation to foresee that a train derailed by a car hits a dam and consequently floods a village.
- Therefore, the damage must be foreseeable and not remote.

Exception to the Foreseeable Test

- There are a numbers of exceptions to the foresee ability test.

✓**The egg -shell -skull rule :**

- This rule applies "Where the plaintiff is suffering from a latent physical or psychological predisposition to a particular form of illness, which the harm inflicted by the defendant triggers off, that his negligence has produced.
- **Economic loss consequent on physical injury**

This is a condition where one single conduct causes two injuries, and the one is not foreseeable by the tortfeasor.

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- E.g. Mohammed causes physical injury to Chalto. Due to this physical injury Chalto suffers economic loss. Chalto can recover compensation for the physical injury that she suffers without having to prove that it is reasonably foreseeable at the time Mohammed commits the act that she will suffer those economic losses as a result.
- As per the Ethiopian Non – Contractual Liability Law a victim who suffers both physical and economic loss should sue the defendant for both at the same time.
- Therefore, as per Ethiopian law simply bringing an action for physical injury does not mean that it follows with compensation for economic loss. The claimant has to bring action for both simultaneously(art.2151)

✓Psychiatric Illness

- If a physical injury brings about the victims psychiatric illness, even though the defendant will not foresee that, she will be liable for the psychiatric illness.
- E.g. *Ukan Okech negligently causes a traffic accident in which Sara is involved. Sara is injured in the accident and developed a psychiatric illness as well. Therefore, Okan Okech is liable for the psychiatric illness Sara suffers*.
- Under Ethiopian law, fair' compensation is awarded to victim as per article 2114(1) of the CCE.

✓Intentional torts

- Which an offence is committed by an actor who knows what she is doing, tortfeasor may be held liable to compensate the victim for the loss she suffers even if the damage is not reasonably foreseeable at the time the tortfeasor commits the act intentionally.
- In other words, where the act is international, even if the result is reasonably unforeseen the offender will be liable for the remote damage.
- If, however, the act is non – intentional but resulted in reasonably unforeseen consequences, the offender will not be answerable for the remote damage.
- Q: **Is there a possibility of classifying faults in our law as non-intentional and intentional torts**?

2.4. Legal liability

- The damage must be a kind of harm recognized as attracting legal liability.

Chapter 3 Ethiopian Non- Contractual Law

3.1. Sources of Non contractual liability law(art.2027)

There are three basic sources of Extra-contractual liability law:

A. Fault based liability(2027(1)):

- Fault based liability is the rule whereas the later two are exceptions……where the law so provides.
- This part is further classified in to general and specific parts. The general rule contains articles 2028 – 2037 and Special cases is from article 2038 – 2065.
- as it is provided in art.2030 fault may be committed either intentionally or negligently. All the details of fault based liability set forth from art.2030-2064

b. Strict liability (2027(2))+ (2066 – 2089)

- A person shall be liable, where the law so provides, for the damage he causes to another by **an activity in which he engages** or **by an object he possess**.
- This category of fault consists of:

✓ Dangerous activities (article 2069 and 2070),

✓ Liability for animals (2071 – 2076),

✓ liability related with building (2077 – 2079),

✓ machines and motor vehicles (2081 – 2084) and

✓ Liability for manufactured goods (2085).

- the defendant state of mind is irrelevant to establish strict liability.

C. Vicarious liability(2027(3)+ 2124-2136

- It is a liability which emanates from the act of third party which the defendant is vicariously liable.
- The liability presumes the legal bound b/n the vicarious defendant and direct defendant such as state Vs. civil servant relationship (2126 – 2128), minor Vs. guardian (2124 – 2125), and liability of body corporate and employer for their employee (2129 – 2132)

NB: The real or direct defendant may cause damage to the victim either on the basis of fault or irrespective of fault.

3.2 General Liability arising from an offence(Fault) (2028 – 2037)

- This part helps to established liability where the special part failed to establish fault of the defendant.
- Whosoever causes damage to another by an offence shall make good it (2028). If the victim wants to get compensation from the wrong doer, **three elements have to be satisfied:**

✓ That s/he suffered damage

✓ The damage was caused by the wrong-doer

✓ The wrong doer was at fault

What is an offence?

- Pursuant to article 2030(1) a person commits an offence where he acts or refrain from acting in a condition which offends morality or the usual standard of good conduct.

Q: **what is usual standard of good conduct?(2030(2))**

The answer is provided in in sub-art.2 of the above provision. If the act is the one which the reasonable man do, that is not a fault. But, if a reasonable man in the same position would not do it, then it is a fault.

Q. **Who is reasonable man?**

- It is an ordinary average prudent or wise person, he is average careful person. He is a factious person in the society who has a good and proper behavior.

Q. **Is breaking a window while chasing a dog that stole a pieces of meat a fault, or not?**

Age and metal conditions(2030(3)

- (3) Unless otherwise provided by law fault shall be assessed without regard to age or mental conditions of the defendant.
- Hence, even minor and insane person should act like reasonable person. It seems the law is concerned more to the victim. However, when assessing the damages the law takes into consideration the mental and the age of the defendant.(2099, the power of equity)

Q. **What do you think the reason behind**?

- **Points to remember:** This provision is a residual and applies only if special provisions does not cover the situation.

3.2.1. Professional Fault(2031)

Professional fault presupposes the existence profession.

- What is profession? Who is professional?
- Defining profession and professional is difficult business. Thus, many attempts to identify some features that can be taken as necessary for an occupation to be a profession.

✓**Training :-**

-in particular filed or activities, not general training such as high school. University and college training exemplifies extensive training.

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- ✓ The training must involve significant intellectual component. It must enrich mental faculties of the trainee.
- ✓ **provide community services to the organized functioning of society**.
- ✓ They process of certification or licensing, organization of members and autonomy of the professional in his or her work.
- ❖ Hence, a profession is an activity or occupation that benefits the society for the proper exercise of which a special training, skill or knowledge is required.
- ❖ A professional is, therefore, some one who practices profession.
- ❖ E.g. Lawyer, Engineer, accountant carpenter etc.

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- A person practicing a profession shall observe the **rules governing that practice**.
- The rules for the profession could be written or it may not be written but is simply recognized by the professionals.
- Therefore, if s/he fails to observe the rules of the said profession fault is committed.

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- In most cases the damage caused by professional are likely be governed by contractual provisions.
- For instance, in case a medical doctor causes damage the liability is with the domain of contract and not tort law.(2647).
- The same goes to contract of advocacy…. It is issues of k+.

❖**Question**

- A child born deformed due to the fault of the physician. can mother claim compensation based on professional fault? Can the child claim the same based on professional fault.

scope of Art.2031

- Article 2031 includes both activities that needs special training and that do not.
- The term *activity* used to refer the later.
- E.g. *the one who often times ride a bicycle is considered as professional the violation of which gives raise to tortuous liability.*
- *An activity differ from profession that the former do not need special training*.

Q. **What is the standards of Professional conduct?**

- It is measured by not ordinary reasonable man.
- It is instead with reasonable professional conduct.
- Hence, it is necessary to call a professional to the court as an expert witness.

3.2.1. Abuse of right and abuse of powers (2032 and 2033)

A. **Abuse of right (intent to injure)**

- Abuse is in general use of power or right for wrong purpose.
- Art. 2032(1): A person commits a fault where he acts with the intent to injure another with out seeking personal gain.
- (2). A person likewise commits a fault where he consciously causes heavy damage to another in seeking personal gain.

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- The above provision forbids miss uses of rights.
- Individual rights are protected as long as they are used primarily for the advantage of the individual herself.
- Under sub article (1) of 2032, the objective of the offender is not to secure personal gain; rather it is intended to injure.
- In sub **article 2** of the same article personal gain is acknowledged. But, where it is disproportionate with regard to the damage, it amounts to fault.

E.g. 1. Every one has the right to speak.

- However, if the right is exercised for the purpose of injuring another, the right holder commits fault.

E.g.2.

- Deliberately cuts the price to uneconomic level to drive Sarah out of business.

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- **In conclusion:**
- **W**here a person either injures another intentionally without personal gain or intentionally causes damage in seeking personal gain, which is less proportional to that of the damage, we say s/he abuses her rights and s/he is at fault.

B. Abuse of power (2033)

- Powers are vested either ***in the interest of individual*** or **given to the interest of public**.
- That power could emanate **from a law** or **the decision of a court**.
- Power that is entrusted to the guardian of a minor is one that emanates from the law.
- The power of a liquidator assigned by a court to liquidate an asset of a business that goes bankrupt is power that emanates from decision of a court (See articles 222 and 227 of RFC.
- In any of case, if such person who is conferred with such power uses the power in his interest or to the benefit of a third party we say there is a diversion of power.

What is the difference b/n exceeding one's power and abusing one's power?

- Exceeding of power is when the power holder acts beyond scope of his or her authority.
- If it is exceeding of power, the victim can claim on the basis of article 2035 law infringement.

3.2.3. Infringement of law (Art.2035)

- When a person violates a law, different consequences may follow:

✓ Criminal sanctions

✓ Disciplinary measures

✓ Civil proceeding

- The first two do not benefit the victim directly. But, civil compensation is the most important to the victim's benefit.
- Thus, article 2035 of CVC is a ground of for ever damage caused by infringement of laws.

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- The types of law violated does not have an effect in establishing the fault of the defendant.
- Article 2035(1) embraces any **specific** and **explicit provisions of law**, ordinance and administrative regulations.
- In the contemporary Ethiopian legal system we have federal and regional laws. The former embracing: proclamations, regulations and administrative rules and judicial precedents of Federal supreme court cassation division .
- We also have state proclamation enacted by states council, regulations enacted by state administrative council and administrative rules issued by concerned body.

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- **The provision is applicable when the law allegedly violated is specific and explicit.**

Q. ***Do you think that violation of constitutional provision amount of infringement of law and thereby attracts civil liability?***

- What if the person does not know the law?(Art.2035(2))
- As ignorance of law is no excuse, the tort feasor does not escape from liability. The presumption is that every body knows the law. That is the reason why laws have been published in Negarit Gazeta since 1942.
- However, if the law is not published the defendant has the no the means of getting knowledge about and such absolute impossibility amounts force majeure that could be admitted as a defense to avoid liability.

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- Scope of application of art.2035:
- There are exclusion of violation of laws

✓ We do not use this article where the fault is regulated by any of the Non – Contractual Liability law provisions. E.g. abuse of power is infringement of law as per article 407 of the Criminal Code of the FDRE. Since this infringement is governed under article 2033, we do not utilize article 2035. If the case it exceeding of power, however, one can cite article 2035

✓ We do not apply art. 2035 to the violation of contractual agreements. As per article 2037, we should apply the appropriate contract provisions.

3.2.4. Chain of command (**2036**)

- This provision governs the damages caused by the subordinates under guidance and order of superiors.
- <u>Points to remember</u>

✓To apply the provision there has to be legally recognized superior-subordinate relationship. Mere superiority in rank is not suffice. The superior has to the have the powers to pass such an order and subordinate has to have the duty to obey and effect the order.

✓ If the subordinate acts on an order given by a superior in rank but not by superior in authority he/she is at fault.

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- E.g. A solider may kill civilians by the order of his/her superiors. The issue is that whether the act carried out on the order of higher authority necessarily relieve the wrong doer's liability.
- There are three scenarios

A. <u>Always abide with law</u>:

- this is derived from the notion of rule of and presupposes that every body both superior and subordinates are well versed with law.
- Therefore, the subordinate shall refuse every order which he/she deems unlawful.

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- Critique:

✓ It delay public administration, especially in military administrations.

✓ In the context of current legal regime with large volumes of laws and technical complexity the subordinate could not establish the legality or otherwise of the order.

B. <u>Always abide with the order</u> (blind obedience rule)

- The subordinate has to forget the law and shall only focus on the order

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- The presumption is that the superior knows the law. Thus, it is up to the superior to give order as per the law.
- **Critique**

✓ The superiors do not always now laws. And in some cases, knowingly or negligently, they may give illegal order.

✓ The argument may result in so many sufferings to human beings and damage to materials as it was during **second world war and genocide in Rwanda**. In all case those who carried on the atrocities invoked superior order as a defense.

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C. **Mid way approach: abide with both law and the order.**

- **As a principle the subordinate shall respect the rule of law**.

✓ The fact that an act has been carried out on the order of superior shall not be a guarantee to relieve from liabilities. ……2036(1) CVC+ 74 CR.C

✓ The subordinate commits a fault especially where he is aware of the illicit nature of the order in particular by reasons of lack of competence of superior and the criminal nature of the act ordered.

E.g. Grave crimes such as homicide, arson and genocide are the one that the subordinate should know.

cont'd

- **Exceptions**…article 2036(3)…….abide with the order

✓ If in the circumstances of the case and particularly under disciplinary compulsion it was practically impossible for the subordinate to discuss the order or disobey, i.e. act otherwise than s/he did, s/he is not at fault.

✓ Circumstances of the case must indicate that the subordinate was in such fear of imminent harm as to make it "practically" impossible to disobey. **It should not based on unfounded reasoning.**

3.2.5. Non – Performance of a contract (2037)

- In establishing fault it is always necessary **to check whether the plaintiff and the wrong doer had contract.** If they had one, then appropriate contractual provision will be applicable.

❖E.g. suppose that **Mr. X** is a passenger in a public bus. While bus rushes to its destination, it turns out of lane and collide with a tax. Consequently, a pedestrian who was walking on the road was seriously injured. The occasion also claim the life of the passenger, Mr. X.

❖Q. Assuming that all elements of tort are fulfilled:-

A. can the passenger bring action under Non-contractual liability law? why?

B. What about the pedestrian? Why?

3.3. Special Cases of fault(2038-65)

- So far the discussion was on fault based liability that are applicable across the board. It is thus important to note where exactly should we apply general categories of fault. It is only when the special part is limited to establish the fault of the victim.
- For the sake of convenience one can put the special parts in **to trespass to person** and **interference against economic interest**. The former inter alia includes **physical assault**, **interference with the liberty of another** and **defamation**. Where as the later embrace **trespass to both immovable and movable properties.**

3.3.1 Trespass to Person

A. **Physical assault(2038)**

- Constituent elements of physical assault
- That the person makes contact **intentionally**,
- There has to be contact to **the person of the victim**: be that may **direct contact** or **indirect** via animate or inanimate things (pouring of water on other face or cause a contact through dog (2038(2))
- Against the victims will

Mere threat to Physical

- **unless otherwise provided by law,** a mere threat of physical assault is not a fault, (2038(3)). Example is found in article 580 of the Criminal Code.
- *Whosoever threaten another with danger or injury so serious as to induce in him a state of alarm or agitation is punishable up on complaint. Here, a mere threat of physical assault is an offence*.

Justifications(article 2039)

- **Unforeseen objection (2039)(1):** the defendant could not reasonably foreseen that the defendant would object to his act. May be due to pre-existing relationship.
- **Self defense or legitimate defense of another (2039) (2)+ 78 cr.c**: it may be therefore either to defend ones own person or another third party's person, or to safeguard the property of which the defendant is a lawful owner or possessor.
- The law, however, does not allow the use of force to protect someone else's property.

Justification…cont'd

- ✓ **Corporeal Punishment [2039(3):**
- This act consists in a reasonable corporeal punishment inflicted by the defendant on his child, wards, pupil or servant. So if a child misbehaves, parents or a guardian may use reasonable force to discipline their child.

Q. **is it constitutional to apply this provision in the contemporary legal regime**?

- See with article 36(1) (e) that children are free of corporal punishment or cruel and inhuman treatment in school and other institutions responsible for the care of children. Moreover, article 576 of the Criminal Code prohibits beating a child by making this act a crime.

Justification..cont'd

- Concerning servant and others, it is as well unconstitutional to administer corporal punishment in its whatever form, for the FDRE Constitution declares that everyone has the right to protection against cruel, inhuman or degrading treatment or punishment..(art 18)
- Thus, this justification has been barred since promulgation of FDRE constitution.

Justification…cont'd

- ✓ **A dangerous Lunatic (2039[4])**
- where the plaintiff is a dangerous lunatic whom it was necessary to prevent from doing harm and the act was done in reasonable manner,
- ✓ **Any other justification (2039[5])**
- This is where the act of the defendant is justified in the eyes of a reasonable person(2030)

B. Interference with liberty defense (art.2040 &2041-2043)

- It is a detention of one person by another with out good cause.
- Three cumulative requirement have to be fulfilled :-

✓ **The restriction has to be made without due legal authority**: (art.2040(1)+(49) of the Criminal Procedure code. The police officer has the power to arrest suspects with or with out warrant as the case may be..

E.g. If ordinary individual arrests another with out due legal authority it may amount to violation of art.2040.

cont'd

- **The detention** must be complete that the victim has no any possible avenue to escape. But, the restraint need not involve physical force. It shall be sufficient for the plaintiff to have been compelled to behave in a certain manner by the threat of a danger of which he could be unaware as per article 2040(3).
- **The other party has have the right to move**…`his is entitled to do so.'

NB: Damage is not a requirement. It is actionable without proof of damage and so it is *actionable per se. The victim is not required to show that he has suffered damage. The mere fact that his liberty is restrained attracts liability.*

Justification (art.2041-2042)

- **Lawful authority(2041):**where the constraint has been imposed on a person in the legal custody of the defendant and for enforcing the authority conferred up on the latter by law(usually criminal procedural law).

E.g. People suffering from mental disorders may be restrained or confined in a rehabilitation center. The center has incur no any liability so long as:

- the constraint is exercised in reasonable manner;
- that the center have a legal custody of the plaintiff and
- The law should confer that authority upon the center

- **Criminal offence (2042):** this has something do with individual duty to assist the justly system. Hence, someone who has the good reason to believe that the defendant had committed a criminal offence may interfere with the liberty of another.

Restriction to criminal offence as defense (Art.2042(2))

NB: This defense is applicable provided that the person that has interfered with liberty of another hand over forthwith the person under his custody to the police. As per article 19(3) of the FDRE Constitution persons arrested have the right to be brought before a court within 48 hours of their arrest.)

Bail (2043):

- A person who has given an assurance to the officials guarantying that bailiff will reside in a certain place , may lawfully interfere with the liberty of the person on bail, where the former has good reason to believe that he is preparing to abscond.

C. Defamation and Justification (article 2044,2045& 2046-2049)

- Defamation is jeopardizing the good will of a person by spreading false information about him. Defamation is an offence included in the criminal code of Ethiopia too. Thus, had it not been this specific stipulation provision, the defendant would not escape from liability pursuant to article 2035 of CIVIC.

❖ **Constituent Elements of defamatory conduct**:

✓ **Communication**: whatever the method might be (word, writing, gesture etc), the defamatory statement has to be communicated to third party. If it not communicated, it will be a mere insult. And people who heard, saw or read the defamatory statement must understand the content therein.

cont'd

Q. Suppose that a manager of **ABC** share company write statements alleging that the world class athlete Genzebe Dibaba uses drag to get strength. Thence, the manager order his secretary to translate in to type written form. Let us assume that the secretary wrote what she is ordered to do so. Has the manager committed defamation? Would the type of language that the statement was drawn make any difference?

✓ **Directed against living person**: (2044)

- Defamation is to make a living person detestable, contemptible or ridiculous and jeopardize his credit, his reputation or his future.

Q. Mr. 'Y' said in certain magazine that Mr. X's father is died of hereditary disease, or the same person has said in a public gathering that Mr. X's is died Of HIV ADIS. Can the wife or children of the deceased bring action for defamation against 'Y'?

- **The defamatory statement should not be targeted towards group of persons (2045(2))**

Cont'd

- There is no group defamation as per article 2045(2). The simple reason is in a sweeping generalization any reasonable audience could not understand to whom the statement is referred to.
- However, the outcome would be different where the author of defamatory statement ought reasonably to have foreseen that his statement would inflict injury on another (Art.2045(3).
- **E.g**. If a media outlet writes with heading that 'all the opposition parties in the current Ethiopian parliament are power seeking and corrupted'. Then, the author of this statement could not escape from liability for there is only a single opposition party in the parliament.

Justifications

- **Maters of public interest(2046):** expressing an idea of public concern is not defamation.
- What are matters of public concern?

✓The statement should be, on its face, statement of opinion, not a statement of fact.

✓The expression should be an opinion on matters of public interest, rather than private interests.

✓The holder of that opinion should hold that opinion honestly and should not act maliciously in expressing that opinion (art.2046(2)). Hence, if the author of the statement know for certain that the statement he is making is false, then s/he commits fault.

cont'd

E.g. If students comments about the services of DMU, it falls under art.2046., for is concerns the general interest of the university at large.

- The exception helps to triggers people to freely discusses about common problem whether they are economic, social or political in nature.
- **Truth of the Alleged Fact (2047):**

✓ one can make another person detestable, contemptible and detestable and ridicule if s/he can prove the truth of the statement.

E.g. You may write in news paper that your neighbor cheats on his wife. When the later brings action against defamation, the defendant may justify that it is true.

Cont'd

- **Exceptions 2047(2):** Even if the statement is true, if it was made solely to injure, then the wrong doer could not escape from liability. The motive is only to injure and the discourse brings no benefit.
- **Immunity (2048):**
- As per article 2048(1) no liability shall be incurred in respect of utterance made in parliamentary debates or **in the course of legal proceedings**.
- These are Members of Parliament [MP] and those who engage in the judicial proceedings.
- **PUBLICATION (2049)**
- Defamation could be committed by way of publication. In whatever form the defamation is carried out, the responsibility of press arising from criminal offences and civil damages shall be laid down in the Criminal Code and the Civil Code.

3.3.2. Tress Pass to Property

- Interference against economic interests is an offence affecting economic interest of the victim.

A. Tress pass against immovable property: (Art.2053):

- It is an authorized or uninvited entry up on the land or in to the house of another.
- **The elements of tress pass to immovable property are**:

➢ **Absence of legal authority**. If some one is suspected of crime, his house could be searched. But still there is no an offence of tress pass so long as the police officer or security team has legally issued search warrant. If, the police officer did not have search warrant it may amount to tress pass. Likewise, a person can enter up on the land or in to the house another in case of necessity.

Tress pass to immovable cont'd

- **Against the clearly expressed will of the possessor or lawful owner of the house or land.**
- **What does clearly expressed will mean?**

- It could either be expressed in words, written form, or conduct. When you build a fence around your house it means that you haven't allowed people to enter. The same is writing a word of here is the '**DOG**'
- **The expression should be given by lawful owner or possessor**.
- **The manner how the offender acted or the means used is not a prerequisite**. A person may commit tress pass by physically getting in to or by indirectly putting objects up on the land of another or in to other's house.

B. Tress pass to movable property(art.2054)

Here element of tress pass to property

- **Without due legal authority**: According to article 2076 of CCE in order to secure compensation, which may be due to her, the owner or possessor of a farmland, may seize and charge animals belonging to another person provided they have caused damage to property. This person has due legal authority to take custody of animal.
- **The defendant takes possession of property**: This conduct includes actual damage of goods, use of goods or moving of goods from one place to another.
- **Against clearly expressed will of possessor or lawful holder of such good.**

Q. Does article 2054 includes theft?

CHAPTER FOUR
INTERFERENCE AGAINST ECONOMIC INTEREST

❖This chapter deals with special cases of fault.
❖Specifically, this part pinpoints faults directed against economic interests.
❖These issues are governed from article 2055 to 2064 of the civil code .

4.1. Pre-contractual negotiation(2055)+(1693)

❖ **Perquisites**

•The defendant declares his\her intention to enter in to contract with plaintiff
• The offer induces the claimant to incur some expense
•Latter on the defendant randomly discard the offer

4.2. Inducement to breach contract(2056)

- The alleged defendant knows in advance the existence of contract between two other persons;
- The defendant inter in to contract with one of the parties ;
- The **latte**r contract renders the performance of the **firs**t contract impossible .
- **<u>NB</u> :**It is not suffice to impose simple inconveniency or difficulty in performance of the first contract.
- E.g. Time inconveniency may or may not render the first contract completely impossible.

cont'd

- Yet, the defendant shall no be liable when the party complaining breach of first contract failed to take the necessary measure, which would have ensured the effective performance of that contract(2056(2)). E.g. payment of price.
- **The victim's remedy**:- the victim can claim compensation from person that breaches his promise on bases of contractual obligation and from third party based on non contractual liability law.

4.3 Unfair competition [2057 civic+ 132-134 com.c]

- Unfair competition is a fault committed against business.
- One may call it as defamation to business establishment
- It is any act of competition contrary to honest commercial practice compromising the reputation of a product or the credit of a commercial establishment.
- It is dishonest act or an act of bad faith and may be committed by publication or any other means.
- Its purpose is obviously to take another's customer away and to control the market alone.

cont'd

unfair competitions includes those acts under ((133(2) of the commercial code:-

-acts w/c mislead customer- using same or seemingly the same trade name or trade mark. E.g. Selling Pepsi cola in coca cola bottle, using 'Fine's trade name as 'FANA'

-Bribing once employee to commit sabotage (deliberate slowing down of work)

-unfair advertisement(w/c may discredit other competitors) such as advertising the product of another as your own, spreading false rumor about the product of another.

cont'd

What are the remedies of unfair competition?

- Damage to be paid by unfair competitors for the damage already suffered
- Injunction order necessary to put an end the unfair competition for prevention of future damage
- Publication of excuse at the cost of unfair competitors

4.4 Simulation (2058)

- Simulation is a deliberate making of certain conditions as of it could exist in reality

❖ **It is** :-

- Inducing another through conduct, nonfeasanc or declaration to believe in a certain state of affair

- And the defendant takes advantage of the plaintiff thereby gain benefit.

cont'd

- **E.g.1** If the agent acts as if he has the power after the laps of agency contract, it may induce third party. Thus, the agent can be held liable for the damage caused against third party.
- **E.g. 2** As it is provided under Art. 2195(c), the principal is liable when by his statement, behavior, or failure to act causes **3p** to believe that the agent with whom that he was dealing was authorized to act on behalf the principal.

4.5. False information (2059)

- As per article 2059 a person who, intentionally or by **negligence?**, supplies false information commits an offence where;

a. The information supplier knows **or "ought to know"(the Amharic version)** that the person to whom the information is supplied or another given person will act up on the information and thereby suffers damage or;

E.g. IF an individual shouted as 'Fire! Fire'! in a cinema hall. The author of this word should have known that the audience would react upon this information and suffer damage.

cont'd

b. The information supplier is bound by the rule of his profession to give correct information regardless of whether 3p suffers damage or not.

e.g. 1 medical doctor is bound his profession to give accurate information.

e.g. 2 Auditor are obliged to supply accurate information. If, for example, an auditor reports that the business is not evading tax while was is in reality aware of evasions, he commits a fault.

Q. Is there any profession w/c allows supplying false information?

Exception (2060)

1.The statements are related to the qualification, conduct, solvency, competence or undertaking of another person,

2. With the intention of helping others. The statement was made with the view to secure credit, money or goods to that person and;

3. Made in forms other than signed document(2060(2))

e.g. -supplying false information to get employed needy person. If the information is n writing and signed, however, it will be injurious falsehood and attracts liability.

-supplying false information about the asset a debtor to secure bank loan.

4.6 Witnesses [2061, 2048+ 446 Cr.c]

- witnesses who testify to the occurrence or the non-occurrence of a given event or the existence or non existence a given fact shall guarantee the accuracy of their statement.
- If not, they shall be liable for those who acted on the faith of such statements.(2061(2)).To put it otherwise, those who have suffered damage on the account of inaccurate information can get redress civil damage from alleged witnesses.
- Besides, witness who knowingly gives the authorities inaccurate information in relation to **criminal proceedings** or **investigations** is also punishable with simple imprisonment as well(446 cr.c).

cont'd

- However, it is the right of witness in good faith to bring action against the person who led them in to error(**2062(3)**).
- Thus, the witness can have recourse against a person who supplied inaccurate information

Points to remember: Witness are immune from being sued and not being liable for what one has said as a witness in judicial proceedings, the actions against them is suit for defamation.

- Where a person comes to seek advice or recommendations and one renders only that **advice** or **recommendations** the latter who gives the advice or makes the recommendation may not be liable(2062(1)).
- **Nevertheless**, the one who gives advice or recommendation should confine himself to **offering advice or suggestion**. It should not be **an order**.

4.7. unnecessary Seizer of another's property or Distrait (2063+2076)

- This provision presuppose a **creditor-debtor relationship**.
- Then creditor, in order to secure debt due to him , can holds the property of the debtor.
- But, If the property that is held by the creditor is disproportionate to the value of the debt this act of the creditor is a fault(**2063**).

E.g. In order to secure compensation w/c may be due to him, the possessor of land may seize and take the charge of animal up until he is fully compensated(**2076**).

- However, this has to be proportional to the amount of damage suffered by the victim.

Distrait cont'd

Q1. **Would the source of debt makes any difference in establishing fault? The debt may emanate from contractual or extra-contractual obligation.**

Q2 .Who is empowered to asses proportionality b/n the debt and property seized? creditor? Court? Reasonable man on the foot of defendant?

Execution of a court order (2064+394&ff of cv.pc)

- An execution officer or a bailiff can carries out the execution as per court order.
- The executor does not commit a fault by executing a court order w/c is made in the prescribed form and in accordance with the law .
- **The execution officer, however, shall be liable where**

✓S/he executes the court order that is not made in a prescribed form, i.e. -either where it does not have the signature of a judge, the seal of the court or some elements are missed ;

✓ -The execution officer exceeds his power.

Fore instance, the bailiff is liable when s/he attaches those properties which are not subject to the attachment pursuant to art.404 cv.p.c

4. 8 Prescription and period of limitation (2030, 2065 &1845 CV.C)

- There are limitations prescribed by law in which one is supposed to bring an action.
  - In contract case it is ten years (1845)
  - In tort case it is two years (2143)

Thus, the creditor has to bring her/his action within these period. If s/he does not, s/he is barred from bringing her action by prescription or period of limitation .

Conversely ,a person who invokes usucaption or time limit w/c has operated to his benefit does not commit a fault. This provision seems an exception to article 2030.

CHAPTER: FIVE

LIABILITY IRRESPECTIVE OF FAULT

(Strict Liability) (2066-2089)

- **Learning out comes**

-knowing the theoretical bases for liability irrespective fault;

-Explain and know the basis of liability of irrespective fault

-Devise defenses for a suit against liability irrespective fault

- Giving effect irrespective of fault provision to hypothetical or real cases

5.1. Rationale behind strict liability

Essence: The defendant can not argue that he acted as a reasonable man. What the victim need to prove is existence of **damage and causation**

- **Why one can be held liable with out his/her fault?**

  -deeper pocket principle:-The owner of animal, building, or motor vehicles are in a better economic position than the victim.

  -If some one is capable of owning a car, then he/she is in a better position to pay damage

- **These defendants are better informed**. Thus, they can get assurance from insurance company
- **Sharing of risk** :the loss and damage of the victim must be spread to the defendant and the society at large…social justice
- **reduction and prevention of risk**: the existence of liability pressurized the risk taker to take proactive measures. This may minimize or reduce risk of damage.

5.2 Bases of liability irrespective of fault

- There are definite ground of liability irrespective of fault .
- Such grounds are specifically provided from art.2066-2085.

5.2.1 **Necessity(2066,2162+75 cr.c)**

(1) A person is liable for harm he deliberately cause to another in order to save himself or 3p from imminent damage to person or property.

- **Imminent danger** : The danger must be real and not remote.
- **To save once own person or property or 3p's person or property**.

Cont'd

- **The right to recourse**
  - The defendant who saved life or property 3p can go against the other whose interest is saved and get indemnified by virtue of article 2162 of the CCE.
- **<u>Assessment of damage</u>:** the rule of equivalency may not be respected in assessment of damage caused due to necessity. It is rather estimated equitably as per article 2103.

5.2.2 **Bodily Harm (2067)**

- (1) The person is liable by his **act** he inflict bodily harm on another.
- (2) no liability is incurred where the act causing the harm was ordered by law, was done in a legitimate defense or where the harm is due solely to the victim's fault.
- What if it was caused by accident? What if it was caused without fault of the defendant? It doesn't matter.

e.g.1 If you while running to catch a bus push somebody unintentionally causes damage, it attracts liability.

2. Causing damage in the state sleep walking

Defenses art 2067(2):-

1. When the act causing the harm is ordered by law

   - medical activities

   -execution of death penalties

   - inflicting harm on the arrestee that resists the endeavors to arrest(art. 56(4) of criminal procedure code)

2. **Where the act was done in legitimate defense**

✓The law acknowledged defending once own person or property, or the legitimate interest of 3p's person or property provided that:

- Their exists imminent and unlawful attack
- The defendant use proportional force taking in to account sex , age, strength and exigency of the attacker
- The danger could have not been averted except by counter attack

3. **Where the harm is solely due to the fault of the victim.** No-contribution is made by the offender to cause that injury and it was solely due to the victim's fault.

5.2.3. Dangerous Activities [2069)

Elements of the provisions

(1) A person who expose another to abnormal risk. The risk is not ordinary and normal. Abnormal risk is created because the activity is inappropriate to the place.

- **Storing or using explosives or poisonous substances.**
- **Establishing high-tension electric transmission lines.**
- **Modifying the natural lie of the land.**
- **Engaging in exceptionally dangerous industrial activities list of** dangerous activities by Ministry of Labor and Social Affairs are Chemical Industries, Cement, Coal mining, etc

cont'd

The provision applies against both public and private institutions.

Can you sue for future occurrence?

No, it is only when the damage materialize that the ptt can claim damage.

- where the danger created materiaiises, thereby causing damage to another.(2069(1))
- **Deterioration of value of property.(2070)**
- Except in case of fault, no liability shall be incurred where the value neighboring property is reduced in the consequence of abnormal risk being created.

5.2.4. Liability for animal

- Under the common law legal system, animals are classified into fierce by nature and tame by nature.
- The purpose of this classification is to determine the circumstances under which the keeper of the animal would be liable, whether the liability is strict or not.
  - the keeper of the fierce by nature is strictly liable for the damage caused by the animal, for knowledge of its dangerous propensity **is being presumed**.
  - in case of team animal for the keeper is liable if science or knowledge of its dangerous tendency could be proved…the victim supposed to prove.

A. Owner's liability (art.2071)

- The owner of an animal shall be liable **for any damage** caused by the animal not **withstanding *that it has eluded his control accidentally*** *or* ***the damage caused was unforeseeable.***

B. **Custodian (holder)(2072)**

- The holder is a person who uses the animal for her personal benefits.
- The holder is liable for any damage caused by that animal while it is under her holding.
- **This includes** where a person has hired or borrowed the animal, or has taken possession of it in order to take care of it, or for any other reason.

Attendant or employees liability (2072(3))

- An employee attending to an animal, or making use of it for the owner's account or for the account of another person, shall not he liable for any damage caused by the animal **unless it is due to his own fault**.

Transfer of Liability (2073)

- Transfer of liability from **the owner to the holder or any person in charge of the animal.**
- A person who suffers damage by an animal may bring action against the owner though the damage was caused while it has been in charge of someone else

Why? The reason could be the fact that the victim may only know the owner or the victim may think that the owner has the capacity to pay damage.

- **Thus**, the owner who paid the **victim may recover the amount from the person in whose charge the animal was when it caused the harm (art.2073(1))**

Limitation to transfer of liability(art.2073(2))

- He may claim to be **indemnified in full**, **unless the damage is due to his own fault or that of a person for whom he is liable.**

E.g. *Kebede is an owner of a donkey that has a habit of kicking people when it is touched on its tail. Ato Abebe borrowed the donkey to take teff to a market. Kebede failed to tell Ato Abebe the habit of the donkey.*

Surrender…. (2074)

- Ethiopian Non- Contractual Liability Law classifies animals into **domestic animals** and **animals other than domestic.**
- **Domestic animals** are those animals, which it is customary to keep for purposes of pleasure or gain (**art.2074(3)**).

❖ **The purpose of classification**

-to determine whether the owner and the person in whose charge the animal is could relieve themselves of their liability by simply transferring the ownership of the animal in case of the owner and paying the value of the animal in case of the person who was in charge of the animal when it caused damage.

A. Surrender by owner (2074)

- Thus, the owner of domestic animal, can relieve from liability by surrendering the ownership or paying the value of the animal to the person who suffered the damage.
- **Restrictions to surrender (art.2074(2))**
- Where the damage is the consequence of an offence committed by himself (owner) or by a person for whom he is liable(children & employee).
- **An animal other than a domestic animal(2074(1))**

B. Surrender by the holder (2075)

- The person in charge of the animal shall only be liable to the value of the animal at the time when the damage was caused(2075(1))
- **Limitation to transfer of liability (2075(2))**
- *Where the damage was caused by an animal other than a domestic animal or*
- *Arises from an offence committed by himself or by a person for whom he is liable*.

Victim's guarantee (2076)

- Animals may cause damage to crops or grasses.
- The owner or holder of these interests may seize the animals as a guarantee until compensation for the damage is paid for her.
- Sub article (2) governs a situation where the animals brought damage disproportionate to their value. Such animals could be dogs or cats, which the holder of the interest could kill and notify the owner.
- (2) The victim may kill them where circumstances require this in order to prevent substantial damage disproportionate to the animal's value.
- (3) He shall in both events notify the owner of the animals without delay or, where the owner is unknown to him, take the necessary measures to ascertain him.

5.2.5. Liability for Buildings (2077– 2080)

- *For whatever reason* ***the building is collapsed or is demolished and brought damages, the owner is liable(2077(1)).***
- *But, the owner's liability is only for any damage due to the building, not for all damages.*
- Buildings could create risk **due to man made** and **natural reason.**

E.g. when a building collapses due to lack of maintenance, the cause is man made.

- ✓When a building causes damage due to earth quake or other natural reason, we say the reason is natural.

Transfer of liability ((2077(2)).

- The owner can transfer liability to **the builder** or occupier or from the person by whose fault the damage was caused
- ✓ The owner can claim compensation based on contract against the builder or the occupier.
- ✓ The owner can also take action against the occupier on basis of fault extra-contractually.

Surrender of building (2078):

❖owner of building can limit liability by surrendering ownership of building to the victim, where the damage **is not due to the fault committed by the owner or a person for whom he is liable.**

❖**Fore instance**, when the owner failed to maintain the building and as a result, the building collapsed and caused damage the owner can not limit his liability(2078(2)).

Limitation of liability by the occupier

•The occupier of building is not allowed to limit liability to the extent of the value of building(2078(1) Vs (2075) why? B/c occupiers are liable strictly only for objects falling from the building.

Occupiers' liability (2080)

- The occupier is liable for any damage caused by the object falling from the building
- **Question:** what are these objects?
- those objects or things which are not part of the building
- They are household utilities and other similar objects.

5.2.6. Liability for Machines and motor vehicles(2081)

- What are machines and motor vehicles?
- **Machines** are mostly fixed in certain places. Nevertheless, there are certain machines which are not fixed such are water pumps, bulldozers, etc.
- **Motor vehicles** are not fixed rather they are mobile.
- **Liability:-**

❖ **Machine** usually cause damage to employees who are connected with the machines through a contract of employment.

Cont'd

- Thus, the owner of machines are usually liable for the employees in accordance with the labor proclamation 377/2000.
- **While for others the owners** of a machine or vehicle may not have contractual relationship and the owner shall be liable for any damage caused by the machine or vehicle in accordance with extra contractual liability law legal regime.

owner's defense

=Non-valid defense .....2081(1)

- The damage may be caused by a person who was not authorized to operate, handle, or drive the machine or motor vehicle .....

=Valid defense

✓ Proving that at the time when the damage was caused , the machine or vehicle had been stolen from the owner(2081(2)).

Question :

- **Can a father raise the defense of theft when the child causes damage taking the key of the car?**

=In order to say there is theft;

1. The alleged offender should intends to get unlawful enrichment,
2. The alleged offender has taken the property away

Keeper and agent's liability(2082)

- The keeper : is a person who has some kind of agreement with the owner.
- This person drives some kind of benefit from their holding .
- They persons are liable when the machine or motor vehicle caused damage under their custody

Employee's or attendant's liability (2082(2)).

- Where as an agent or employee who has charge of the machine or vehicle for the owners account or for the account of another person shall not be liable unless he is at fault.

E.g. If someone has haired as diver he is not liable for the damage due to the vehicle except in the case of fault.

Transfer of liability(2083)

- The victim may not know the keeper or the agent who caused the damage.
- Thus, they could proceed against the owner and the owner may not refuse making good the damage.
- **Instead**, the owner who paid compensation to the victim may recover fully from the person in whose keeping the machine or vehicle was, provided she/he has not committed offence or a person for whom she is liable has not committed a fault

Collision between vehicles(2084), half-half rule

- Two motors vehicle could collide each other.
- When it is not proved the accident was due, entirely or chiefly, to the fault of one of the drivers, it shall be deemed each driver has contribute equally to the accident.
- E.g. Suppose that car **A** and car **B** are collide each other. car A's damage was 10,000 birr while **B** suffers 2,000 birr.
- In this case, the owner of each vehicle, or person responsible for it, shall bear half of the total amount of the damage resulting from the accident.

5.2.7. Liability for manufactured goods (2085)

Product liability is believed to foster several objectives;

- It create safety incentives
- Reduce the cost of litigation
- Create customer confidence

Conditions of product liability(2084)

- **The product must be sold for profit** .
  - Thus, if some one gives a manufacture for donation and the donee has experienced injured this provision cannot applicable.
  - Similarly, when two person exchange good each other and one bears damage as a result ,the victim shall not be redressed tortiuosly .
- **The person should be one who produces or manufactures the product**. Not the whole seller or retailer.
- The later may be liable based on contract

Cont'd

- **The damage should arise from the normal use the product-**
- The victim who sustained damage due to improper use of product can not claim damage from the manufacturer .
- **The defect that caused the damage should be such that cannot be discovered by customary examination of the product used(2085(2))**

Cont'd

- **The victim should not purchase the product directly from the manufacture (2088).**
  - If the consumer purchase the product that cause damage directly from the producer, the victim can sue on contract.(2088 &2287)

5.3. Defenses to actions of liability irrespective of fault

- Even though the law seems not to have attached absence of fault as defense, it has also other important defenses.
- Some defenses are specific such as:-
- Sub article (2) of 2067 presents order by the law and legitimate self-defenses as justifications for bodily harm,
- Article (2081(2)), if the vehicle or the machine is stolen and that can be proven by the owner,

Exemption of liability (2086)

=Sub 1 of 2086 *lists* defenses that are not acceptable*(Amharic version, w/c* seems correct);

- *Proving absence of fault*
- *The cause of damage is not known*
- *The damage was uncontrollable :- the damage is arise from* force majeure or acts of God.
- *Appeal to authority:- the damage was caused by the fault a third party.* **What are those third party? Employees? agent? Keeper?**

Uniform defenses for action against strict liability

I. Victims' fault (2086(2)) :

❖if the **victim** of the damage caused by car, animal, building, motor vehicle, machine or dangerous activity **was at fault** ,the defendant shall relieve from liability.

E.G if the pedestrian suffered damage crossing the road while the green light was on, he has committed a fault.

•B/c reasonable person would not cross the road while cars rush ahead..

E.g.2 ELPCO erects huge electric power towers usually with a notice of caution. if a person touches this tower neglecting the notice he has committed a fault.

II. Other objects(2087+2027(2))

- Other than the stipulation in article 2066-2085, a person shall not be liable strictly unless s/he committed a fault or a fault has been committed by a person for whom s/he is liable.
- **E.g.** The a tree falls and crushes a vehicle.
- As per article 2087, the owner of the tree shall be liable where the cause for the damage his fault or an offence committed by a person for whom she is liable.
- Thus, she is not liable for the mere fact that she is the owner of the tree for article 2087 states.

III. Contractual Relation (2088)+2037

- The victim can not resort to tortuous remedies while he/she has contract with defendant.

E.g.1 'A' works in a metal factory. A poisonous substance inflicts injury to his body. At this juncture, the victim can not sue the employer on the bases of Art.2069.

E.g.2. You may suffer damage while going in a taxi .

- And the incident could cause the death of passengers and pedestrians. The passenger can sue based on carriage contract. The pedestrian ,however, can claim based on the Art.(2081)

Cont'd

IV. **Disinterested Relationship(2089)**

- Here the victim may not have any contract with victim. But the victim, **is a kind of parasite**.
- Therefore, the owner or the holder of building ,animal, or thing are not liable when at the time damage was caused the defendant drives no benefit.
- In such a case the owner or the holder is liable only when he/she has committed fault(2)

E.g.1. The case of street children

E.g.2. Free transport service

CHAPTER SIX
VICARIOUS LIABILITY(LIABILITY FOR OTHERS)

- **Definition:**

➢ Vicarious liability is where one person is made liable for the tort of another person.

➢ Vicarious liability is when one person is liable for the tort of another

➢ It is an indirect way of strict liability.

- **Why the law makes one person responsible for the act of somebody else?**

6.1. Rationale of Vicarious liability

1. **Control test**:-the vicarious defendant has the power to control the manner of original tort feasor.
2. Hence, the vicarious defendant commits a wrong for the he failed control the behavior and manner of persons under their control.(Art. 4 of Labor proclamation and RFC articles 258-260)

Control test cont'd

- As the employer guide the over all activities it should put up with the damage due by the employee.

E.g. The control test is not free from criticism, especially concerning employees "…as many employees perform skilled tasks, which the employer is incapable of understanding

2. **Deep pocket principle**:-

- The law prefers persons with better economic position. It prefers the father from the child, the employer from the employee, the state from civil servant.

3. **Moral consideration and economic gain:**-the vicarious defendant drives benefit from the activity of direct defendant. It is also morally fair the bear the risk of damage caused by another.

4. **Loss spread**:-the vicarious defendant can spread loss through adding cost and get inssurance.

6.2 liability of parents others for the tort of Minors

Liability of parents

- **There are two points of arguments as to when would the liability of the parent arises**
- **Civil law approach: Presumption of fault**

✓ It is presumed that the damage is due to the failure on the part parents or other person to exercise effect control over minors.

✓ **Thus, if** the parents and other persons are effetely discharged the obligation, they cannot be liable for the tort committed by the child.

➢ **Common law approach**:

- A simple existence of parentally relationship should not make liable parents and other persons for the act of children.
- It is only when the defendant proves the failure of parents and other persons to exercises effective control.

In both cases the liability of parent are not strict and absolute.

➢ **What stand the Ethiopian law takes?**

- **Are they liable for all damage caused by the child.** See from bearers of liability and the essence of article 2136 together with the Amharic version of article 2124, 2027(3).
- Are they liable for damage caused by the object possessed by a child.

Liability of parent cont'd

Who are persons answerable for the act children?

- According to Art. 2124 of Ethiopian civil code the father is a primary person to be liable for his minor child is wrong doing.
- The mother is only liable where she exercises the paternal authority over the child as per article 2125(a).
- This provision shows the statutory superiority of the husband during that time. B/c the husband was the *head of the family, (article 635 civic)*

Liability of parent and others

- *However ,currently this provision is not available;*
- ✓ *Firstly, Art* 34(1) of the FDRE Constitution underlines equal rights of spouses while entering into, during marriage and at the time of divorce.
- ✓ *Secondly* , pursuant to Art.219 of the RFC, the father and the mother are, during their marriage are jointly guardians and tutors of their minor children.
- Article 2125(a) is, therefore, applicable where the father of the child is unknown, died or the spouses are divorced.
- The words in lieu of article 2125, therefore, do not apply for the mother

Liability of others (art 215(b))

- Where the child lives outside the family home, the person in whose charge the child is placed shall be liable.
- The child could is said be living outside the family home when she/he lives in governmental or private orphanages, when they learn at school, when they are at work, undertaking in an apprenticeship.

6.3 *Liability of the state (2126)*

- State refers both to government at Federal and Regional levels (2128 + 47 of FDRE constitution).
- And civil servant means a person employed permanently by either Federal or Regional Governmental offices.
- While giving services the civil servant or government employee may commit fault.
- The fault could be personal or professional fault.
- Where the fault is personal, the state shall not be liable(CCE article 2126 (3).
- Where the fault is professional, however, the victim may claim compensation from the state.
- Nevertheless, the state may subsequently claim it from the servant or the employee at fault(2126(2)).

State liability

- What is professional fault and what is not?

Art.2127: if the civil servant or employee believes in good faith that she acted within the scope of her duties and in the interest of the state, then the fault shall be deemed professional fault. And good faith presumed (2127(3))

- All other faults other are deemed to be personal fault(2127(2))

6.4. Liability of bodies corporate and employers [2129-2133]

see article 394-404 of civil code: Thus bodies corporate are those associations with a view to obtaining a result other than the securing or sharing of profits. It includes religious institutions, trade unions and other groupings.

The liability of employer arises in normal employee-employer relationship

Employers liability

- What is employment relationship(Labor Proclamation No.377/2003)?
- As per that proclamation employer means a person or an undertaking who employs one or more persons who agree directly or indirectly to perform work for and under the authority of an employer for definite or indefinite period or a piece of work in return for wage. A worker or employee is a person who has an employment relationship with an employer in accordance with an employment contract.

6.5. Liability of managing editor, publisher and printer(Liability for defamation by print media)

- Under article 2049 a person is liable for defamatory matter because of positive act, i.e. where she communicates words, pictures, or written materials to at least one person other than the person defamed.
- Here the author has a primary responsibility. Nevertheless exceptionally one may also be liable for not taking positive steps to prevent the publication by someone else". or, "because she approved it" Thus the managing editors of the newspaper, the printer of the pamphlet or publisher of the book shall be liable for defamation committed by the author of a printed text.

Defamation via print media Cont'd

- Hence, the authors are liable for positive acts under article 2049 for they have primary responsibility for the defamatory matter. And the managing editor, the printer and the publisher may be liable for either approving the defamatory matter or as accomplices.
- For under article 2136(2) it is stated that the person who caused the damage and the person whom the law declared to be liable for such damage shall be jointly liable to repair the damage

Defamation via media cont'd

- It seems there is, however, one outlet for the printer, i.e. a person whose name is defamed may bring action against the managing editor, or printer or the publisher for it is easier to identify and locate them rather than the author. Under such circumstances the managing editor, printer or the publisher may demand that the author of the damage be made a party to the proceedings brought by the victim for compensation.
- The reason seems that the person who caused damage (the author) shall repair it notwithstanding that another person (printer, managing editor or publisher) is declared by law to be liable for such damage.

CHAPTER SEVEN: REMEDIES TO EXTRA CONTRACTUAL WRONG

7.1. Conceptual Analysis of Damage and the classification thereof.

❑ Conceptual analysis of damage

- Damage is a harm or injury caused to a person's legitimate interest.
- The interest affected may be related to the person's material (pecuniary) interest or to moral (non pecuniary) interest.
- The cross reading of Articles of the civil code clearly shows that, as a matter of principle, proof of the existence of damage is a mandatory requirement for the plaintiff to claim compensation.

7.2. Classification of damages

- On the basis of interest affected damage can be classified in to.

7.2.1 Material damage

- An injury caused to a person's economic or financial interest.
- This damage affects the victim's economic status in one or another way.
- E.g. The loss of earnings with all other expenses attributable to the tort such as medical care, expense of traveling and cost of equipment.

cont'd

- Material damage have two important components.

A. Present material damage:

- ✓ Refers to the material or pecuniary loss sustained by the victim occurred from the date of the c**ommencement** of the injury up to the **date of final** assessment by the court.
- It can be measured by the difference between the plaintiff's present estate and what would be now his estate had the harmful fact not occurred

cont'd

- Present material damage embraces
  - A ***damnum emergens***, a Latin term, which denotes the occurrence of a loss (**diminution of estate**).
  - It refers to increment or creation of a liability to the plaintiff. It is the circumstances where a person becomes civilly liable to a third party because of the wrongful act of damage caused by the defendant.
  - A **lucrum cessans**, the Latin term, which denotes the prevention of a gain (non-increase of estate).

Example

- Assume that while Mr. **A** is driving Mr. **B's** car without authorization from the latter, he was involved in a severe collision with another car which belong to Mr. C.
- Assume also that both the cars involved in the collision are damaged and the cause for the collision is proved to be the fault committed by Mr. A who drove the car contrary to traffic regulations.

Cont'd

- In this hypothetical case, it is possible to discern the *damnum emergens* caused to Mr. B's property right. Firstly, the value of the car is reduced due to the damage caused during the collision. This diminishes the value of Mr. B's asset. In order to repair the car, Mr. B has to pay some amount of money.
- Secondly, by virtue of Article 2081 of the civil code, Mr. B is liable to compensate Mr. C for the damage caused to the latter's car. This fact also decreased Mr. B's estate, i.e. his credit balance is affected.

cont'd

Lucrum cessans:-

- The owner of the car, Mr. B, in addition to the money he paid out of his pocket to repair his damaged car and the money he has paid in the form of compensation to Mr. C, he lost the daily income he would have normally derived by his car.

B. Future material damage(2092)

- Future damage includes the damage that will occur certainly or with a higher probability after the date of judgment(art.2092)
- The dividing line is the date of assessment of damage by the first instance court of other decision maker.
- Where the judgment as to the amount of compensation is appealed and varied, it is the date of the new assessment on appeal that separates present from future harm.

Why?

- **To make use of** limitation period (article 2142)
- **The issue of** ***res judicata*** article 2151. The victim may not bring a fresh action for compensation for other damage he has suffered unless the damage was caused independently of that for which he has already claimed compensation.

7.2.2. Moral Damage

- Moral damage refers to the harm or injury inflicted to a person's feeling or non-pecuniary interest
- It is an injury caused to a person's honor, reputation or personal feelings of the victim.
- NB: There are situations where the same tortuous act can inflict both material damage and moral damage to a person.
- This is usually what happens in many bodily injury cases.

7.3. Criteria, Modes and Extent of Compensation for damage

7.3.1. Criteria for compensation of damage

I. **The harm must be sustained by plaintiff**.

- The victim should show his vested interest as per article 33(2) cpc.
- The plaintiff shall demonstrate source of independent claim, (2095) or claim on the basis of derivative interest(2113,2144(2),2115(2))

Cont'd

II. **The interest harmed must not be illegitimate(unlawful and immoral)**

- This criteria is bases itself from the close reading of article 1677 and 1716 of contract provisions.
- Article 1716 illustrate that obligation shall no be effect where the obligation of the parties or one of them are illegal or immoral.
- And pursuant to article 1677 contractual provision shall apply notwithstanding that they **do not arises out of contract.**

III. The harm must be reasonably certain (2092) (2102(2))

- Art. 2092: future damage which is only certain to occurs shall be make good without waiting for it to materialize.
- Art. **2102(2): No indemnity shall be awarded in respect of a damage of which the very existence, and not only the amount is doubtful**
- Hence, ***certainty*** of the harm's occurrence is a perquisite for all case of extra-contractual liability claims .
- **BUT,** absolute certainty is not required
- E.g. Loss of chance(lottery or prize loss). If the number was wining the victim could be redressed. But, simply the value envisioned on it is uncertain.

7.3.2 Mode of compensation

- Mode of compensation is method of redress of damage sustained by the victim.

A. Mode of compensation for material damage

- **Pecuniary compensation, the rule,(2090(1))**
- The rules of modes of compensation for material damage is **pecuniary or in terms of money**.
- It is b/c the damage affects mainly the victim's economic interest.

cont'd

- **Non-pecuniary mode of compensation, exception (2090(2))**
- The court may depart from the rule of pecuniary mode of compensation when it thinks right.
- It may be awarded in **lieu** or **in addition** to pecuniary mode of compensation.
- These includes:-
  - ✓ **Restitution (2119),**
  - ✓ **injunction (2121),**
  - ✓ **abandonment or reparation in case of unfair competition (2122)**

Cont'd

- The right or the liberty of the defendant and rights of 3p are restrictions to the departure (2120)
- E.g.1 Compulsory service may not be ordered for it is against constitutional right of the defendant .

B. Modes of compensation for moral damage

I. **Non pecuniary mode of compensation, rule(2105(2))**

- **Pecuniary compensation (exceptions) when the law specifically provided that mode of compensation.**
- Pecuniary mode of compensation for moral damage are provided from 2106-2115 and elsewhere the law envisioned the same.
- **NB**-Even in such cases expressly stated by law awarding monetary mode of compensation is not mandatory duty of court. (the **word** '**may**' in each provisions of article 2106-2115 shows the discretion of court.)

7.3.3 Quantum/ Extent/of Compensation

7.3.1. Quantum of Compensation for Material Damage

I. **The rule of equivalency(2090&2091).**

- As a rule, the *damage is made good by compensating the victim by means of an equivalent amount of* ***damages*** *(2090)*
- The compensation due by the person legally liable is equal to the damage caused to the victim (2091)
- However, there are exceptional **downward derogations** where the compensation could be less than the damage incurred.

II. Departures from the Rule of Equivalence

- The term departures denote the circumstances that justify the mitigation of the liability of the defendant which is less than the actual damage caused to the plaintiff.
- There are several ways in which a departure is made;

A. Compulsory Mitigation

- ✓ These are binding on the courts' ruling
- ✓ Stipulated to the benefit of the defendant and can be invoked as of right

E.g. Art(**2098**)+(**2086(2)**). where the damage is due partly to the fault of the victim, the latter shall be entitled to partial compensation only.

- ✓ The compensation shall be reduced in proportion to his relative contribution.

B. **Discretionary Mitigation(**2099-2103**)**

- This types of departure largely depends up on courts discretion.
- The defendant may not rise mitigation as of right.
- ‘*where the power of equity requires* ‘2099-2103”’ and *’the word may' from* Articles 2099-2101 signify the discretionary nature of mitigation.

Examples

- **Art. (2099+2030(3)):-**where the fault giving rise to the liability is committed by a person who was not in a state to appreciate the wrongful nature of his conduct, the court can mitigate the amount of compensation
- **But**, one should note that this provision is applicable is only applicable for fault based liability. It doesn't be pertinent for strict and vicarious liability claims.
- **Art. (2100+2036):-**The court may also reduce the amount of compensation for damage caused under the "chain of command")

- **Unforeseen damage Art.2101+(2039(1):-** sometime this totally justify the defendant from making good the damage.
- In some situation it can serve as a ground of mitigation (2071(1), 2077(1)+2101).
- **Art. (2103+2066):-**when a person causes injury to the property of another because of acts of "necessity" the amount damage to be paid for the victim may reasonably reduced

NB–*the reduction is limited to property damage and do not encompass damage to human person*.

C. Optional mitigation (2074,2075,2078)

- This category of reduction depends on the discretion of the defendant himself and not the court.
- The defendant may choose to surrender the animal or building instead of paying an equivalent some of money.
- But, the defendant cannot exercise this options where the damage was caused by his fault or that of a person for whom he is answerable. (Article 2074(2) cum Article 2078(2)).

D. Nominal Damages(2104)

- This is another instance where the rule of equivalency between damage and compensation may be excepted.
- Without the need to proving any real or actual damage, a very small fraction of money can be awarded to the victim simply as a recognition or declaration of his rights violated or infracted by the defendant.
- E.g. **Art. 2038:-** Compensation for physical assault and interference with liberty of another.

7.3.2. Quantum of Compensation for Moral Damage

- **Equitable** or **fair** compensation is the standard of compensation of moral damage.
- This can easily be understood by the wordings of Arts. **2106- 2126** of the civil *code('fair compensation may be awarded')*
- There is no fixed standards of measuring the extent of moral damage.
- Cognizant of the danger in assessing extent of moral damage, our civil code puts maximum ceiling, which is one thousand birr(2116)

Q. **Is it fair?**

- Proclamation no. 410/2004 copy right and Neighboring Rights Proclamation fixed a minimum of one hundred thousand Ethiopian Birr compensation for moral injury (Art 34(4).

7.4. Specific cases Compensation,

7.4.1 compensation for personal Injuries, moral Damages vs. Pecuniary Loss(2067 &2113)

- Personal Injuries bears both material and moral damages.

➢ **Moral damage**:- **injury feeling of a person**

Q. **To whom?**

- **Does it include** claimants who is wholly unconscious due to personal injuries?

- **Argument 1.** B/c damages are awarded not to punish the wrongdoer but to compensate the person injured, and a dead and unconscious man cannot be compensated.
- **Argument.2 :-**It would be horrible if the defendant had to pay less because, in addition to inflicting physical injuries, he had made the plaintiff unconscious.
- Hence, moral damage should be paid in even when the victim becomes unconscious due to personal injuries

What Is the position of Ethiopian civil code regarding compensation for personal injuries?

- It is strictly prohibited to inflict bodily harm(2067).
- Consciousness is not defining factor in compensation of moral damage in art.2113
- It is immoral to deny a person by the mere fact of victim's unconsciousness.

II. Pecuniary Loss(material damage)

- The material damage involves;
  - **-loss of earnings**,
  - **-medical expenses and other outlays**
  - **-Future harm:-**
- While assessing future pecuniary loss, the following **key variables need to be considered**:
  - the future progress of the injury;
  - the claimant's future employment prospects.
- **NB:** There are jurisdiction that also such as inflation and interest in to account.

In Ethiopian:

- In Ethiopia, material damage (pecuniary loss) that will be "certain to occur" in the future is compensable without waiting for it to materialize (Article 2092 civil code).
- Whenever it becomes difficult to exactly fix the amount of future damage the court is empowered **fix the amount based on equity(2102)**
- **Besides, when it is too complicated to certainly assess the future damage on the date of judgment** , court has the discretion to grant a **provisional judgment** that may be reconsidered within a period of two years upon the application of the parties(2150(2)

Extent of compensation of personal injury

A. **Injury of an employee**

- The extent of compensation of an employee is dependant up on the degree of disablement.
- As Art.99 of labor proclamation, bodily injuries that decrease or impair the capacity of the person injured to work have the following degree:-

  -Temporary disablement;

  -Permanent:

  - partial disablement

  -Permanent total

  - death

Cont'd

Temporary disablement

- Total
- Partial
- **Permanent**

  -partial disablement

  -Permanent total
- **death**

temporary disablement the pecuniary loss includes:-

- loss of **net** wage,
- loss of interest that would accrue from saving
-costs of medication
- any other alleged and reasonable costs

- **In case of Permanent partial disablement:-**

- loss of **net** wage,
- loss of interest that would accrue from saving part of the wage,
-costs of medication
- decreases of the future earning

In case of Permanent total disablement

- -the economic loss is absolute in nature
  - Present material loss, which includes losses of earnings up to the final assessment of the court
  - -Future material losses loss to be materialized after assessment by the court

B. Injury of self-employed Persons(2610 & 2632 and ff)

- They don't work for wage .
- They are independent entrepreneur.

E.g. Publisher, private doctors, craftsman and any other independent business man.

- **What is the extent of damages for self employed workers?**

Consideration are the following;

- *Pre-earnings of the victim*
- *Having regard to inflation* and other circumstance

C. Injury of Non-Employed Persons

- Persons who are neither employees nor self-employed individual
- The reasons for their unemployment could be, among other things, **lack of incentive**, **opportunity, or ability to work**
- E.g. Suppose that a medical graduate does not practice because of having inherited enough assets to live on.
- In this case, what is the yardstick to quantify compensation sustained by the victim?
- Loss of professional earnings?
- Loss of earning non-employed worker?

Other perspectives

- In the USA, the victim should be compensated for loss of professional earnings. B/c the victim has the right to choice leisure or work at different times
- In England, the court would refuse compensation for professional loss of earning.
- Latter approach seems plausible and Ethiopian tort law follows the same **(2091) .**
- BUT, **can't a person have choice between leisure and work at different times?**

7.4.2. Compensation for Fatal Accidents(2095-2096)

- It is an independent claim that the dependants of the victim allege on behalf of them.
- It is a claim for loss of economic support they suffered due to the death of victim.
- **Methods of calculation(consideration)**

  -the amount of annual dependency

  -the number of years the support may continue.
- This is normally begins at the death of the deceased and would continue to retirement age.
- Dependency benefit here is **compensatory** by nature
- Equitable moral damages may be awarded to close relatives of the deceased which is not compensatory (2113).

7.5. Who May Claim Compensation?

- Claimants (plaintiffs) in Law of torts can be
- Those who can institute a civil action for compensation **on their own behalf** and **for their own benefit**.
- Those who can institute action by subrogating (substituting) the victim of the **tort(derivative claims**).
- As provided under Article 2146(1), the victim's claim for the damage may not be assigned so long as it has not been maintained by a judicial decision and the amount fixed. .

7.5.1. Independent Claimants

I. ***The victim himself*** *(*2146(1*):-* Where a non-mortal bodily injury is caused to a person or where an injury is caused to any person's material interest, only that person whose interest is at stake can sue the harm doer for compensation.

- However, after the victim won the case the right can be assigned to 3p pursuant contract law(1962 – 1975).

•**Exceptionally,** there are circumstances where a person can institute an independent action for compensation on his own behalf for non-mortal bodily injury ensued to another person**.**

A -Art.2114(2)-where a girl or a woman has been raped, equitable compensation may also be awarded to the husband of the woman, or to the family of the girl.

Q. Would the reverse be applicable if the husband is raped in an act of homosexuality?

B. A bodily harm to a wife(2115). where the companionship of the wife is rendered less useful or less agreeable to the husband because of tortuous act of another person the husband is entitled compensation

•This form of compensation is in addition to the compensation awarded to the woman for the bodily injury she sustained.

Q. Would this provision be applicable if the companionship of the husband is rendered less useful or less agreeable to the wife because of tortuous of the defendant?

II The right of certain next of kin in Case of death

- Dependants of the Deceased can claim for compensation of Material Damage they suffered due to the death of their bread winner(2095).
- The **spouse of the victim, his ascendants and descendants** can institute an independent action for compensation for the material damage they have sustained because of the death of the victim.

NB:- *Any of the persons listed under Article 2095 have to show that he had been supported and that the support would have continued had the death of the victim not resulted from the accident.*

Question that matters:- should the claimants be in a state of necessity for care and support in order to sue?

- **According to some commentators**, unless the material supports that were supplied by the deceased under Article 2095 in a regular manner and the receivers of the support were in a state of necessity to claim maintenance allowance they are not allowed to get compensation.
- **On the other hand**, (**Mehari**), claimants are entitled for the loss of material support they would have received from the deceased had not the latter been killed by the event for which the defendant is liable.
- The finical capacity of the defendant doesn't matter.

III. Family of the Deceased for Compensation of Moral Damage(2113,2116&2117)

- The families of the victim may claim compensation for the moral damage they suffered by due to the death of their family member.
- *Who is family of the deceased?*
- *How much money they are entitled?(2116-2117)*
- *Does it exceed 1000 birr*? (1000 for each)?

7.5. 2 Derivative Claimants

- These are persons who can bring action for compensation by substituting the victim of the tort.

I. ***Heirs of the*** *Victim,2144(2):-*

- *Both testamentary or in testamentary heirs of the victim may institute action for compensation for* ***material damage suffered*** *by the victim*
- *However, heirs of the victim cannot claim compensation for the moral damage sustained by the victim, unless the victim has initiated an action to such effect during his lifetime.*

II. **Creditors of the Victim** (2145(1)

There conditions are that need to be satisfied

- There must be a debtor creditor relationship between the victim and the person to be subrogated
- The damage suffered by the victim must be solely against his **pecuniary interest** as opposed to damage connected to the debtor's person, bodily integrity or honor;
- The damage must be suffered by the victim after the creation of the debtor-creditor relationship
- The creditor has to secure authorization

7.6. Who May Be Sued?

7.6. 1. **The Author of the Damage**(Art.2136)+**2142**

- Primarily in tort basis liability the author of the damage shall be sued
- the author of the wrongful damage is liable to make good the damage he caused to another by his fault regardless of whether or not there is another third party answerable under the civil law (Art.2136).
- However where damage has been caused by the fault of one or another of several persons and it is impossible to determine which of the persons involved is the author the victim shall establish action jointly 2142(1).

7.6.2. The Vicarious Defendant

- vicarious defendant could be sued jointly and severally with the author where there is a legally recognized relationship between the author of the damage and the vicarious defendant(2136+2155)

7. 6.3. Heirs of the Person liable(2144(3))

- As person shall not inherit only the rights of the deceased person but also the obligations attached to such rights the heirs may be sued for the damage caused by the deceased during his life time.
- **NB**- the liability of heirs may not exceed the value of the property devolved to them by virtue of the succession.

Chapter: Eight unjust enrichment

8.1. General Provisions Applicable to Unjust Enrichment

- It is a kind of residual remedy for the victims of a certain act/omission by another.
- It a gap filling law that only comes into operation when the laws of contract, property and tort fail to provide appropriate remedy.
- The basic principle is that a person who has unjustly enriched himself shall make restitution to the other

Cont'd

- Article 2162 of the civil code sets the general principle as follows: "
- *Whosoever has derived a gain from the work or property of another without a cause justifying such gain, shall indemnify the person at whose expense he has enriched himself to the extent of the latter's impoverishment, and within the limit of his own enrichment*.

Requirement(element)

- The plaintiff should have suffered an impoverishment(loss of asset or increment of liability). It is getting poorer.
- The defendant has enriched (acquire asset or decease liability) at the expense of the plaintiff . It addition of wealth or getting richer.
- The enrichment does not have a valid contractual or legal basis(legitimate cause)

Example

- **X** handed over 2000 birr to **Y** to pay his debt. But, he was mistaken as to the identity of the debtor as he hadn't borrowed the debt from the latter.
- **Z** repairs **H's** motor bicycle believing that it was his employer's. H is enriched at the expense of Z by driving a gain from Z's work.
- What is the remedy available to the plaintiff?2162
  - restitution of the thing itself or payment of the value
- When should the plaintiff claim restitution? (2163)

  Ans: when the is still in the hand of the defendant.
- If the person who has unjustly taken the thing had lost it, the plaintiff will not have remedy.2163(2)

8.2. *Grounds of Unjust Enrichment*

A. **Undue payment (2164)**

- Payment made without legal contractual or legal ground
- *Whosoever had paid what he did not owe may claim restitution of it."*
- *According to 2164(2) the ptt can demand not only the money he paid, but also the legal interests(9% Art.1751) and increment of fruits of the property when the person to whom the payment was made acted in bad faith.*

E.g. ***If you have delivered a cow to the defendant unduly, you can demand the calf.***

Performance of obligation (2165&2166)

- "Restitution is not admitted where a person cognizant of the facts pays voluntarily what he knew he did not owe.
- *Even if the person does not owe payment, if such payment is made voluntarily with full knowledge of the facts, restitution of such payment may not be claimed*
- *when the payment is made in the performance of a barred debt or moral obligation unless the payer lacks capacity to alienate gratuitously (Art. 2166(1) (2))*

Cont'd

E.g. Law student association is colleting money contribution philanthropic purpose. Every student need to pay 10 birr per month. But, you voluntarily pay 100 birr. Latter on you can not demand restitution of the 90 birr claiming that you had made undue payment.

Recourse to true debtor(2167)

- *the receiver of the undue payment relieved from the obligation to return what he has received if, due to such payment, he has in good faith destroyed or cancelled his title, relinquished the security for his claim or allowed his action against the true debtor to lapse.*
- *When this happens, the person who made the undue payment may recourse against the true debtor only (Art. 2167(2)).*

Cont'd

- **A** has the duty to make payment to **B.** But, **C** by mistake make payment. Here we have three person:
  - The receiver of undue payment, B
  - The undue payer, C and
  - And the true debtor, A
- According to (1) of 2167 the receiver of undue payment,(**B**) will not bound to give back the money
  - Where he destroyed or cancelled the title (transfer of the thing in case of sale)
  - Where he relinquished the security for his claim
  - Where he allowed his action against the true debtor to laps

cont'd

- The receiver of the undue payment (B) is relieved of giving back the money or the thing:

✓ **Where he destroyed or cancelled his title**

e.g. 'B' has agreed to surrender his title over a house up on payment by 'A' of a million birr. 'C' by mistake enters the said sum of money. So 'B' transfers his title to 'A'. And 'B' did so in good faith believing that 'A' made the payment. In this case, 'C' can't demand restitution for undue payment because 'B' has relinquished his title in good faith.

Where he relinquished the security for his claim

E.g. 'B' borrowed 1 million birr from 'A'. In return, 'B' mortgaged his house as a security. Supposed that 'C' paid 1 million birr to 'A' by mistake. Then, 'A' believing in good faith that 'C' paid on the instruction of 'B', relinquished his security, the house i.e he lost his right over the house. Here, if 'C' wants to reclaim undue payment, he can not because 'A' has relinquished his security.

8.3. Indemnity for expenses(2168-78)

- It is concerned with the rights of the person bound to make restitution of the thing to demand reimbursement for some expenses he has made to preserve the thing and/or the right to retain increments made on the thing.
- These includes:.

❖ **Art.2169- Reimbursement of necessary Expenses**

-expense made to prevent deterioration or loss of the thing

-But, expense to decorate the thing are not necessary expense

❖ Art. 2171: **Reimbursement of Expenses or investments made on the Thing.**

❖ **Art. 2178: Retaining the Fruit- The fruit is natural increment of thing**

E.g. When an animal produces offspring. Thence, a person who is bound to make restitution of an animal shall retain the **calf** if the he did not know at the time of taking the possession of animal that he hadn't valid contractual or valid title.

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- Thank You !!!!

Home take assignment the might available at final Exam?

- Reason out why unlawful enrichment law is pertinent in presence of contract and tort law?
- What is the general doctrinal justification for it?
- What are guiding rules to claim unjust enrichment ?
- Spell out legal grounds of unjust enrichment?
- Ascertain whether ground such are exhaustive or not ?

A few tips about final exam

- It will mainly be a case type
- It encompasses all chapters
- Due consideration should be given for strict ,vicarious liability and assessment, of damage, criteria for damage as extent of damage
- Defense for tort based liability should not be overlooked.
- Essay type will also be there

Instructions:

-Write your answer with in a page.

- Be precise as verbosity entails liability.

-Do not forget to write your ID no.

- Distinct from criminal liability wherein material element (*acts rues*) is an essential perquisite, the bases of liability in strict case is markedly different. In strict liability case, the defendant shall be liable with out his fault or negligent .
- **why do you think the rationale behind imposing liability irrespective of fault or negligent?**