

PART I
GENERAL BACK GROUND

CHAPTER I

DEFINITION AND PRINCIPLES OF NON-CONTRACTUAL LIABILITY
LAW

1.1. Definition

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

When those interests, which are protected by the Constitution and other laws, are violated, courts will award a sum of money, known as damages (compensation) for infringement of protected interest. Alternatively, the court may issue injunction. Injunction is a court order given to the defendant to refrain from doing something”. Restitution is the third form of remedy. The victim seeks a remedy by bringing her case to a court or by settling it amicably with defendant directly or through a third party.

1.2 Principles

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

CHAPTER II
CONSTITUTIONAL RIGHTS

2.1. Personal Security

These are torts involving a tress pass to the person. As per article 16 of the FDRE Constitution, everyone has the right to protection against bodily harm. This right is protected in a number of ways. For instance, if one makes a contact with another intentionally against the other person’s will, the victim could bring action as per article 2038(1) of the CCE under assault. Assault is a

condition where “one person puts another in fear of being hit. If (however) the blow is struck, then the person hit may have an action under bodily harm.

Moreover as per article 17 of the FDRE Constitution any, Ethiopian or foreign national lawfully in Ethiopia has the right to liberty of movement. This freedom could be restricted unlawfully. A person whose freedom is restricted could sue that person who interfered with her liberty for interference with the liberty of another as it is stated under article 2040 of the CCE or for false imprisonment.

1.2. Interest in property

As per article 40(1) of the FDRE Constitution, every Ethiopian citizen has the right to the ownership of private property. This right includes the right to acquire, use and dispose of such property by sale or bequest or to transfer it otherwise. No one, therefore, has the right to interfere with this constitutional right other than as it is provided by law.

2.3 Economic Interest

As per article 41(1) of the FDRE Constitution, every Ethiopian has the right to engage freely in an economic activity and pursue a livelihood of his choice anywhere within the national territory. Any conduct which jeopardizes the exercise or enjoyment of this right is violation of the economic interests of a person, which is guaranteed protection by the FDRE constitution. Therefore, the Extra – Contractual Liability Law gives protection to this interest “... where the defendant has acted unlawfully and has caused economic loss to the claimant”.

2.4 Reputation and privacy

The FDRE Constitution recognizes every one’s reputation and privacy under articles 24 and 26 respectively. Accordingly, under article 29(6) of the same, limitation on the right of thought, opinion and expression are put where these rights go against honors and reputation of individuals. Therefore, as it is provided under article 29(7) of the FDRE Constitution, any citizen who violates any legal limitations on the exercise of these rights may be held liable under the

law. One of these laws is Extra – Contractual Liability Law. Hence, “where a person’s reputation is damaged by untrue speech or writing then they may have an action in the tort of defamation

CHAPTER III

CONDUCT THAT GIVES RISE TO LIABILITY

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

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.

3.1 Intention and Negligence

Intention exists where:

- a) The defendant knows that the consequences of her conduct are bound to occur; or
- b) Where the defendant desires the consequences or

Where the defendant may not desire but foreseen the result of her action or omission.

When negligence exists, four conditions are supposed to exist:

1. The defendant must have owed the plaintiff a duty;
2. The defendant must have breached that duty;
3. The breach of that duty must be the actual as well as the “legal” cause of the plaintiff’s injury.
4. That injury must be one that the law recognizes and for which money damages may be recovered

CHAPTER IV

CAUSATION AND REMOTENESS OF DAMAGE

4.1 CAUSATION

4.2 THE ‘BUT FOR’ TEST

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

When the judges satisfied with the but for test he can apply “A balance of probabilities test”.

4.3 Remoteness of Damage

In the previous unit, we have seen that causation is a link between the defendant’s conduct and the plaintiff’s damage.

To that end we have seen the law uses the “but for” test to determine whether that connection is established or not. Now we will discuss remoteness of damage, which is “used to set the limit of legal accountability of the defendant”

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

4.4 Exception to the Foreseeability Test

4.4.1 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.

4.4.2. 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.

Illustration

Mohammed by his act 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 and she will be able to sue Mohammed for compensation in respect of the economic losses that she suffers as a result of sustaining that injury 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. Otherwise as per article 2151 of the Civil Code of Ethiopia the victim may not bring a fresh action for compensation for other damage she has suffered unless such damage was caused independently of that for which she has already claimed compensation. 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.

4.4.3. Psychiatric Illness

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

Illustration

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. Does our law have an article, which regulates psychiatric illness due to physical injury? / Article 2114(1) of the CCE./

4.4.4 Intentional torts

Nicholas classifies intentional tort into two: The first one is the one which is committed by an actor who knows what she is doing. Examples of this are battery, false imprisonment, defamation and private nuisance. These are referred to as non-intentional torts. They are referred to as non – intentional torts because they can be committed unintentionally or inadvertently.

Others are those which are committed intentionally. Examples for this are **malicious falsehood**. If someone makes maliciously false statement about someone to a third party, which results in that someone suffering loss, we say that act is an intentional act. “Other examples of intentional torts are the intentional infliction of harm using unlawful means, deceit and malicious prosecution” So the 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.

4.4.5. Statutory Torts

Article 2035 of the CCE with article 184(2) (d) of the Labor Proclamation.

CHAPTER V

Boundaries of Non– Contractual Liability Law

In this section we will try to see the relationship between Non – Contractual Liability Law and Contractual Law on the one hand and Criminal Law on the other.

5.1 Non-contractual liability law v Contractual law

Under the Ethiopian Law both Non – Contractual Liability Law and Contractual Law are classified under Book 4 as Obligations. However, the sources of obligations are different. In case of contracts, the obligations emanate from the agreement made between the parties, while the obligation of Non – Contractual Liability Law emanates from the law./Art. 2027 of cc/

Again consent of the parties is necessary in case of Law of Contracts while this is not in Non-Contractual Liability Law./Art. 1678 and 1679 of cc/

Furthermore, the two laws are d/t is the fact that in case of Contract Law there are certain people who are exempted from performing their part of obligations, for instance, a minor. No exception is, however, made in Non – Contractual Liability Law./Art. 2030(3) and 2099 of

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

Where a person borrows money the damage for delay in payment is the amount of interest/Art. 1803/. In case of Non - Contractual Liability the amount of compensation is assessed at the time of judgment/Art. 2091 and 2150/.

Finally, yet importantly, difference is related with the period of limitation and court jurisdiction. If someone has to bring action, she has to bring it within a certain period. Otherwise, it is going to be barred by limitation of action. Limitation of action in contract is 10 years while in case of Non – Contractual Liability it is 2 years/Art. 1845, 1846 and 2143 of cc/. Finally, a court that has jurisdiction in a case of contract is a court at the place where the contract is made or to be performed while in the case of Non – Contractual Liability the court at a place where the wrong was done has jurisdiction.

5.2 Non- Contractual Liability Law v Criminal Law

Liability from both wrongs emanates from the law.

Their consequence also however, varies. The criminal wrong doer may end up in jail or be punished with fine or both. In case of non – contractual wrong, the wrong doer may not go to jail. Rather she will be obliged to pay compensation to the victim or be ordered to restitute the thing she has taken away from the victim or be ordered to refrain from perpetuating the wrong.

The parties are different. In the criminal case, the parties are the offender and the state, the latter, representing the public through the public prosecutor. In Non – Contractual Liability case, the parties are the victim and the offender who are civilians.

Finally, the purposes of the two laws vary. The object of a criminal prosecution is to punish a person who has been duly tried and convicted of a criminal offence. While ‘The purpose of an action in the civil courts is to obtain compensation for the loss sustained by the plaintiff.’”

PART II

Ethiopian Non – Contractual Liability LAW

CHAPTER VI

SOURCES AND TYPES OF LIABILITIES

The sources of Non – Contractual Liability Law are three:

1. Fault (offence)
2. Activities one engages in or things possessed by a person
3. Where a third party for whom a person is responsible incurs liability.

The first one is regulated by those provisions from article 2028 – 2065 and the liability is referred to as fault liability.

In addition, it is further classified into paragraph 1-General rules and paragraph 2-Special cases. General rules contains articles 2028 – 2037 and Special cases is from article 2038 – 2065. The second source of liability is referred to as Liability in the absence of an offence or strict liability. It is regulated from article 2066 – 2089. It 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 one article for manufactured goods (2085).

The third source is the act of a third party and the liability is vicarious liability. We may classify it into liability of families and others for a minor child (2124 – 2125), liability of State (2126 – 2128), liability of Bodies Corporate and Employers for their Employees (2129 – 2132).

6.1 Liability for Fault

6.1.1 General Rules

This type of liability is an ordinary one while the other two, i.e. Strict and Vicarious Liabilities are exceptions, for they arise when the law says so.

As per article 2029 the types are:

1. Intentional positive act
2. Intentional forbearance
3. Negligent positive act and
4. Negligent forbearance.

To say these acts or forbearances are faults they have to fulfill what is given under article 2030. In assessing the fault the law takes a reasonable man standard/objective (Art. 2030/2). However, the law rejects subjective standards in assessing fault. But in the case of assessing damages/compensations the law takes subjective standards/Art. 2091 of cc/. This is the principle and in addition, the amount of compensation is equal to the damage suffered by the victim, the court shall take into consideration those elements mentioned under article 2099(3).

6.1.2 Professional Fault (2031)

A person practicing a profession shall observe the rules governing that practice. Non observance of the rules and accepted practice of the profession may cause or entail civil liability.

6.1.3 Intent to Injure (2032)

This is an area where the right of an individual is restricted or controlled.

This not for personal gains, but primarily “with intent to injure another”. In this case a fault is committed.

Where a person either injures another intentionally without personal gain or intentionally causes damage in seeking personal gain, which is less proportional to that of the damage, we say she abuses her rights and she is at fault. On the other hand, a person does not abuse her rights where she injures another incidentally to a lawfully gainful activity as in e.g., fair business competition. Thus, she does abuse them where her main purpose is not gain to herself but harm to another.

6.1.4 Diversion of power [2033]

There are two types of power. The first is the one, given in the interest of a private individual, and the second is that given to an individual in the interest of the public.¹In any 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.

Therefore, we say there is private diversion (abuses) of power where the powers are directed from their basic purposes by being exercised with a view to personal gain. In case of the public one the diversion is done not only to benefit the individual who diverted the power but also a third part.

6.1.5 Purpose of Rights (2034)

If one exercises her rights under article 2032 and 2033, though they are within the economic or social purpose of the thing, one could be at fault. We referred to those two articles for the phrase “Subject to the foregoing provisions” under article 2034 seems to be referring to those two articles.

6.1.6 Infringement of Laws (2035)

In this regard the law should be specific. The means they should not be general and subject to interpretation.

The application of article 2035 is very narrow. For one thing, the infringed law should not be exposed to various interpretations. It should be explicit. The fault should not be regulated by other Non – Contractual Liability Law or Contractual provisions.

¹ Article 2033

6.1.7 Chain of Command (2036)

6.1.8 Non – Performance of a contract (2037)

Both Contractual and Non – Contractual Liabilities arise, as a rule, from the breach of duty. The mere fact that a person does not perform an obligation (duty) in a contract, however, does not amount to non – contractual fault as it is given under article 2037(1). Under such circumstance, the plaintiff should apply the appropriate contracted provisions.

6.2 Special Cases

In this part, we are going to discuss special cases.

will discuss physical assault, interference with the liberty of another and defamation under trespass to person. The other category will be fault against property. Under this, we will have trespass to both immovable and movable properties. The third category will be fault against economic interests. Article 2055 – 2063 falls in this category. Finally, we will discuss injury to the right of spouses and duty to educate and supervise.

6.2.1 Trespass To Person

Trespass to person consists of

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

6.2.1.1. Physical Assault (2038)

In the common law context, this is referred to as battery. Battery is doing something which induces in another reasonable fear and apprehension of immediate violence.

Some of the elements in this article need illustration are also in article 2038. Thus to say a person has committed a physical assault, first, there has to be contact to the person of the victim. This contact could be made by having direct personal contact or by utilizing other objects, which could be a living thing or a non – living thing.

The contact should, however, be done intentionally. [See the above definition]. In other words if the contact is made negligently or it is careless contact there is no physical assault.

6.2.1.2 Defenses

1. Unforeseen objection (2039)(1)

(2) Self defense (2039) (2) 3. Corporeal Punishment [2039(3)]

The Constitutionality of this sub article is questionable for the FDRE Constitution states under article 36 (1) (e) that children are free of corporal punishment or cruel and inhuman treatment in school and other institutions responsible for the care of children. Even the Revised Family Code does not allow corporal punishment expressly. What parents can do, when their children misbehave, is to take disciplinary measures. Some argue these disciplinary measures include corporal punishment. The ground they invoke for their argument is that the FDRE Constitution does not expressly include parents among those who are forbidden from administering corporal punishment. Nevertheless, article 576 of the Criminal Code prohibits beating a child by making this act a crime. Moreover, it uses the word *whoever* not to make any kind of discrimination on the actors.

Concerning the servant and others, it is as well unconstitutional to administer corporal punishment in its form, for the FDRE Constitution declares that everyone has the right to protection against cruel, inhuman or degrading treatment or punishment. Therefore, this sub article should be revised and redrafted alongside the FDRE Constitution and other laws.

(4) A dangerous Lunatic (2039[4])

If a notoriously insane person is categorized as dangerous lunatic those people with whom he lives or his family would restrict his liberty of moving.

(5) Any other justification (2039[5])

This is where the act of the defendant is justified in the eyes of a reasonable person.

6.2.2. Interference with the Liberty of another (2040)and Defenses

This is referred to as false imprisonment in the common law legal system. It is a detention of one person by another against the will of the former and without just cause.

DEFENSES/exception to art. 2040/

6.2.2.1. Lawful authority (2041).

The first justification to restrain another person and prevent him from moving is 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. Three elements deserve discussion. These are:-

- 1) The constraint should be exercised in a reasonable manner.
- 2) The one who interferes with the liberty of another should have a legal custody of the plaintiff.
- 3) The law should confer that authority upon the defendant.

6.2.2.2 Criminal offence (2042)

This is done in prevention of a crime. As per article 2042 (1) the person who interfered with the liberty of another has to show that she has a good reason to believe that the plaintiff had committed a criminal offence.

The consequences of defamation are to make a living person detestable, contemptible or ridiculous and jeopardize his credit, his reputation or his future.

So, defamation is related to living person not to a deceased one.

7.6.5 Prescription 2065

There is a prescription in which one is supposed to bring an action. For instance in a contract case it is 10 years/Art.1845. Thus, the creditor has to bring her action within this period. If she does not, she is barred from bringing her action by prescription.

By virtue of article 2030 the debtor's action of not paying the debt within this period, however, is a fault. Nevertheless, article 2065 is an exception. Thus, if the creditor invokes article 2030 (for not settling one's debt is a fault) the debtor can invoke article 2065 not to be liable. Let us make one remark and proceed to the next part. As a rule, by virtue of article 2164 one can demand restitution. Let us assume the restitution is carried out after the prescription period. The one who effects the restitution or who pays after the prescription, i.e. after the period has ran out cannot claim the restitution. because the law says she paid what she owed.

CHAPTER VII

Other Interests

8.1 Injury to the Right of Spouses (2050)

This is a condition where someone induces one of the spouses to leave the other against the will of the other spouse. Here we have elements worth discussion.

1... knowing her/him to be married...

2...he or she induces one of the spouses...This is where the actor persuades one of the spouses to leave the other

3...against one of the spouses' opposition.

It is worth making two points clear here. The recipient should have the knowledge of the unwillingness and opposition of the husband. If this knowledge does not exist there is no fault. Thus if there is an agreement to live separately and one receives the wife, there is no offence, for the husband is willing to accept that act by conduct. Moreover, the recipient can receive the wife if the husband is guilty of cruelty. Under such circumstances, the recipient is not at fault.

8.2 Duty to Educate and Supervise (2052)

As per article 2052 a person could be entrusted to the charge or supervision of another by law or in conformity with the law. Thus, parents' custody of their children emanates from the law/Art. 256 of RFC. This obliges them to educate and supervise their children. If the parents or legal guardians fail to educate and supervise their children, they are at fault. Similarly, schools have the custody of children for the time the children are at school. During this time, the schools have responsibility to educate and supervise the children at school.

CHAPTER IX

Liability Irrespective of Fault

Strict Liability (2066-2089)

For the purpose of simplicity, we classify this chapter into three headings.

- 1.** Liability for the types of activities which the defendant peruses (2066-2089)
- 2.** Liability for bodily harm or injury (2067)
- 3.** Liability for the types of instruments that cause damages (2071_2085). These are further classified into:
 - A.** Liability for animals(2071-2076)
 - B.** Liability for buildings (2077-2080)
 - C.** Liability for motor vehicles or machines (2081-2084)
 - D.** Liability for manufactured goods (2085)

9.1 Necessity (2066)

When there is imminent danger against property, oneself or another person, one may cause harm to another person to avoid that danger. However, where a person acts of necessity as per article 75 of the Criminal Code of FDRE she may not be criminally liable she is, however, civilly liable as per article 2066 of the CCE. The reason to make a person who acts of necessity civilly liable and criminally free could be to strike a balance between the interest of the victim and the doer of the action.

9.2 Bodily Harm and Defenses (2067)

In the common law legal system bodily harm is referred to as battery. Thus, “a battery is the actual infliction of unlawful force on another person” Direct personal contacts may not be needed to cause bodily harm.

DEFENSES

The defenses are stated under sub-article 2 of article 2067. These are:

1. Where the act causing the harm was ordered by law
2. Where it was done in legitimate self-defense.

Where the harm is due solely to the victim’s fault.

9.3 Sport Activities [2068]

In sporting activities, one may injure another who is taking part in the same activity or a spectator. Where the one who causes the damage observes the rules of the game she may not be liable. The rationale behind this is what is called voluntary assumption of the risk. If there is, however, a deceit or gross infringement of the rules of the sport the person who causes the injury shall be liable.

9.4 Dangerous Activities [2069]

Creation of abnormal risks

The activities are enumerated as follows under article 2069.

1. Storing or using explosives or poisonous substances.
2. Establishing high-tension electric transmission lines.
3. Modifying the natural lie of the land.

4. **Engaging in exceptionally dangerous industrial activities.**

9.5 Types of Instruments

In this part, we will discuss liability for animals, buildings, motor vehicles or machines and manufactured goods.

9.5.1 Liability for Animals (2071_2076)

1. Custodian (holder)(2072)

The holder is a person who uses the animal for her personal benefits. She is liable for any damage caused by that animal while it is under her holding.

2. Transfer of Liability (2075))

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.

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. Similarly, the courts may order the owner to make the damage good. The owner who paid the victim may recover the amount from the person in whose charge the animal was when it caused the harm.

9.4.4 Transferring the ownership (2074)

4 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.

9.6 Liability For Buildings (2077 – 2080)

Buildings could create risk if they collapsed. A building could collapse and the reason could be man made or natural. Where a building collapses due to lack of maintenance we say the cause is man made. whereas if it collapses due to earth quack or other natural reason, we say the reason

is natural. For whatever reason the building collapses or is demolished and brought damages, the owner is liable as per article 2077(1).

Where the reason for the damage is the fault committed by the person who built the building or occupier, the owner, after paying the compensation to the victim, may claim compensation from those persons as per article 2077 (2). Similar to the owner of an animal, the owner of a building may relieve himself of liability by surrendering the ownership of the building to the person who has suffered the damage as per article 2078 (1). The question is what about if the building is totally demolished or destroyed and nothing is left to transfer?

9.7 *Machines and motor vehicles*

A person who manufactures goods and sells to the public for profit shall be liable for any damage to another person resulting from the normal use of goods.

There are elements worth discussing. These are:

1. A person ... This person could be either physical or natural person.
- 2...who manufactures goods...

manufactured products do not simply refer to food and drinks as some think. "It has been held to cover motor vehicles, lifts, clothes, cleaning fluids and building" Under our law, however a building may not be classified as manufactured products/Art. 2077.

...Sells to the public for profit...

1. The sale should be to the public and for profit. An enterprise could, for instance, distribute food items free for the public. And if someone is injured due to that food, the victim may not be successful under this article.
2. ...shall be liable for any damage...

Here any damage could mean damage to person or damage to property.

9.9 Defenses or justifications for strict liability

Before discussing article 2086, it is better to summarize other defenses stated under articles. Thus, regarding articles 2066 and 2067 the defenses are given under each sub article (2) as victims fault. They are uniform defenses. Moreover, sub article (2) of 2067 presents order by the law and legitimate self-defenses as justifications. As regards article 2081, if the vehicle or the machine is stolen and that can be proven by the owner, that can serve as a defense. Article 2088 states that if the harm is occurred to a person who connected with instruments due to the

contractual relations there will not be liability based on tort. The consequences of the damage shall in this case be settled in accordance with the rules governing the agreement reached/Art. 2088. Even in the absence of contractual relations without the owner deriving any profit from this operation, the owner is not liable, if the damage is sustained, unless the owner has committed a fault/Art. 2089

Now we can discuss article 2088, which is applicable under all situations as a defense. To start with, there seems to be a difference between the English and Amharic versions of sub article (1) of 2088. While the English version reads... “May relieve themselves...” The Amharic version reads... The Amharic version seems correct for two reasons. The simple reason is where there is inconsistency between the English version and the Amharic version the latter one prevails, for the Amharic language is a working language of the FDRE government/FDRE con. 5/2. Second, in light of sub article (2) of the article 2086 the Amharic version gives more sense than the English version. For as per article 2086(2) those persons declared legally liable shall be relieved of their liability, entirely or in part, only where the damage is due solely or partly to the fault of the victim

\Thus, the only justification to relieve those persons declared legally liable is the claimants fault which is referred to “as the claimants lack of care.” Here the idea is the claimant’s negligence contributes to her injury. Thus, the standard applied to the claimant in contributory negligence is the same as that of the reasonable person in fault liability. Here the test, however, is not whether the damage or the accident was foreseeable but whether the claimant acted reasonably, that is to say, with the amount of self-care that a normal person would have exercised in the circumstances.

CHAPTER

VICARIOUS LIABILITY

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

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

Thus, under the Ethiopian tort law parents and others listed under article 2125 are liable for the wrongs done by a minor child. The state is liable for its civil servants and employees acts./Art. 2126 cc.

Similarly, bodies corporate are liable for their representatives, agents or paid workers act./ Art. 2129 of cc.

Finally, the managing editor of the newspaper, the printer of the pamphlet or publisher of a book is liable for defamation committed by the author of the printed text. / Art. 2135 of cc.

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

Why one is liable for the wrong done by another. The possible rationales are:

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

10.1.2. Analogy with causation

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

10.1.3 Deep pockets

As per this theory, the father, the state, bodies corporate and the employers are richer. Hence they should pay.

10.1.4 Economic and moral consideration

This theory is based on the fact that "...the person who drives a benefit from the activity of another should also bear the risk of the damage inflicted by those acts.

10.1.5 Loss, spreading

This is another economic variant, which enables the employer to spread the loss through insurance or the price of the products.

10.2 Liability of parents and others

As per article 2124, the father shall be liable under the law where his minor child incurs liability.

To summarize, the father and the mother, as parents, are jointly liable for the wrong done by their minor child. One of them is liable where she\he exercises the guardian authority alone for this or that reason. Finally, the mother shall be liable where she exercises that authority alone where the father is unknown, for the child shall have a judicial bond only with her mother. The words in lieu of article 2125, therefore, do not apply for the mother. Parents are either jointly liable where both exercise parental authority or separately liable in case one alone exercises the authority.

10.3 Liability of the state 2126

And 2127 of cc.

10.4 Liability of bodies corporate and employers [2129-2133]

Bodies corporate are those associations established in accordance with Memorandum of Associations and Statutes with a view to obtaining a result other than the securing or sharing of profits.

PART III: REMEDIES TO EXTRA CONTRACTUAL WRONG

Chapter XI Introduction to the Basic Notions of Damage

11.1 Conceptual Analysis of Damage

The word “damage” is derived from a Latin word “*damnum*” meaning loss or species of loss. It is a harm or injury caused to a person’s legitimate interest. The interest harmed may be related to the person’s material (pecuniary) interest or to moral (non pecuniary) interest.

Therefore, based on the nature of the interest harmed, damage can be classified into two: material damage and moral damage. Material damage is a damage which affects the person’s pocket, whereas harm to his moral interests affects his feelings or emotions.

Damage is among the mandatory requirements. In Ethiopia, too, proving damage is a prerequisite for compensation. The cross reading of Articles 2092 and 2102(2) of the civil code clearly shows that proof of the existence of damage is a mandatory requirement for the plaintiff to claim compensation.

Classifications of Damage

❖ Material Damage

Material damage is an injury caused to a person’s economic or financial interest. This damage affects the victim’s credit worthiness or economic status in one or another way.

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

Present Material Damage

Present material damage refers to the material or pecuniary loss sustained by the victim of the tort that covers the loss occurred from the date of the commencement of the injury up to the date

of final assessment by the court. It can be measured by the difference between the plaintiff's present estate and what would be now his estate had the harmful fact for which redress is sought not occurred.

Present material damage can be further classified into two: a *damnum emergens*, a Latin term, which denotes the **occurrence of a loss** (diminution of estate), or a *lucrum cessans*, the Latin term, which denotes the **prevention of a gain** (non-increase of estate).

Damnum emergens includes two different aspects. Firstly, it refers to the type of damage caused to a person's tangible or intangible asset due to the depreciation, destruction or loss caused to such asset. In this case the value of the plaintiff's assets is diminished due to the injury-causing agent that makes the defendant liable. The other aspect of *damnum emergens* refers to the increment or creation of a liability to the plaintiff. This does not refer to the direct injury caused to the person's material interest. Rather it refers to the circumstances where a person becomes civilly liable to a third party because of the wrongful damage caused by the defendant.

Lucrum cessans in the context of present material damage refers to the damage incurred by the plaintiff due to the prevention of gainful opportunities or loss of earnings resulting from the tortuous act of the defendant.

Future Material Damage

Future material damage is the other main component of material damage. It is a damage that is going to occur in the future. The dividing line between present damage and future damage is drawn in terms of time. The dividing date is that of the judgment assessing the damage.

In short, future damage includes the damage that will occur certainly or with a higher probability after the date of judgment. Although future damage was not present at the time of a judgment, it is compensable without waiting for it to materialize provided that it is certain to occur.

❖ Moral Damage

The term 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.

The pain, mental anguish and frustration which resulted from pain and disability or disfigurement of his body parts affects the victim's feeling, hence referred to as moral damage.

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.

Chapter XII Modes of Compensation

12.1. Modes of Compensation for Material Damage

12.1.1. The Rule of Pecuniary Compensation

Broadly speaking, the modes of compensation for material harm, as stipulated in Article 2090 of the civil code, can be categorized into **pecuniary or non-pecuniary** compensation.

To begin with the definition of the term “pecuniary” compensation, it means compensation by means of money. That means that the damage inflicted to the pecuniary interest of the victim has to be quantified and valued in terms of monetary equivalence so that the harm will be made good by the award of compensation expressed in terms of money.

The exceptions to the rule of monetary or pecuniary compensation will be discussed subsequently. Suffice it to say, pecuniary (monetary) compensation is the rule, whereas non-pecuniary compensation is the exceptional mode of compensation for material damage.

12.1.2. Non-Pecuniary Compensation

Although our law sets pecuniary compensation as an ordinary or usual mode of compensation, there are also other non-monetary or non-pecuniary forms of compensation or remedy that may be awarded by the court in exceptional circumstances. The exception to the rule of pecuniary compensation is laid down under Sub-Article two of Article 2090 of the civil code, which reads: “The court may, subject to the liberty of persons and to the right of third parties, order in lieu or in addition to money damages other appropriate measures to make good or limit the damage”. The provisions of the civil code Article 2118 through Article 2123 provides a partial enumeration of the “other modes of compensation” other than payment of monetary compensation to the victim. Restitution, reparation in kind, retraction of defamatory publications, enjoining cases of unfair competition and injunction are prominent among such non-pecuniary modes of compensation that can be granted in addition to or as alternative to monetary compensation in appropriate cases envisioned in Article 2090(2) of the civil code.

The phrase “*subject to the liberty of persons*” incorporated under sub-Article two of Article 2090 articulates that deviation from the rule of pecuniary compensation is possible where non-

pecuniary civil compensation does not contradict with the liberties of the defendant recognized under the various laws including the constitution.

The other phrase *subject to the “rights of third parties” incorporated in Article 2090(2)* also illustrates the *in personam* aspect of the remedies of the law of obligation. The remedies enumerated in Articles 2118 through Article 2123 of the civil code apply against only the party in breach of the tortious obligation and not against third party right-bearers.

12.2. Modes of Compensation for Moral Damage

12.2.1. The Rule of Non-Pecuniary Compensation

Moral damage refers to the injury caused to a person’s feeling that cannot be assessed in monetary terms. It is difficult to set monetary equivalence for an injury caused to a person’s feeling. Thus, as a rule, the mode of compensation for moral damage is non-pecuniary. This is because injury to a person’s feeling cannot be measured in terms of money.

In Article 2105 of the civil code, the principle related to the mode of compensation for moral damage is clearly stated. Sub-Article one of this provision stated that the author of a wrong shall make good the moral harm resulting from the wrong wherever adequate procedure exists for such redress. Sub-Article two further stipulated that pecuniary compensation for moral harm may be awarded only in cases expressly provided by law. The phrase “only in cases expressly provided by law” indicates the exceptional nature of awarding pecuniary compensation for moral damage.

Non-pecuniary compensation is the ordinary rule for redressing moral harm under the Ethiopian Extra- Contractual liability law.

12.2.2. Pecuniary Compensation as an Exception

Sub-Article one is read in conjunction with Sub-Article two which states that pecuniary compensation can be awarded to redress moral damage only in cases expressly provided by law, one can safely conclude that the type of redress envisioned under sub-one must be non-monetary (non-pecuniary) in its nature. Sub-Article two of Article 2105 is applicable only to such

nominated cases of moral injury enumerated in Article 2106 through 2115 of the civil code. It may also apply to other moral harms expressly stated to such effect in other pertinent provisions.

Chapter XIII Quantum/ Extent of Compensation

13.1 Quantum of Compensation for Material Damage

13.1.1. The Rule of Equivalence

The principle of equivalence between material damage and compensation is incidentally mentioned in Article 2090 and explicitly laid down in Article 2091 of the civil code. While dealing with modes of compensation for material damage, Article 2090 incidentally states that: “as a rule, the *damage is made good by compensating the victim by means of an equivalent sum of money.*”(Emphasis added.) Article 2091 of the code, which deals with the extent of compensation, also explicitly states that: “The compensation due by the person legally liable is equal to the damage caused to the victim by the fact giving rise to the liability.” The principle of equivalence between compensation and damage goes in line with the overriding purpose of extra contractual liability law.

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

while calculating the material damage caused to a person’s pecuniary interest due to the injurious act of another person, the court is required to calculate not only the out of pocket payments made by the victim to repair the property damaged or the medical and other related expenses he incurred to heal the physical injury caused to his body but also the *lucrum cessans* (gainful opportunity prevented, frustration or interruption) because of the injury causing event for which the defendant is liable.

13.1.2. Departures from the Rule of Equivalence

This topic shall discuss the most radical departures that may be made by the court from the principle of equivalence stated in Article 2091. These exceptions will be discussed under separate headings in the following sequence:

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

A. Compulsory Mitigation

As exceptions to the rule of equivalence between damage and compensation, there are situations where the quantum of damages (compensation) may be reduced or should be reduced to a certain amount, which is less than the material damage sustained by the victim.

The concept of compulsory mitigation is incorporated in Article 2098 of the civil code.

Mandatory mitigation of compensation is relevant in situations where the victim's own fault is partly contributed to the damage sustained by him.

B. Discretionary Mitigation

On discretionary basis. These provisions depend for their application on the court's largely free (discretionary) decision. The defendant can invoke them where relevant, but he is not as of right entitled to the mitigation. This can be inferred from the wordings of Articles 2099-2103 and 2157, which use "powers of equity" as a parameter for exercising such discretion and the word "may" in Articles 2099-2101 that indicates the discretionary nature of mitigation.

C. Optional Mitigation

The mitigation of liability for compensation in optional cases differs from the mitigations discussed in the above three limitations in that its application does not depend on the discretion of the court but on the discretion of the defendant himself. In optional mitigation cases there are alternatives other than paying money, therefore, the defendant can opt for an alternative to that of paying the damages otherwise due by him. Cases of optionally mitigating circumstances are covered in Articles 2074, 2075 & 2078.

D. Nominal Damages

The other instance where departure from the rule of equivalence between compensation and damage comes into operation is related to the award of nominal damages. As a rule, a claimant in extra contractual liability law has the burden to prove the nature and the extent of the harm he sustained and the circumstances that render the defendant liable to make it good. But this is not the case in an action for nominal damages. Without the need to proving any real or actual

damage, a very small fraction of money can be awarded to the victim simply as a recognition or declaration of his rights violated or infringed by the defendant.

Article 2104 of the civil code that deals with Nominal Compensation states that: “Damages of a purely nominal amount may be awarded where the action has been brought solely with a view to establishing that a right of the plaintiff has been infringed, or that a liability has been incurred by the defendant.”

❖ Quantum of Compensation for Moral Damage

The principle of equivalence between damage and compensation envisaged in Article 2090(1) cum 2091 is practically impossible in the case of moral damage.

Admitting the difficulty or impossibility of the rule of equivalence, our civil code uses the word “equitable” rather than equivalent as a standard for fixing the quantum of compensation for moral damage. This is evidenced by the wordings of Article 2106 through Article 2126 of the civil code that deals with instances of moral damage that may be subject to monetary compensation in appropriate cases.

❖ Compensation for personal Injuries

13.3.1. General Damages vs. Pecuniary Loss

