

Chapter Three

CONDITIONS OF CRIMINAL LIABILITY

Introduction and objectives

- This chapter deals with important elements that constitute Criminal Liability in general and under Ethiopian Law in particular.
- Basically, It discusses essential requirements of criminal liability. These are the legal element of the crime, material element and the mental of the crime.
- There can be no crime large or small, without an evil mind. It is therefore a principle of our legal system, that the essence of an offense is the wrongful intent, without which it cannot exist.
- Generally, criminal law is concerned with blaming a conduct and imposing punishment on perpetrators of harmful actions.

CONDITIONS OF CRIMINAL LIABILITY

- CG is a blameworthy state of mind punishable under criminal law. the maxim there are no guilty acts but guilty persons indicates the decisiveness of the persons **specific moral** guilt in rendering an act punishable. Acc. To Art. 57(1) of CC (1) No one can be punished for a crime unless he has been found guilty thereof under the law.
- The same provision defines guilty: A person is guilty if, being responsible for his acts, he commits a crime either intentionally or by negligence. In the absence of CI or CN on the part of the doer, harm is considered to have been caused by force majeure or accident. The moral conditions of liability to punishment are thus **responsibility** and **CG**. This chapter discusses the 2 components of CG namely intention and negligence. Then we move on discuss cause and effect relationship between 2 d/t acts/factors/circumstances (r/p b/n his act or failure and the consequences) termed as causation in CL. Here You are expected to identify the act which caused the harm/produce the result.

The Essential Elements of Crime:

- The maxim '***actus non facit reum nisi mens sit rea***' makes clear that, "no man may be found guilty of crime and therefore legally punishable unless in addition to having brought about harm which the law forbids, he had at the same time a legally reprehensible/blameworthy state of mind". Bringing harm and culpability. The act is not guilty w/out guilty mind.

This principle recognized that there are two essential elements of crime:

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

- In general, There are 3 ingredients of crime: These are: The legal element, the material and the moral element
- ***actus reus***:
- *Actus reus* means, ***the result forbidden by law brought about by human conduct***. A harm brought about by evil conduct manifests the evil mind behind it. Until then the guilty mind remains hidden in man's thought and it is impossible to detect the evil intentions of a man. It is diff to know what is going in the mind of a criminal.
- Moreover, simply having an evil intention does not make a man punishable **unless it ends in a harmful result**.
- Therefore, **according to Prof Kenny**, *actus reus* is such a result of human conduct as the law seeks to prevent.
- The act done or omitted must be an act forbidden or commanded by the law in force.

Cont'd ...

- *Actus reus* in terms of Art 23 includes the following:
- A. Whether the offender's act or omission has caused:
 - the event, for example, death, hurt etc. or
 - A state of affairs, for example, disturbance to public peace or morals etc. This forms the material element of crime.
- B. Whether bringing about such a result or state of affairs is prohibited by law. This is the legal element of crime.

- This ingredient of the crime refers to the infringement of any law, which is a criminal nature. This, in other words, means that a law must exist and this law must be violated so as to hold a person criminally liable. Its embodiment and prohi by a specific cr. law provision.
- it is the express prohibition of an act or omission and articulation of penalties or measures thereof. low, It refers to the requirement that an act or omission w/c constitutes an offence & its pun be expressly stated by legn.; but an act is not a crime for the mere reason it is wrong.
- In the absence of prohibition by the law, no act is a crime even if it may seem wrong to the individual conscience. That is why Article 2 of the Criminal Code of Ethiopia provides that no act or failure to act may be regarded as an offence unless the law so prescribes.
- Therefore, a person who performs an act which is not clearly penalized by any law such as prostitution or

- The Ethiopian Criminal Code also incorporates these essential elements in Art. 23, sub-Articles (1) & (2) in the following way:
- (1) *A crime is an act which is prohibited and made punishable by law.*
- *In this Code, an act consists of the commission of what is prohibited or the omission of what is prescribed by law.*
- (2) *A crime is only completed when all its “legal, material and moral ingredients are present”.*
- The provision distinctly states the requirement of three elements of a crime: 1. The legal element, 2. The material element and 3. The moral element

The Material Element:

- Needless to mention, a mere thought of committing a crime does not suffice to constitute a crime and may not entail punishment.
- There will not be, for that matter, a violation of a criminal law unless there is a material breach of such a law.
- In order for a crime to have been said committed, there shall be a material breach of a criminal law. It is not the purpose of the law to punish mere thoughts of committing a crime, thus the thought should be **externally manifested by certain material act**. For example, a person who thinks to steal another person's property will not be liable for crime of theft unless he behaves in way to materialize his thought.

Cont'd ...

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

Cont'd

- Thus, what is material element? Material element of a crime refers to an act, to use the language of Article 23 (1), “which is prohibited and made punishable by law”.
- However, so far there is no an agreed definition for the term “act”. Nevertheless, for the purpose of the Criminal Code of Ethiopia an act is described, under Art.23(1), second paragraph, as “the commission of what is prohibited or the omission of what is prescribed by law”.
- Thus, a person can commit a certain criminal act by doing what is prohibited, or by refraining from doing what is prescribed by the criminal law.

- Accordingly, it is possible to classify crimes into crimes of commission, crimes of omission, and crimes of commission by omission.
- Crimes of commission refer to those crimes the commission of which requires the performance of what is prohibited by criminal law. For example, crimes of bodily injury, arson, theft etc requires striking some one's body, setting fire on some one's house, abstracting some body's property respectively.
- Whereas, crimes of omission implies failure to perform what is prescribed by criminal law. A number of these kinds of crimes are stipulated in FDRE Criminal Code. For instance: Art.443(1) a person who comes to know the perpetration of a serious offence by another is required to report . If he fails to do, it is a crime by omission. Report a Crime **Article 443.-**

- It is becoming usual to divide crimes into conduct and result offences. Conduct crimes r those w/r the forbidden conduct need be proved. The best e.g is perjury. In perjury the accused is guilty if he makes a statement on oath, knowing or believing it to be false. The **outcome of the case need not** be affected. Perjury is therefore a CC.
- In result crimes b/c a forbidden consequence is part of actus reus, the specified harm must be shown. In murder someone must be killed. The forbidden result must be caused.
- W.r.t conduct crimes, there is no problem normally with causation, since no result need be proved.
- Some offences can be committed by a failure to act, others such as possessing cannabis are status offences or state of affairs ones. It is difficult to describe these offences as conduct ones. In fact, Omission involves the opposite, a lack of conduct.
- Omission or status offences የላንዳች ድርጊት ሀላፊነት ያስከትላሉ፤

Cont'd

- In other way round, the material element (*Actus reus*) may consist of:
 1. Deed of commission, or
 2. Result of omission.
- An act is “a willed muscular (bodily) movement”.
- If a criminal shoots at and kills a person, his “act” include the event of death as well as the willed act of pointing the gun and pulling the trigger.
- The resultant deed is the “consequence of the act”, but not the act itself.

- as per art 23, The phrase “material ingredients” means facts surrounding the act, such as, the type of weapon used, place and time of commission of the offence, range of shooting, the part of the body of the victim hit by the bullet, etc.
- The same act of shooting under different material circumstances, for example, warfare, execution of death penalty etc, may render the act lawful.
-

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

Deed of Commission:

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

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

- When criminal policy regards a deed as sufficiently harmful, it prohibits such a deed and seeks to prevent its occurrence by imposing a penalty for its commission.
- Thus, '*actus reus*' **is constituted by the 'event' or the 'result' and not by the activity or conduct which produced the event.**
- For example, 'A' kills 'B' by stabbing him with a knife. The voluntary movements of A's hand holding the knife is the activity which produced the result i.e. the death of 'B'.
- The same voluntary activity might sometimes become necessary to produce some useful results like where a surgeon needs to cut open the body of a patient for performing a life saving surgery.

Cont'd

- Thus, the voluntary movements of the human beings cannot be prohibited but producing certain harmful results by such activity is prohibited.
- This means, in the above example, the voluntary movement of the hand with a knife is not the one that is prohibited but causing the death of a human being is.
- However, every harmful event produced by human conduct is not *actus reus*, but only such event which is forbidden by the law is an *actus reus* forming the basis for criminal liability.
- A 'deed' may cause harm such as destruction of property or even of life but it is not a crime unless it is legally prohibited.
- Infliction of harm is legally permitted, justified or even commanded under certain circumstances and these do not constitute *actus reus*.

Result of Omission:

- The word 'omission' is generally used in the sense of intentional non-doing. It is only under certain circumstances, an 'omission' to act becomes criminal.
- In fact the law imposes responsibility for omissions reluctantly. Omission" with reference to the performance of a duty involves the idea of conscious or willful omission. Omission simply refers to the not doing of something.
- Under the criminal law, only failures to perform legal duties can amount to criminal omissions. Legal duties to act might arise out of relationships or contracts, or might be imposed by statutes. Observe that Liability for omission may exist by the operation of the law.
- Failures to perform moral duties cannot constitute the *actus reus*.

Cont'd

- Limiting criminal omissions to failures to perform legal duties is based on the proposition that the individual conscience, peer group pressure and other informal social sanction mechanisms can regulate behavior more effectively than direct criminal prosecutions.
- Also, it would not only be burdensome but also impossible for the criminal justice system to enforce moral obligations. In addition to this,

- 
- Mind that A person can be found guilty in doing nothing where the law imposes a duty to act. Lets see some of them.
 - 1. Liability is imposed for failing to perform a duty one has undertaken voluntarily. The more one does, the more likely it is that one will be liable for an omission.
 - In other words, no duty will arise if the accused refused to accept the obligation to take care of another but it will arise if **he does so and performs poorly**. Suppose a niece had failed in her duty to look after an aunt (failed to summon medical attention) is guilty of homicide.

- 2. If one fails to perform a duty imposed by contract, one is guilty. E.g. a lifeguard employed by a local authority at a pool or a seaside resort is guilty of manslaughter.
- 3. liability will be imposed if one fails to perform a duty imposed by law. A police officer off duty was found guilty of misconduct in a public office when he didn't go to the rescue of a man being kicked to death by a bouncer at a club.
- 4. consanguinal or affinal r/p. Here, Res may arise out of a blood or marital r/p. e.g. parents have been tried for manslaughter on the grounds that they willfully refused to give their daughter insulin. There is no doubt a parent has a duty to intervene if **his/her child is drowning**.
- Contracts and blood r/ps are in themselves merely matters going towards proving the assumption of a duty. What if the child is married or lives away from home? He no longer owes a duty.

- A crime, according to Art 23/1, is also committed when a person fails to perform an act the performance of which is prescribed by law. This means, not all omissions are punishable but only those that are in breach of a legal duty
- For example, 'A' happened to walk along a deserted road at night during winter. He saw a just born infant abandoned on the roadside but did nothing to save it and went away.
- Next morning the infant died being exposed to the chilly climate. His attitude towards the dying infant may involve omission of a moral duty but is not punishable under any legal provision.
- Therefore, omissions to be punishable crimes must involve breach of some specific duty either imposed

“omissions” are of two kinds:

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

- The law often imposes the duty to do something, e.g. to report about the commission of the **crime and of about the offenders**, to register the birth of a child, etc. and penalizes the failure to carry out such a duties. Crimes of this type are referred as “Crimes of Omission’ and are characterized by the non- performance of a mandatory act.

2. Crimes of Commission by Omission: Where there is a Duty Recognized by Law:

- In some cases, a person’s failure to do **so** what is commanded by law **under the pain of penalty** **may bring about the same result** which could naturally be brought by doing what is prohibited by criminal law.
- For example Mr. X can bring the death of Mr. Y, which could be caused by shooting Mr. Y, by failing to extend assistance to the latter while the latter was in great peril and the former could have assisted him without direct or indirect risk to himself or third party. Such kinds of crimes are sometimes referred as crimes of

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

Cont'd

- From what has been discussed so far it is possible to conclude that under the FDRE Criminal Code material element refers to an act of commission or omission what is prohibited by law and prescribed by law respectively.
- However, there are cases **that do not squarely fit with this conclusion**; for instance, crimes of dangerous vagrancy and unjustified possession of suspicious articles which are crimes under the FDRE Criminal Code.
- In both cases, there is no requirement of commission or omission of an act prohibited or prescribed by law respectively.
- *Read Article 477, Dangerous Vagrancy*
- Art.854. Unjustified Possession of Suspicious Articles

Cont'd

- In both these two legal provisions, it is not the commission or omission of a certain act rather **it is the social status of the person**, in case of dangerous vagrancy, and possession of certain articles, in the case of unjustified possession of suspicious, that constitute the crime.
- Here the issue is whether material element is still considered as an ingredient of these two crimes.
- If it is so, shall we construe material element to include also social status and possession of certain articles, which are not actually commission or omission of an act? Or shall we take it for granted that crimes of dangerous vagrancy and unjustified possession of suspicious articles are exception to the requirement of material element? Dear student you are encouraged to discuss these issues with your friends and colleagues?

Cont'd

- The other point that should be considered in relation to material element is the personal nature of criminal liability. It is a well accepted norm that no one shall be held criminally liable for a criminal act committed by another person.
- There is no vicarious liability (liability for others) in criminal law. A person will be criminally liable only for acts the commission or omission of which is attributable to him.
- As a matter of principle the commission or omission of a criminal act is attributable to natural persons.
- Nevertheless, in some cases a criminal act may be attributed to juridical persons entailing a criminal liability in accord with Article 23 (3) of the FDRE Criminal Code.
- *a corporation, no matter how large or small, is criminally liable if a member of the organization commits a crime within the scope of employment and with the intent to benefit the company.*

THE 'MORAL INGREDIENTS' OF CRIME (*mens rea*)

- The presence of legal and material ingredients of crime, does suffice to entail a criminal liability. The violation shall be accompanied with guilt state of mind.
- Moral ingredient refers to the state of mind of the wrongdoer at the time of committing the crime.
- Moral ingredient has associated with the principle "*Nulla poenae culpa*" which means there is no punishment without guilt.
- This implies that a person cannot be held criminally liable for acts he/she commits without there being any fault **what so ever** on his or her part. This signifies the fact that there must exist some degree of blameworthiness.
- In terms of Article 23 (4) of the FDRE Criminal Code, a crime deserves punishment "*where the court has found the crime proved and deserving punishment*". The very imp Q is when does a crime deserve punishment?
- From the *acontrario* reading of Article 57(1), first alina, it is to construe that a person can be punished for a crime if and only if he is found to be guilty. From this it follows that a crime deserves punishment, save for excusable and justifiable grounds, when it has been proven that its perpetrator has acted with a guilty state of mind.

- If that is so, what is a guilty state of mind? As per Article 57 (1) of the Ethiopian Criminal Code, second paragraph, a person shall be deemed to have a guilty state of mind if he is proven to have committed a crime either intentionally or negligently.
- Of course, as a matter of principle, it is intentionally committed crimes that are punishable. Nevertheless, exceptionally negligently committed crimes as well may entail punishment when this is **so expressly provided by the law**.
- The very principle of this element is provided under Article 57 of the Criminal Code which reads as follows:
“No one can be punished for an offence unless he has been found guilty thereof under the law. A person is not guilty if, being responsible for his acts; he committed an offence either intentionally or by negligence.”

- *No one can be convicted under Criminal Law for an act penalized by the law if it was performed or occurred without there being any guilt on his part, and was caused by force major, or occurred by accident.*
- A person is liable when he or she commits the offence based on guilty state of mind.
- Guilt, therefore, is an **essential** factor in determining whether a crime has been committed. The perpetrator should be held criminally liable and be punished if he or she acts in a blameworthy manner.

Element:

- These requirements of criminal liability are rightly expressed in the Latin maxim “***actus non facit reum nisi mens sit rea***” (act alone does not make a man guilty unless his intentions were guilty). This is a well known principle of natural justice.
- No person could be punished in a proceeding of criminal nature unless it can be shown that he had a “guilty mind”.
- However, unlike physical element of crime the mental element poses a difficulty in its proof. Since, it is a known fact that we cannot know what was going on in the mind of a person at the time of commission of the crime and it is natural that we cannot expect him to confess what was on his mind, it is mainly on the circumstantial evidence that the Court depends to establish the moral ingredients of crime.
- Hence, the court can infer the person’s state of mind **from different facts and circumstances** before, after and attending at the commission of the crime.

Attempts to Determine the “Moral Ingredient” of Crime:

- It is difficult to determine what was going on in the mind of the accused at the time of committing the crime.
- However, the court can infer the person’s state of mind **from different facts and circumstances** before, after and attending at the commission of the crime.
- In an attempt to assess the “state of mind” in establishing a crime, the courts adopted different tests in the historical of development of doctrine of *mens rea*.

These include the following:

- 1. Objective standard of morality,
- 2. Test of subjective standard,
- 3. Voluntariness of conduct, and
- 4. Foresight of consequences.

- 
1. **Objective standard of Morality:**
 - The facts of each case were studied to see whether the accused's behavior did or did not reach the moral standard generally accepted and approved in the period".
 - This is nothing but the essence of the test of reasonable man.
 - In this test the true question was not whether he himself thought that his conduct had been blameworthy or not, but the courts went on the assumption that their own standard of what was right or wrong was the true test.

The Test of Subjective Standard:

The adoption of the accepted rules of morality as a criterion *mens rea* in practice meant “the courts appraised the accused's conduct objectively giving no much opportunity to the accused to prove his state of mind otherwise”. Yet there are circumstances where the accused may be compelled to act without his will.

- For example:
 - If a man was so insane as not to understand what he was doing
 - He was honestly mistaken as to the facts upon which his action, or
 - He was compelled by overpowering physical force to become a helpless instrument in another person's misdeed.
- In all these cases, he could not be reasonably said to be guilty. In all these circumstances, criminal guilt is not established by the argument that “what had been done was not the accused's act”. This means that the accused had not caused the harm, there was no *mens rea* on his part.
- That is why self-defence, accident, mistake of fact etc. All these have come to be accepted as grounds of excuse from criminal liability.

Voluntariness of Conduct:

- Gradually, the courts adopted another method of establishing *means rea*. The courts felt that if the man's conduct could be proved to be voluntary i.e., "the movements of his body in producing the harmful result were willful movements then his *mens rea* was established".
- In cases where he could show that his conduct was involuntary i.e., his bodily movements were not operated by his will, he would have no responsibility.
- For instance, 'X' is holding a knife and 'Y' seizes the arm of 'X' and by means of his greater physical strength causes the knife in the hand of 'X' to wound 'Z'. Here the movement of 'X' was not voluntary since it was not the result of any mental intention on his part. That is, the movement of his hand was not operated by his will.
- In fact, it was not the act of 'X' but the act of 'Y' who had seized his hand and caused the wound by overpowering him. Hence, 'X' is not liable for causing the wound.

Cont'd

- Thus, according to the test of Voluntariness of conduct, it was essential that the conduct of accused should have been the result of the exercise of his will in all crimes.
- However, *mens rea* in this sense relates not to the harm which the man brought about but to the movements (physical acts) by which he brought about the harm.
- In other words, it indicates his mental attitude to his conduct and not to his mental attitude to the consequence of his conduct.

Cont'd

- In cases in which a man is able to show that his conduct whether in the form of action (commission) or of inaction (omission) was involuntary, he must not be held liable for any harmful result produced by it.
- What has been done is an '*actus reus*', but his defence is that he is not legally responsible for his *actus reus*.
- Therefore, in cases of persons acting under the influence of Somnambulism (sleepwalking), insanity, intoxication or automatism the defense of involuntary conduct was available.

Foresight of Consequences:

- The method of determination of *mens rea* through establishing voluntary conduct was found not satisfactory in certain instances. For example, in cases of 'pure accident' where there is no foresight of consequences **if the voluntary conduct of the person in driving the vehicle is taken to be his *mens rea*** then he should be punished even for an accident.
- Thus, it is not enough to be satisfied that an accused person 's conduct was voluntary.
- There should be proof that "he must have had foresight of consequences" of his conduct. A man cannot be held guilty if his voluntary actions result in harm but the harm was not contemplated.
- Accordingly, there has developed a principle that "a man should not be punished unless he had been aware that what he was doing might lead to mischievous results".

- Now, foresight of consequences is **the common requirement for all crimes** and it is **this subjective element of foresight** which **constitutes *mens rea***.

Subjective elements of criminal liability under the Ethiopian Criminal Code:

- From art. 23 one can understand that crime is an intentional or negligent act or of intentional omission which is prohibited by law that subjects a person liable criminally when it is proved beyond any reasonable shadow of doubt
- Independent existence of material and legal elements without accompany of a moral element is not sufficient to constitute criminal liability.
- Rather, they shall exist together at the time of the commission of the offence. The elements should be fulfilled cumulatively.

- What is Criminal guilt is a blameworthy state of mind punishable under criminal law. As we mentioned earlier, The maxim “**there are no guilty acts but only guilty persons**” indicates the decisiveness of a person’s specific moral guilt in rendering an act punishable. It is the persons intent that matters most
- “To intend” is to have in mind a fixed purpose, to reach a desired objective. The fact that the moral element of a given crime is absent, for example, in cases of theft (Art. 665) if the intent to obtain an unlawful enrichment is absent, the accused is not punishable for that crime. Intention is the state of mind of a man **who not only foresees** but also wills the possible consequences of his conduct.
- He had the foresight and desire for the result. It will be noted that there cannot be intention unless there is foresight, **this is b/c a man must decide to his own satisfaction and must accordingly foresee that to which his express purpose is directed.** ያለ አስቀድሞ መገመት/ማወቅ ሀሳብ የለም ም/ቱም አንድ ሰው አላማው የት እንደሚያደርሰው በአእምሮው ቁልጭ ብሎ ሊታየው ይገባል።

- Criminal intention is composed of 2 component elements. It has a cognitive element(awareness) and a connative (volitional) aspect. These aspects are indicated clearly under article 58 (1) a and b.
- 'Criminal intention', constitutes the highest degree of criminal guilt and comprises of two elements in the words of Art. 58. read and tell me 2 elements
- *58 (1) A person is deemed to have committed a crime intentionally where:*
- *(a) he performs an unlawful and punishable act with full knowledge and intent in order to achieve a given result; or (b) he being aware that his act may cause illegal and punishable consequences, commits the act regardless that such consequences may follow.*

Criminal Intention: Art. 58

- *58 (1) A defines direct intention (intended result) as the performance of an unlawful and punishable act with awareness (eyawoke) and volition (berasu filagot). w/ras Art. 58 1 (b) defines dolus eventualis in which the probable harm is foreseen and the accused accepts the probable event of resultant harm.*
- According to Sub-Art. (1) (a) a person intentionally commits a crime who infringes law:
with full knowledge and
intent.
- In Article 58 , The code uses the terms full knowledge and intent as elements of intention to respectively express awareness and volition (will).

Full knowledge:

- “Knowledge” is “awareness” of the consequences of an act.
- “Awareness” means the ability to foresee nature, factual circumstances and consequences of one’s act or omission. It is established by **common knowledge** having regard to the particular circumstances of the accused.
- For instance, an adult who has Aids and who resides in Addis Ababa cannot invoke his knowledge that he is unaware of the contagious nature of the disease, after having maliciously donated blood to deliberately infect others.
- Thus, criminal intention firstly implies awareness.

Cont'd ...

- There are events of unawareness or mistake of fact whereby criminal intent is deemed to be non-existent. Eg A person who picks an umbrella believing that it is his doesn't commit theft. But ignorance (unawareness) of the law is no excuse aside from possible mitigation of penalty under justifiable circumstances.
- Likewise, if under the law certain consequences must be achieved so that a crime is complete, a person must not be regarded as having intentionally committed the crime unless he knew that such consequences would follow.
- For example, a person does not intentionally commit homicide if **he is not aware of the fact that his target is a human being** and that he is going to produce the death of human being (Mistake of fact, Art. 80).

Cont'd

- Therefore, in every case, the object of the criminal's intent must be ascertained having regard to **the ingredients** of **the crime** as laid down in the Special Part of the Code.

Intent

- The word 'intent' is used in Article 58/1 to mean 'will' or 'volition'. Every conscious act that we do is preceded by a certain state of mind. No physical act is possible without bodily motions. And every bodily motion which constitutes an 'act' is preceded by a desire for those motions.
- According to Austin, "bodily movements obey wills. The wish is "volition" and the consequent movements are "acts".
- The will to accomplish an act and obtain the result thereof takes two forms. Primarily, 'Will' involves a desired objective or active desire, i.e. desiring the result as an objective of the act or omission.

- 
- Such a will exists where a person, for example, deliberately strikes another with the desire to inflict bodily injury.

In this case, there is :

- A. 'awareness' of the act, the circumstances and the probable result,
 - B. the 'desire' for the probable result.
- Under such cases, there is criminal intention even though the chances of achieving the desired result are small.

Cont'd ..

- A person shooting at his chosen victim from a distance with the desire to kill has a CI in spite of the considerable likelihood that he will miss his target. Certainty or uncertainty of obtaining result is thus immaterial as long as the accused **desires the occurrence of the harm** as his primary objective.
- This form of intention may be qualified as DI.
- **Secondly** “will” manifests itself in the form of willingness to bring about a substantially certain (but not necessarily desired) result, while acting to achieve a desired objective.
- In such cases a person’s secondary will is a means to his primary objective. The accused being aware that a greater harm will certainly occur or having foreseen that the harm is substantially certain, willingly accepts it as the necessary consequence of his act or omission.

- Let me give you an e.g. If A, with a view of hitting B, throws a stone through the [glass] window of B's bedroom, the two consequences he brings about bodily injury [which is the result desired] and damage to property [an inevitable result under the circumstances] must be regarded as having been intentionally produced.
- The accused **acc. To Sklar**, "knows that should he succeeded in achieving his desired objective (bodily injury) The secondary result (damage to property) will certainly or nearly certainly occur. For the purpose of distinction we may refer this form of DI as **ancillary DI**.
- It is subordinate or ancillary to DI, but the near certainty of the occurrence of the harm makes it very close to direct intention. In German CL this moral guilt is referred to as dolus indirectus IDI or in some cases dolus directus (DI).
- French and swiss criminal law refer to IDI as **dolus eventualis**.
- It is to be noted that most of the literature in the Ethiopian criminal law uses the term 'indirect intention' interchangeably with dolus evenatualis, w/c is embodied in art 58 (1) (a) of CC.

- We will use thus the term “ADI” (rather than dolus indirectus or indirect intention in order to avoid the conceptual confusion with dolus eventualis).
- BIM Art. 58 (1) (a) refers to either form of will: direct intention i.e. awareness plus desire for intended harm or ancillary direct intention i.e. willingness to bring about a substantially certain result.
- These two forms of intention **belong to the general category of DI** and are d/t from dolus evenatualis stipulated under Art. 58 (1) (b).

Volition, Intention and Motive:

- These three terms are interrelated. Every conscious act that we do is preceded by a mental condition. Every bodily motion that constitutes an act is preceded by a desire for those motions.
- The desire that impels the motion is known as volition. When an act done is preceded by a desire for the act and if such a desire is not produced by fear or compulsion we say it is a voluntary act.
- Thus, all bodily motions, which constitute an act, are preceded by the desire for those motions. This desire is called volition.

- The longing for the object desired which sets the v motion is motive. The expectation that the desired will lead to certain consequences is the intention.
- Thus, the intention is not a desire whilst motive is. terms intention and motive must be precisely distinguished. We may try to understand by an illus
- For instance, in beating his victim the person in h striking intends to cause him pain. Causing pain m satisfy his revenge or it could be merely to indicate superior strength. Each of these interests is called motive. It is this reason why he does the act.
- Intention is the foreknowledge of the act, coupled v desire of it, such foreknowledge and desire being t of the act, in as much as they fulfill themselves thro operations of the will. Replace it (concept of moti
-

- DI (intended result) in acc. With Art 58 (1) (a) defined as the performance of an unlawful and punishable act with awareness and volition:

Direct Intention Art 58/1/Para (a)

- The existence of will accompanied by awareness proves criminal intention as per Art. 58/1, Para (a) as has been explained above, in detail.
- This category of intention is usually referred to as direct intention as it involves the ff distinct characteristics:
 - a fixed object,
 - a clear foresight of consequences , and
 - a desire for consequences.

Dolus Eventualis:

- Art. 58/1, Para (b), reads thus, “... *he being aware that his act may cause illegal and punishable consequences commits the act regardless that such consequences may follow*”.
- In this state of mind, the criminal does not desire the occurrence of the harm. However, he is aware of the possible consequences and **yet is unwilling to renounce** his act since **he has some other object in his mind**. In other words, though the criminal does not desire, he accepts the occurrence of possible harm in order to achieve his own object.
- To illustrate, if a driver, who is eager to avoid being late for an appointment, drives rashly exceeding the appropriate speed with an intention to reach his destination in time.

Cont'd

- Here for sure he could foresee the possibility of hitting a pedestrian on an overcrowded street, accepts the possible harm but still he proceeds with his course of conduct consciously taking the risk. Here *dolus eventualis* is said to exist in case he causes bodily injury, death or damage to property.
- In ‘*dolus eventualis*’ , **the offender does not foresee the harm as a certainty** (or near certainty) but only as a possibility.
- This kind of mental attitude is commonly referred to as “recklessness”. In contrast to ADI, a DE offender is not certain or nearly certain about the inevitability of harm.

Recklessness (indirect intention)

- Intention cannot exist without foresight, but foresight can exist without intention. A man may foresee the possible or even probable consequences of his conduct and yet not desire them to occur. In spite of this foresight if he proceeds on his course of action he knowingly runs the risk of bringing about the unwished result.
- To describe this state of mind the word 'reckless' is the most appropriate. The words "rash" and "rashness" have also been used to indicate the same attitude. A man who is reckless may prefer that –
 - the event shall not happen, or
 - he may not care whether it happens or not.

- 
- Nevertheless, in either case he does not desire it to happen and therefore, does not act with the purpose that it shall happen. Unfortunately, this is a very common attitude of mind and is found mostly in the cases of dangerous driving of motor vehicles, adulteration of food materials, drugs and medical negligence etc.,

Criminal Negligence Art. 59:

- 'Negligence' is another form of mens rea. Culpable negligence is a condition for criminal liability. Negligence is not taking care where there is a duty to take care. In negligence, there is a state of mind in which there is absence of desire to cause a particular consequence. The standard of care established by law is that of a reasonable man in identical circumstances.
- What amounts to reasonable care is 'a question of fact' depending on the circumstances of each case.
- Negligence means the failure to exercise care there by which harm (undesired by the accused) that could or should have been normally avoided.
- Article. 59/1 provides:
 - "A person is deemed to have committed a criminal act negligently where he acts:*
 - (a) by imprudence or in disregard of the possible consequences of his act while he was aware that his act may cause ill punishable consequences; or*
 - (b) by a criminal lack of foresight or without consideration of the consequences of his act.*

- A careful consideration of these essential elements of negligence reveals two kinds of negligence:
- Art.59 1 embodies 2 forms of negligence.
- Art 59 (1) (a) defines conscious (advertent) negligence w/rby the offender is aware of but disregards the possible harm.
- Art 59 (1) (b) deals with unconscious (inadvertent) negligence where the offender acts by criminal lack of foresight or without consideration (i.e. without awareness while he should or could have been aware of the possible consequences of his act).
 - Advertent (conscious) Negligence.
 - Inadvertent (unconscious) Negligence

Cont'd

- It is the element of “consciousness” in bringing about the consequences that differentiates these two forms of negligence. Similarity is that In both cases criminal lack of foresight or imprudence must be proved.

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

- Acting in disregard of possible consequences defines conscious type of negligence. In this form of negligence the criminal, like in the case of indirect intention, foresees the possibility of some harm but disregards (or rejects) its occurrence.
- Dolus eventualis and advertent negligence have a common denominator in that in both cases the offender foresees the possibility of certain harm. The d/c is the offender in IDI accepts (reconciles) with the occurrence of possible harm w/ras advertently negligent person rejects the possibility the harm w/c in fact materializes as a result of his imprudence.
- Under indirect intention the **criminal accepts the occurrence of the possible harm** whereas in the advertent negligence the **person rejects the possibility of the harm** which in fact materializes as a result of his negligence.
- Philippe Graven, gives the following illustration to clarify the point. 'A' is driving a car and 'B' his passenger, points to him that he drives too fast and might hit someone, to which the

Cont'd ...

- A moment later, 'B' again insists that the driver should slow down. 'A' then answers, "I've told you that I am a good driver. Anyway, it is 2 o'clock in the night, the police are asleep and no body will see us if something should happen."
- There after, 'A' runs down a pedestrian who dies -----Had the accident taken place after--- the first statement ---- he had **rejected** the possibility of hitting someone (advertent negligence).
- But, after he made his second statement "it is virtually certain that **he had accepted the possibility of causing a result**," there by entering into the realm of indirect intention.

Inadvertent Negligence: Meaning and Distinction from Advertent Negligence:

- Acting without consideration represents the unconscious type of negligence. Under inadvertent negligence the accused is not aware of a possible harm. The offender does not foresee the result at all. For example, the accused believing that the gun is unloaded pulls the trigger and to his surprise finds some one injured.
- It cannot possibly be a case of pure accident since he is handling a deadly weapon, which requires the exercise of care and caution on his part. His failure to take care makes him liable for negligently injuring the person.
- In the same example, if the offender having foreseen the possibility of hitting 'B' but disregarding the same, shoots at a certain target and unfortunately injures 'B', his state of mind may be described as advertent negligence.

Cont'd

- In accordance Art. 59/2, negligence is not punishable unless a specific provision under consideration expressly embodies negligence as its component part.

Relationship of Cause and Effect:

- Art. 24. of Criminal Code, lays down the principle that, “a person is answerable for the consequences of his act or failure to act only in so far as there exists a relationship of cause and effect between his act or failure and the consequences.
- The general meaning of the term ‘cause’ is the ‘act’ or ‘the agency’ that has caused or produced an effect.
- The doctrine as to the connection of causes and effects is known as causation in law. It is an investigation of act which caused effect.
- A harm which has been suffered is an event and majority of such events are products of a plurality of factors. A ‘factor’ is said to have caused a particular event if, without such factor the event would not have happened.

Cont'd

- From this, it would follow that a man can be said to have caused the *actus reus* of a crime if that *actus* would not have occurred without his participation in what was done.
- There may be several causes bringing about one result of which the nearest possible cause affords a good ground for criminal liability.
- The more remote the cause the greater the difficulty in proving that the accused person intended or realized (i.e. knew or foresaw) what the effect it would be.

Tests to Establish the Relationship of Cause and Effect:

- Various tests have been suggested to enable the courts to decide whether alleged 'act' is the cause of the 'result' in question, of which the following are important ones:
- 1. *Sine qua non* test
- 2. Adequate or proximate cause test.

Sine qua non Test or the Theory of Absolute Causation:

- Until very recently, some countries have applied this so-called sine qua non-test. 'Sine qua non' is a Latin term which means "without which not" – an indispensable condition or an important prerequisite. The test says, "An act in the absence of which the result would not have been achieved is deemed to be the cause of such result".
- For example, if 'A' strikes 'B' and 'B' gets injured. 'C' drives 'B' to a doctor but the car crashes on the way and 'B' dies in the crash, 'A' will be held liable for B's death. The test tries to explain that, had 'A' not wounded 'B' he would not have had to be driven to a doctor and would not have lost his life in the car accident.
- Such a r/p is referred to as .. Is normally a remote probability but a necessary condition
- but for it is a remote probability ...but a necessary condition for the particular event that has occurred Lunch invitation it would be absurd

Cont'd

- This theory, known as the theory of absolute causality, goes too far because it **mixes up 'causes' and the 'occasion' of the harm.**
- However, it makes it clear that no person can be liable for harm unless he did something, which was necessary condition of this harm.
- As such, the test, is useful since it permits selecting of possible candidates for liability, such as 'A' and 'C' in the above illustration. However, criminal liability cannot be established through the sine qua non test quite clearly.
- Therefore, another test has been evolved to establish 'cause' and 'effect' more distinctly.

Adequate or Proximate Cause Test:

- Basing on more common sense it can be clearly said in the above illustration that, though cause and effect relationship exists between A's act of striking 'B' and the slight injury suffered by 'B', **it cannot be extended to anything that may happen after striking** and apply to B's death. The striking alone could not result in B's death and it is obviously the car accident and not the striking, which in this case is the "cause" of death.
- Although the invitation was a necessary condition for the death, such an invitation doesn't in the regular course of events cause death.
- TIW The second paragraph Art. 24/1 states that an act or omission may not be deemed to have caused the harm in issue unless this act or omission "...would, in the normal course of things produce the result charged".
- Therefore, according to the "proximate cause rule", two things have to be fulfilled:
 - 1. The criminal's behavior that brought about the result, and
 - 2. A relevant condition of the harm resulted.

Circumstances not Capable of Bringing the Result in the Normal Course of Things

- Sometimes, certain circumstances, though they might have effectively contributed to the occurrence of the harm, in the ordinary course of their nature, are not capable of bringing about such harm.
- in the legal sense of the term Such circumstances may not be regarded as the “cause” of the harm produced,. Only acts that are **generally capable** of producing the result in issue are deemed to have caused it.
- Any relationship that might exist between the result and an act **not normally capable of producing** it has no legal consequences since Art. 24(1) uses the words, “in the normal course of things produce the result charged”.

Cont'd

- For example, 'A' simply pretends to shoot at 'B' with his gun and 'B' who has a weak heart dies of "fright". In this case, two possible considerations have to be made:
- In the ordinary course of things, one cannot kill a person by pretending to shoot him,
- If the offender knows that his victim is suffering with a heart condition, then the issue will be "whether one can frighten to death" a person with such a heart condition.
- If 'Yes', then his act can be defined as the cause for the death of the victim. If 'no', his act is not the cause of the 'death' of the victim and thereby he cannot be made liable for his death.

Presumption in favour of the Prosecution:

- In this instance, a chain of causation is deemed to exist between A's act and B's death. Here generally the presumption is probably meant to operate in favour of prosecution.
- This means that, it is sufficient for the prosecutor to prove that acts of the same kind as "the acts charged", **when done in the same circumstances** as those in which the accused acted, are ordinarily capable of bringing about the harm done in the particular case.
- He need not prove that this causal relationship also existed in the present case. It would be the burden of the defendant to rebut such a presumption by adducing sufficient evidence to the contrary.

Factors That Might Break the Chain of Causation:

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

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

Preceding Causes:

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

- For example, 'A' hit 'B' a hemophiliac with a glass bottle that had very sharp edges. 'A' was brought on record to show that 'A' had intended the said injury with the intention of causing death and that 'A' did not know that 'B' was suffering from hemophilia.
- In this case 'A' will be liable for causing injury to 'B' and not for causing death because 'A' did not know the existence of a pre-existing condition 'B' being suffering from hemophilia.
- The relation between the cause i.e. the act of the accused and the result produced i.e. the death of the victim cannot be said to have been established where **the preceding cause has contributed materially** to the result produced.

Cont'd

- To consider another example, 'C' who was suffering from a long-standing high blood pressure problem met with an accident while taking a morning walk. He sustained some minor injuries and was hospitalized.
- Shortly afterwards he died in the hospital. The cause for his death was extensive bleeding which could not be controlled due to his high blood pressure.
- Therefore, the person responsible for the accident can be held liable only for causing injury through negligent driving but not for causing death due to the condition of the victim here i.e. his blood pressure. The one that had contributed to his death was the pre-existing condition.
- The minor injuries he had suffered in the accident could not have caused his death but for the extensive uncontrollable bleeding. Therefore, the relationship is broken here by the existence of a preceding cause.

Concurrent Causes:

- The problem arises when, through or despite the application of the relevancy test, two or more persons are found to be eligible for liability.
- Here the problem arises when a given result may be attributed to two or more simultaneous causes. For example, if 'A' and 'B' simultaneously shoot 'C' with the intention of killing him and 'C' is hit by bullets from both and dies, the question is whether both A and B are liable or A or B alone is liable.
- This question cannot be answered unless one investigates which bullet brought about the death to establish which act i.e., whether A's or B's act is relevant cause of C's death.
- In this case, in fact the acts of both 'A' and 'B' are relevant causes, because both the bullets hit simultaneously. Then the question would be which one of them was the efficient cause of B's death.

Cont'd

- Here again, there can be various possibilities like the following:
- If it is proved that both the bullets were fatal, 'A' and 'B' will be equally liable for the homicide.
- If the bullet fired by 'A' hit 'C' in the leg while the bullet fired by 'B' hit 'C' in the heart, 'B's act will be regarded as the efficient cause of 'C's death.
- Therefore, 'A' may be found guilty only of attempted homicide, where as 'B' will alone be liable for C's death. This is subject to **be** provisions of Art. 32 regarding co-offenders.
- **However, the Court, while deciding on liability, is not required to bear in mind everything that might possibly have occurred if 'C' had only been shot in the leg by 'A' and not also in the heart by 'B'.**

Intervening Causes:

- Here, the problem arises when a given result may be attributed to a multiplicity of causes. The difference between this case and the case of concurrent causes **lies in the time element involved**. In intervening, the task is to know which of the two or more consecutive (not simultaneous) events has caused the harm in issue.
- For instance, if 'A' beats up his child and inflicts on him an injury that, though not fatal, makes it necessary that he is admitted to. The child, while under treatment at the hospital, catches some deadly infectious disease and dies. There is no doubt that the efficient cause of the child's death is not the injury, but the disease.
- The latter is an intervening cause, the effect of which is that no chain of causation exists between the beating up and the death since, the initial act done by 'A' could not, in the normal course of things, produce the result eventually achieved.

Cont'd

- Therefore, here in this case, 'A' would be liable for maltreatment of his child under Art. 576 since the efficient cause that brought about the death is the disease and not the injury caused by the accused. To put it in the words of Art. 24 (2), the extraneous cause was in itself sufficient to produce the result.
- In v. white the D put potassium cyanide into a drink called nectar with the into murder. The deceased was found dead shortly afterwards, and medical evidence showed that shed died of heart failure and not of poison. The heart condition is a preceding cause and the heart failure which caused the death is an intervening cause that occurred after the act of poisoning.

- 
- The core issue here is w/r the heart failure was acc. To art 24(2) in itself sufficient to produce the result thereby breaking the chain of causation b/n the Ds act of poisoning and (extraneous to the victims heart condition) and the victims death. Is heart failure adequate on its own to cause death irrespective of the Po?
 - If, for ex it takes a certain length of time for the poison to start taking effect and the heart failure caused the death of the victim before the poison started taking effect, the preceding cause can be regarded as having independently caused death.

- If the intervening cause is the natural consequence of the original cause, the chain of causation should not be considered broken as long as the original cause is adequate enough to normally cause the harm. Such int is reasonable although the literal reading of art. 24 (2) seems to be susceptible to erroneous int. assuming that D throws V into an ocean and V is eaten up by a shark, the latter event (although seemingly intervening), should not exempt D from punishment if (depending upon distance of spot from the shore or other reasons) V would have died any way from the drowning.

cont'd

- Another issue that can arise involves harm caused by an act of a third party that was caused by the defendant's act. In *R v. Paget* the defendant held a girl as a shield while he was resisting lawful arrest and shooting at policemen. The court of appeal rejected the defendant's argument that the shot fired by the policemen was the intervening cause of the girl's death. It held that reasonable acts of a third party committed in self defense cannot be considered as new intervening acts (*novus actus interveniens*).

- 
- Expert evidence may also make a distinction heart condition and heart failure, and state that the victim had an unhealthy heart condition before the act of poisoning, but her heart failure came after the poisoning and independent of it.

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

Cumulative Effect of Different causes:

- According to Art. 24(3), where the result achieved is the cumulative effect of different causes mentioned in Sub. Art. (2) the cause and effect relationship shall be presumed irrespective of the fact that none of these causes can independently produce the result in question.
- For instance, 'A' and 'B' simultaneously/ consecutively shoot 'C' with the intention to kill him. 'A' shoots in his leg whereas, 'B' shoots in his upper arm and death ensues due to excessive bleeding from the wounds.
- The cause and effect relationship can be presumed to exist between the acts of both 'A' and 'B'.
- Both are equally liable for the crime of homicide.