CRIMINAL LAW

CHAPTER ONE – INTRODUCTION TO CRIMINAL LAW

Crime" is an offence committed by an individual who is a basic unit of a society. Therefore, study of crime i.e. Criminal Science" is a social study. The main aims of Criminal Science are:

1. To discover the causes of criminality,
2. To devise the most effective methods of reducing the amount of criminality,
3. To perfect the machinery for dealing with criminals.

Criminal science has three branches;

1) **Criminology:** is the study of crime and criminal punishment as social phenomena. This branch of criminal science is concerned with causes of crimes and comprises of two different branches.

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

b) Criminal Sociology: deals with enquiries into the effects of environment as a cause of criminality. This branch focuses on the objective factors like social, political and economic conditions leading to criminality, also termed as **criminal anthropology.**

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

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

3) **Criminal Law:** Criminology and Penology are implemented through the instrumentality of 'Criminal law'. The criminal law decides the special sanctions appropriate in each case. These sanctions range from death penalty through

various kinds of degrees of deprivation of liberty, down to such measures as medical treatment, supervision as in probation, fines and mere warnings (admonishment).

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

a) Substantive Criminal Law,

b) Adjective/Procedural Criminal law.

'The Substantive Criminal law' lays down the principles of criminal liability, defines offences and prescribes punishments for the same. Procedural Criminal law' has been designed to look after the process of the administration and enforcement of the substantive criminal law. Thus, the procedural criminal law is to administer the substantive criminal law and give enforcement to it. The scope of our study i.e. 'Criminal law' falls under the branch of substantive criminal Law.

- **Elements** of criminal law;
  - **Politicality** = only violations of rules made by state are regarded as crime (against laws given by the state)
  - **Specificity** = provisions of criminal law should be stated in specific terms
  - **Uniformity =** uniform application to all without any discrimination, thus imparting even-handed justice to all (equally balanced).
  - **Penal sanction =** imposing punishment on wrong doer
- General objectives of criminal law;
  - Protection of persons and property
  - Deterrence of criminal behavior
  - Punishment of criminal activity
  - Rehabilitation pf criminals
- Specific purpose and functions of criminal law Art 1;
  - To ensure order, peace and security
- Functions of criminal law by Robinson;
  - Rule articulation = define and announce criminal acts
  - Liability functions = setting minimum condition
  - Grading (punishment) function

Wrong – is an act forbidden by the society or violation of rules, which are accepted by the society.

a. **Moral wrong** = checked by social and religious norms.

b. **Legal wrong** = act the prohibited and failure to act the ordered.
   1= **civil wrong** → the state takes action against the wrong doer at the instance of the injured party.

   2 = **criminal wrong → the state by itself proceeds against the wrong doer.**

The word **crime** comes from the Latin word '**crimen'** which means **to charge;**

- An act against social order and are worthy of serious condemnation
- An act punishable by law as forbidden by state or injurious to public welfare.

Criminality and morality;

- Criminal but moral act → female genital mutilation in Somalia
- Immoral but non-criminal act → አለባበስ፤ አመጋገብ ›››››››
- Both immoral and criminal act

❖ **Differences between criminal and civil law ;**

a. **Sanction** (criminal sanctions are related with individual liberty, freedom and life, while civil sanctions are related with property such as compensation, injunction and fine).
b. **Parties involve (**in civil cases parties are the individuals but in criminal cases parties are state and individuals).
c. **Interest to be protected** (criminal law seeks to protect public interest while civil law seeks to protect individual interests).
d. **Standard of proof required** (in criminal cases there must be proof beyond reasonable doubt but in civil cases preponderance proof is enough).
e. **Interpretation of laws** (no broad interpretation in criminal law, while civil law allows broad interpretation in the spirit of the law).
f. **Fault** (in criminal cases there must be a fault but in civil cases it is not always necessary).
g. **Transfer of liability** (there is no transfer of liability in criminal cases while there is transfer of liability in civil cases).

❖ Definition of crime;

= crime is an act committed or omitted in violation of public law either forbidding or commanding it. Crime is a public wrong. → Black's law dictionary

= crime is an act forbidden by law and which is at the same time revolting to the moral sentiments of the society. Crime is moral wrong. → **Stephen** (but there are acts not immoral and highly criminal as critics).

= crime is a wrong which is pursued by sovereign or his subordinate. Criminal is procedural wrong. → **John Austin** (but it does not explain a number of crimes under the criminal code in

which the prosecution could be initiated only at the instance of injured party as is done in the case of civil wrongs).

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

CHAPTER TWO – HISTORICAL DEVELOPMENT OF ETHIOPIAN CRIMINAL LAW

1. Fews Menfesawi (canonical penance) which had 62 articles at the time of king Zerayakob.
2. Fetha Negest
3. The 1930 penal code
4. The 1957 penal code
5. The 1974 revolution and criminal law
6. Special penal code of 1981

- **Feteha Negest**

It includes;

- Concept of intention and negligence
- Proportionality b/n the fault and the sanction
- Individualization of punishment
- Forgiveness and redemption of offenders
- Sharing of guilt case of fighting

Drawbacks of the Feteha Negest;

- Lacks systemization and other characteristics of modern code
- No differentiation b/n general and specific, and exception and rule
- Aggravating and extenuating circumstances were not clearly stipulated
- Not accessible

- The 1930 penal code
  - Crimes and respective punishments were defined
  - Softness and improvement of sanction
  - Three great categories of interests;
    1, state and community interest
    2, persons interest and
    3, property interests

- The 1957 penal code and its merits
  - Collective punishment
  - Mutilation of human body as punishment abolished
  - Presumption of innocence introduced
  - Rules applicable to young offenders
  - Probation and suspension of sentences
  - Personal nature of punishment
  - Punishment for burning of crops (arson)

= the 1957 penal code revised/amended in 1976 to institute the death penalty for 'anti-revolutionary' activities and 'economic crisis'.

- The special penal code of 1981 also include breach of trust by public officials and economic offences, grain hoarding, illegal currency transactions, corruption and abuse of authority.
- Factors for the revision of the 1957 penal code in May 2005;
  - To incorporate the modern legal concepts (equality, democratic and human rights…)
  - To fill in the lacunae (high jacking, money laundering, corruption, drug trafficking, harmful traditional practices …)
  - To adopt a compressive
  - Punishments for certain offences increased
  - Matters concerning in the determination of sentence revised
  - To redefined purpose of criminal law and objectives of punishment
- The skim of the criminal code;

The criminal code has three parts;

I. General provisions Art 1 – 237
   a. crimes and the criminals 1 – 86
   b. criminal punishments and its application 87 - 237
II. Special part 238 – 733
   a. Crimes against the state or national or international interests 238 – 374
   b. Crimes against public interest or the community 375 – 537
   c. Crimes against the individuals and the family 538 – 661
   d. Crimes against property 662 – 733
III. Petty offences 734 – 865
   - Rules governing liability to punishment
   - Petty offences under specific leads

❖ **Classification of crimes;**

1) Based on seriousness of the crimes

a. **Treason** – the most heinous, although the rarest species of felony. It is a breach of duty of allegiance to the state.

b. **Felony** – a serious criminal offence punishable by at least one year imprisonment.

c. **Misdemeanor** – a criminal offence which is less serious than a felony, and is punishable by no more than one year in a country jail and/or a fine, restitution or some other minor penalty.

FDRE criminal code;

- Crimes of very grave nature = rigorous imprisonment 108
- Crimes of not very serious nature = simple imprisonment 106
- Petty offences = arrest 747,767 – 769

2) Based on the subject matter of the crimes

- Interest of the state 237 – 374
- Interest of the community 378 – 537
- Interest of the individual 538 - 733

A petty offence is an infringement of mandatory or prohibitory provisions of a law or regulation issued by a competent authority or a minor offence which is not punishable under the criminal law. Such actions or omissions are made punishable under the petty code.

Crimes can be categorized in to ordinary crimes and petty offences.

CHAPTER THREE- PRICIPLES OF CRIMINAL LAW

1) Principle of legality

- Continuation of due notice
- It avoid undefined limit (arbitrary actions of judges)
- It protect individuals from arbitrary action of the states
- Suggests that, there is no crime or punishment without a pre-existing law that prohibit that crime.
- Fair warning
- Elements of the principle of legality

A) **Nullum crimen sine legalno** (no crime unless specified by the law) Art 2(2)

Rules; -

- Certainty
- Accessibility of the law

- Strict construction (criminal law should be constructed strictly or narrowly. Creation of offences or crimes by analogy is prohibited).
- Non-retroactivity of criminal law FDRE constn 22(2), crc 5-10
  B) **Nulla ponea sine legal** (no punishment other than prescribed by law) Art 2(2)
  C) **Non bis in idem** (nobody shall be punished or tried twice for the same crime) Art 2(5), FDRE constn 23

2) Principle of equality

- Non-discrimination Art 4 crc, 25 constn
- It is human right principle
- Elements of the principle of equality;
  A) **Equality before the law** Art 4 parag 1
- Procedural and enforcement aspect of the law (applicable on all without any differential circumstances).
  B) **Equal protection of the law** Art 4 parag 2
- The behavior or nature of the law should treat all persons equally. **There is equality between equals and equality between unequals.**

Exceptions of equality before the law;

1. **Immunity**
   a. Diplomatic immunity – emanates from public international law, not from the constitution. It includes persons enjoying diplomatic immunity, foreign sovereign, ambassadors and diplomats, alien enemies, foreign army …
   b. Parliamentary immunity – immunity granted by the national constitution. Art 54(5,6)
2. **Individualization of punishment** Art 4 parag 2, 88(2)

- age, mental and physical conditions, degree of the crime, individual character, and damage of the crime on the society … may differ persons in criminal case treatment.

3) Principle of individual autonomy

- The right to act positively (free will)
- Capability of choosing their acts and omissions

Euthanasia 542???

CHAPTER FOUR – JURISDICTION OF THE CRIMINAL LAW OF ETHIOPIA

Jurisdiction – seeing certain kinds of cases.

- ✓ Legislative jurisdiction = competence to enact laws
- ✓ Administrative jurisdiction = competence related with execution

- ✓ Judicial jurisdiction = legal competence to entertain a certain case.

► conflict of jurisdiction at national level 99 – 107 crc

► conflict of jurisdiction at international level 11 – 22 crc

♣ Judicial jurisdiction

1, National jurisdiction = refers to which nations shall have jurisdiction.

2, Material jurisdiction = refers to which level of court in a given nation shall have jurisdiction (federal or state and high or supreme).

3, Local jurisdiction = refers to which place of court from the same level of court shall have a jurisdiction to entertain the case.

♣ Conflict of jurisdiction;

- **a.** Negative = where courts deny the existence of jurisdiction and there is possibility to the criminal to escape from the punishment.
- **b.** Positive = where courts claim to have jurisdiction on the same crime and there is probability of double jeopardy.

♣ Fundamental principles in assuming jurisdiction;

a. Principle of territoriality Art 11 – the place/country where the crime is committed
b. Quasi territorial principle (protective or interest) Art 13 – states have jurisdiction over aliens for acts done abroad which affect the security y of the state (currency, immigration, economic crimes … Art 238 – 260, 355 -374).
c. Active nationality principle – crime committed in foreign countries by Ethiopian citizen may be tried in Ethiopia 14, 15(2), 18(1) → crimes 269 – 322
d. Passive nationality principle – aliens may be punished for acts abroad harmful to the nationals of the forum (crimes committed in abroad against Ethiopian citizens) 17(1)
e. Principle of universality (universal jurisdiction) – states have jurisdiction on crimes as matter of international public policy 17 (murder, high jacking, drug trafficking …).

♣ Application of the Ethiopian criminal code as to place;

1) Principal jurisdiction

i. Territorial application

- ✓ Crimes committed on Ethiopian territory Art 11
- ➢ Conditions;
  = crimes committed by any person
  = the crime must be punishable under Ethiopian law

= the crime must be committed in Ethiopian territory

Exceptions to 'any person' → immunity (ambassadors, diplomats … Art 11(2)).

- ✓ Crimes by foreigners on Ethiopian territory 12
- ➢ Impossibility to try the accused foreigner in Ethiopia, if extradition cannot be obtained
- ➢ Impossibility to retry the accused foreigner in Ethiopia, if the criminal tried and sentenced in the country of refugee
- ➢ Resumption of delegated jurisdiction (by which state law can try??? And what if there any difference in punishment and execution between the countries law???)
- ➢ Enforcement of punishment in Ethiopia

ii. Extra-territorial jurisdiction

- ✓ Crimes committed against Ethiopia outside its territory 13

  Essential elements;

  = the criminal must be found in Ethiopia

  = if he is not found in Ethiopia his extradition shall be requested 11(3)
- ✓ Crimes committed in a foreign country by an Ethiopian enjoying immunity 14
- ➢ Immunity persons = diplomats, consuls, officials and agents
- ➢ The crime must be punishable both under the foreign law and Ethiopian law.
- ✓ Crimes committed in a foreign country by a member of Ethiopian defense force 15
- ➢ 15(1) Ethiopian courts subsidiary jurisdiction if the crime is against ordinary law of a foreign country.
- ➢ 15(2) Ethiopian courts principal jurisdiction if the crime is one of the listed in Art 269 – 322 and crimes against international law, in the capacity of soldier in a foreign country.

♣ Effects of foreign sentences with regard to principal jurisdiction; 16

- ➢ When the crime is 11, 13, 14(1) and 15(2), he tried and sentenced again in Ethiopia 16(1)
- ➢ Discharge or acquittal in a foreign court shall not be a bar to fresh proceedings in Ethiopia 16(2).
- ➢ Where the criminal was tried and sentenced abroad and served all or part of the sentence, the rule against double jeopardy demands that the term sentence served in the foreign country be deducted from the sentence imposed in Ethiopia 16(3).

2) Subsidiary jurisdiction

► crimes committed by members of defense force against ordinary law of a foreign country 15(1)

► crimes committed against international law outside Ethiopia 17(1)(a)

► crimes against public health and morals outside Ethiopia 17(1)(b) → 510, 567, 605, 606, 609

► other crimes outside Ethiopia 18 (the crime must be punishable under both states law and the crime be grave enough to justify extradition).

= conditions for application of subsidiary jurisdiction 19

♣ Effects of foreign sentences with regard to subsidiary jurisdiction;

- In cases where Ethiopian courts have subsidiary jurisdiction only (17(1), 17, 18), the criminal cannot be tried and sentenced in Ethiopia if he sentenced or acquitted in a foreign country.
- Otherwise he/she can be tried again.

► The concept of extradition 21

Extradition is the process whereby under a treaty or upon a basis of reciprocity one state surrenders to another state at its request a person accused or convicted of a crime committed against the laws of the requesting states. There are crimes not subject to extradition proceedings, such as;

- Political crimes
- Military crimes e.g. desertion
- Religious crimes

In Ethiopia foreign extradition is allowed. But Ethiopian citizens shall not be extradited.

Art 22, recognition of foreign sentences.

The FDRE constitution Art 23 generally prohibited the case of double jeopardy. But the criminal code Art 16 & 20 create some door to double jeopardy in case of sentences given by foreign courts.

CHAPTER FIVE – CONDITIONS OF CRIMNAL LIABILITY

- Elements of crime;
  a. Objective element (physical element/actus reus) = material and legal element
  b. Subjective element (mental element/mens rea) = moral element
- Elements of crime under Art 23;
  a. **Legal element** Art 2, 23(1,2)
- No act or failure to act may be regarded as an offence unless the law so requires
- The law which prohibits such act should be in force, not only when the act is committed but when it is punished.

- A person who performs an act which is not penalized by any law such as prostitution or intoxication, commits no crime.

b. **Material element** 23(1,2)

- The existence of some sort of **conduct** on the part of the perpetrator in order to make him/her liable criminal.
- **Physical or muscular movement** towards a given object which may also willful restraint from doing a given act.
- It can be classified as **commission, omission, and commission by omission.**

✓ **Commission**

- Act the prohibited, but all commissions cannot be criminal like; lawful acts (acts permitted by law, justified by law/self defense, commanded by law, professional duty …)

✓ **Omission**

- Failure to act the ordered and failure to perform legal duty 39, 254 – 256, 285, 308, 443...

✓ **Commission by omission**

- Committed when a person fails to perform a duty recognized by law. Act contrary to his duty and without just cause refuses to provide his services in a case of serious need (through speaking, customary signs …) 537, 575, 778

c. Moral element (mens rea) 23(2)

- The liability to conviction of an individual depends not only on his having done some outward acts that the law forbids, but on his having done them in a certain frame of mind or with a certain will.
- Attempt to assess the state of mind in establishing a crime.
- 23(4) the crime is punishable when;
  = the court proofs the commitment of the crime
  = the crime is punishable by the law

❖ Criminal fault and accident 57

- Criminal liability through intention and negligence 57(1)
- No criminal liability in accident because there is no moral element 57(2)
  = Grounds ► no fault, force majeure, accident

A) INTENTION 58

- Foreseen and wish (desire) to the possible conduct
- Criminal intention constitutes the highest degree of criminal guilt and comprises of **two** elements i.e. full knowledge and intent.

a) Direct intention 58(1)(a)

- A fixed object (by the criminal own wish)
- A clear foresight of consequences
- A desire for consequence

b) Indirect intention (dolus eventualis/recklessness) 58(1)(b)

- No desire to the consequence of the harm
- Accept the occurrence of the harm
- Probable knowledge on the unlawful or punishable nature of the act

► legal effects of criminal intention;

- Intentional crime is punishable unless and otherwise expressed by law as an exception 58(2) → 68 – 81 (lawful act, self defense, excusable act, professional duty …)
- No criminal liability 58(3) → 73 (when it was without knowledge, without desire and for what goes beyond he intended0.

B) NEGLIGENCE 59

- Criminal negligence constitutes criminal guilt of a lower degree
- Negligence means the failure to exercise care thereby causing harm that could/shoukd have been normally expected.

a. Advertent negligence (conscious) 59(1)(a)

- Knowledge or awareness of the result
- No interest or desire over the result
- No acceptance of the consequence
- Rejecting the consequence

b. Inadvertent negligent 59(1)(b)

- No knowledge or awareness
- No intent or desire
- Has duty of care
- ❖ Determination of negligence 59(10 parag 2
- Reasonable man standards and considers the personal circumstance, age, experience, education, occupation and rank of the person.
- ❖ Legal effects of criminal negligence 59(2)
- Crimes committed by negligence are not always punishable. But they are punishable when the law says by considering the nature, gravity and the danger of the criminal act constitute over the society.

- **Criminal liability in case of concurrence and recidivism**

A. Concurrence of crime/material concurrence 60(a), 85 → two or more similar or different crimes committed successively
B. Notional concurrence/concurrence of criminal provisions 60(b), 85 → a single criminal act or omission may give rise to concurrent crimes by violating two or more provisions. Notional concurrence may also a non-simultaneous combination of crimes 66.

65 ↔ 187(2), 620 rape, 639 public indecency and outrages against moral, 652 adultery, 654 incest, 665 theft, 670 robbery …

C. Assimilated case of concurrence 60(c) → through criminal intention or negligence and violation of same criminal provision causes harm against more than one person's interest.

- **Unit of guilt and penalty 61 (one punishment for one crime)**

A. Single act (imperfect) 61(1) the same criminal act or a combination of criminal acts against the same legally protected right flowing from a single criminal intention or negligence. → 477, 535, 634

B. Successive non-concurrent act 61(2) successive or repeated acts against the same legally protected right flowing from the same initial criminal intention or negligence constitute one crime.

C. Aciliary (subordinate acts) 61(3) precedent and subsequent criminal acts performed by the criminal himself before and after the commission of the main crime

- **Renewal of guilt and penalty 62**

The offender becomes punishable where there is repetition of acts or omissions with renewed criminal intention or negligence.

- **Concurrence between material and moral element;**

➢ The existence of legal, material and moral elements cannot be sufficient, so there should be concurrence of moral and material element. The material element must be attributable to the moral element or the material element must be manifestation the moral element. The moral element should come first and the result is material element 57 – 59. **Exception:** concurrence of material and moral element may not be mandatory in case, if the crime commits in order to commit a crime or knowing that he could a crime, intentionally put him into a condition of absolute irresponsibility or of limited responsibility by means of alcohol or drugs or any other means 50(1).

- **Relationship of cause and effect (causation) 24**

A harm which has been suffered is an event and majority of such events are products of plurality of factors/causes (when the application of criminal law requires the achievement of a given act). But in some cases the criminal law may apply in default of results (attempt 27, preparation 26 … The result achieved should be the consequence of the act or omission of a person in question. But **exceptionally**, where there are preceding, concurrent or intervening causes, whether due to the act of a third party or to a natural or fortuitous event, which are extraneous to the act of the accused, this relationship of cause and effect shall cease to exist when the extraneous cause in itself produced the result and in such a case, the act with which the accused person is charged in itself constitutes a crime he shall be liable to the punishment specified for such a crime 24(2). 477, 854

- **Theories of causation**

a. Sine qua non (absolute causation) theory

- An act in the absence of which the result would not have been achieved is deemed to be the cause of such result. But … for test.

b. Adequate/proximate causation theory 24(1) parag 2

- A case in an event which is the normal course of things, produce the result achieved.
  - **Factors that might break the chain of causation 24(2)**
    a. Preceding causes – the one that exist even before anything is done by the accused towards commission of the crime.
    b. Concurrent causes – a given result may be attributed to two or more simultaneous causes, two or more persons are found to be eligible for liability.
    c. Intervening causes – two or more consecutive (not simultaneous) events has caused the harm in issue. It may cause after the commitment of the crime. But it has **exceptions** 24(2) parag 2 the act with which the accused person is charged in it constitutes a crime he shall be liable to the punishment specified for such a crime. And also 24(3).
  - **Place and time of the crime 25**

- Place and time of the act committed or omitted and also the attempted 25(1).
- If the act and the result cannot be found together you can take place of the act or place of the result 25(2). **Court of place of result is subsidiary of court of place of act.**
- In case of combination and repetition of criminal act take the time and place of one the combined or repeated crime 25(3).

CHAPTE SIX DEGRRES IN THE COMMISSION OF CRIME 26 – 29

- Preparatory acts 26

Preparatory acts are not punishable as a general principle for two main causes;

1. It is difficult to safely conclude that a person manifests a material elements of the crime due to the equivocal nature.
2. Remoteness of the preparatory acts towards the offences intended to be committed.

But there are two situations where preparatory acts are punishable;

1. Where the preparatory acts constitutes a crime in themselves 26(a) = 808, 809
2. Where the preparatory acts constitutes a special crime by owing to their gravity 26(b) = 256, 257, 300, 371

- **Attempt 27**

Attempt is a substantial but unsuccessful effort to commit a particular offence. The elements of criminal attempt are;

1. Failure of the intended result
2. Intention
3. Commission or omission

When a crime is began to be committed? = when the act performed clearly aims by way of direct consequence, at its commission.

Substantiveapproach = no matter how the material proximity are there, rather moral and mental intension is proximity.

Objectiveapproach = emphasis only on material proximity rather than oral and mental proximity.

4. The intended result should be contrary to criminal law

Kinds of attempt;

a. Incomplete attempt
   - The accused chooses not to do or prevented from doing the last act of the crime. = not to do (does not pursue) = voluntary withdrawal (renunciation) 27(1), 28(1). It may create an **effect** of reduction of punishment or total exemption of punishment 179, 180, 28(1).

b. Complete attempt
   - The accused has performed on his part but without achieving the result indeed. Pursue criminal activity without achievement 27(1). The non-achievement of result is because of;
     = reasons beyond his control (impossible offences) 29
     = because of his own free will (active repentance) 28(2)

Liability in criminal attempt;

Rule = attempt is always punishable 27(2)

Exception = **participation in secondary capacity** unless and otherwise expressly provided by law 29 parag 3= 36, 37 = 255 =238 – 242, 246 -252 AND in case of **pettyoffences** 740.

Sentencing in case of attempt;

- As the crime intended to commit 27(3)
- Possibility of reduction of punishment 27(3) parag 2, 179

Renunciation and active repentance in case of secondary capacity 36, 37 = 28(3) = 179, 180

- Reduction of punishment

- Total exemption from punishment

When the acts done in an attempt to omit a crime in themselves constitute a separate crime the punishment attaching there to shall be applied 30.

- **Impossibility of offences 29**

It is in case where a person uses a means which is not capable to cause the result targeted. It is because of;

- The object of the crime is absolutely insusceptible to harm
- The means used is absolutely incapable of to produce the result intended.

Criminal liability in case of impossible offences;

- They are liable 29 parag 2, 180
- There may not punishment at all 29 parag 2

Discretion of the court 31

CHAPTER SEVEN – PARTICIPATION IN THE COMMISSIO OF CRIME

1. PRINCIPAL PARTIVIPATION
   - Close, direct and active participation in the crime.
     A. Material offender 32(1)(a)
   - Who actually or materially participate in the commission of a crime either;
     = directly (physically or personally commits the crime) or
     = indirectly (the perpetrators commits the crime by using instruments like natural force, animals …)
     B. Moral offenders 32(1)(b)
   - A person who fully associates himself/herself with the commission of the crime and takes the crime as his/her own even though he/she is present at the time when and at the place where the crime was committed.
   - A person who plays no part physically in the commission or omission of the offence.
   - He has conditional intent.
     C. Indirect criminal 32(1)(c)
   - Use an intermediary to commit a crime.
   - Conditions;
     = employs an infant 52
     = employs mentally deficient person
     = employs unaware of the circumstances
     = compel another person 80, 81
     = use irresponsible persons 48 - 50

❖ Legal effects of principal participation

- Crime excess of the intended result 32(2) → 58(3) (no person shall be convicted for what he neither knew of nor intended, nor for what goes beyond what he intended either directly or as a possibility).
- Principal participation of two or more than two persons 32(3) → 41, 88(2) (non-transmissibility of personal circumstances and penalty shall be determined according to the degree of individual guilt).
- Following punishment provisions 32(3), 88ff

Differences between moral and indirect criminals: awareness and capability (conditional intent).

- Participation in case of special crimes 33
- Only by specific individuals
- No principle of conditional intent
- Participation of juridical person in a crime 34
- Collective crimes (when the crime is committed collectively) 35 → 20(3) FDRE constn

2. SECONDARY PARTICIPATION

A. Incitement 36

- Conditions (no conditional intent, no negligence, intention, comes before the commitment of crime by material criminal, always in commission, there exist at least two persons (instigator and instigate), no prior decision of crime on the instigate before the incitement). Instigator of instigate
- Incitement to be punishable the crime should be attempt. 36(2)
- Legal effect of incitement 36(3) → the punishment to be imposed shall be that provided by law for the intended crime. = 179
- Excess crime than the intended result 36(4) – when the person who committed the crime went beyond what was intended by the investigator, the latte shall be liable to punishment only for the crime he intended or could foresee. The actual criminal shall alone be answerable for the more serious crime which he committed. → 57 – 59

B. Accomplice 37

- Conditions (intention, no assistance by negligence, there exist two persons, both commission or omission, material or non-material (moral) assistance, the assistance can be before and at the time of commitment of crime but cannot be after the commitment of the crime, the assistance should be for the intended crime.
- Assistance of assistance is not allowed.
- The accomplice shall be liable minimally at attempt of crime 37(3).
- Assistance for the intentional crime is always punishable 37(2).
- Legal effect of accomplice 37(4) – the punishment to be imposed shall be the punishment for the intended crime in accomplice.

- Excess crime than the intended result 37(5) - when the person who committed the crime went beyond what was intended by the investigator, the latte shall be liable to punishment only for the crime he intended or could foresee. The actual criminal shall alone be answerable for the more serious crime which he committed.
- **Even though there is no attempt of crime, attempt of incitement and accomplice can be punishable for cases of Art 238 – 242, and 246 – 252, 255.**
- Criminal conspiracy 38
- It considered as an aggravating circumstance, not as a crime according to Art 84(1)(d). but **exceptionally** it can be a crime in cases of;
  = provocation and preparation 257
  = provocation and preparation 274
  = conspiracy 478

CHAPTER EIGHT – CRIMINAL RESPONSIBILITY

Defenses for criminal liability are circumstances or conditions that relieved on accused from conviction of guilt and its consequent penalty.

Special defenses are not expressed in the general part of the code rather they exist in the special part. They are applicable to special cases or crimes.

General defenses are applicable to all crimes 68 – 81. Genera defenses can be categorized in to two as follows;

a) **Defenses of irresponsibility** = negative defenses (yes I did, but I have a good reason) → e.g. prohibition of double jeopardy 2(5), non-retroactivity of criminal laws 5 -10.
b) **Affirmative defenses** = positive defenses (did not commit the crime)

Responsibility is a general presumption and irresponsibility is an exception.

Responsibility is a person's mental fitness to answer in the court for his/her action. Criminal responsibility and irresponsibility stipulate under Art 48.

- **Irresponsibility**

No person may be convicted of an offence, at the time of the commission of the crime, was irresponsible for his acts. There are **three grounds of irresponsibility;**

1. **Insanity**

Essential conditions to establish the defense of insanity; 49

- Nature of incapacity (not understanding the nature and consequence of acts)
- Reason of incapacity (due to old age, illness, abnormal delay/deterioration).

- Time of incapacity (at the time of his act).
  A, absolute insanity 48(2,3)
- Has no responsibility (liability) 48(2)
- Has **three** approaches
  = **biological approach** – without taking in to account the result
  = **psychological approach** – focus on understanding nature and consequence of the act (cognitive and volitional power)
  = **bio-psychology approach** – criminal irresponsibility in both biological and psychological causation
- Legal effects of absolute insanity;
  = total exemption (no punishment) 48(2)
  = treatment and protection 48(3) → 129 - 131

B, partial/limited insanity 49

- Partial understanding of the nature and consequence of the act and the person did not lost his/her total cognitive power.
- Legal effects of partial insanity;
  = partial punishment 49(1)
  = treatment and protection 49(2) → 129 – 131

2. Intoxication 50

A, voluntary intoxication

- It may be intentional 50(1) or negligent 50(2) or unfortunate 50(3) intoxication and create criminal **liability**. → 59, 491

B, involuntary intoxication

- There is no fault on his part and it is by coercion and the doer is absolutely **irresponsible**. 50(4)

= defense of intoxication is only in case of involuntary intoxication 50(4). There may be expert examination in doubtful cases 51.

3. Infancy 157 → 53 - 55

- Children under the age of 9 are criminally irresponsible and their families and relatives protect those 52.
- Youth criminals include persons in the age of 9 to 15, Art 53.
- **Measures** taken by court in this kinds of cases;
  = admission to curative institution (medical treatment) 158

= supervision and education 159 = 208 129 - 133
= reprimand, censure 160 if they are irresponsible
= school or home arrest (limit their normal movement) 161
= admission to corrective institutions 162

- Duration of the measure 163
- Variation or change of the measures 164
- **Penalties** 166 if the above measures are not effective to record the intended goal;
  = fine 167
  = imprisonment 168
- **Legal effects of the measures** = they shall not be regarded as having been sentenced under criminal law 165.

❖ **Transitory age (from 15 to 18) Art 56**

- Tried under the ordinary provisions of the code 56(1).
- Conditions take in to account in assessment of their criminality (age, incorrigible or dangerousness to the society, likely hood of his reform 117(1), 166 – 168, and 179).
- No death penalty to these persons 117(1), 176.
- The court may order measures and treatments 177(1) = 157 - 165

CHAPTER NINE AFFIRMATIVE DEFENSES

- Affirmative defenses as their name indicates are legal defenses against a criminal charge.
- There are **three** categories of affirmative defenses; **lawful acts, justifiable acts and excusable acts.**

1. LAWFUL ACTS 68, 69 77?

- Which are recognized or authorized by law.
  = acts performed in respect of public duties (non-state official who cause harm to other for the public good) 68(a) = 57 crp
  = acts performed in respect of state duties (causes harm to others for discharging duty) 68(a)
  = acts performed in respect of military duties 68(a)
  = acts performed in exercising the right of correction or discipline (parents may punish their children for correction and better behavior) 68(b) = 52 parag 2, 576(3), cvc 2039(c)
  = acts performed in exercising private rights recognized by law 68(c), cvc 1148, 2075
  = acts of professional duty 69 (the act should not deviate from the accepted practice of the relevant profession and the crime should not be on his fault).

2. JUSTIFIABLE AND EXCUSABLE ACTS 70 – 81

A, defense of consent of the victim 70

Rule = consent of the victim cannot be defense

Exception = it can be defense when the crime is punishable upon compliant and done with the consent of the victim or his legal representatives. It is not punishable also in case, when it done with free will of the victim without any commercial purpose and donate the body or part of the body to other persons use or for necessary scientific research.

B, defense of coercion 71, 72

= **absolute coercion** - there is no moral element /no negligence or intention/ at all to commit a crime, there is volition element /no power of choosing and deciding/, social benefit/comparison of interest to be affected/, existence of coercion/imminent, continual and comes from human being/ and proportionality/balance/. In this case there no purpose of punishment. Its legal effect is total exemption. 71 = 32(1)(c)

= **resistible coercion –** there is a position to avoid or resist the coercion and the coercion is not irresistible. Its legal effect is reduction of punishment. 72 = 180

C, defense of superior order 73, 74

= **responsibility of the person giving the order** – there is an order, the act should be criminal, the order must be executed, the act within the limit of the order and superior-subordinate relationship should be exist. 73

= **responsibility of the subordinate** – if the order is out of power or out of law, within the knowledge of criminal nature of the act and in such crimes: homicide, arson, any grave crime against person or national security or property, essential public interest or international law. In this case there may be total exemption of punishment or reduction of punishment. 74

= there are **three theories** with this regard;

a. The blind or passive obedience theory
- The subordinate is always under the obligation to carry out the order of his boss. At all, there may not be punishment or liability of the subordinate.

b. The intelligent bayonet or infanty theory
- The duty of the subordinate to obey the order of his superior is conditional. He/she has examining the legality/illegality of the order.

c. The manifest illegality theory
- The subordinate is always duty bound to check the legality/illegality of the order and to implement the order. Check or examine: does the person has authority? Or does the act is criminal?

D, defense of necessity 75 - 77

It presupposes the choice of evil between high evil and low evil. (Suffering harms Vs violation of law).

Elements – (there must be true state of necessity/imminence or urgent cases and serious/, the source should be natural force, the act should be last resort, intention must be exist, proportionality, the emergence condition should not be because of the contribution of the criminal/no fault of the criminal/, and the act should be for the protection of legal interest of oneself or another).

= **exceptionally** this provision cannot be applicable to persons having professional duty 75 par 2. **Exception to exception, in case of military sate of necessity 77.**

= if the act is in excess of necessity the criminal is liable and there may be reduction of criminal punishment 76.

E, legitimate defense 78, 79

It is use of force against unlawful act for the protection of legal interest of oneself or the other 78. And if it is in excess of legitimate defense, there is criminal liability 79.

F, defense of mistake of fact 80

G, defense of mistake of law and ignorance 81 = cvc 2035

Rule = it cannot be a defense 81(1, 2)

Exception = it can be defense 81(3)

CHAPTER TEN – CRIMINAL PUNISHMENT AND ITS APPLICATION

Punishment is loss of rights or advantages consequent on a breach of law.

Theories of purpose of punishment;

A) Retribution (retaliation/revenge)
- Revenge against the wrong doer
- Satisfies the feeling of the revenge

B) Deterrence
- To deter the criminal from committing crime in future and to set as an example to the prospective criminals. It carries the message that those who commit the criminal activities will be punished likewise. This ensures by two ways;
  a. General deterrence = for the general public as a whole
  b. Specific deterrence = only for the criminals

C) Prevention (incapacitation) Art 1 parag 2

- To prevent the criminal from committing crimes by physically disabling him by separating him and keeping him in seclusion from the society for a certain period of time (prison).

D) Reformation (rehabilitation)

- To restore a man to society as a better and wiser man and as a good citizen.

❖ General provisions of for punishment

87 principle of punishment = to achieve the purpose, in the spirit of the code, and in keeping with human dignity.

88 calculation or determination of punishment = based on degree of individual guilt, dangerous disposition of the criminal, motive and purpose, personal circumstance, standard of education, gravity of the crime and the circumstance of committing a crime.

89 minor crimes = which leads to simple imprisonment not exceeding 3 months, or fine not more than one thousand birr. → 122, 746 - 764

❖ Kinds of punishment

1) Ordinary punishments applicable to adults 90 – 156
2) Measures and penalties applicable to young offenders 157 – 177
3) Measures and penalties applicable to petty offences 746 – 764

- ORDINARY PUNISHMENTS APPLICABLE TO ADULTS

A) Principal penalties 90 – 102

1. Pecuniary penalties

✓ Fine 90 = juridical persons 100,000 – 500,000 ETB
= physical persons 10,000 – 100,000 ETB
} general maximum and minimum

Considerable things in determination of fine are gravity of the crime, dangerousness, economic and health status, family administration, age and source of income and its amount …

90(3) substitution of imprisonment by fine to juridical persons;

= < 5 years simple imprisonment = 10,000 ETB
= < 5 years rigorous imprisonment = 20,000 ETB
= < 10 years rigorous imprisonment = 50,000 ETB
= > 10 years rigorous imprisonment = 500, 000 ETB

90(4) if the penalty provided by law is only fine, it becomes fivefold for juridical persons

91 fine with imprisonment jointly

92 motive of gain as an aggravating circumstance

93 recovery (collection) of fine = it may paid forthwith or within 6 months or by installments within the period not exceeding 3 years.

94 steps taken by the court when fine is not paid forthwith (sureties and securities, surety and security be deposited and finally property seized and sold).

95, 96 conversion of fine in to labor or compulsory labor not exceeding 2 years

97 suspension of compulsory labor in cases of illness 105, unable to carryout compulsory labor, reason of poverty, family obligation, state of health and other good causes.

- ✓ Confiscation of property 98
- ➢ The properties confiscated are directly or indirectly acquired by committing a crime and acquired lawfully. But the confiscation shall not affect domestic articles normally in use, instruments of trade, amount of foodstuffs and of money as are necessary for the support of family …
- ✓ Sequestration of property 99
- ➢ When the criminal has been convicted and sentenced in his absence for conspiring or engaging in hostile acts against the constitutional order of the internal and external security of the state.
- ✓ Other pecuniary penalties 100 – 102

100 = forfeiture to the state any material benefit given to the criminal for the commission of crime and any fruits of crime. If they no longer in kind, refund their value.

101 = restitution of property, compensation for damages and costs through civil and criminal joint

102 = compensation to the injured party

2. Compulsory labor 103 - 105

103 = compulsory labor with deduction of wages to the state in case of minor importance crime and punishable with simple imprisonment not exceeding six months. The punishment may be applied in his normal work place, employed place, public establishments or public work.

104 = compulsory labor with restriction of personal liberty where the criminal fails to discharge his obligation and if any failure to comply with this requirement, the criminal shall be liable to simple imprisonment.

105 = suspension of sentence during illness

3. Imprisonment 106 – 116

a. Simple imprisonment 106, 107

- ➢ In case of not very serious crime, not serious dangerous to the society and in principle presentment from 10 days to 3 years 106. **But as an exception it may extends up to 5 years.** There is substitution of simple imprisonment in compulsory labor 107. → 103, 104

b. Rigorous imprisonment 108

- Very serious nature crime, dangerous to the society, strict confinement of the criminal to protect the society and presentment from one year up to 25 years and it may be for life.
  - ❖ Common provisions for both types of imprisonment

110 = separation of sex and segregation → separation based on sex and separation of minors from rigorous imprisoners and special confinement imprisoners …

111 = obligation to do work and benefits accruing there from.

112 = variation of condition of imprisonment

113= conditional release before expiry period of sentence → 202

114 = execution of sentence in case of members of defense force

115 = deduction of period of remand (time of imprisonment before judgment may be **deducted** from the full sentence time as a case but if the imprisonment before judgment is because of his fault it may **not be deducted**).

116 = period of time spent in hospital and transfer in case of illness, as a case may be **deducted or not.**

4. Death penalty 117 - 120

= pass only on criminals who attained the age of 18. It is on completed crime, in case of grave crime, dangerous to the society and in the absence of any extenuating circumstances. It shall not be carried out unless confined by the head of the state. Its execution cannot be in public, by hanging or inhuman means.

118 = treatment of prisoners awaiting execution

119 = cases where death penalty may be suspended;

a. Fully or partially irresponsible
b. Serious illness
c. Pregnant women

120 = commutation of sentence of death

a. Women with child born alive
b. Pardon and amnesty 229, 230

Theories = abolitionist

= retentionist Vs the right to life

B) Secondary penalties 121 ff

- ✓ Caution, reprimand, admonishment and apology are penalties affecting the honor and personal integrity of the criminal. 122
- ✓ Deprivation of civil (to vote, to be elected, to be a witness …), family (paternal authority or guardianship) and professional (art, trade …) rights for permanent or temporary period. 123 -126. The criminal may claim **reinstatement** 126.
- ✓ Dismissal from the defense force and reduction in rank 127, 128

C) Special measures

a. Measures applicable to irresponsible persons and criminal with limited responsibility

- ➢ Confinement 130 129, 132, 133
- ➢ Medical treatment 131

b. General measures for purpose of prevention and protection

- ❖ Measure of material nature
  - ✓ Guarantee of good conduct 135 – 139
  - ✓ Seizure of dangerous articles 140, 141
- ❖ Measures entailing restriction on business activities
  - ✓ Suspension and withdrawal of a license 142
  - ✓ Prohibition and closing of an undertaking 143 effect 144
- ❖ Measures entailing a restriction on personal liberty
  - ✓ Prohibition from resorting to certain places 145
  - ✓ Prohibition to settle down or reside in a place 146
  - ✓ Obligation to reside in special place or area 147
  - ✓ Placing under supervision 148
  - ✓ Withdrawal of official papers 149
  - ✓ Expulsion 150 ……. 151 -153
- ❖ Measures for purpose of information
  - ✓ Notification to the competent authority 154
  - ✓ Publication of judgment 155
  - ✓ Entry in the judgment register 156

- MEASURES AND PENALTIES APPLICABLE TO YOUNG OFFENDERS 157 – 177
- MEASURES AND PENALTIES APPLICABLE TO PETTY OFFENCES 746 - 764

► DETERMINATION OF PUNISHMENT 178 - 189

1. GENERAL PRINCIPLES

Punishment and measures designed by the criminal code are supposed to be applied; 87

- In accordance with the spirit of the criminal code
- In order to achieve the purpose of the criminal code
- Give due respect for human dignity

Calculation of sentences 88 = considerable things are degrees of individual guilt, dangerous disposition of the criminal, antecedents, motive, purpose, personal circumstance, standard of education, gravity of the crime and circumstances of its commission.

Minor crimes 89 = crimes punishable with simple imprisonment not exceeding three months and/or fine not more than 1000 ETB.

2. EXTENUATING CIRCUMSTANCES

a. General extenuating circumstances 82 previous good character, the criminal prompted by a high religious, moral or civil conviction, crime under the influence of a person to whom he owes … Art 179. But there is no double mitigation.
b. Special mitigation circumstances 83 – family and affection relationship, ordinary mitigation 179, free mitigation 180, exemption from punishment 83(2).

3. AGGRAVATING CIRCUMSTANCES

a. General aggravating circumstances 84 – factors that can be used to increase a punishment.
b. Special aggravating circumstances 85 – concurrence and recidivism 85, ordinary aggravation 183, concurrent crimes 184, special cases of concurrence 185, retrospective concurrence 186, notional concurrence 187, recidivism 188 …

- Other general extenuating and aggravating circumstances 86 = 179, 183.

4. CUMULATION OF DIFFERENT EXTENUATING AND AGGRAVATING CIRCUMSTANCES 189

- In case of general aggravating and extenuating circumstances 179, 180, 183 = 86
- In case of recidivism.
- In case of different types of aggravating and extenuating circumstances.

- **POST CONVICTION PROCESS 190 FF**

The post conviction procedures are;

1. Suspension of penalty and conditional release

a. Suspension of penalty 190 ff

It aims to promote the reform and reinstatement of the criminal. It may be suspension of pronouncement of penalty 191 or suspension of enforcement of penalty 192 with the specified conditions.

b. Conditional release 201 – 204

2. Pardon and amnesty 229 – 230, constn 28, 71

Pardon = the act or instance of officially nullifying punishment or other legal consequences of crime. The chief executive of the government usually grants a pardon. The president has the power to issue pardon. 229

Amnesty = a species of pardon but applies to a certain classes of criminals and specific type of crime only 230.

3. Reinstatement 232 – 237

A convict who has undergone his penalty or whose penalty is barred by limitation or has been remitted by pardon or who has been released conditionally may obtain his reinstatement and the cancellation of his conviction.

4. Discontinuance and extinction of charges 211 – 228

- If the defendant dies 214
- Period of limitation 217

CHAPTER ELEVEN – SPECIAL PART OF THE CRIMINAL CODE

❖ **Crimes against the sate**

a. Treason and its kinds (high treason, treason and economic treason) 248 -251

b. Espionage 252

❖ **Crimes against life**

a. Justifiable homicide = these are no fault homicides. They ordinary involve the death of someone under circumstances of necessity or duty.
b. Excusable homicide = these are misadventures, accidents or acts of insanity.
c. Criminal or culpable homicides;

- First degree criminal homicide (murder) =death in **cold blood or by lying in wait**.
- Second degree criminal homicide (murder) = death in the **heat of passion.**
- Voluntary manslaughter = involves acts involving the death of someone without thinking. It involves **sudden passion**.

- Involuntary manslaughter = the least serious offence in the law of homicide.
  Ethiopian experience;
- **Intentional homicide = aggravated homicide 539**
  = extenuated homicide 541 - because of excess power use
  = ordinary homicide 540
- **Negligent homicide 543**

  - **Crimes against persons 553 ff**
  - **Crimes against women and children**
    - ✓ Abortion 551 ff

When it becomes legal? 551

- The pregnancy was the result of rape or incest
- The continuance of the pregnancy engagers health and life of the mother and the child
- When the child has an incurable and serious deformity
- Where the pregnant women, owing to a physical or mental deficiency she suffers from or her minority,. is physical as well as mentally unfit to bring up the child.
  - ✓ Harmful traditional practices 561 ff
  - ✓ Bigamy 650
  - ✓ Rape 620
  - ✓ Trafficking women and minors 635
- **Crime against property662 ff**

CHAPTER TWELVE – PETTY OFFENCES

Petty offences can be described as public welfare offences and regulatory offences.

Petty offences lie in any one of the following conducts 735;

- An infringement of the mandatory or prohibitive provision of law or Art 3
- An infringement of a regulation issued by a competent authority or
- Commission of a minor offence which is not punishable under the criminal law.

Petty offences are subject to punishment 746 – 755.

Petty code is applicable only in the absence of a provision for more severe penalty 736(1) per 2.

Petty offences shall not be punishable retroactively 736(2).

Petty offences shall be governed by the principle of territoriality 738(1) = 11, 25

Art 14, 18, 12 and 21 has no applicability in case of petty offences.

The only petty offences committed outside the territorial jurisdiction, but are still triable in Ethiopia are petty offences of purely military character provided by Ethiopian military law 792, 738(3).

In relation to petty offences, foreign sentences fail to produce any consequential effect in Ethiopia 739.

In case of petty offences negligent offences are always punishable except where expressly exempted from liability 741. It is opposite to the ordinary offences 48 – 50.

In case of petty offences only completed offences are punishable. The stages of preparation and attempt are not punishable 740. In petty offences only the principal offender is punishable. Inciters, co-offenders and accessories are not punishable. No collective responsibility in petty offences 743.

Applicability of extenuating and aggravating circumstances in case of petty offences 745.

- **Kinds of penalties or measures**

Art 746 expressly excludes imposing of ordinary penalties in case of petty offences.

A. Principal penalties
   - Arrest 748 - 751
   - Fine 752 - 754
   - Reparation of the damage 755
B. Secondary penalties
   - Exclusion of forfeiture of rights 757
C. Safety measures
   - Guarantee of good conduct 758
   - Confiscation and forfeiture of the state 759
   - Prohibition of undertakings and suspension of work permits 760 - 762

In case of petty offences the law prohibits the imposition of the following measures; 762(2)

- Prohibition to reside in a place
- Obligation to reside in a specific area
- Placing under supervision
- Expulsion from the territory of Ethiopia

CHAPTER THIRTEEN – CRIMINAL LAW IN A CHANGING WORLD

- **Economic crimes**
- **Environmental pollution**
- **Sexual permissiveness**