

Chapter Four

CONDITIONS OF CRIMINAL LIABILITY

- **Introduction**

- *“no man may be found guilty of crime and therefore legally punishable unless in addition to having brought about a harm which the law forbids, he had at the same time a legally reprehensible state of mind”.*
- The principles of modern criminal law require the establishment of certain essential elements to fix criminal liability as follows;
- The **Legal Element** of a crime checks the action of the suspect(the material element) against the ingredients of the article of the law violated.
- The **Material Element** of a crime is the action taken by the suspect.
- The **Mental Element** is all about the state of mind of the suspect while taking the action in the process of violating the specific Article or provision of the the law at issue.

The Legal Element of A Crime

- **This ingredient of the crime refers to the infringement of any law, which is a criminal nature.**
- **This, in other words, means that a law must exist and this law must be violated so as to hold a person criminally liable.**
- **In most cases it is clearly said that a particular act is a crime or an offence and that there should be a law against it; but an act is not a crime for the mere reason it is wrong.**

In the Ethiopian Criminal Code

- **Art.23.crimes**
- **(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”.**
- ***For example Article 539 and the following***

The Material element

- Material element is all about the actions taken by the suspect in the process of violating the articles of the law making such action wrong.
- It is considered to be a requirement to constitute criminal liability as it is *undesirable* to punish one merely for his/her thoughts.
- Accordingly, the material element of a crime may be classified as
 - Commission,
 - Omission, and
 - Commission by omission.

Material Element by *Commission*

- When criminal policy regards as sufficiently harmful, a deed(act) that seeks to prevent its occurrence by imposing a penalty for its *Commission*.
- Its materiality is however measured by 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'. In this case the conduct is harmful and it is punishable.
- The same voluntary activity might sometimes cut open(operate) the body of a patient for performing a life saving surgery. In this sense even if the conduct is harmful it is for good and therefore not punishable.
- All commissions, even if they are harmful, are not punishable

All Commissions are not punishable

Commissions can be of four category

1.Command of the law as a Lawful Event

- Death' caused by execution of a criminal,
- Demolition of buildings' under town planning scheme

2. Events resulting from acts “Permitted by law” as a Lawful Event

- Injuries caused by the force in arrest of a criminal,
- Injury by a surgeon during operating a patient;
- Hurt caused by reasonable punishment of a child

3. Events resulting from acts “Justified” by law: as a Lawful Events

- Injuries caused during the exercise of right of self-defense

4.Unlawful Events: Commission of “Events” Prohibited by Law:

- **It is this category of harmful results of human conduct that constitutes crime.**

Material Element by *Omission*

- 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.
- But only those that are in breach of a legal duty are punishable.
 - **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 specific duty either imposed or recognized by law either of which is :

➤ Crimes of omission and:

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

❖ The law often imposes the duty to do something and failure to carry out these duties are punishable. These types of Crimes are referred as “Crimes of Omission” and are characterized by the non-performance of a mandatory act.

- Failure to report the preparation, attempt or commission of a crime Art. 39.
- Failure to report the preparatory acts of treason and mutiny Art. 254-256
- Failure to inform of a crime punishable with death or life sentence, Art. 443.
- Failure to obey enlistment or mobilization, or failure to enlist Art. 284-285.
- Failure to appear before courts as a witness or an accused person Art, 448
- Failure to lend aid to another. Art 575.

Crimes of *Commission by Omission*: Where a duty is recognized by Law

- **A crime is committed when a person fails to perform a duty recognized by law, such as, professional duty of a doctor.**
- **Refusal to provide professional service by a doctor, pharmacist, dentist etc., who contrary to his duty and without just cause refuses to provide his services in a case of serious need, is made punishable under Art 537 of the Criminal Code. If harm is caused by such refusal, it is a crime of commission by omission.**
- **The term *failure* and *refusal* at times require a careful distinction. For example in a case falling under Art 778, a shopkeeper expressly states his refusal to accept a legal tender (i.e. National money or currency) by saying 'No' or "I won't take", he has performed an act through a willful act i.e., "words of his mouth". If his refusal takes the form of a**

The Material Element in Summary

The Material or "Actus reus" or the physical element of Crime		
Deed of Commission	Results of Omission	
Crimes of Commission "Acts"	Crimes of Omission "Failure"	Crimes of Commission by Omission "Refusal"
These are characterized by positive behavior, i.e. by actively doing something to bring about the harmful 'result'.	It is impossible to bring about these results by positive behavior. These are the results of negative conduct omitting to act expected of him.	These offences include behaviors which include both positive and negative elements refusal to perform a duty includes a positive expression of 'unwillingness to act' expected of him.

The Moral Element of A Crime

- This has got something to do with the *guilty state of mind of a person* which means there is no punishment without guilt.
- This implies that a person cannot be held criminally liable for those acts he/she commits without there being any fault whatsoever on his or her part unless there exists some sort of blameworthiness.
- The very principle of this element is provided under Article 57 of the Criminal Code of FDRE

The Ethiopian Context(Art 57)

Article 57- Criminal fault and accident

(1)“No one can be punished for an offence unless he has been found guilty there of under the law.

A person is guilty if, being responsible for his acts; he committed an offence either intentionally or by negligence.”

(2)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.

- **Nothing in this Article shall be a bar to Civil Proceedings.**

Intentional Moral Element

- “To intend” is to have in mind a fixed purpose, to reach a desired objective.
- **Direct intention**
- *The noun “intention” is used to denote the state of mind of a man who not only foresees but also wills the possible consequences of his conduct.*
- For example, a man throws down another man from a high tower. In this cases it is clear that he both foresees the victim’s death and also desires it. Even in cases of omission, the desire and foresight are the same, for example, a man knowingly leaves a helpless invalid or an infant without nourishment or other necessary support until death occurs. He had the foresight and desire for the result.
- It will be noted that there cannot be intention unless there is foresight, since a man must decide to his own satisfaction and must accordingly foresee that to which his express purpose is directed.
- **Indirect intention**
 - A man may foresee the possible or even probable consequences of his conduct and yet not desire them to occur.
- **For the Ethiopian context Art.58**

Negligent Moral Element

- 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.
- **Advertent Negligence**
- In this form of negligence the criminal, like in the case of in direct intention, foresees the possibility of some harm but disregards (or rejects) its occurrence. Under indirect intention the criminal accepts the occurrence of the possible harm whereas in the advertent negligence the person rejects the possibility of the harm which in fact materializes as a result of his negligence.
- **Inadvertent Negligence**
- 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.
- For the Ethiopian case see Art.59

Moral Element in Summary

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

An Accident

- Accident is an act which is caused is not done with intention of causing it(**No intention**) or when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought under the circumstance in which it is done, to take reasonable precaution against it.”(**No negligence**)
- Art. 57 (2) of the Criminal Code of FDRE provides:
- ***“No one can be convicted under criminal law for an act penalized by law if it was performed or occurred without there being any guilt on his part, or was caused by force majeure, or occurred by accident.”***
- **Example:** **A** is at work with an axe. The head of the axe suddenly flies off and hit a person standing nearby injures him seriously. There is no negligence on the part of **A**. He can claim the defence of accident here provided he had taken proper care of fixing the axe before he starts working with it.

Cause and Effect

- A 'factor' is said to have caused a particular event if, without such factor the event would not have happened. In this regard there are two tests
- ***Theory of Absolute Causation:***
- 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.
- it is however difficult to establish criminal liability in such a way.
- ***Adequate or Proximate Cause Test***
 - ***as per this test relation between cause and effect is said to have been established when the act or omission***

The Ethiopian Context

Relationship of Cause and Effect(Art.24)

- (1) In all cases where the commission of a crime requires the achievement of a given result, the crime shall not be deemed to have been committed unless the result achieved is the consequence of the act or omission with which the accused person is charged. This relationship of cause and effect shall be presumed to exist when the act within the provisions of the law would, *in the normal 'course of things, produce the result charged.*
- (2) 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. If, 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.
- (3) Relationship of cause. and effect shall be presumed to exist between each cause specified under sub article(2) above and the result achieved, when the result is the cumulative effect of these causes, even though each cause cannot independently produce the result.

Concurrence Crimes

Material concurrence

Material concurrence

- **Several Criminal acts may also constitute one or more crimes. Such concurrence is referred to as material concurrence in Art 85. For example, if a criminal robs B's shop and C's residence, there is a case of material concurrence due to the criminal's successive acts. If the criminal in addition ravishes a maidservant while robbing C's residence, there is a material concurrence of three crimes, i.e., two crimes of robbery and a crime of rape.**
- **Materially concurrent crimes may be 'independent' or 'related'.**
- **In concurrent related crimes, a criminal commits a crime with the intention of causing or facilitating the commission of another punishable crime (Art 65).**

Notional concurrence

- **A single criminal act or omission may give rise to concurrent crimes by violating two or more provisions.**
- **Such events are referred to as national concurrence in Article 85. For instance, if a married man ravishes his relative in a public place he is punishable for four crimes.**
- **The crimes of rape (Art.620) incest (Art.654), adultery (Art.652) and public indecency (Art. 639) arise from the criminal's single act.**
- **Here several legal provisions are applicable because the act or combination is not an ingredient of only one of them. Art. 620 covers the sexual outrage, but not the relationship between the criminal and the victim which is covered by Art. 654, nor the marital status of the criminal, which is taken care of by Art. 652, nor the fact that the crime was committed in the view of the public, which is covered by Art.639.**
- **When a single criminal act results in several punishable crimes, it is classed as Simultaneous Notional Concurrence.**

Corporate Liability

- **Recently, developments have been made in criminal law with respect to wrong doings by legal persons.**
- **In law, personality is manifested not only in natural persons but also in legal or Juridical persons such as companies.**
- **The application of the doctrine that companies are legal persons separate from the individual persons involved in its operations, is that a company can commit many crimes of strict liability.**
- **For instance it can cause pollution, provide products that are unsafe to the public etc.**
- ***For the Ethiopian context Art 34***