- **Crime**" is an offence committed by an individual who is a basic unit of a society.

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. However, the substantive criminal law by its very nature cannot be self-operative. A person committing a crime is not automatically stigmatized and punished. At the same time, generally, a criminal would not be interested in confessing his guilt and receiving the punishment. It is for this reason that 'Procedural Criminal law' has been designed to look after the process of the administration and enforcement of the substantive criminal law. In the absence of procedural criminal Law, the substantive criminal Law would be almost worthless

The objectives of Criminal law are the protection of persons and property, the deterrence of criminal behavior, the punishment of criminal activity and rehabilitation of the criminal. The provisions of the Criminal Code are aimed at achieving these important objectives.

BASIC PRINCIPLES OF CRIMINAL LAW

The Principle of Legality.

- ***Nullum crimen, nulla poena sine praevia lege poenali*** (Latin, *No crime (can be committed), no punishment (can be imposed) without (having been prescribed by) a previous penal law*) is a basic maxim in continental European legal thinking.

- This maxim states that there can be no crime committed, and no punishment meted out, without a violation of penal law as it existed at the time. Another consequence of this principle is that only those penalties that had already been established

for the offence in the time when it was committed can be imposed.

- ✓ The *principle of legality* is that, *'there is no crime or punishment without a pre-existing law that prohibits that crime'*. Thus, the conduct must be deemed a crime before the act is committed. The policy behind the principle of legality is that "fair warning" should be provided to a criminal so that he does not inadvertently commit a crime that he has no reason to believe is illegal. There is no deterrence value in having unwritten crimes because people do not know what actions to avoid.

Art. 2 of the Ethiopian Penal Code incorporate this principle. The principle, according to this provision, has three important ingredients:

- ✓ "***nullum crimen sine lege"*** - No crime unless specified by law, (Art. 2/1)
- ✓ "***nulla poena sine lege"*** - No penalties other than prescribed by law, (Art. 2/2)
- ✓ "***non bis in idem***" – Nobody shall be punished twice for the same act, (Art. 2/5)

1. 'nullum crimen sine lege'

The first ingredient of the principle of legality is that "there are no offences other than those which are expressly provided by law". 'Criminal Law' within the meaning of Art.2 is not only the Penal Code, but any law duly passed and published, which contains penal Provisions. Thus, no person may be deemed to have been committed an offence if his act is not in violation of 'Criminal Law' in force at the time of its commission, at the place where the act is performed.

The principle "nullum crimen" conveys four different rules, namely:

- ➢ Certainty in Legislation,
- ➢ Accessibility of the law,
- ➢ Rule of strict Construction,
- ➢ Non-retroactivity of penal laws.

❖ **Certainty in legislation:**

- ✓ *nullum crimen',* is an injunction to the legislature not to draw its statutes in such broad

general terms that almost anybody can be brought within them at the whim of the prosecuting authority and the judge.

- ✓ . Penal law should be sufficiently definite for those to be affected by it. People must know their duty and be precisely aware about the prohibition created by law. This is possible only when the law is certain and definite. People can then regulate their conduct and behavior in order to avoid the hazard of falling within the grips of the penal provisions of laws. Certainty in legislation does not only mean that crimes should be created by law but it also means that a prohibition must also be drafted in *clear, certain and unambiguous language.*

- ❖ **Accessibility of the Law:**
  - ✓ The Penal law must be accessible and intelligible because it is addressed to people in society who are bound to obey it on pain of punishment.

it would be against the principle of natural justice to permit the subjects of a state to be penalized by laws of which they had no knowledge and of which they could not even with the exercise of due diligence have acquired any knowledge. Natural justice requires that before a law can become operative it must be promulgated and published.

- ▪ ***'nullum Crimen'* prohibits analogical extension of Penal statutes**:

According to '*nullum crimen*,' as embodied in Art 2/1, primarily, courts cannot punish acts or omissions which are *not prohibited* by law. For example, although 'prostitution' is morally repulsive, it is not expressly

stated as a crime. Hence, the conduct cannot be made punishable on the basis of its evil effect on the society.

To give further effect to this principle, there is a "prohibition of analogy" inserted by Art 2/3, which states – "The court may not create crimes by analogy". This means courts are not free to punish an act on the basis of similarity in its evil nature to that of a punishable act.

- **Principle of Strict Interpretation (Art. 2/4)**

The duty not to depart from what the law prescribes for the purpose of creating new crimes does not preclude courts from interpreting the law if this is found necessary As long as the courts take due precaution not to create crimes by analogy, they are empowered by Art 2/4 to interpret the law in cases of doubt. However, this provision sets out specific conditions to ensure that they do not misuse such power; for not every legal provision is open to construction, nor should construction take place in disregard of certain basic rules. Therefore, interpretation may be considered only in legitimate instances such as the following:

a) In cases of ambiguity (unclear) of the law, i.e. when the law contains provisions which are on the face of them inconsistent (contradictory), or,

Where, by reason of the language used, a provision is of such an uncertain or obscure meaning that its true sense is doubtful

Where a doubt arises as to the meaning or the scope of the legal provision, according to **Graven**, the court which interprets such provision must have regard to "the meaning intended by the legislature". To this end, he proposes the following two methods of interpretation:

a) **Grammatical or logical interpretation**, in which the meaning is sought *from within the text* of the law, or

b) **Historical interpretation**, in this method the meaning may be sought *from without the text* of the law.

In either of the cases, the court should bear in mind the general purposes of the law as defined in Art 1 and the particular purposes of the provision calling for interpretation.

- **Non-retroactivity of Criminal law Arts. 6-10**
  - ✓ From the *nullum crimen* maxim, jurists have deduced the principle of prohibition of retrospective penal laws. As early as 1651, Hobbes wrote:

> *"No law, made after a fact done, can make it a crime … For before the law, there is no transgression of the law".*

Article 15 of the International Covenant on Civil and Political Rights states, inter alia:

> *"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed".*

  - ✓ The concept of non-retroactivity has been incorporated in the Constitution of Ethiopia under article 22(2)Which reads:

> "***Not withstanding the provisions of sub Article 1 of this Article, a law promulgated subsequent to the commission of the offence shall apply if it is advantageous to the accused or convicted person."***

The rule of '***nullum crimen'*** is that 'no person shall be punished except in pursuance of a statute which fixes a penalty for a criminal conduct. It means there can be no *ex-post facto* Criminal law or in other words, the Criminal laws should not have retrospective operation. (Art 5 of Criminal Code**).** It would be unjust that:

- What was legal when done should be subsequently held criminal,
- What was punishable by a certain sanction when committed should later on be punished more severely,
- That procedure changes to the serious disadvantage of an accused and should be applied retrospectively.

Art 5 of the Criminal code lays down three important rules relating to the applicability of law in respect of a crime committed before the coming into force of the new Code.

- As per the Sub-Art. (1) , if the crime in question is one which is declared a crime under both the old and new Codes the crime shall be tried in accordance with the old Code. Because it is the old Code that he violated and obviously he cannot violate the new Code which was not in existence at the time of its commission.
- Under the Sub-Art. (2), if the said act is declared crime only under the new Code and not under the new Code such an act is not punishable, since there was no violation of law when it was committed.
- The Sub-Art. (3), says that if the act is a crime under the old Code only and not under the new Code , any proceedings instituted in respect of such an act shall be discontinued , since now it ceases to be a crime.

➢ Application of the More Favorable Law Art. 6

This rule is an exception to the second component of the principle of legality i.e. ‘no penalties other than those prescribed by the law’. As per this provision, though the criminal is tried under the old Code for the crime committed earlier to coming into force of the new code (Art. 5/1), he shall be sentenced under the new Code if the new provisions are more favorable to him. The Court shall decide in each case which law is more favorable to the criminal.

Application as to Measures. Art. 7

In passing the sentence on the crimes committed under the repealed law, the Court shall apply the measures prescribed under this Code. This is to give effect to the new measures which are, obviously, adopted to be more effective to achieve the purpose of the Criminal Law.

- ✓ Article 8 provides that the periods of limitation in relation to the crimes committed under the old law shall be determined according to the new Code. And the rules of enforcement of judgments in such cases are laid down in Art. 9.

2. *'nulla poena sine praevia lege poenali' (no punishment (can be imposed) without (having been prescribed by) a previous penal law)*

- ✓ Not only the existence of the crime depends on there being a previous legal provision declaring it to be a penal offense *(nullum crimen sine praevia lege*), but also, for a specific penalty to be imposed in a certain case, it is also necessary that the penal legislation in force at the time when the crime was committed ranked the penalty to be imposed as one of the possible sanctions to that crime (*nulla poena sine praevia lege*).
- ✓ The second ingredient of the principle of legality is that a person who has committed a crime may not be subjected to a punishment other than that which is provided for by law in respect of the crime committed. A court may make with regard to a convicted person only such order as he knew or should have known would be

made. Therefore, with due respect to aggravating circumstances, a court cannot at its discretion impose a sentence beyond the range of punishment stated in the law.

3. 'Non *bis in idem*' (Nobody shall be punished twice for the same act) (Art 2/5):

- ✓ By virtue of Art.2, sub-Article 5, a person cannot be "tried or punished twice for the same act". According to Art 2 of the Criminal Code of 2005, this is the third component of the principle of legality. This principle forbids **double jeopardy**, as enshrined in Art 23 of our Constitution. The doctrine of double jeopardy means that **no person can be tried or punished more than once for the same crime**. This is an important principle of the administration of criminal justice.
- ✓ The rule is contained in the common law maxim "***autrefois acquit and autrefois convict***" which means "the previous acquittal or previous conviction may be pleaded by the accused as a bar to the subsequent trial". These rules or pleas are based on the principle that "a man may not be put twice in jeopardy for the same crime". The basic rule here is that 'a person who has been tried by a court of competent jurisdiction for a crime and convicted or acquitted of such crime shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same crime'.

- ✓ In other words, where a criminal charge has been adjudicated upon by a court having jurisdiction to hear and determine it, that adjudication, whether it takes the form of an acquittal or conviction, **is final as to the matter so adjudicated upon** and may be pleaded in bar to any subsequent prosecution for the same crime.

- **Double jeopardy allows for protection against three main legal abuses**
- The first, double jeopardy protects against is a second prosecution for the same crime after acquittal. Double jeopardy also protects against a second prosecution for the same crime after conviction and also for multiple punishments for the same crime.
- **Section 2: The Principle Of Equality**
- The principle of equality originated in the process of the development of Roman law. For many years, Romans and non-Romans within the empire were governed under different sets of laws. Roman citizens were governed by *'jus civile'* (Civil Law). The Romans developed a special set of laws called the *'jus gentium'* (law of the nations) to rule the peoples they conquered. They based these laws on principles of justice they believed would applying to all people i.e. worthy of universal application. Such principles are known as 'natural laws'. Once the Romans started believing in the natural law concept, they recognized that 'slaves' had human rights that should be respected. Romans thus began to require that slaves be treated fairly and decently.

All men are born equal and must be treated equally. Clauses directed against arbitrary discrimination and aiming to ensure equal rights are contained in almost all modern constitutions. These constitutional guarantees of equality take a great

number of forms but two of the formulations are most often used. They are:

- That there should be "Equality before the law" and
- That "the equal protection of the laws" should not be denied.

1. Equality before The Law:

- *Equality before the law only connotes the equal subjection of all to a common system of law whatever it's content.* According to Lord Wright, "all persons are equally subject to the law, though the law to which some are subject may be different from the law to which others are subject". In this sense the concept of equality principally means that there should be no lawlessness but that all should be within the some frame work of laws, whatever the generality or quality of the laws in question.

The expression "equality before the law' has also been explained as a procedural concept pertaining to the application and enforcement of laws and the operation of the legal system. The formulation equality before the law gives rise to the following derivations:

- Equality means the denial of any special privilege or status in the sphere of the law's enforcement by reason of characteristics such as language, religion, political or other opinion, race, color, sex, and the like,
- That all are subject to the ordinary law of the land as administered by the ordinary law courts.
- That all enjoy equal access to society's legal tribunals and other dispute resolving agencies.
- That all are entitled to impartiality in the administration of justice.
- That there should be no special privileges in litigation in favor of a particular classes or individuals barring certain lawful and reasonable exceptions.
- That there should be independent tribunals to which all may resort.
- That state and individual before the law should be equal. (Marshall) Officials and

others are not exempt from the general duty of obedience to the law resting upon others.

- That law should define any special public powers. Discretionary powers, so necessary today for carrying on modern government, must not be abused.
- That any excess or abuse of authority by the organs of the state and any other wrongful acts on the part of public officers should be under the supervision and subject to the eventual control of the courts or other appropriate law enforcing agencies. The task of superintending their employment falls upon an impartial independent and fearless judiciary.
- That the argument of state necessity can provide no defense to prosecutions for crime or civil actions in respect of legally wrongful acts.
- That among equals the laws should be equal and should be equally administered that is, "like should be treated alike".

In the words of Jennings (year), 'equality before the law' is … "the right to sue and be sued, to prosecute and be prosecuted, for the same kind of action, should be the same for all citizens of full age and understanding, and without distinction of race, religion, wealth, social status or political influence".

2. The Equal Protection of Laws:

➢ ***"Equality consists in treating equals, equally and unequal unequally."***

--ARISTOTLE.

✓ "Equal protection of the law" is a more positive concept implying equality of treatment in equal circumstances. This expression is exclusively associated with written constitutions and embodies guarantees of equal treatment normally applied not only to the procedural enforcement of laws but also to the substantive content of their provisions.

In other words, the equal protection of the laws is invariably treated as a substantive constitutional principle, which demands that laws will only be

legitimate if they can be described as just and equal. The concept of 'Equal protection of laws' leads the following inferences:

- That all persons in similar circumstances shall be treated alike, both in the privileges conferred and liabilities imposed by the law.
- That equal law should be applied to all in the same situation. That there should be no discrimination between one person and another. As regards the subject matter of the legislation their position is the same.
- That the like should be treated alike and not that unlike should be treated alike.
- That law cannot be uniform and that almost all legislation must make numerous distinctions and classifications between persons, things and situations.
- That a modern state may adopt political and legal measures and policies in order to promote either a just and fair society, or more specifically, greater equality in advantages, burdens and protections for various classes and sections of its population.

To conclude, the essence of the principle of equality contained in the above two expressions, "Equality before the law and Equal Protection of the Laws" can be seen in one common dominant idea that is of "EQUAL JUSTICE".

. Exceptions By Virtue Of Recognized Immunities:

The principle of equality before the law does not prohibit making certain differences in the treatment of criminals. Art. 4 of the Criminal Code specifically mention three exceptions to the principle of equality:

- Immunities sanctioned by Public International law,
- Immunities sanctioned by Constitutional law, and
- Requirements of individualization of Criminal Justice.

1.Immunities Sanctioned by Public International Law:

- Art. 4 of the Criminal Code recognizes the existence of immunities as are enjoyed, in pursuance of Public International law, by certain categories of **foreign officials** who may commit a crime while in Ethiopia. These officials are protected from criminal prosecutions by virtue of the so-called diplomatic immunities founded on international usages of mutual courtesy. "Persons who partake in the functions which are to a greater or lesser extent of "**diplomatic character"** enjoy the same immunity as the Head of the State which they represent and are for all juridical purposes deemed to be still in their own country and not in the country in which they carry out their official duties". These persons are, accordingly, considered not to be subject to the laws of the state of residence or sojourn and may, therefore, not be prosecuted and punished in that state.

2. Immunities Sanctioned By the Ethiopian Constitution:

- ✓ As the Constitution is the Supreme law of the State, any provision it makes for immunities is binding upon the prosecutors and the courts as regards prosecution and punishment. However, immunities under Constitutional law exist only in the cases provided for by the Constitution. Therefore, when a doubt arises as to whether or not a person who has committed a crime does or does not enjoy immunity, the decision will be made exclusively in accordance with Constitutional law.
- ✓ Articles, 54 (5) & (6) and 63, of the 1995 Constitution, declare

immunities to the 'Members of the House of People's Representatives' and the 'Members of the House of the Federation' respectively. The Members of the Houses of the Federation cannot be arrested or prosecuted without the permission of the House concerned, except in the case of ***flagrante delicto***. The effects of such immunities are specified in Arts 39(1) (c) and 130 (2) (e) of the Criminal Procedure Code. It is clear that the immunities granted to these members do not conflict with the principle of equality before the law. Thus, even here it becomes evident that these rules do not provide for any exception to the ordinary provisions of the Criminal Code but only result in creating a temporary immunity from prosecution, and in no case they create an absolute immunity from punishment. The fact that special formal conditions govern the institution or the continuance of the proceedings does not affect the fundamental rule according to which no discriminations may be made among criminals which are based on social conditions only.

3. **Requirements of Individualization of Criminal Justice:**
   - ✓ In actual operation, Criminal justice is individualized, that is, choices are made in each case, within limits; laws are not automatically applied.
   - ✓ Art. 88(2) of the Criminal Code, incorporates the fundamental principle that, '**the penalty shall be determined according to the degree of individual guilt**', having regard to all the circumstances of the

case and not only to the material seriousness of the crime. The necessity of individualizing the penalty renders it inevitable that certain differences be made in the treatment of criminals, since the degree of guilt depends on circumstances which may be purely personal to the criminal, such as his age, mental condition or antecedents. These differences do not contradict the rule of equality before the law so long as they are based on considerations which affect the liability to punishment and criminal guilt of the person concerned.

- ✓ Art. 4. does not mean that all persons who violate the same legal provision are liable to a mathematically identical punishment. For example, a person having committed a theft of 10 bags of 'theff' may be sentenced to 3 months imprisonment while another person having also committed the 'theft' of the same amount of 'theff' may be sentenced to one year imprisonment without the principle of equality being thereby infringed, provided that this difference is justified for reasons pertaining to the guilt of the accused.

The Criminal Code provides for several considerations to give effect to the principle of individualization. They may relate to:

- ✓ The conditions in which the crime was committed, for

instance, at night, by violence etc.,

- ✓ Certain differences may exist among the criminals themselves, even when they have acted in similar conditions. For example, it may not be justified to pass the same sentence on an adult as on a young person or on a first criminal as on a habitual criminal, or on a person who is fully responsible for his acts as on a lunatic.
- ✓ Special situations might arise in which the court would have to deal with persons acting under special duties, e.g. Public servants, members of Armed Forces etc. A misappropriation of public funds cannot be dealt with as an ordinary breach of trust, an insult uttered by a soldier against an officer cannot be dealt with as an ordinary insult.

- ❖ **Special Treatment of Women, Young Persons and the Feeble Minded:**

Criminal law, in principle, does not make any distinctions in dealing with the criminals. However, it would amount to injustice if a different kind of treatment were not given to criminals in certain circumstances. The expressions 'special circumstances of the criminal' and 'age of the criminal' used in the second paragraph of Article.4 make room for differential treatment of women, children and the mentally abnormal criminals. In case of women, the biological factors sometimes pose a serious concern while applying the law uniformly. Thus, Article 119 provides for suspension of death sentence passed on a pregnant woman while she continues to be in that state.

- ✓ Article 120 (1) of the Criminal Code provides for commutation of death sentence passed on a pregnant woman. If at the time of passing of the sentence the woman is with child and the child is born alive, the law takes into consideration of the fact that the mother has to nurse the child and therefore, her sentence of death may be commuted to rigorous imprisonment for life. Another important provision that takes care of women's right to privacy and dignity is Article 110(1), which provides for segregation of prisoners. The prisoners of different sexes shall serve their sentences in different prisons. In case this is not possible the male and female prisoners shall be kept in different sections of the same prison and shall not be allowed to mix with the prisoners of the opposite sex.
- ✓ Similarly, the juvenile delinquents and the young criminals are given a special treatment under the Criminal Code due to the fact that this group of criminals is immature in their understanding and that they fall an easy prey for the bad influence of others. It has been universally accepted that the young criminals have to be dealt with sensitivity so that they can be corrected of their bad ways rather than punishing them for their wrongful acts.
- ✓ Feeble minded people are the other group of criminals who deserve special treatment. Articles 48 and 49 lay down the principles relating to the negation of the moral ingredient in the acts committed by them and declare that they are irresponsible and thus they cannot be exposed to criminal liability. However, since they proved to be dangerous by causing harmful results to others they cannot be simply released freely in to the open society. Once their irresponsibility is duly proved in the Court of law the Court orders such appropriate treatment, correction or protection as are provided by Articles 129-131. Directions

are given in these provisions for the confinement and treatment of irresponsible criminals.

- ✓ These special groups of criminals receive differential treatment obviously without violating the principle of equality since the circumstances in which they are given special treatment are sufficiently justified.

Section3. The Principle of Individual Autonomy:

- ✓ One of the fundamental concepts in the justification of criminal laws is the principle of individual autonomy---- *that each individual should be treated as responsible for his or her own behavior.*

This principle has factual and normative elements that must be explored.

The Factual Element of Autonomy:

- ✓ The *factual element* in autonomy is *that individuals in general have the capacity and sufficient free will to make meaningful choices*.
- ✓ Over centuries the *free will* argument has been contradicted by the 'determinist' claim that all human behaviour is determined by causes that ultimately each individual cannot control. However, there is a reasonable amount of consensus on the opinion that behaviour is not so determined that blame is generally unfair and inappropriate, and yet to accept that, in certain circumstances, behaviour may be so strongly determined that the normal presumption of free will may be displaced, for instance, where the individual is overpowered by the threats of another.
- ✓ In support of these approaches is the fact that most of everyday

life is conducted on the basis of such beliefs in individual responsibility, and that in the absence of proof of determination we should not abandon those assumptions of free will that pervade so many of our social practices.

The Normative Element of Autonomy:

- The second important element of the principle of Autonomy is normative: *that the individuals should be respected and treated as agents capable of choosing their acts and omissions, and that without recognizing individuals as capable of independent agency they could hardly be recognized as moral persons.*
- The principle of autonomy assigns great importance to liberty and individual rights in any discussion of what the state ought to do in a given situation. A major part the principle's emphasis is that the individuals should be protected from official censure, through the criminal law, unless they can be shown to have chosen the conduct for which they are being held liable.
- **"Three main features characterize the autonomy-based doctrine of freedom.**
- First, its primary concern is the promotion and protection of positive freedom which is understood as the capacity for autonomy, consisting of the availability if an adequate range of options, and of the mental abilities necessary for an autonomous life.
- Second, the state has the duty not merely to prevent the denial of freedom, but also to promote it by creating the conditions of autonomy.

- Third, one may not pursue any goal by means which infringe people's autonomy of the people or the others."

- This third feature proposes a minimalist approach to the use of the criminal law.

➢ **Principle of Respect for Autonomy:**

As commonly understood today, autonomy is the capacity for self-determination. Being autonomous, however, is not the same as being *respected* as an autonomous agent. To respect an autonomous agent is to acknowledge that person's right to take choices and take action based on that person's own values and belief system. On his account, respect involves not only refraining from interfering with others' choices, but sometimes entails providing them with the necessary conditions and opportunities for exercising autonomy. The principle of respect for autonomy implies that one should be free from coercion in deciding to act, and that others are obligated to protect confidentiality, respect privacy, and tell the truth. In the practice of health care, a person's autonomy is exercised through the process of obtaining informed consent. The principle of respect for autonomy, however, *does not* imply that one must cooperate with another's actions in order to respect that individual's autonomy.

Autonomy is given a central place or primary status in the prevailing modern liberalism of contemporary society. However, the principle of *respect* for autonomy implies that autonomy has only a *prima facie* standing, that is, it can be overridden by competing moral considerations. For example, if an individual's choices endanger public health, potentially harm others, or require a scarce resource, that individual's autonomy may justifiably be restricted.

Respect for autonomy, then, should not be construed as an absolute and foundational value, but a "middle principle" that requires every individual to respect every other individual's self-determination to an appropriate extent within the context of community. A health care institution is a moral community that can be properly considered as an autonomous agent in its own right.

CONDITIONS OF CRIMINAL LIABILITY

The Essential Elements of Crime:

The maxim '***actus non facit reum nisi mens sit rea***' makes it clear that, *"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"*. This principle recognized that there are two essential elements of crime:

- ✓ Physical element (*actus reus*)
- ✓ Mental element (*mens rea*)
- ✓ The 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.

- **Ingredients Of A Crime:**

These are: The legal element, the material and the moral element

The "Legal" and "Material" Ingredients of Crime: (*Actus reus*) as the physical element of crime may be studied under two heads:

- ➢ Meaning of '*actus reus*'
- ➢ Causation of crime

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. 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 some law in force. Thus, *actus reus* in terms of Art 23 includes the following:

- 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.
- Whether bringing about such a result or state of affairs is prohibited by law. This is the legal element of crime.

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. 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.

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:

- The legal element,
- The material element and
- The moral element

The Material Element:

- 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. 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.

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

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

In the words of Art 23/ 1, “A crime is an act which is prohibited and made punishable by law”.

An act can be defined as “a willed muscular (bodily) movement”. If a crimnal shoots at and kills a person, his “act” does not include the event but only involves 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. 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.

- **Deed of Commission:**

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

- ✓ 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. The expression *omission* does not connote any obligation. Omission is a colorless word which merely 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. Failures to perform moral duties cannot constitute the *actus reus*.

- ✓ Limiting criminal omissions to failures to perform legal duties is based on the proposition that the individual conscience, peer group pressure and other informal compulsion regulates behaviour 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.
- ✓ omissions to be punishable crimes must involve breach of some specific duty either imposed or recognized by law

- **THE 'MORAL INGREDIENTS' OF CRIME (*mens rea*)**
  - ✓ This has got something to do with the guilty state of mind of a person which is associated with the principle *"Nulla poena, sine culpa"* 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 what so ever 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 which reads as follows:

*"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 respo*nsible for his acts; he committed an offence either intentionally or by negligence."

  - ✓ According to this Article, that lays the general principle of guilt or fault a responsible person can be convicted and be punished for his or her acts in so far as 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.

According to Art. 23 of the Criminal Code, any crime comprises legal, material and moral ingredients, all of which must be present so that the crime may be deemed to have been completed. The provisions of Arts. 57-67 dealing with 'Criminal Guilt' define this moral ingredient i.e. the state of mind of the criminal at the time of committing the unlawful act. Although there is a legal presumption that every accused is responsible for his acts, there is no presumption that every responsible accused is guilty. The important principle of criminal law that requires proof of guilt before attaching criminal liability to a person is recognized by the Constitution under Art. 20(3) which provides that, "accused persons have

the right to be presumed innocent until proved guilty". Therefore, it must, always be established that, "the state of mind of the accused at the time of the commission of crime was of the nature defined in Art. 58 or 59".

- **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 fulfillment of this essential principle gives rise to difficulties since the concept of cause is impossible to be defined in such away that a specific result can in every case be automatically traced to specific behavior.

- ✓ . A 'factor' is said to have caused a particular event if, without such factor the event would not have happened. 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

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:

- ✓ *Sine qua non* test
- ✓ Adequate or proximate cause test.

- **Sine qua non Test or the 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".
  - ✓ 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.

- **Adequate or Proximate Cause Test:**

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.

- **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.

- **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. 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.

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'. 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.

- **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. 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. Therefore, here in this case, 'A' would be liable for maltreatment of his child under Art. 576 only 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

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

Concurrence Of Crimes- Guilt In Case Of Concurrence Crimes Art. 60-67

1. When several unlawful acts are done in contravention of one or more articles of the law. This type of concurrence is known as concurrence of crimes or Material Concurrence, or

2. When one unlawful act is done in contravention of several articles of the law. This is called concurrence of criminal provisions or Notional Concurrence.

The provisions relating to 'Concurrence' deal with two important questions:

(a) Whether the commission of several acts or faults affects the doer's degree of guilt, if so, to what extent?

(b) Determination of punishment to which he is liable as a consequence concurrence.

❖ **Concurrence of Crimes: (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). In some cases, related crimes whose components fall under different provisions are in combination embodied in a special aggravated crime (185/2) For instance, Coercion (Art-582) and 'theft' (Act. 665) is embodied in 'robbery' (Act. 670).

- **Concurrence of Criminal Provisions (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.

- ✓ When a single criminal act results in several punishable crimes, it is classed as Simultaneous Notional Concurrence. Under this type of concurrence, if the criminal is proved to have caused one of them with criminal intention or negligence, he is held guilty of all the crimes because they invariably occur at the same time from the same causal relation. In the illustration here above the accused has simultaneously committed four concurrent crimes by the same act and causal relation.

'Notional concurrence' may also include a non-simultaneous combination of crimes as stated in Art. 66, where by causation and the particular state of mind must

be proved independently for each of those crimes. There are three possibilities of combined notional concurrence, namely :

- ✓ Concurrence of intentional crimes, Art.66/1/a
- ✓ Concurrence of intentional and negligent crimes. Art. 66/1/b, and
- ✓ Concurrence of negligent crimes, implied in Art. 66/1/c.

For example, if 'A' sets fire to B's hut with an intention to destroy it, it is obviously an intentional crime of 'Arson' under Art. 494. If 'B' dies while asleep inside the hut, a possibility which the criminal had foreseen and accepted, "A" is concurrently (Art. 66/1/a) punishable for intentional homicide (*dolus eventualis*). If 'A' having foreseen the possibility and had believed that 'B' might not be present inside the hut at the crucial point of time or had the opportunity to save his life, there is concurrence of intentional arson and the resulting negligent homicide (Art. 66/1/b).

UNIT-V

DEGREES IN THE COMMISSION OF CRIME

Different Stages In The Commission Of Crime:

- ❖ **Preparation**:
- ✓ Criminal law punishes "overt acts" and not mere intentions. A criminal intent, no matter how immoral it may be, is beyond the grip of criminal law until it is manifested by external conduct. The requirements of Art. 23 imply that a mere criminal intention does not in itself constitute a crime and is not punishable.

These preparatory acts are not punishable as a general principle for two main reasons.

- That is, it is difficult to safely conclude that a person manifests the material element of the crime due to the equivocal nature and remoteness of the preparatory acts towards the offences intended to be committed.
- , behaviors cannot be considered to constitute the material element of the crime unless they are proximate and definite that the offence is likely to be committed.

There are two situations where ***preparatory acts*** are punishable.

1. Where the Preparatory Acts Constitute a Crime in Themselves (Art 26/a):

A person who buys a gun as a preparatory step towards homicide is punished for the completed "petty offence" of retaining a gun without license (Arts. 808, 809) even though he is not punishable for his preparatory act; the act of keeping a gun without a license itself is a petty offence.

2. Where the Preparatory Acts Constitute a "Special Crime" by Owing to Their Gravity (Art 26/b): Certain preparatory acts are expressly constituted a special crime by law owing to their gravity or the general danger they necessarily bring upon the society. For example, material preparation of offences against the state (Art. 256, 257), preparing a mutiny or seditious movement (Art. 300) and preparing machinery and means of counterfeiting currency (Art. 371) are expressly stated to constitute special crimes.

❖ **Attempt:**

✓ Attempt is the second degree in the material element of the crime. It is a substantial but unsuccessful effort to commit a particular offence. It is a willful effort but without success. The effort must be unsuccessful because a person cannot be prosecuted for both an attempt and completed crimes as the attempt can be considered to have been merged with the completed

offence, thereby abrogating itself.

- ✓ attempt includes three most important requirements to exist that include: intent, overt act, and failure to achieve the result
- ➢ **Kinds of Attempt:**

Basing on the 'reason' for the failure to achieve the intended result attempts can be classified into three categories:

a. "Incomplete Attempt":

If the accused chooses not to do or is prevented from doing the last act of the crime, the attempt is said to be incomplete. The words "… do not pursue … his criminal activity to its end" in Article 27 define "incomplete attempts" because of voluntary withdrawal. The part of the provision that reads, "… or is unable to pursue his criminal activity to its end",

On the other hand, indicates an incomplete attempt because of external interventions, that is outside the volition or will of the accused. For example, an accused aims at a person, touches the trigger and then changes his mind is said to have voluntarily withdrawn. Article 28/1 gives due credit to an offender who renounces the pursuit of his criminal activity by allowing reduced punishment (Art. 179), free mitigation (Art. 180) "if circumstances so justify" or no punishment "if the renunciation was prompted by honesty and high motives".

- ✓ In cases where the withdrawal occurs due to external circumstances, the non pursuance of criminal activity is involuntary.

b. "Complete Attempt":

An attempt is said to be complete when the wrongdoer has performed everything on his/her part, which is considered to be necessary without, however, result having occurred. In other words the perpetrator has done all that he/she intended to bring about the result, but the desired result has not followed. The reasons for the failure to achieve the result may be of two types: one, it may happen that the offender did every thing that was necessary to bring about the result but the achievement has not occurred due to situations beyond his/her control. This point has the idea that the

attempter would in all probability have achieved in causing the desired result had it not been for the existence of unexpected events. This category of attempt includes impossible offence. Attempt could also felt to achieve the result due to the active involvement of the perpetrator him/herself. This is known as active repentance.

Where the accused has done the last act, which he expects to carry out, and which he thinks causes the harm intended, the attempt is said to be complete. Complete attempts may take the forms of voluntary undoing or involuntary failure to achieve the result.

C. "Impossible Attempt" Art. 29:

Certain attempts are incapable of achieving the desired result. Such attempts involve situations where a criminal attempts "to commit a crime by means or against an object of such a nature that the commission of the crime was absolutely impossible".

Article 29 covers the cases of absolute impossibility and not relative impossibility where the circumstances in which the criminal acted are unable to cause the criminal's intended harm due to the means used or because of the object against which the act is committed. Failure to achieve result because of an unloaded gun is an absolute impossibility due to the means used. Poisoning a person with an insufficiently fatal poison is a case of relative impossibility due to insufficient means. If a doctor attempts abortion over a woman who is not pregnant, there is absolute impossibility due to the missing object. In case however, the attempted abortion fails because the woman is conditioned to a particular drug, the doctors attempt is said to be relatively incapable of achieving result due to the nature of the object over whom it is practiced.

Such a distinction between absolute and relative impossibility is significant because free mitigation (Art. 180) may be allowed under cases of absolute impossibility. Further more, no

punishment shall be imposed if a person “from superstition or owing to the simplicity of his mind acted by using means of processes in themselves innocuous which could in no case have a harmful effect.” Such a consideration of objective harm rather than subjective criminal intention is apparently inconsistent with the overall subjective inspiration of the Criminal Code. Yet, it is indeed difficult to interpret Article 29 otherwise.

❖ **Renunciation And Active Repentance:**

- **Renunciation:**

Renunciation is provided under Article 28 of the Penal Code as “if an offender of his own free will renounce the pursuit of his criminal activity the court shall reduce the punishment within the limits provided by law (Art. 179) or may reduce it without restriction (Art. 180) if circumstances so justify. No punishment shall be imposed if the renunciation was prompted by reasons of honesty or high motives.” It refers to situations where a person abandons the pursuit of his or her criminal activity by his or her own free will without completing the act required producing the result. Renunciation exists when the criminal activity is abandoned absolutely. As it is in an attempted crime, it must be accompanied by guilty state of mind in the form of intent. There is also no doubt that the act should not achieve the result. In such a case, the person is held criminally liable for an attempted offence, but there is a possibility of reduction of punishment within the limits of the law as per Article 179 of the Penal Code, or beyond the limits of the law as provided under Article 180 of the same code which reads as:

- **Active repentance:**

The failure to achieve the result after the completion of the act may also occur when, after having performed all the acts to bring about the desired result, the perpetrator himself either prevents or contributes for the prevention of the result. This is what is called active repentance which is dealt with under Article 28(2) of the Penal Code that reads: If an offender, having completed his or her criminal activity, of his or her own free will prevents, or contributes to prevent the consequent result, the court may

without restriction reduce the punishment (Art. 180).

❖ PARTICIPATION IN THE COMMISSION OF CRIME

It is obvious that a crime should not always be committed by single persons. A crime can be committed by several persons who participate in the commission of a crime at different or same capacities. It is therefore important to determine the degree of involvement and the role played by such persons in the commission of the crime.

Participation In Principal Capacity:

Participation is defined differently in different legal systems. Some legal systems define it narrowly and only include those persons who involve themselves in the commission of the offence physically or personally. A person, therefore, is considered to be a principal offender if and only if he/she participates in the commission of the offence materially. If Alemu and Belay stabbed Chernet to death, they are principal offenders as they personally perform the offence on their own.

Principal participation exists where those persons who do the act or acts constituting the offence or abstain from acting when they are bound to act. It is, therefore, the case that a person is considered to be the principal offender in homicide who stabs another by a knife; or he or she is the principal offender in an offence of theft if he or she snatches the bag from another. If the persons who involve themselves in the commission of the crime are more than two, they are still called principal criminals.

In Ethiopia, principal participation is defined broadly that it takes the forms of material, moral and indirect offenders. These forms of principal participation are provided under Article 32 of the Criminal Code.

1 Material Criminal:

This form of participation is dealt with under Article 32(1) (a) of the Criminal Code. It exists when the one, who, with the requisite mental state, personally engages in the act or omission concurring with mental state which causes the criminal state. A person is a material criminal in a crime of homicide if he or she takes the life of another. Such form of

principal criminal can commit the offence either directly or indirectly.

It is also possible for a person to be regarded as a material criminal if he or she negligently performs an act and produces a forbidden harm. This is to mean that a person should not always commit the crime intentionally in order to be regarded as a principal party in the form of material criminal. Negligent performance of an act can constitute for material criminal.

2 Moral Criminal:

Moral Criminal is a person who fully associates himself/herself with the commission of the crime and takes the crime as his or her own even though he or she is not present at the time when and the place where the crime was committed. Moral criminal is a person who plays no part physically in the commission or omission of the offence. Persons who involve in the commission of the crime in such a way are considered to be working brains or master minded. He/she just takes part in the process by designing plans, providing means, facilitating everything necessary for the commission of the offence, as it is dealt with under Article 32(1) (b) of the Criminal Code.

3. Indirect Criminal:

This form of principal party is contained under Article 32(1) (c) of the Criminal Code. Such a party to a crime uses an intermediary to commit a crime. In this case, the intermediary is a mere instrument and the originating actor is the principal participant in the form of indirect criminal.

- **Legal Effects Of Participation:**

A person who involves himself or herself in the commission of a crime in different forms of participation as material, moral or indirect criminal is liable for the crime committed being considered as a criminal in the first degree. Of course, all principal criminals may not be subjected to the same degree of punishment as personal circumstances and degree of individual guilt may be taken into account as per Articles 35 and 41 of the Criminal Code which provide the following respectively: That is, where a crime is committed by a group of persons the person who is proved to have taken no part in the commission of the crime shall not be punished. That also is the case of participation whether as principal or accomplice in a crime each of the

participants shall be punished for his or her own act, according to the extent of his or her participation, his or her degree of guilt, and the danger which his or her act and his or her person represent to society.

It must be mentioned here that the principal criminal or criminals may not be liable for what goes beyond their intention unless it is possible to prove negligence on their part as per Article 58(3) of the Criminal Code.

4. Co-criminals:

This point has to do with co-offenders.

co-criminals are dealt with under Article 32 and 33 of the Criminal Code of Ethiopia as "where several co-criminal are involved, they shall be liable to the same punishment as provided by law (32/3)". An accused person may be prosecuted as a co-criminal when, by his/her acts he/she fully participated with knowledge and intent in the commission of a crime which can be committed only by certain specified persons such as members of the Armed forces or officials or only by male persons as in the case of rape.

From these Articles, it is possible to envisage that co-criminals are those persons who participate in a crime in their principal capacity either as a material or moral or indirect parties. Co-criminals may, in fact, be of with or without conspiracy. Co-criminals with conspiracy are those actors who involve themselves in a crime in their primary degree based on prior agreement as between themselves to realize the intended crime. Co-criminal without conspiracy on, the other hand, refers to those principal parties in a crime without there being any agreement.

Co-Criminals in general Crimes and special Crimes

Persons may also be categorized as co-criminals in general crimes and special crimes. Several persons may be considered as co-criminals in crimes in general when the crime in question can be committed by any one. This relates to homicide, theft, robbery, bodily injury and so on. Persons are co-criminals in special crimes when the crime in question requires special qualification. Art. 33 of the Criminal Code.

The crime should only be committed by specified person who has special qualifications. When the crime to be committed requires the person to possess special qualification, those without the same may be said to have participated in the crime as co-criminals under Article 33 of the Criminal Code.

Section.2. Participation In The Secondary Capacity:

This refers to the involvement of persons in the commission of a crime in the second degree. This exists either before or during the commission of the crime. A person is not considered to be principal criminal as his participation in this case is less than the principal criminals. This relates to incitement or complicity, which are also called accessories either before or during the commission of the crime. Accessory after the fact does not come under participation for one cannot take part in the commission of the crime after it is consummated. It is, therefore, dealt with independently as shall be discussed under Article 40 of the Criminal Code. Secondary participation refers to incitement and complicity.

- **Incitement:**

This form of participation is secondary before the commission of the crime. It is dealt with under Article 36 of the Criminal Code

Incitement requires at least two persons. These are the inciter/instigator and the incited/instigated. The incited is the one who actually commits the crime either in the form of material, moral or indirect criminal. The instigator is the person who initiates the idea of committing the crime by the principal by using different means.

The instigator or instigators should convince the principal criminal/criminals until the latter reaches a determination or decision to commit the crime based on the inducement/instigation/incitement.
That is, the principal criminal should be stimulated to take the decision as a result of the incitement. Pre-existing intention of the principal criminal is irrelevant as long as it is proved that the same would not have committed the crime had he not been persuaded by the instigator.
Such provocation or inducement must be carried out intentionally. The instigator should have the knowledge of what he incites. This is to mean that there is no negligent incitement.

There shall be causal relationship between what the instigator does and the act of the principal criminal. This in other words means that the incited must be convinced and commit the crime as is intended by the instigator. Causation in incitement involves the following three chains of events:

a. That there shall be an act of incitement by the instigator to induce or convince the other person
b. That the principal criminal takes his or her decision as a result of the inducement
c. That the principal criminal should commit the crime

- Finally, the crime should be committed or at least attempted.

➢ *The legal effect of being an instigator:*

The instigator will be liable to punishment under the law for the intended crime. This is the case for instance that a person who incited the commission of the crime of robbery will be liable under Article 36/670.

❖ Complicity:

It is also a secondary participation which may exist either before or during the commission of the offence as provided under Article 37 of the Criminal Code

- ✓ It requires at least two persons i.e. the accomplice and the principal criminal.
- ✓ Assistance must be given to the principal criminal. The assistance may be given either before (accessory before the fact) or at the time (accessory during the fact) of the commission of the crime. The assistance should, however, be given before the result is achieved.
- ✓ such assistance may be material or non-material. It is material when the assistance relates to guns, money, supplies, instrumentalities, being at a look out, ran the

gateway car, signal the approach of the victim, send the victim to the actor, prevent a warning from reaching the victim, facilitate the crime by getting the victim, or possible witness away from the same. It is non-material when it relates to advice, command, counsel, encourage, and so on.

- ✓ the assistance given to the principal criminal should always be intentional i.e., the accomplice should have the knowledge that he/she is giving help or assistance to the principal criminal in order to realize the latter's criminal design. Assistance that is given by negligence does not fall under Article 36.

The assistance should relate to the crime for which it was rendered. If the accomplice agrees with the principal criminal to give the latter assistance for theft, but the principal criminal commits robbery thus the accomplice will only be considered as an accomplice for theft but not for the robbery. It is the principal who will only be liable for the robbery.

➢ *What are the legal effects of complicity?*

The following are the legal effects of complicity:

1. The accomplice is liable for the punishment under the law regulating the intended crime.

2. The accomplice will not be liable for what goes beyond his intention.

3. Punishment may, however, be reduced within the limits of the law as per Article 179 of the criminal code

❖ Criminal Conspiracy:

Conspiracy is defined as an agreement between two or more persons to effect something unlawful. In case of conspiracy there is a need of an overt agreement beyond independent intentions of the persons involved which of course constitutes the material element of the crime. The crime of conspiracy is completed at the moment when two or more persons have agreed that they will do at once or at some future time an act which is unlawful. Therefore, the crime of conspiracy is said to be completed even if there is

no further act to put the agreement into effect. Agreement in conspiracy refers to the meeting of two or more minds. It is the understanding of the parties each other to perform an act which is forbidden.

In the Ethiopian law, conspiracy, as a rule, is *not* considered to be an independent crime. Rather, it is a ground for aggravating punishment when persons participate in the commission of a crime based on prior agreement as per Article 38(1) of the Criminal Code of Ethiopia.

One more topic left about the criminal liability of legal person.

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