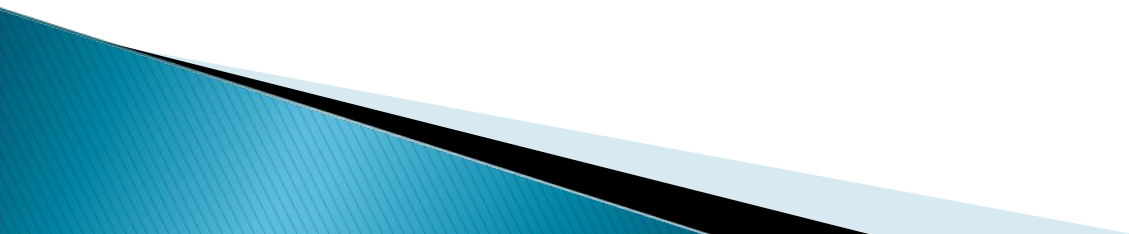


Introduction to law of extra-contractual liability

- Amare Bayissa (Ass. Prof)



Course Description

- ▶ The course deals with the notion and basic principles of Extra-contractual liability laws, and discusses the differences between non-contractual liability law and criminal laws as well as contract laws.
- ▶ It explores the various sources of extra contractual liability, the circumstances that give rise to liability under the Ethiopian extra-contractual liability law in general, and examines whether injuries related to emotional distress, toxic substance exposure, tobacco, etc. are governed and redressed under the Ethiopian law.
- ▶ The course also presents on the principle of causation, the assessment of damages and the various defences.

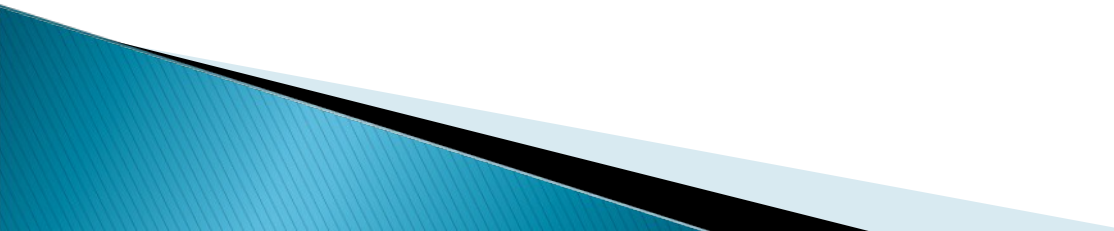
Course objectives and competencies to be achieved

- ▶ After a successful completion of the course, students are expected to achieve basic knowledge and competence regarding:
 - ▢ the meaning, nature, principles, characteristics and sources of non- contractual liability;
 - ▢ the existing legal provisions of extra-contractual liability in relation to the Constitution of FDRE;
 - ▢ the similarities and differences between extra-contractual liability law and criminal and contract laws;
 - ▢ the sources of extra-contractual liability by giving appropriate examples;
 - ▢ the notion of damage and the modalities of assessment of compensation;
 - ▢ the Mode and extent of compensation for various types of damages

Contents to be covered

- ▶ Definition and Principles of Extra- Contractual Liability Law
 - ▶ Constitutional Rights
 - ▶ Conducts That Give Rise to Liability
 - ▶ Causation and Remoteness of Damage
 - ▶ Boundaries of Non-Contractual Liability Law
 - ▶ Sources and Types of Non-Contractual Liability
 - ▶ Liability Irrespective of Fault
 - ▶ Vicarious Liability
 - ▶ Modes of Compensation
 - ▶ Quantum/ Extent of Compensation
 - ▶ Action for Compensation
- 

Methods of Delivery

- ▶ Lectures,
 - ▶ seminars,
 - ▶ student presentations,
 - ▶ group discussions,
 - ▶ individual and group tutorials,
 - ▶ assignments and
 - ▶ project supervisions.
- 

Assessments

- ▶ The final grade shall be determined based on the performance of students in the following activities:
 - Class Participation...5%
 - Chapter Reflections / Summaries...15%
 - Student Presentations...15%
 - Assignments / Project/ Essays...15%
 - Exam(s)...50%

References

- ▶ Books available at your library and in your disposal
- ▶ Ethiopian Civil code,
- ▶ FDRE constitution

Introduction

- What do you think is law of extra-contractual liability?

Introduction...

- ▶ There are rights and interests, which are rendered protection by the FDRE Constitution.
 - ▶ Some of these interests and rights are
 - the right to life (article 15),
 - the right to the security of person (article 16),
 - the right to liberty (article 17),
 - the right to honor and reputation (article 24),
 - the right to privacy (article 26), etc.
 - ▶ Where these rights or interests are infringed there are remedies made available by different laws, one of which is criminal law.
 - There is remedy rendered by criminal law however, is different from that rendered by extra- Contractual Liability Law, for the latter gives remedy by forcing the tortfeasor to make that damage good.
 - ▶ So, what is extra-contractual liability law?
- 

Definition of extra-contractual liability law

- ▶ It is a law which governs the relationship of an individual without any prior contractual agreement
 - ▶ It is also called tort
 - ▶ It is a law that gives remedy by awarding compensation (CCE A. 2090) to the victim or ordering restitution (CCE A. 2118) or injunction (CCE A.2121).
- 

Liability?

- ▶ Liability is a responsibility to ones conduct.
- ▶ Conduct?
- ▶ Conduct= commission/action + omission

Continued

- liability has multiple features

- _supernatural liability

- _criminal liability

- _contractual liability

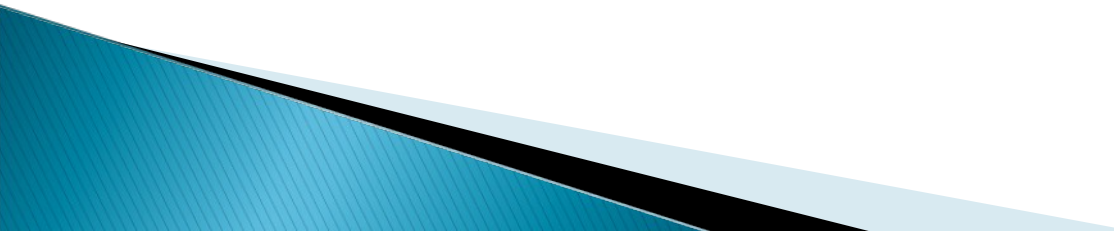
- _administrative liability

- _extra-contractual liability

Tort?

- comes from Latin word “tortous” which means a wrong or distort action
 - What type of wrong?
 - Society condemned + legally recognized wrong.
 - Tort is a grey area between contract and criminal law. Which means it consists features of both.
- 

Tort Vs. contract

- ▶ The source of tort is society standard whereas the source of contract is prior agreement
 - ▶ The duty in tort is duty to the society whereas the duty in contract is against the contracting parties
- 

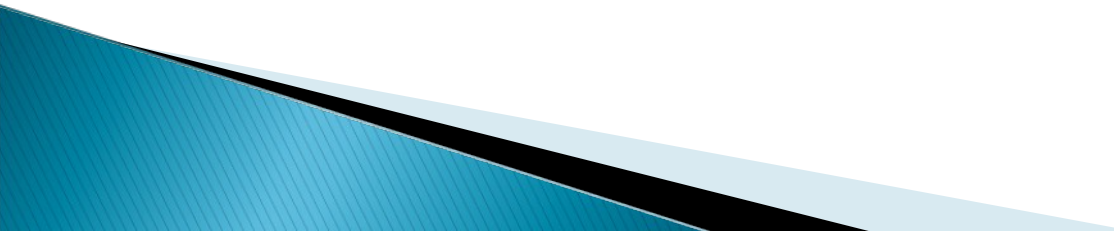
Tort Vs. Contract...

- ▶ The extent of damage of contract is mostly known in terms of money whereas the damage of tort are difficult to assess in terms of money especially for bodily injury and future damages

Tort Vs. Contract...

- ▶ The objective of contract law is to respect the promise of contracting parties where as the objective of tort is to prevent society from wrongful act

Tort Vs. Contract...

- ▶ What to prove for claiming damage?
In contract the victim only proof non-performance of the contract whereas in tort the victim proves fault conduct but both have an exception. What are?
- 

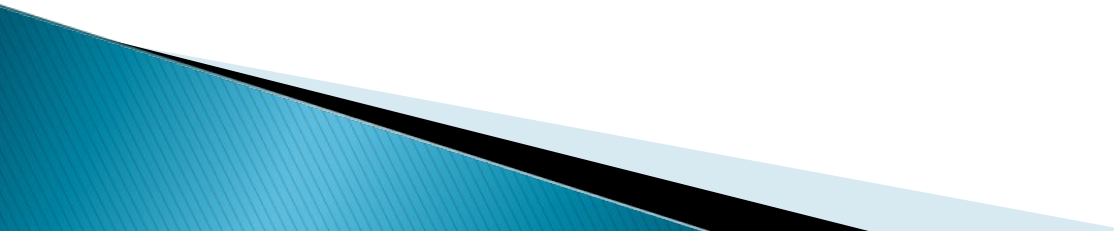
Tort Vs. contract...

- In contract minor and incapable are exempted from making contract whereas in tort minority and incapability are not a defence.
 - Period of limitation: the period of limitation for contract is 10 years as per article 1845 of the civil code whereas the PoL for tort is two years with exception of criminal accusation.
- 

Tort Vs. contract...

- ▶ Jurisdiction: the place of formation and place of performance of the contract have jurisdiction to entertain the contractual case where as the place of the harm occurring have the jurisdiction to entertain the extra contractual liability

Similarity of tort and contract

- ▶ Both are private liability (civil)
 - ▶ No restriction of liberty as sanction with the exception of unwillingness
 - ▶ Compensation is common sanction
 - ▶ Both are private proceeding /private action/
- 

N.B!!!!!!

- ▶ Checking whether the relationship is contractual or extra contractual is the base and must.

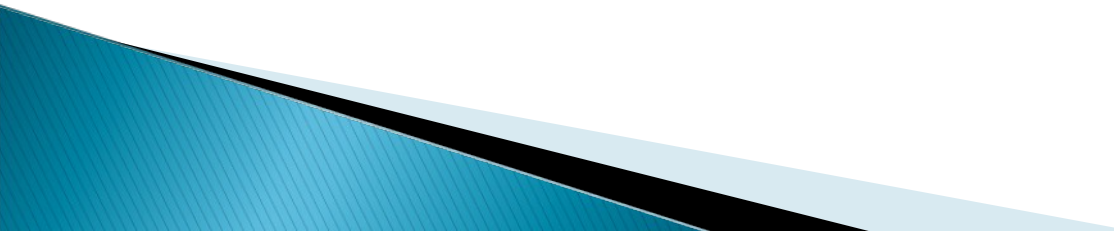
Tort Vs. criminal law

- The source of criminal liability is criminal code and other criminal legislations where as the source of tort liability is society standard of care.
 - Sanction of criminal liability are restriction of liberty whereas the principal punishment of tort liability is paying of compensation.
- 

Tort Vs. criminal law.....

- ▶ Proceeding: private proceeding (between two individuals) is for tort and public proceeding (between an individual and government) is for criminal liability

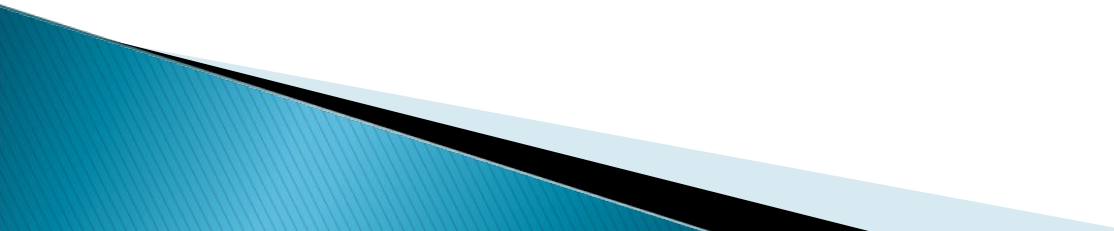
Tort Vs. criminal law....

- ▶ Standard of prove: preponderance evidence for tort and beyond reasonable doubt for criminal liability
 - ▶ N.B most criminal liability entails tort liability because of article 2035
- 

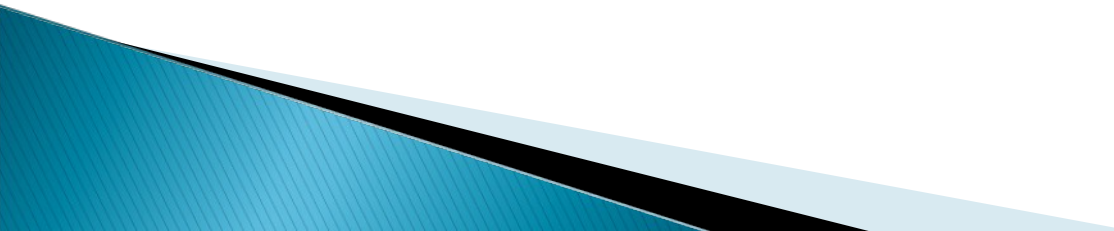
Similarity of tort and criminal liability

- ▶ Criminal liability may simultaneously give rise to extra contractual liability
- ▶ Punishable irrespective of will and consent of the wrongdoer.

History of tort law

- ▶ Traditionally, no distinction was made between tort and criminal law, and criminal cases were handled through private measures/proceedings.
 - ▶ They are now distinct branches of liability in which criminal law regulates unacceptable and intentionally committed crime while tort law regulates both unacceptable and negligent and intentional conduct at the same time.
 - ▶ When we say unacceptable in a tort case, we mean by criminal law and societal standards.
- 

General objective of tort law

1. Compensating of the victim
 2. Protection of different legally recognized interests
 3. Have deterring effect
 4. Retribution
 5. Loss distribution
- 

Constitutional Rights

- ▶ What are these rights?
 - Personal security
 - Interest in property
 - Economic interest
 - Reputation and privacy
- ▶ Personal Security:
 - These are torts involving a tress pass to the person.
 - As per article 16 of the FDRE Constitution, everyone has the right to protection against bodily harm.
 - This right is protected in a number of ways.
 - ▢ For instance, if one makes a contact with another intentionally against the other person's will, the victim could bring action as per article 2038(1) of the CCE under battery.

Personal security

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

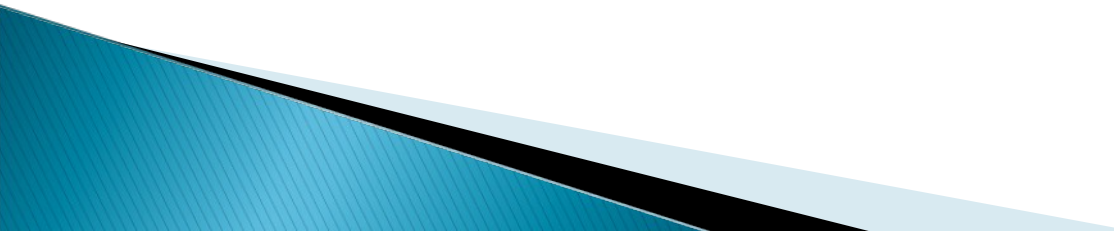
Activity

- ▶ Assume Chala touched Chaltu's hand without her consent. Is Chala liable extra-contractually to Chaltu? What is your reasoning?

Interest in property

- ▶ As per article 40(1) of the FDRE Constitution, every Ethiopian citizen has the right to the ownership of private property.
 - Be it movable or immovable; tangible or intangible
- ▶ This right includes the right to acquire, use and dispose of such property by sale or bequest or to transfer it otherwise.
- ▶ No one, therefore, has the right to interfere with this constitutional right other than as it is provided by law.
 - Property right related to land is possessory right.
 - No one is allowed to infringe this possessory right unlawfully and if so the person will be liable under article 2053 of CCE.

Economic interest

- ▶ According to Article 41(1) of the FDRE Constitution, every Ethiopian has the right to freely engage in economic activity and pursue a livelihood of his choice anywhere within the national territory.
 - ▶ Any conduct that jeopardizes the exercise or enjoyment of this right is a violation of a person's economic interests, which are protected by the FDRE constitution.
- 

Reputation and privacy

- ▶ The FDRE Constitution recognizes every one's reputation and privacy under articles 24 and 26 respectively.
- ▶ Accordingly, under article 29(6) of the same, limitation on the right of thought, opinion and expression are put where these rights go against honors and reputation of individuals.
- ▶ Therefore, as it is provided under article 29(7) of the FDRE Constitution, any citizen who violates any legal limitations on the exercise of these rights may be held liable under the law.
- ▶ One of these laws is Extra - Contractual Liability Law. Hence, where a person's reputation is damaged by untrue speech or writing then they may have an action in the tort of defamation. See articles 2044 - 2049 of the CCE

Principles of Extra-contractual liability law

- ▶ To make a person liable under this law, four requirements which are called principles of Extra-contractual Liability Law are essential.
 - The first one is conduct of a person
 - ▢ Act (Art. 2038) (Misfeasance) or omission (Art. 2052) (nonfeasance).
 - ▢ This is either intentional or negligently
 - The second concerns damage.
 - ▢ either material or moral damage
 - ▢ either present or future damage
 - ▢ either physical or property damage

Principles of ...

- The third one is existence of casual relationship between the act or omission and the damage suffered by the victim.
- Finally, this damage should be a kind of harm recognized as attracting legal liability. There is duty to care from legal point of view.

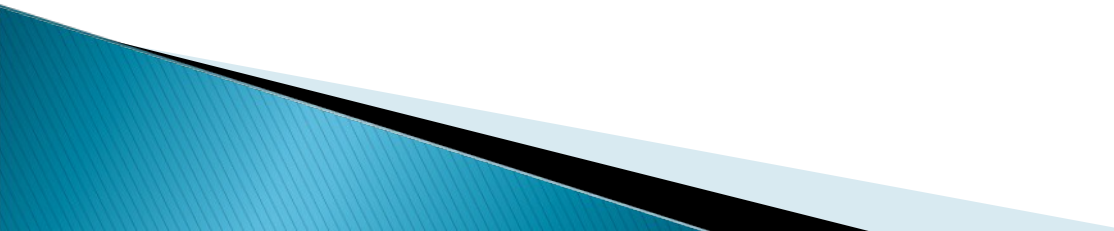
N..B cumulative fulfilment is the rule. But have an exception of special Fault Based Liability without damage and strict liability without fault



Activity

- ▶ Assume Mamo owns a business similar to Newute's. Mamo is skilled at dealing with customers, and he is constantly competing with his rivals, including Newute, by providing high-quality services. Customers gradually began to prefer Mamo, and Newute was unable to compete with him and declared bankruptcy.
- ▶ Can Newute sue Mamo based on extra-contractual liability laws?
- ▶ Why or why not?
- ▶ Refer from your material **damnum sine injura**
 - This is to mean damage without infringement of any legal right

Activity...

- ▶ Tolcha crosses a piece of land without the permission of the landholder, Merga. Is Tolcha required to pay compensation even though Merga suffers no substantial harm?
 - ▶ The answer is yes. See CCE A. 2053
 - ▶ This is referred to as **injura sin damno** in Latin which means a violation of legal rights without causing any harm, loss or damage to the plaintiff.
 - ▶ The plaintiff is not expected to prove damage in such cases.
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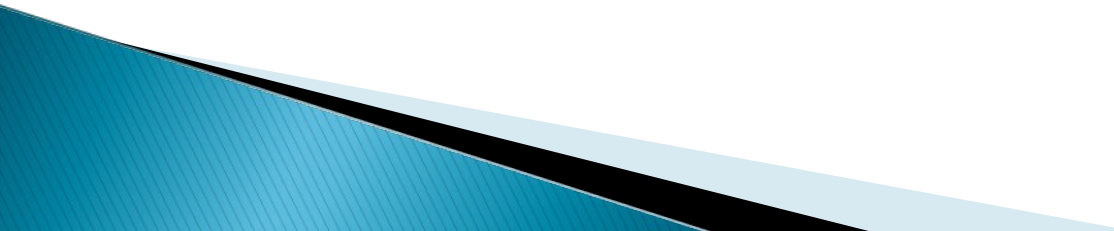
How to assess conduct

- ▶ Conduct is a person's behavior in a particular place or in a particular situation.
 - ▶ In legal sense, conduct is classified into two: Act and omission.
 - ▶ Act (misfeasance) is defined as an external manifestation of the actor's will
 - ▶ Omission (nonfeasance) is failure to act where the law requires you to act in a certain way.
- 

How to assess conduct...

- ▶ In evaluating conduct, one should be able to distinguish between intention and negligence.
 - ▶ Intention refers to the defendants knowledge that the consequences of her or his conduct are bound to occur, where the consequences are desired or, if not desired, are foreseen as a certain result.
 - ▶ Negligence is a person's failure to act in a reasonable manner.
- 

How to assess conduct...

- ▶ To assert that negligence exists, four conditions must be met:
 - The defendant owed the plaintiff a duty;
 - The defendant breached that duty; and
 - The breach of that duty was both the actual and "legal" cause of the plaintiff's injury.
 - The injury must be one recognized by the law and for which money damages can be recovered.
- 

How to assess...

- ▶ It is worthwhile to discuss duty and reasonable person stated as criteria to determine negligence.
 - ▶ We all have a responsibility to keep others safe.
 - ▶ The question is how much duty exists and under what circumstances.
 - ▶ The reasonable and prudent person has been introduced to determine the degree of duty.
- 

How to assess...

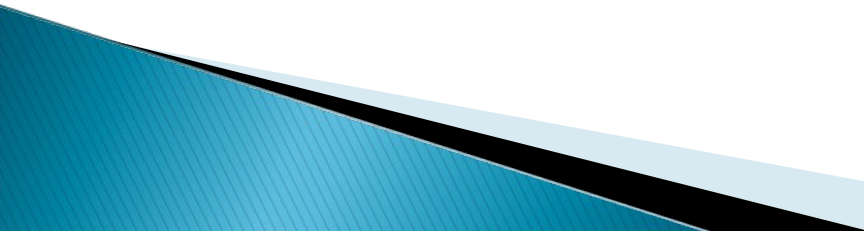
- ▶ As a result, we all have a "reasonable duty to avoid liability-causing behavior."
- ▶ A reasonable duty is an ordinary skill and care standard based on the facts of each individual case.
- ▶ A reasonable and prudent person will be assessed using three requirements and these are knowledge, investigation and judgment.
 - Knowledge: knowing a certain standard of care
 - ▢ Unforeseen circumstances are taken into account
 - Investigation: Checking before acting
 - Judgment: how individuals judge their activities

How to assess...

► Statutory Standard

- In some cases, the law solves the problem of subjectivity by enacting a statutory standard.
 - ▢ For example, all drivers are required to wear a seatbelt while driving. If a driver without a seatbelt causes damage while driving, the law will conclude that the person violated a reasonableness standard, regardless of the excuse given.
- The majority rule is that failing to meet the statutory standard constitutes negligence.
- This does not require further proof.

Causation and remoteness of damage

- ▶ Causation is a link between the defendant's conduct and the plaintiff's damage.
 - The "but for" test is used by the law to determine whether or not that connection exists.
 - ▶ The remoteness of the damage, on the other hand, is used to determine the defendant's legal liability.
 - ▶ In general, once the tortfeasor's conduct causes the damage, the tortfeasor is obligated to make that damage good.
 - ▶ However, there are some circumstances in which even if the defendant's act caused the damage, liability can still be excluded.
 - That is, if the type of damage was an unforeseeable result of the act, it is said to be too remote.
- 

Causes and ...

► Causes of damage

- It is not difficult to determine the cause of a damage when there is only one known cause.
 - A causation problem arises when we examine the damage and discover that it was caused by a number of different factors.
 - The judge may, among other things, use "but for" tests to determine the cause of a damage .
 - ▢ According to this principle, the plaintiff must demonstrate that s/he would not have been injured in the way s/he was if it were not for the defendant's actions.
 - ▢ The “but for” test is satisfied by using a balance of probabilities test.
- 

Causes and...

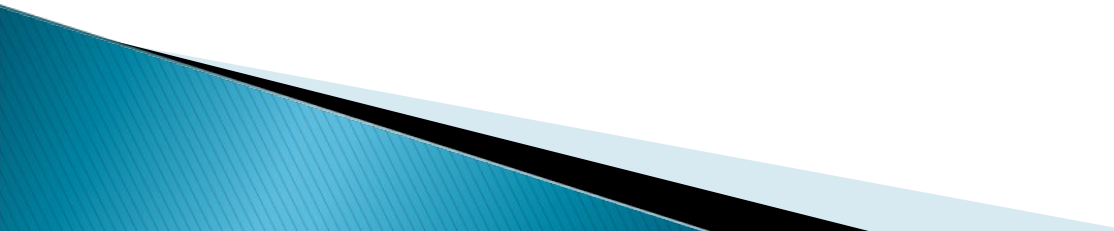
- ▶ Remoteness of the damage
 - Because not all losses are recoverable in tort law, the remoteness of damage is frequently viewed as an additional mechanism for controlling tortious liability.
 - To determine whether a given conduct is remote or not remote to causing something, judges must demonstrate whether the act is beyond the reasonable man's ability to predict the incident.
 - This is guided by foreseeability test.
 - The judge will use reasonable man standard to decide foreseeability.

Causes and...

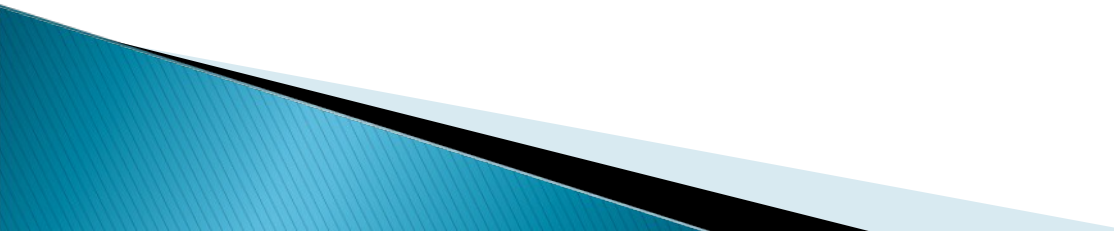
► Exception to the Foreseeability Test

- The egg -shell -skull rule
 - ▢ (the act is aggravating the preexisting problem)
- Economic loss consequent on physical injury
- Psychiatric Illness
 - ▢ (If a physical injury causes the victim's psychiatric illness, even if the defendant had no idea, s/he will be held liable for the psychiatric illness.)
- Intentional torts
 - ▢ (if the person is doing knowingly)
- Statutory Torts
 - ▢ (Certain human relations, such as discrimination based on race, religion, or sex, are sensitive and are addressed in statutes or laws, and violations of such statutes will result in tort liability.)

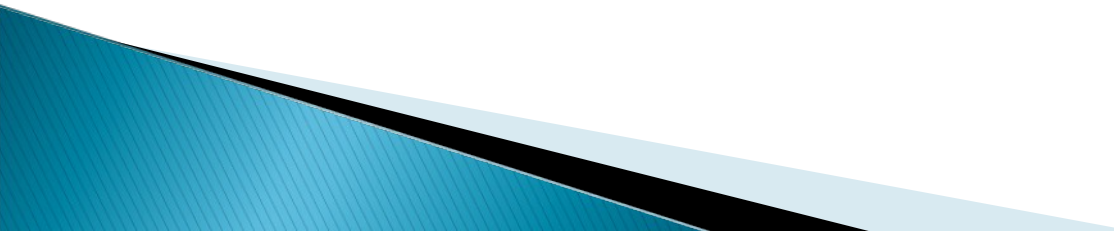
Sources of extra contractual liability

- As per Article 2027, the sources of extra-contractual liability are three. These are:
 - Fault (offence)
 - Activities one engages in or things possessed by a person (Strict liability), and
 - Where a third party for whom a person is responsible incurs liability (Vicarious liability)
- 

1. Fault Based liability (article 2027(1)+2028-2065)

- ✓ Even if no contractual liability there may be another liability that may come from fault or offence.
 - ✓ Here we look for the fulfilment of the four principal elements of extra contractual liability {fault, damage, causation and duty to care}.
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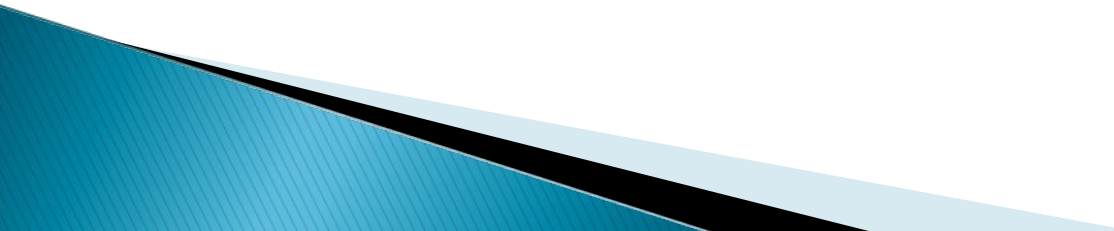
Fault based...

- ▶ No element of promise is needed rather element of fault is required
 - ▶ How can we assess fault?
 - Either by RMS, RPS and presumed fault.
 - ▶ What is the logic of FBL?
 - The implied guarantee not to make mistakes and cause harm to others if you live in society.
- 

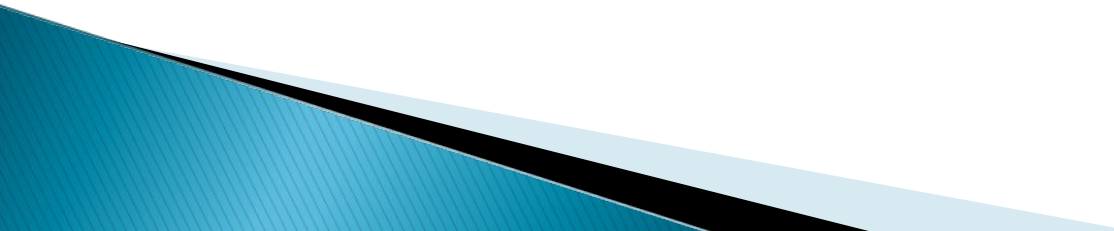
Structure of FBL under the civil code

1. General damage: 2028-2037 fulfils the four principal element of extra contractual liability
2. Special damage: 2038- 2065
 - ✓ Are fundamental rights guaranteed by the constitution.
 - ✓ Proving damage is not needed.
 - ✓ Nominal damage is given to recognize a constitutional right
 - ✓ They lacks the principal element of damage
 - ✓ They are all about nominal damage without damage caused (Damages without damage).
 - ✓ They are also called nominate torts in Common law system
 - ✓ It is just creating by listing special provisions of EXCL

2. Strict liability: article {2027(2)+2066–2089}

- ▶ Even someone is not at fault,
 - ▶ If the law provide so i.e. like legality principle of criminal law, and
 - ▶ The activity engaged or the object possessed give rise to extra contractual liability
- 

Strict...

- ▶ The plaintiff is not expected to prove the fault of defendant
 - ▶ The defendant cannot defend himself by absence of fault
 - ▶ Liability is based on activity or possession of object.
- 

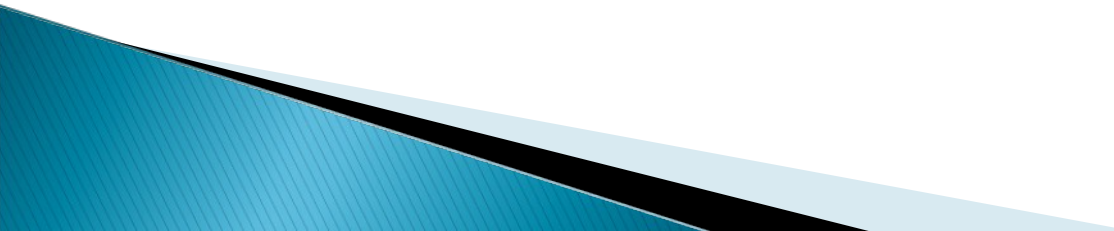
Strict..

- ▶ Thus, it consists of:
 - Dangerous activities (article 2069 and 2070),
 - Liability for animals (2071 – 2076),
 - Liability related with building (2077 – 2079),
 - Liability related with machines and motor vehicles (2081 – 2084)
 - Liability for manufactured goods (2085).
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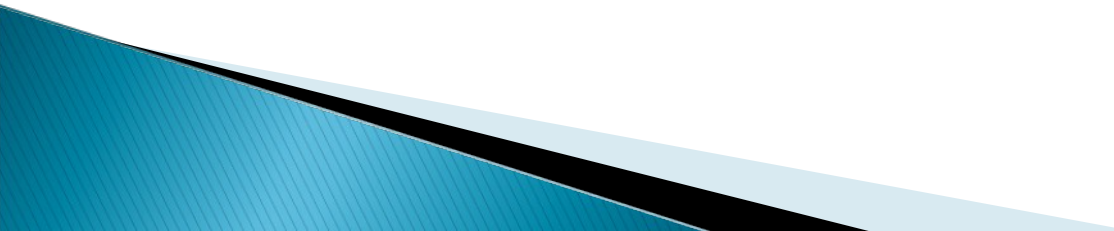
3. Vicarious liability: article {2027(3)+2124-2136}

- ▶ Liability for the action of other third party, and
 - ▶ If the law provide so.
 - ▶ Have three parties {victim, wrongdoer or principal offender and vicarious offender.
 - ▶ Logic of vicarious liability is not fault like FBL and not activity or possession of an object rather action of other third party.
- 

Vicarious...

- ▶ This liability can be classified into:
 - liability of families and others for a minor child (2124 – 2125),
 - liability of State (2126 – 2128),
 - liability of Bodies Corporate and Employers for their Employees (2129 – 2132).
- 

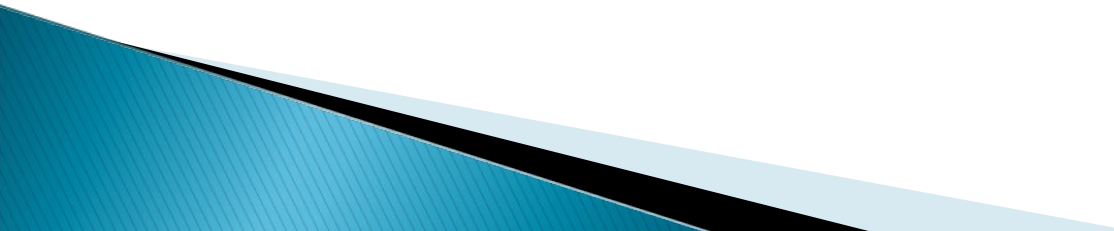
Strict liability VS. vicarious liability

- ▶ Both are exceptional sources
 - ▶ Legality principle is guiding principal to both
 - ▶ However, FBL is raised when the principal element of extra contractual liability are fulfilled and that is a principal source of extra contractual liability
- 

Fault based Extra Contractual liability

- ▶ According to article 2028, the general principle is that whoever causes damage to another by his fault must make it good.
- ▶ According to the article, if a person is at fault and causes harm to others, he or she must compensate.
 - The reason for the damage must be the **fault conduct** of the defendant.
 - Is there exception to this principle? (See Article 2137).
 - Is this article applicable now? (See FDRE constitution Art. 12 (2))
- ▶ The question now is what type of fault will subject individuals to this liability. (See Art. 2029)

Kinds of fault (Article 2029)

- ▶ As per this article, The following are kinds of fault.
 - Intentional positive act,
 - Negligent positive act,
 - Intentional forbearance, and
 - Negligent forbearance.
- 

Kinds of ...

- ▶ The terms act and forbearance refer to a person's physical activities.
 - ▶ Both intent and negligence are referring to the mental element of the wrong doer
 - Intention and negligence is also seen from moral aspect.
 - ▶ Intention refers to a person's motivation to cause harm, whereas negligence occurs when a person is expected to consider his actions but fails to do so.
- 

How one may assess fault (Art. 2030 (Good usage))?

- ▶ The article impliedly refers to three tests to good usage or to assess fault and these are:
 - The morality test (willful intent or reckless negligence)
 - The Good usage test (like reference to 'a reasonable man', extra-ordinary prudence)
 - Age or mental condition in good usage and morality test (see article 2099 (1) as an exception to 2091)

How one may assess fault (Art. 2030 (Good usage))?...

- ▶ The parameter of extra-ordinary prudence is also applicable to minors and incapable 2030(3).
- ▶ What is the rational behind of article 2030(3)?
 - To take necessary care by the guardian
 - To avoid evidence falsification in regard to age
 - To compensate the victim
 - Because it is a civil liability, if he can afford to pay, he will, and if he cannot, he will not be imprisoned, so the law wishes to be strict.

How one may assess Fault (Art. 2031)

- ▶ The other method of assessing fault is stated under article 2031.
- ▶ It refers to a reasonable professional standard (RPS) rather than a reasonable man standard (RMS).
 - NB: RMS is just like any other person, but with ordinary prudence that does not offend morality, obeys the law, respects his rights, and protects the rights of others.
- ▶ Because of the knowledge and skill they acquire, society expects a different standard of their profession from some people.
 - So it needs RPS for assessment of fault as per Art. 2031.
 - Example medical professionals, lawyers, drivers etc when failed to consider what their profession requires

Activity

- ▶ Assume a lonely and heavily bleeding accident victim is lying on the side of the road. Tola, a Jimma University professional medical graduate, drives by. Instead of providing first aid on the spot or calling for it, the physician stops his vehicle and attempts to transport the victim to a nearby hospital, which results in the same fatal outcome. The victim bleeds to death before reaching medical help due to the shaky road.
- ▶ Is Tola liable extra-contractually?
- ▶ What is your response if Tola is a layman in terms of medical knowledge

Professional Fault (Article 2031)

- ▶ What is a profession?
 - ▶ A profession is an activity for the proper exercise of which a special training, skill and knowledge is required.
 - ▶ A professional is, therefore, some one who practices profession.
 - Examples are lawyers, physicians, accountants etc.
 - ▶ Hence, a person practicing a profession shall observe the rules governing that practice.
 - ▶ The rules for the profession could be written or it may not be written but is simply recognized by the professionals. (Expert witness)
- 

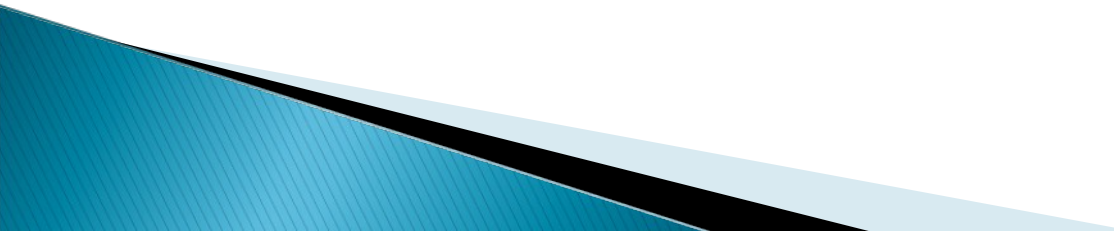
Professional Fault (Article 2031)...

- Duty to observe the rules governing that practice/profession,
- Violation of those rules implies professional fault, and
- Professional faults are measured by reasonable professional standard (RPS) that we have discussed above.
- ▶ Discussion point:
 - Why this article is needed? Can't we make a person liable extra-contractually by citing article 2035 when code of conducts are violated?
 - Don't you think that professional services are based on contract and a person can be liable under contractual laws?

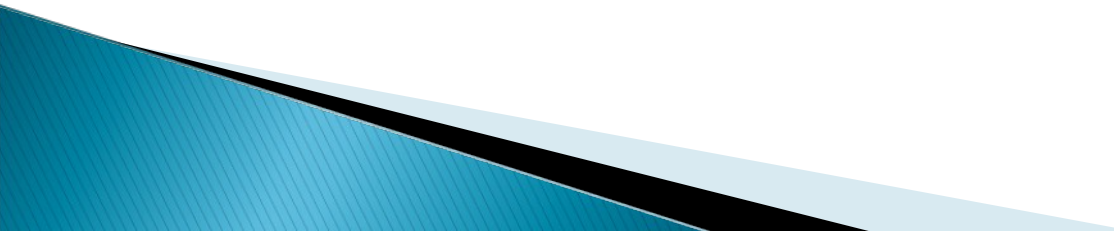
Intent to injure (Article 2032)

- ▶ According to article 2032 (1) and (2), when a person intentionally injures another without personal gain or intentionally causes damage for personal gain that is less proportional to the damage, we say s/he has abused her/his rights and is at fault.
- ▶ Questions
 - What if a person does not abuse his or her rights but injures another as a result of a lawfully gainful activity, such as fair business competition?
 - Can the injured party make use of this provision?
 - Please refer **damnum sine injura** .

Intent to injure (Art.2032)...

- ▶ In cases where rights are exceeded or rights are abused, there may be liability even if the person exercises the legally recognized right.
 - ▶ Exceeding is the absence of a right, whereas abusing a right is the use of an existing right to cause harm to others.
- 

Activity

- ▶ Sarah and Dawit are in the mousetrap business. Dawit recently reduced the price to an uneconomic level, causing Sarah to go out of business. Dawit raises the price to the economic level after driving Sarah out of business.
 - Is Dawit's goal to obtain personal gain, to cause harm, or both?
 - Justify your argument
- 

Diversion of power (Article 2033)

- ▶ There are two types of power.
 - The first is the one, given in the interest of a private individual, and
 - the second is that given to an individual in the interest of the public.
 - ▶ In any case, if such person who is conferred with such power uses the power in his interest or to the benefit of a third party we say there is a diversion of power.
 - ▶ That power could emanate from a law or the decision of a court.
 - Power that is entrusted to the guardian of a minor is one that emanates from the law.
 - The power of a liquidator assigned by a court to liquidate an asset of a business that goes bankrupt is power that emanates from decision of a court.
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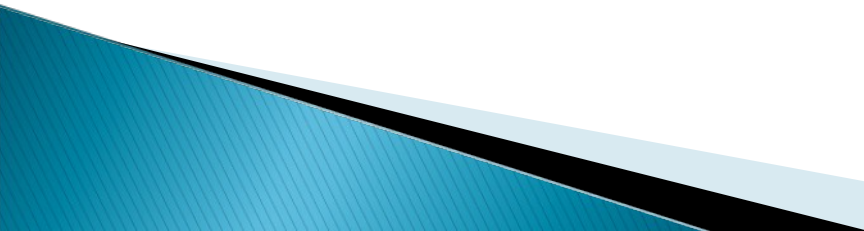
Diversion of power (Article 2033)...

- ▶ If the guardian or liquidator uses the power entrusted to her or him for her or his own benefit, we call this diversion or abuse of power, and it is a fault.
 - ▶ The former is abused to benefit the individual upon whom the power is conferred, whereas the latter is abused to benefit the individual upon whom the power is conferred or some third party.
 - ▶ One distinction between private and public power diversion is the purpose for which the powers are diverted.
 - ▶ As a result, we say there is private diversion (abuse) of power when powers are diverted from their basic purposes and exercised for personal gain.
 - ▶ In the case of a public one, the diversion serves not only the individual who diverted the power, but also a third party.
- 

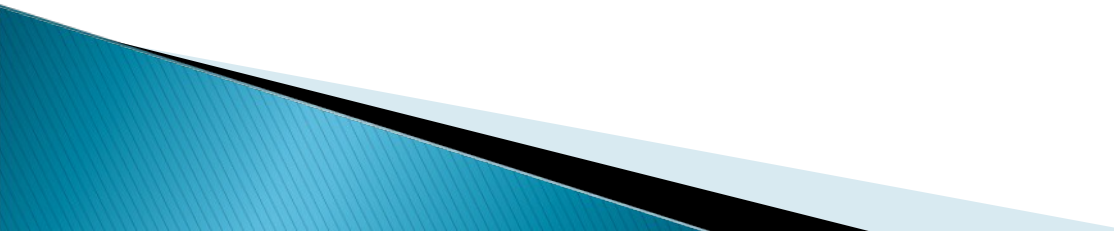
Purpose of Rights (Article 2034)

- Article 2034 makes an exception to the presumed faults specified in articles 2032 and 2033 if there is no intent to injure but the act is contrary to the economic, social, and political purpose of the right granted.
- Example:
 - Assume there is a scarcity of available residential units. A lesser person locked her/his house and left it empty.
 - Even though this act goes against the house's economic and social purposes, no one can question the owner about how s/he handled her or his home.
 - However, if we can prove that s/he was doing it with the intent to cause harm, s/he is liable.

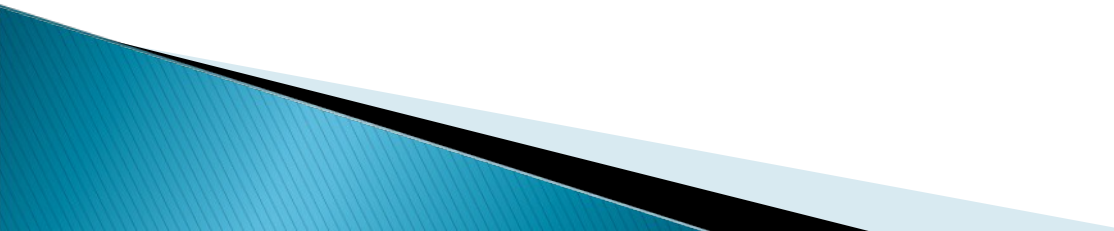
Infringement of law (Article 2035)

- ▶ According to 2035, if any law is provided in the form of legislation, decree, or regulation and if then any violation of those laws results, then the person is extra contractually liable.
 - ▶ The law presumes fault when there is a violation of any specific or explicit provision of law, decree, or administrative regulation.
 - ▶ It is a broad provision that serves as a link between tort law and other branches or fields of law.
 - ▶ It is also known as the tort law basket!
 - ▶ Causation must be established between the damage and the violation of the law.
 - ▶ What is the reasoning behind article 2035(2)?
 - Is it to raise legal awareness?
 - But what about the availability of legal documents?
 - Is accessibility solely concerned with availability?
 - Is price affordability an important factor in accessibility?
- 

Hierarchical order (Art. 2036)

- Also called chain of command
 - There are precondition to have subordinate liability according to article 2036
 1. Superior- subordinate relationship must be exist
 2. Superior should give order to the subordinate
 3. Then, the act of subordinate should cause harm
- 

Hierarchical order (Art. 2036)...

- ▶ This liability applies only for public/administrative and military orders
 - ▶ No liability according to this provision for private superior-subordinate relationship
 - ▶ We have three approach and these are:
 - Rule of law approach
 - Strict/blind obedience approach, and
 - Intermediate approach
 - ▶ The following slides go over each approach.
- 

Hierarchical order (Art. 2036)...

1. Rule of law approach: deals about the law prevails to the order. Obey the law and disregard the order given.
 - **CRITCS**: it delays state machinery because the subordinate checks the legality of every order.
 - The approach is recognized under article 2036(1).
 - No defence of superior order.
2. Strict/blind obedience approach: it says obey the order and disregard the law because of the presumption of the superior knows the law than the subordinate. Superior defence is a defence in this regard.
 - **CRITCS**: it violates rule of law. Also called Nazis/Dergs approach

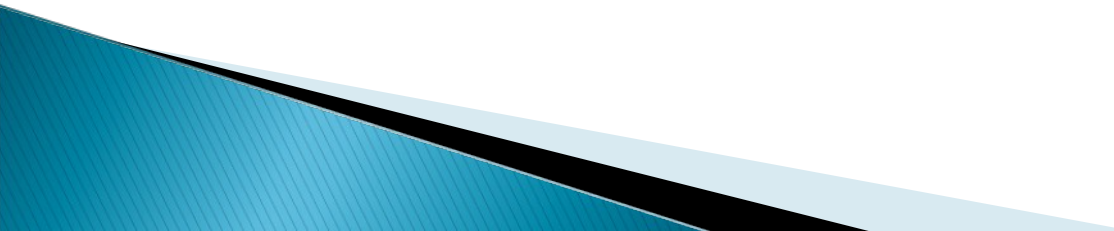
Hierarchical order (Art. 2036)...

3. Intermediate approach: if the law is manifestly illegal or it is from incompetent organ, deny it.

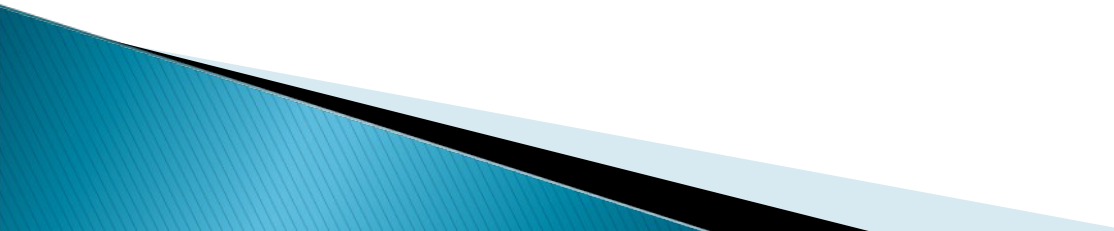
- Its illegality may be either in relation to the competence of the superior or criminal nature of the order.

- 2036(3) says even if the subordinate knows that the order is illegal, or that the superior does not have such power, or that the order is criminal in nature he can still comply with the order if he is not in a position to challenge it especially in military circumstance and public services.

- Example if the order is given at gun point.



Hierarchical order (Art. 2036)...

- ❑ According to article 2155, both superior and subordinate are jointly and severally liable.
 - ❑ Article 2036 holds the subordinate liable, while Article 2035 holds the superior liable, because s/he violates a specific law by issuing an unlawful order, and Article 2036 only addresses subordinate liability.
 - ❑ The applicability of article 2036 turns out to be in the public interest only
 - ❑ Superior and subordinate must be structurally related
 - ❑ When we assess extent of liability, the superior-subordinate relationship will be taken into account as per article 2100 i.e. sense of deriving duty.
- 

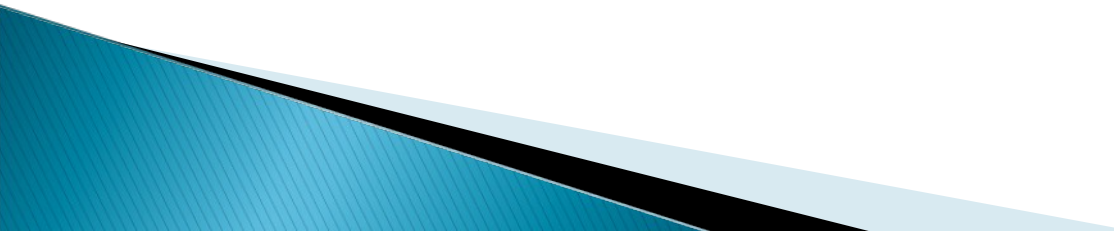
Hierarchical order (Art. 2036)...

- ▶ If a fault is committed as a result of a superior-subordinate relationship formed between individuals, the liability is governed by Article 2035 rather than Article 2036, because Article 2036 only applies to public and military relationships.

Non-performance of the Contract (Art. 2037)

- ▶ It is only when there is no contractual relation that extra contractual remedy come into the picture.
- ▶ Non-performance of contract is not source of EXCL rather than it is source of contractual liability.
 - Damage to contract= lose + non-performance
 - Damage to tort=fault + damage
 - Contractual damage= normal/foreseable damage
 - Tort damage= actual damage/unforseeable

General defence of Articles 2028–2035

- ❑ No fault
 - ❑ No damage
 - ❑ No causation
 - ❑ And other special defences example:
 - ❑ no intent to injure of 2032,
 - ❑ no abuse of power,
 - ❑ no violation of specific law, and
 - ❑ contractual relation
- 

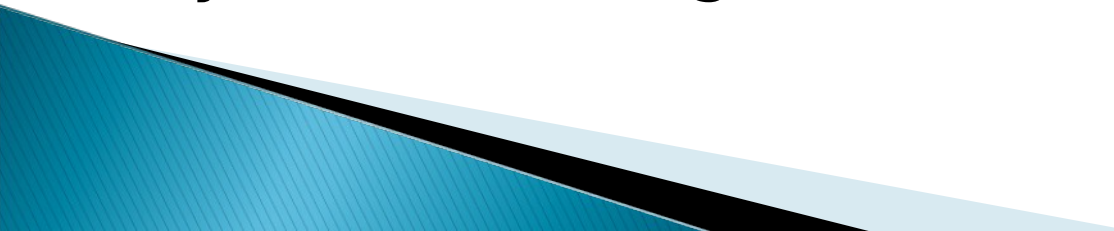
Provisions related special cases

- Under this, fault is established by fault conduct, duty to care, and causation.
- If there is damage special damage is claimed. If there is no damage nominal damage.
- There are fundamental rights guaranteed by the constitution and violation of these rights give rise to extra contractual liability.
- Nominal damage is given to recognize a constitutional right
- The conducts that we will discuss under the special cases include:
 - Physical assault, interference with liberty of another and defamation (trespass to person)
 - Trespass to movable and immovable properties (Fault against property)
 - Fault against economic interest (2055-2063)
 - Rights of spouses and duty to educate and supervise

Physical Assault (Article 2038)

- ▶ One of the trespass to person is physical assault which is called in the common law context as battery.
 - ▶ Battery is doing something which induces in another reasonable fear and apprehension of immediate violence.
 - ▶ To say a person has committed a physical assault:
 - First, there has to be contact to the person of the victim.
 - Second, the contact could be made by having direct personal contact or by utilizing other objects, which could be a living thing or a non - living thing.
 - Third, the contact should be done intentionally. (No negligent contact is liable under this).
 - Fourth, the contact should be against a will of the victim.
- 

Activities pursuant to Art.2038)

- ▶ Newute wipes his bleeding hand with a towel and places it in Yirgete's bathroom. Yirgete uses it, resulting in blood all over his face. Would Newute be held liable for physical assault? What is your reasoning?
 - ▶ Chaltu is attempting to enter a classroom. Chala stands in the doorway, thundering at her to touch her with his dusty, mucus-covered hand. Would Chala be at fault in the event of a physical assault? What is your reasoning?
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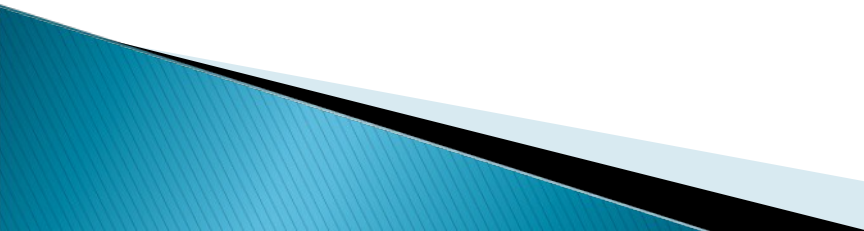
Defense/Justification (Art. 2039)

- ▶ **Unforeseen objection (2039)(a):** This occurs when the defendant could not have reasonably anticipated the plaintiff's objection to the physical assault in advance.
- ▶ **Self-defense (2039 (b)):** Article 2039 defines self-defense as acting "reasonably in legitimate defense of one's person or of another in the safeguard of property of which the defendant is the lawful owner or possessor."
 - Is it defending oneself, another, or both? What about property?
 - Is it only permissible to safeguard property of which the defendant is the lawful owner or possessor, or is it also permissible to safeguard the property of others?
- ▶ **Corporal Punishment (2039(c)):** This act consists of the defendant inflicting reasonable corporal punishment on his child, wards, pupil, or servant.
 - Is such act constitutionally acceptable?
 - Can parents exercise such rights now in our case? See Art. 36 (1(e)) of the FDRE constitution.

Defense/Justification (Art. 2039)...

- ▶ **A risky Lunatic (2039 (d)):** The other justification is where the plaintiff is a dangerous lunatic who needed to be kept safe and the act was done in a reasonable manner.
 - If a notoriously insane person is labeled as a dangerous lunatic, those with whom he lives or his family will restrict his freedom of movement.
 - This is usually accomplished, particularly in rural areas, by tying that person's arms and legs with rope so that he or she does not injure others or damage property.
 - It may be necessary and justifiable to use reasonable force to bind that person.
- ▶ **Any other justification (2039 (e)):** This is where the defendant's actions are justified in the eyes of a reasonable person.
 - Could you provide an example?
 - Ali is at risk of being struck by a moving object. G/Tsadik drags Ali out of the way to avoid being hit by the moving object.
 - In the street, Kebede brushed up against Sarah. "The Contact is legal." The reason for this is that by walking down the street, Sarah has voluntarily accepted the risk of being touched by people passing by.

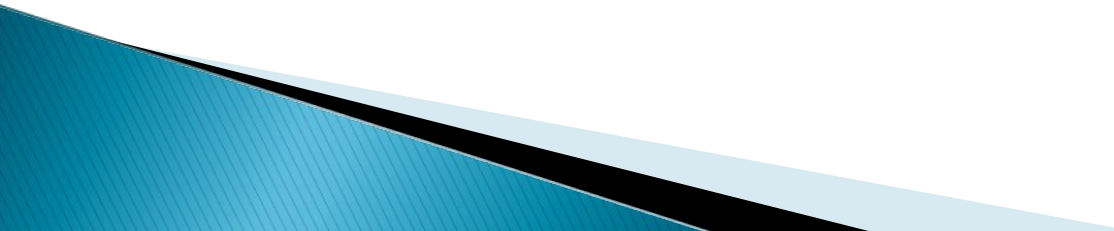
Restraint of liberty (Art. 2040)

- In the common law legal system, this is known as false imprisonment.
 - It is the detention of one person by another against his or her will and without justification.
 - The article is to protect the constitutional right of citizens.
 - Interfering with the liberty of others without due legal authority
 - Length of time is immaterial
 - Damage is immaterial
 - The restriction should be absolute or the movement should be restricted in all direction.
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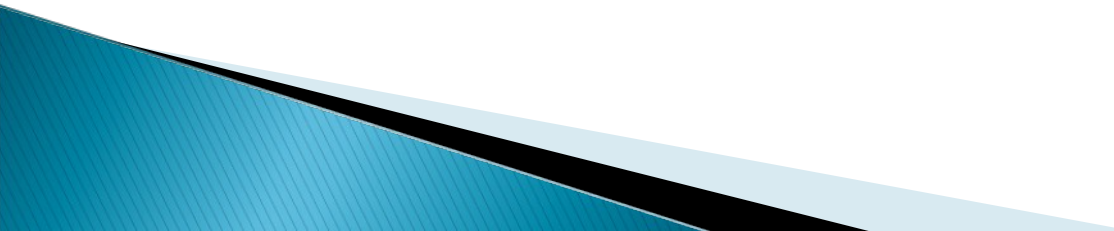
Defenses to restraints of liberty (Art. 2041–43)

- ❑ Lawful authority (2041).
- ❑ Here when the following are met, the person can defend himself/herself citing article 2041.
 - ❑ The constraint must be applied in a reasonable way.
 - ❑ The person who infringes on the liberty of another should be given legal custody of the plaintiff.
 - ❑ The defendant should be given that authority by the law.
- ❑ These are guardians to their minors and guardians to their lunatic persons

Defenses to restraints of liberty (Art. 2041–43)...

- ❑ Criminal offense (Article 2042)
 - ❑ This is done in order to prevent a crime.
 - ❑ According to article 2042 (1), the person who interfered with the liberty of another must demonstrate that she has a reasonable suspicion that the plaintiff committed a criminal offense.
 - ❑ Can a person restrict another person's liberty in civil cases?
- 

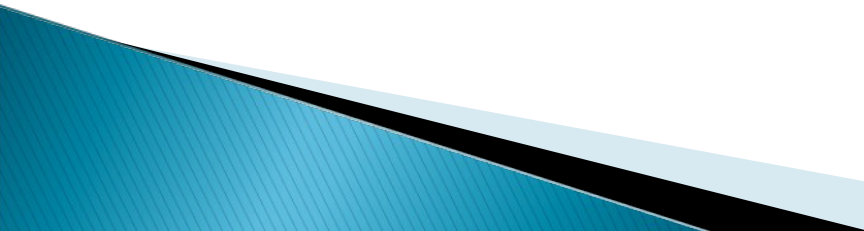
Defenses to restraints of liberty (Art. 2041–43)...

- ❑ Bail (Article 2043)
 - ❑ If the person who stood surety for a person has reasonable grounds to believe that person is about to flee and forbids that person from leaving his residence, the person who interfered with the liberty may not be said to have committed an offense.
 - ❑ Some signs that a person is about to leave his job include him packing his belongings or booking a plane ticket.
- 

Defamation (Art. 2044 & 2045)

- Article 2044 defines defamation and the means by which it is accomplished.
- Defamation may be in word, conduct, picture and any other way to make another living person detestable /to be hated/, contemptible or ridiculous his credit
- The rationale is to protect the right to reputation, which is guaranteed by Article 14 of the FDRE constitution.
- Oral defamation is called slander
- Written defamation is called libel

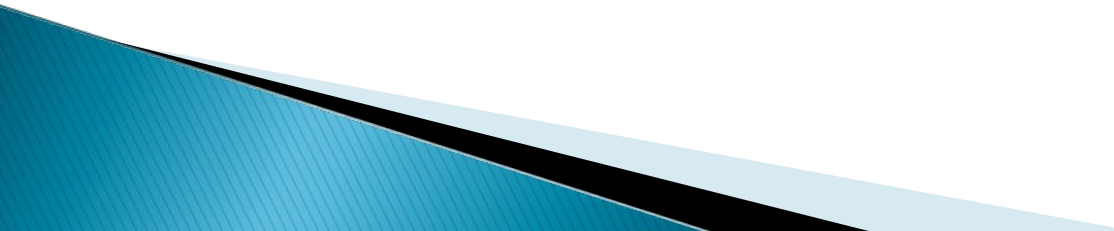
Defamation (Art. 2044 & 2045)...

- In principle, defamation is false and intent to injure is not an element to establish defamation. Only falsity is the element (See Article 2045 (1))
 - There is no group defamation as per article 2045(2).
 - The other name for group defamation is defamation of a class
 - If, for example, Chala says in public or to someone that all women commit adultery, Chaltu cannot sue him for defamation. However, if Chala says in public that all women from Mr. Besha's family commit adultery, Chaltu can sue him for defamation if she is a member of the said family.
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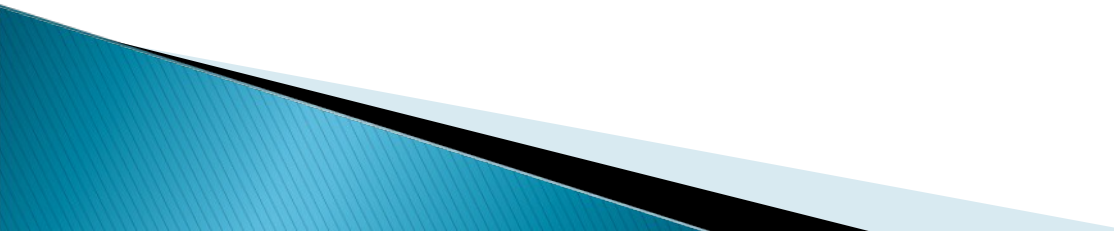
Defamation...

- ▶ Defamation has the effect of making a living person despicable, contemptible or ridiculous, endangering his credit, reputation, or future.
 - ▶ As a result, defamation is related to a living person rather than a deceased one.
 - ▶ Article 2109 provides some examples of defamation.
 - ▶ So, according to the article, there is defamation or insult where;
 1. The injurious or defamatory charges that the plaintiff committed a crime punishable by criminal law, though did not commit it.
 2. It is claimed that the plaintiff is incompetent or dishonest in the matter at hand while remaining honest or competent in her/his profession.
 3. It is claimed that the plaintiff, a businessperson, is insolvent despite her success.
 4. It is claimed that the plaintiff has a contagious disease or infection while he/she is healthy.
 5. It is claimed that the plaintiff is morally deficient, which she is not.
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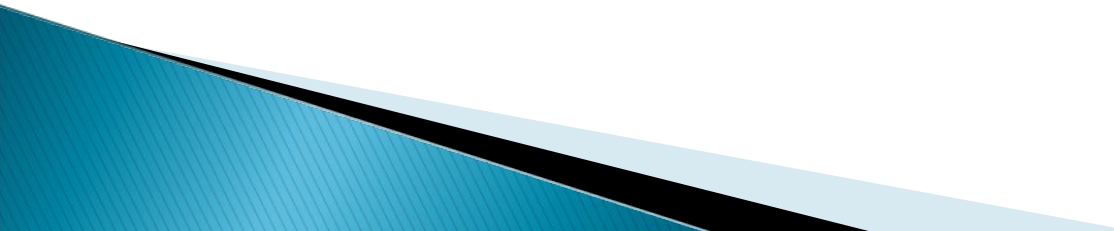
Defamation...

- Defamation is an exception to the general rule of compensatory damages for moral harm.
 - It is repaid in monetary terms.
 - Article 2109 of the civil code attempted to list the types of defamations that are compensable in court.
 - The proclamation 590/2008, which established media freedom and access to information, also established a monetary penalty of up to 100,000 birr for defamation through publication as per article 41(2).
- 

Defenses to Defamation (Art. 2046–2049)

- ▶ Someone can use defamatory words or statements against another person.
 - ▶ S/he may not be held liable, however, because her/his actions were justified.
 - ▶ These defenses are outlined in articles 2046 - 2049 of the Ethiopian Non-Contractual Liability Law.
- 

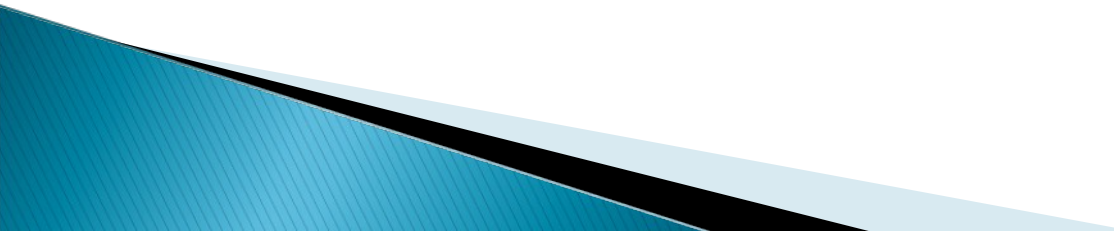
Defenses to Defamation...

- ▶ **Public Concern (2046):** According to article 2046, expressing a public concern is not defamation.
 - ▶ The question now is when an expression is said to be of public concern or interest.
 - ▶ Fair comment is related to public concern or interest.
 - ▶ To say a statement is a fair comment, the following three conditions must be met.
 - The statement should appear to be an opinion, not a statement of fact.
 - The expression should express an opinion on matters of public rather than private interest.
 - The person who holds that opinion should hold it honestly and not act maliciously in expressing it.
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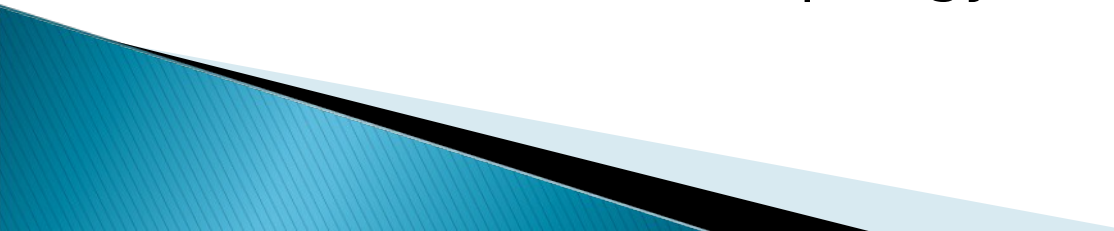
Defenses to Defamation...

- ▶ **Truth of the Alleged Fact (2047):** In general, if what someone says is true, there is no defamation as long as it is not done with malicious intent.
 - Let's say Belay beats his wife three times per week. Chaltu says that Belay beats his wife four times per week. If Belay sues Chaltu for defamation, Chaltu can use the truth to her advantage. Her statement is mostly true, even if she gets the number of times Belay beats his wife incorrectly.

Defenses to Defamation...

- ▶ **Immunity (2048):** According to article 2048(1), no liability shall be incurred for utterances made in parliamentary debates or during legal proceedings.
 - ▶ We can see from this reading that this immunity or privilege is only granted to certain people.
 - ▶ Members of Parliament [MPs] and those involved in judicial proceedings are included.
- 

Defenses to Defamation...

- ▶ **PUBLICATION (2049):** Publication can be used to commit defamation.
 - ▶ The responsibility of the press arising from criminal offences and civil damages shall be laid down in the Criminal Code and the Civil Code, regardless of how the defamation is carried out.
 - ▶ Nonetheless, according to CCE article 2049, the defendant is not liable if:
 - S/he acted without intent to injure and without negligence.
 - At the plaintiff's request, s/he immediately publishes a withdrawal and an apology.
- 

Injury to the right of spouses (Art. 2050)

- ▶ The article states in sub-articles 1 and 2 that if someone knows that a person is married and induces a wife or husband to leave his/her partner against his/her will, that person is at fault.
 - This article is an exception to article 2062, which states that giving advice to another person does not constitute fault.
- ▶ Subsection 3 states that a person who receives, harbors, or detains a married woman against her husband's will and with knowledge of his opposition is at fault.
 - But the exception to this is article 2051.
 - ▢ When the husband and wife agreed to live apart, or
 - ▢ when the husband is guilty of brutality and a third party did it out of humanity, the article justifies the third party's actions.

Duty to Educate and Supervise (Article 2052)

- ▶ When we discussed fault or offense, we mentioned that it could be committed by commission or omission.
 - ▶ Article 2052 is a prime example of an omission flaw.
 - E.g. parents, schools...
 - Customs and circumstances are used to assess the duty.
 - ▶ Thus, a person is said to be at fault when he or she fails to educate and supervise an individual who is under his or her control or entrusted to him or her in a "I -don't- care" manner.
 - ▶ He or she will be held accountable if the person for whom he or she is responsible suffered harm as a result of an omission.
 - ▶ The person is also liable for the consequences of his or her failure if the person under his or her supervision causes harm to another.
- 

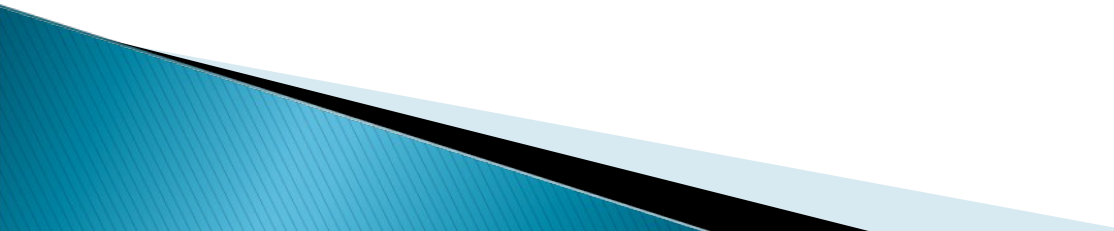
Trespass to land (Article 2053)

- Entering into another land and house without the willing of owner or possessor will put a person at fault as per article 2053
 - Rational behind of trespass is the constitutionally guaranteed right to privacy under article 26 FDRE constitution
- The elements of this article include:
 - Lack of legal authority,
 - Absence of permission (against the will of the person),
 - Presence of force (he/she forces his/her way to land or house of the person affected)
 - This can be directly or indirectly
 - Being owner or possessor of the land or house

Trespass to land (Art. 2053)...

- ▶ What kind of remedy do we have for trespass?
 - Only if there is moral damage there is compensation for trespass of land and house as per article 2112
 - If there is no moral damage and if the trespass has continuous nature, there is remedy of injunction of court as per article 2121

Assault on property (Art.2054)

- ▶ As per article 2054 a person commits an offence where, without due legal authority, she takes possession of property against the clearly expressed will of the lawful owner or possessor of the movable property.
 - ▶ The elements of this article are:
 - Without due legal authority,
 - Takes possession of property,
 - Against clearly expressed, of
 - Possessor or owner of the property
- 

Pre contractual Negotiations (Art. 2055)

- ▶ Before they conclude a contract, parties make negotiations.
- ▶ This is done by expressing their intentions to enter into a contract.
- ▶ When one declares her intention, she may induce others to incur expenses and then decline from entering into the contract.
- ▶ This is an offence as per article 2055.
 - Example: When someone sends an invitation to make an offer, such as a bid, and the offeror is ready to accept and make an offer, and the bid posting individual cancels the invitation upon receiving advice to do so with the intention of injuring the offeror, article 2055 holds the bid posting individual liable.

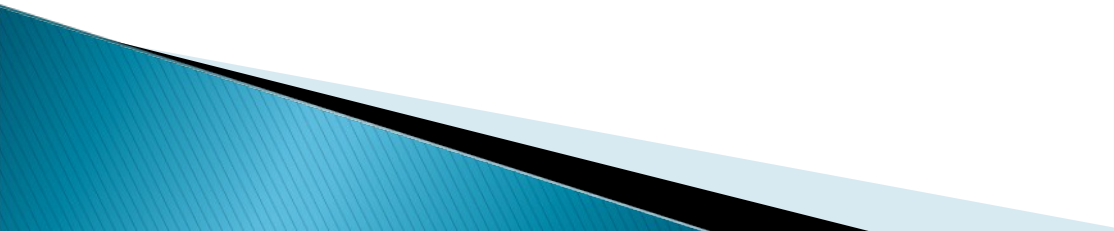
Disregard of contractual relationship (Art. 2056)

- ▶ According to article 2056, anyone who is aware of the existence of a contract between two other people commits an offense if s/he enters into a contract with one of those people, rendering the first contract impossible to perform.
- ▶ The elements are:
 - Being aware of the existence of contracts between other persons.
 - Entering into a contract with one of those persons
 - Rendering impossible the performance of the first contract.
- ▶ Exception: If the person who complains about a breach of contract fails to take the necessary steps to ensure the effective performance of that contract, the person who made the latter contract is not liable (see Art. 2056(2)).

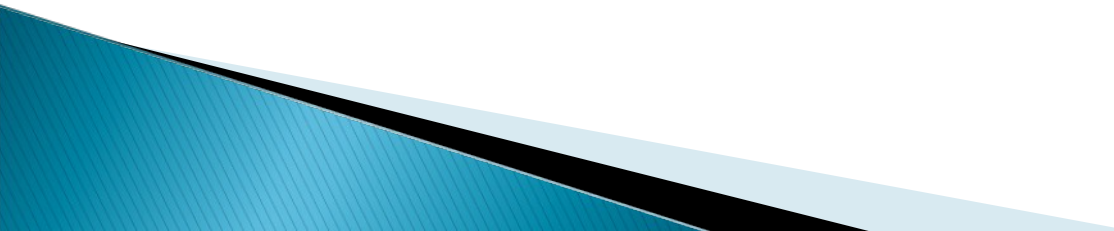
Unfair Competition (Art. 2057)

- ▶ An offense is committed when a person, through unfair competition, jeopardizes the reputation of a product or the credit of a commercial establishment.
 - This may be done through publication, or by other means contrary to good faith

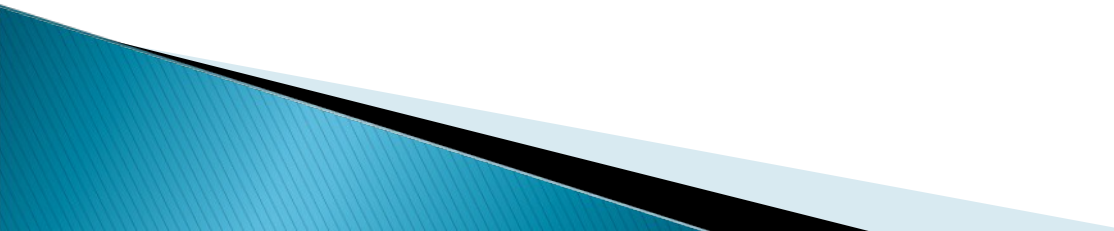
Ostensible situation (Art. 2058)

- ▶ Ostensible situation or simulation is the deliberate creation of conditions that could exist in reality.
 - ▶ Article 2058 deals with simulation, which is the equivalent of "Kutch yebelu or Ateba" in Amharic.
 - ▶ This can be accomplished through declarations, conduct, or forbearance to persuade a third party of the existence of an ostensible situation.
- 

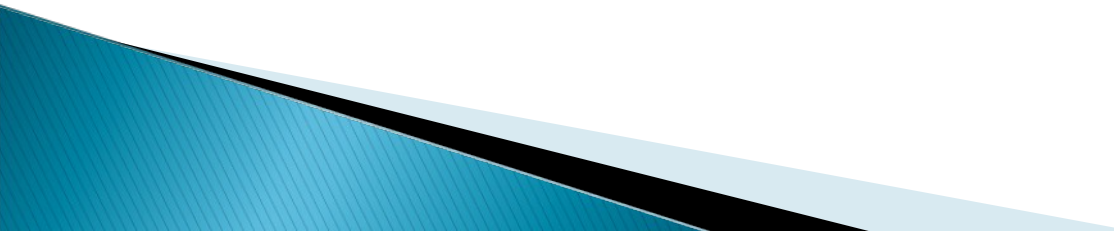
False Information (Art.2059)

- ▶ This is known as the tort of deceit in common law.
 - ▶ According to Article 2059, a person who intentionally or negligently provides false information to another commits an offense where:
 - He is aware that the person to whom the information is given, or another person, will act on it and suffer as a result.
 - He is bound by the rules of his profession to give correct information
- 

Exception to false/inaccurate information (Art. 2060)

- ▶ Article 2060 specifies the circumstances in which a false or inaccurate statement does not subject the person to liability.
 - ▶ The purpose of this article is to safeguard those who are making recommendation to benefit others and not with intention to hurt third persons.
 - ▶ Such information, like beauty, competence, or solvency of a person, is also subjective to quantify.
 - ▶ Subsection 2 states the exception of exception, and if there is a written document with a signature on it, the individual is liable for the false statement.
- 

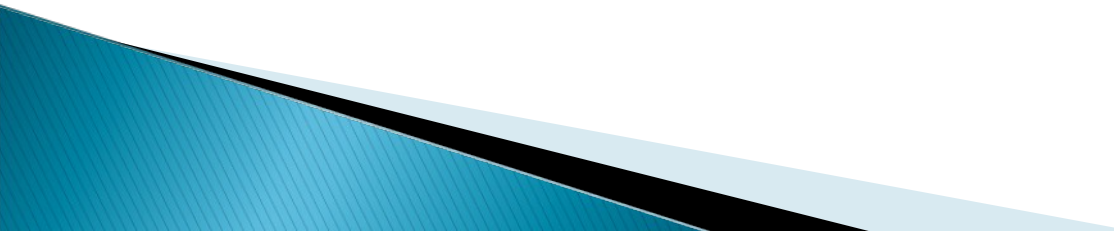
Witnesses (Art. 2061)

- ▶ Witnesses who testify to the occurrence or non-occurrence of a particular event or the existence or non-existence of a particular fact must guarantee the accuracy (exact or without error) of their statements.
 - ▶ If they were unable to do so, they would be liable to those who relied on such statements as per article 2061.
 - ▶ As per sub three of the article, witnesses who acted in good faith may sue whoever caused them to be mistaken.
- 

Seizer of another's property or Distrain (Art. 2063)

- ▶ This article deals with debtor-creditor relationships.
- ▶ To compel the debtor to pay her debt, the creditor seizes the debtor's property.
- ▶ This act is a fault if the borrower's property is disproportionate to the value of the debt.
- ▶ We may question whether the debt is owed extra-contractually or contractually.
 - If it is extra-contractual, a court must first determine the amount. Otherwise, the victim will be unable to determine the amount on her own.
 - If it is contractual, the creditor may pursue legal action. As a result, she is not required to take the law into her own hands.
- ▶ Thus what kind of situation is envisioned by the article?
- ▶ Perhaps those covered by Article 2076, despite the fact that that article only applies to animals.

Execution of a court order (Art. 2064)

- ▶ A court issues an order for the sale of the judgment debtor's property in order to execute its judgment by issuing a valid execution order.
 - ▶ The execution order is carried out by an execution officer or a bailiff.
 - ▶ To be valid, an order must include:
 - the date it was issued,
 - the signature of a judge,
 - the court's seal, and
 - Obviously, it must be in writing.
- 

Execution of a court order...

- ▶ When will be a person is liable under article 2064?
 - The person is liable if he or she executes a court order that is not in the prescribed form,
 - the execution officer exceeds the instructions in the order, or
 - the execution officer carries them out without regard for the provisions of the law.
- ▮ (see civil procedure code Art. 404 to know items that can not be subject to court execution)

Prescription (Art.2065)

- ▶ There is a prescribed procedure for bringing an action.
 - For example, in a contract case, it is ten years. As a result, the creditor must file his or her action within this time frame.
 - If she does not, his/her action will be barred by prescription.
- ▶ Article 2065 is an exception to the civil code's article 2030, which states that a person who does not pay his or her debt is at fault.
- ▶ Thus, if the creditor invokes article 2030 (because failure to settle one's debt is a fault), the debtor can invoke article 2065 to avoid liability.
- ▶ What do you understand from reading of article 2164?

Strict Liability (Art. 2066–2089)

- ▶ As you may remember from our previous discussions, the source of strict liability is either a law-stipulated activity in which he engages or a law-stipulated object a person possesses
- ▶ For the purpose of simplicity, we classify this liability into three headings.
 - Liability emanating from necessity (2066)
 - Liability for bodily harm or injury (2067)
 - Liability for the types of instruments that cause damages (2071_2085).
 - ▢ These are further classified into:
 - ▢ Liability for animals(2071-2076)
 - ▢ Liability for buildings (2077-2080)
 - ▢ Liability for motor vehicles or machines (2081-2084)
 - ▢ Liability for manufactured goods (2085)