

Criminal Law:

Part Two

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Chapter 1:- Criminal Responsibility(art 48-56),

Chapter 2:- Affirmative Defense for Criminal Liability(art 70-81)

Chapter 3:- Cr Pun't & its Application (Arts 87-237)

Chapter 4:- Special Part of Criminal Code (contains 496 articles, from Art 238-733)

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Chapter 6:- Criminal Law in a Changing World

CHAPTER ONE

Criminal Responsibility

- is dealing about the criminal responsibility of an individual who involved in the commission of crime.
- a. Absolute or complete irresponsibility, Art48,
- b. Partial or limited responsibility, Art 49,
- c. The defense of Intoxication, Art 50
- d. Infants & Juvenile Delinquents, Art 52, 53-55 & Art.56)
- e. Offenders b/n the ages fifteen to eighteen are tried under the **ordinary provisions** of the penal code (Art.56), but are entitled to mitigation for penalty or the application of special penalties specified for young persons under Article 166-168.

Responsibility

- ✓ **Responsibility** is a person's mental fitness to answer in a court for his/her action.
- ✓ Responsibility or irresponsibility is concerned with the **criminals' awareness and their capabilities to control their action.** .
- ✓ If the criminal do not know the nature and consequences of their act or if they cannot control their acts despite their awareness, **they should not be responsible** for the result of their acts.
- Irresponsibility may arise in three cases. it may arise from insanity or intoxication, and infants, immaturity

Responsibility is presumed by the Court:

- Generally, when a person is accused of a crime his/her responsibility is presumed by the Court.
- The **prosecution need not prove it.**
- **According to Art 49/1** to make a person liable for punishment:-
 - 1.The **proof that the act was done by the accused**---It is the burden of the prosecutor.
 - 2.The **fact that the accused is responsible** for his acts—
This is presumed by the Court.
- However, **the question of irresponsibility arises** in any of the following ***two situations***:

➤ When the accused invokes it, particularly, during the preliminary objections as per Art. 130/2/g of the Criminal Procedure Code, on the first day of the criminal Proceeding.

➤ When the Court is doubtful about the mental condition of the accused due to partial or complete deprivation of mental faculties.

- Once the ‘question’ arises it becomes necessary to decide the facts in the light of Arts. 48 and 49.
- It becomes the burden of the defence to prove

- **Absolute(complete) irresponsibility:** is the case where a person is criminally not liable due to his act not performed under the will and full capacity of that person. **Art 48**
- If a person commits a crime under the influence of abnormality like insanity, he may not carry criminal responsibility.
- In case he prosecuted he invokes irresponsibility through insanity defense.
- The insanity defense is based on the principle that punishment is justified only if the defendant is capable of controlling his or her behavior and understanding that what he or she has done is wrong.

- B/c some people suffering from a mental disorder are **not capable of knowing or choosing right from wrong**, the insanity defense prevents them from being criminally punished.
- Article 48(1), states that, "the criminal who is responsible for his act is alone liable to pun't under the provisions of the criminal code." An offender is said to have performed a criminal act or commission only where conduct has is "willed".
- A will act apparently requires the capability to understand the ability to regulate conduct through reason and conscience. Certain persons, whoever lacks these capabilities.

- A person is not responsible for his act under the law when, owing to age, illness, abnormal delay in his development, deterioration of his mental faculties, one of the **biological causes specified** under Article 48 sub-article 1 or any other similar biological cause. In addition to one of these biological defects, the accused (who invokes irresponsibility) should also suffer from the **psychological effects** of the pathological deficiency. In more clear terms, the accused must be 'incapable of understanding the nature and consequences of his act, or of regulating his conduct according to such understanding... at the time of his act' (Art.48)

- ✓ Three points must be noted in the psychological domain,
- First, 'the incapability to understand the nature and consequences of one's act' refers to the inability to know what one is doing and the incapability to foresee the possible consequences of one's act. This is in short the incapacity for awareness (knowledge).
- Secondly, 'the incapacity to regulate conduct' means the deprivation of the minimum will power (volition) required for willed acts and self-control, Unlike many legal systems, the Penal Code accepts the inability to control one's conduct due to an irresistible impulse caused by the aforementioned biological defects as an alternative ground of irresponsibility.

- “This is so when the offender is incapable either of making any decision at all (hypnosis, somnambulism) or of refraining from acting as he does... (internal coercion depriving him of the power to choose between right and wrong as may occur in cases of kleptomania, pyromania or indecent exposure.”
- **Thirdly**, the deprivation of awareness or will must exist "at the time of the act" and not necessarily during the proceedings. Nor should the condition be permanent. Acts performed during 'lucid intervals', for example, are punishable because certain insane persons are relatively sane enough to be aware of their acts and to control themselves during such intervals.

- **To sum up**, if one of the two psychological condition, (i.e., **deprivation of awareness, or deprivation of will**) are proved to exist 'at the time of the act', a person is not responsible for his acts. In such cases courts shall not punish the accused (e.g. an insane), but shall, according to Article 48/3, **pronounce the appropriate measures of treatment (131) and the expedient confinement in a suitable institution (130)** if he poses a danger to society or persons living with him. This is to say defendants found not guilty by reason of insanity are not automatically set free. They are usually confined to a mental institution until their sanity is established. These defendants can spend more time in a mental institution than they would have spent in prison had they been convicted.

1.2 Limited /partial/ responsibility

- Transitional (mental) states b/n normal and insane
- **Partial responsibility**: is when a person is **partially incapable of understanding** the **nature or consequences** there of or regulating his conduct according to such understanding.

✓ Article 49 deals with such person. ***It reads:***

“He who doing to one of the causes specified under Article 48(2), or a derangement or an abnormal or deficient conditions or any other similar biological causes was, at the time of his act, partially incapable of understanding the nature or consequences there of or regulating his conduct according to such understanding shall be partially liable to the punishment specified for the crime committed.

- The biological causes of limited responsibility described in Art-49(1), are less serious than those mentioned in Art. (48). At times, the same biological defect (e.g.) retarded mental development) may, in varying gravity, entail psychological effects with different degrees of seriousness. The psychological effect is thus crucial in distinguishing limited irresponsibility from absolute irresponsibility.
- Unlike totally irresponsible persons, offenders with limited responsibility do not suffer from total deprivation of understanding and self-regulation (volition).
- They are thus entitled to reduced pun't (180).
- The court may also order appropriate measures of "treatment, correction or protection" (49/2) as stipulated under Articles 130 and 131.

Insanity

- *is a legal term, not a medical term. It refers to any unsoundness of mind, mental defect, or lack of reason that prevents people from distinguishing right from wrong and from understanding the consequences of their actions.*
- *Guilty defendants can be found “not guilty by reason of insanity” because of the belief that people should be punished for their crimes only if they could control their behavior and knew what they were doing was wrong. Otherwise, it is improper to hold people morally*

? How is absolute or limited irresponsibility determined?

- Insanity is an extremely complex topic and defined as "the inability to distinguish right from wrong or an irresistible impulse that prevent a person from doing right thing.
- An insanity defense normally rests on the testimony of a psychiatrist, who testifies for the defendant after examining him and his past history, and the facts of the case.
- Courts appoint psychiatrists at gov't expense to assist poor defendants who cannot afford to hire their own psychiatrists.

- ✓ The court determines irresponsibility (complete or partial) by expert evidence and an inquiry into the "character, antecedents and circumstances of the accused person" (51/1).
- The court appoints experts (or an expert) and defines the doubts to be examined and terms of reference.
- Expert evidence will then describe the condition of the accused and "its effect upon his faculties of judgment and free determination" (51/2).
- The court will then freely draw the legal inferences from the medical evidence (51/3) although it shall be bound by "definite scientific findings".

1.3 Intoxication

- Intoxication, whether caused by alcohol, illegal drugs, or prescribed medications, may produce a state of mind resembling insanity. An intoxicated offender often cannot distinguish right from wrong or may have an irresistible impulse. **For intoxication to be used as a defense against a crime, it must be involuntary** (for example, if one is forced to consume an intoxicant, or if one consumes an intoxicant without knowledge of its mentally disabling nature).
- Defendants who commit crimes under the influence of drugs or alcohol sometimes argue that their mental functioning was so impaired that they cannot be held accountable for their actions. Generally, however, voluntary intoxication does not excuse criminal conduct.

- Defendants know (or should know) that alcohol and drugs affect mental functioning, and thus they should be held legally responsible if they commit crimes as a result of their voluntary use.
- There are different ways to get intoxicated, and the law recognizes two ways: voluntary and involuntary. Voluntary intoxication goes to the element of mens rea (ability to form the capacity to understand purpose or intent), and is logically a justification. Involuntary intoxication, on the other hand, is an excuse because the person's body did not know it was under the influence.

- According to article (50/1) of CC, a person who intentionally puts himself into a state of partial or complete intoxication by means of alcohol, drugs, etc in order to have the courage to commit an offence can't invoke irresponsibility. But if one puts himself into intoxication without a prior direct or indirect intention to commit a crime, he shall be punished for his negligence (50/2). However, the accused shall not be punished where the offence committed is not punishable on the charge of negligence. In case the accused is only partially (but not completely) drunk, he is punishable under limited responsibility (49) for the offences that are not (directly or indirectly) intended prior to parties intoxication, because the offender is not completely incapable of awareness and self control.

- If for instance, "A gets completely drunk in order to kill B, but when in B's house, rapes B's daughter, even though it is established that... alcohol stimulated his sexual urge, he may not be convicted of rape, for the latter offence is always an intentional one ... If A (however gets partially drunk)... for the purpose of killing B, but rapes B's daughter, he is guilty of intentional rape ... for he was not completely incapable ... of understanding the nature of his act... (But) Article 49 applies if, at the time he got drunk he did not directly or indirectly intends to rape B's daughter."

- Where the offender puts himself into complete intoxication by his own fault, he is punishable under Article 49/1 for the offence he commits without contemplation nor intention (50/3). Pursuant to Article 49/1 a penalty not exceeding one year is imposed for the offence of disturbing public peace if an offence punishable by at least an imprisonment of one year is committed under complete drunkenness.

- A perpetrator's youth has long been a defense to criminal charges because children are deemed incapable of making rational decisions for which they should be held accountable.
- Criminal law is not applicable on infants. Under Article 52 of Ethiopian criminal law infants who have **not attained the age of nine years age are not responsible for their acts**. The family, school or guardian takes the appropriate steps in the upbringing and control of infants in accordance with Arts 231-234, 2124 and 2125 of the civil code.

- Young offenders between the ages of nine to fifteen years are not entitled to complete irresponsibility. Yet, they are not subject to ordinary penalties (53). In case a young offender is convicted, the measures and penalties stated in Articles 157-168 shall apply. The measures may be admission to a curative institution (158) supervised education (159), reprimand (160), school or home arrest (161). The court may order admission to a corrective institution (162) "where the character, antecedents or disposition of young offenders is bad". Such measures (158-162) are not regarded as a criminal sentence.

- The measures stated in Articles 158 and 159 shall continue for a period "deemed necessary by the medical or supervisory authority, and may (if necessary) continue until the young offender attains the age of eighteen years" (163). Admission to a corrective institution, on the other hand, depends upon the period fixed by the judgment. The period shall be from one to five years (163/2), but shall not extend beyond the coming to age of the young offender (i.e. - his attainment of civil majority upon 18 years of age).

- If the young offender commits a serious offence which is punishable with rigorous imprisonment of ten or more years or with the death penalty, the offender is normally sent to a corrective institution (168/1(a). in case this measure is ineffective, the court may resort to a penalty and send the young offender to a penitentiary institution (detention) "if he is incorrigible and is likely to be a cause of trouble, insecurity or corruption to others" (168/1/b). The period of detention may be three to ten years subject to conditional release if the young offender is reformed. The term spent in a corrective institution is taken into account, and the detention takes place "under the regime of simple imprisonment."

- Upon the attainment of fifteen years of age, a person is said to have reached the age of **penal majority**. **Offenders between the ages of fifteen and eighteen**, at the time of the offence, are thus regarded as responsible for their acts and are held **subject to ordinary penalties (56)**, except the death penalty (119). Never the less, the court may according to the particular circumstances of the case allow mitigated sentence (179) or impose a penalty (166-168) designed to young offender.



CHAPTER TWO

Defense for Criminal Liability

? *What is defense?*

- In CJS, accused persons may raise any ground to avoid liability. This ground is what we call defence. So, a defence, in criminal law, is an assertion made by a defendant to claim that he/she is innocent or does not deserve penalty.
- Defense is a broad term that refers to numerous claims that serve to rebut (refute), mitigate (moderate), justify, or excuse conduct that the state has labelled criminal. Some defenses are factual.

➤ **‘Defence’ may be interpreted either widely or narrowly (strictly)**

a. Wider Interpretation:

- Includes all possible arguments against a criminal charge
- Such as denial of having committed a criminal act, argument related to causation, mensrea, autrefois acquit, and similar grounds.
- These grounds challenge either the existence of an offence or the link b/n the harm and the act.

b. Narrow (strict) interpretation:

- May not deny
 - o the commission of the act/omission or
 - o the causal link b/n the harm & the conduct of the accused
- But, invokes its lawfulness, justification or circumstances that may render it excusable.
- In this chapter the term 'defence' is used in its narrower interpretation,

➤ The defenses that are known as affirmative defenses vary from one country to another. ***Under Ethiopian penal code*** those acts, which serve an affirmative defense, are broadly categorized in to three:

- A. lawful acts, (acts done in circumstances which legitimate them),
- B. justifiable acts -(acts done in circumstances excluding intentional guilt) and
- C. excusable acts, acts done in circumstances reducing the degree of guilt). are some defenses that can be raised by the offender to escape criminal liability.

- Is an act, which a person is authorized or bound by law to do.
 - Hence due to such authorization or obligation imposed upon the person by the law the acts that would otherwise be criminal are legitimate and do not punishable.
- To raise the defense of lawful acts two conditions has to fulfilled
- Acquiring the status required in the law – being a person empowered to do the act by the law and
 - The objective circumstances necessitate the action in question must be present.
- *Lawful acts can be classified into two:*
- A. Acts required or authorized by law: **Art 68**
 - B. Professional duty: Art 69

- I. acts in respect of public, state or military duties
- II. acts of correction or discipline; or
- III. acts of private rights recognized by law

I. Acts Relating to Public, State or Military Duties:

- A legal obligation or permission to do an act connected with public duties is a **complete justification** when the doer complies with the legal requirements governing the doing of this act.
- The defense of State or military duties on the other hand is available when the doers possess an official status, either civil or military, and act in discharge of their duty.
- Acts of a public servant or a member of the armed forces are therefore do not constitute an offense and are not punishable so long as they are done in accordance the terms of the relevant law.

- Thus,

- A policeman searching a house,
- A prosecutor charging an offender,
- A judge ordering the accused to be kept in custody,
- A prison employee executing death penalty and
- A soldier killing an enemy

- are not committing crime and

- are not liable to any kind of punishment as long as they discharged their respective duties according to the terms of the Criminal Procedure Code and the laws of war.

II. Right of Correction or Discipline:

- There are some kinds of measures that can be possibly administered for the purpose of **correction or discipline** but **inevitably result in some harm** to the individual subjected to such measures.
- There are also legal provisions that vest the power of administering correctional or disciplinary measures on some.
 - Art.2039(c) of the Civil Code --- Authorized Parents to use reasonable use of force for the purposes of chastisement
 - Art.576/3 of the Criminal Code dealing with maltreatment of minors expressly limits the right of correction or discipline
- Thus, **no criminal liability** against those **legally authorized for their acts** unless they have gone beyond legal limit, namely the reasonableness of the action *vis a vis* the seriousness of the fault sought to be corrected.

III. Exercising Private Rights:

- Acts done in exercising private rights recognized by law, the acts that are sometimes referred to acts of private justice.
- Arts.1148 and 2076(2) the Civil Code
 - Justify the protective actions of a holder of a thing and a possessor of a land however their action may cause harm to others.
- the doer is not guilty of an offense of bodily injury or damage to property, since the law

➤ ***When will be a professional not liable to criminal pun't?***

- ❖ According to Art 69, no criminal punishment shall be imposed upon a professional person provided the ff **three cumulative requirements are fulfilled**: These are w/n the professional acted in:
 - accordance with the accepted practice of the profession;
 - the exercise of his professional duty; and
 - does not commit any grave professional fault.
- ❖ Thus, any professional committing an act in r/n to his professional **duty would be justified** under the law if all the conditions mentioned above are fulfilled.

➤ ***What is the justification given to consider a professional duty as a lawful act?***

❖ ***As per article 551(1)*** a doctor who terminates a pregnancy within the period permitted by the profession is **not punishable where:**

- a. the pregnancy is the result of rape or incest or
- b. the continuance of the pregnancy endangers the life of the mother or the child or the health of the mother or when the birth of the child is a risk of to the life or health of the mother; or
- c. where the child has an incurable and serious deformity; or
- d. when the pregnant woman, owing to a physical or mental deficiency she suffers from or her minority, is physically as well as mentally unfit to bring up the child. So any act that should be performed by a professional will not constitute a criminal offence.

- **For eg,** a surgeon performing an operation does not commit an offence of **body injury** (as regulated under **Art 556**).
- **For eg,** further a **mechanic dismantling** a car given to him for repair may not be punished for damage to property (as regulated under Art 689).
- **Therefore:** **The court determines & resolves** such problem by looking at the different evidence presented to it. Can call another professional person to ascertain the standard and requirements of the professional duty of the defendant professional.

However, Conditions where Professional Duty is not justified: A professional would become responsible if:-

- Did not act accordance to professional regulations or to the custom of the particular profession; or
- Commit any grave professional fault

A. Justifiable acts

- ❖ are those acts considered to be justified (right) under the circumstances of the case, although the act would ordinarily amount to a wrongful criminal conduct. So, the doer will not be liable to the consequences of his action. **For eg,** killing a person in self defense:
- A person who committed a crime is considered to be a criminal offender where his acts fulfill all the three elements of criminal offence legal, material and mental element. Such a person will be punishable where he acted in guilty state of mind negligent or intentional state of mind.

- However, in the cases falling under justification, even though the actor does an act that ordinary amount to a crime (with full knowledge and intent) there is a restriction on his free will. Because of the circumstances of the case the doer was unable to act other wise than what he has done. So the mental element of an offence is assumed to be assent. The restriction on the free will of the doer that resulted from the special circumstance of the case led the law not to impose punishment on the doer.

B. Excusable Acts

- Here, all the *legal, material* and *moral* element of an offence are present.
- Thus the act of the doer, by its nature, is criminal

- ***For instance***, as stated earlier killing another person in self defense is a justified act. However, if a person kills another by **exceeding the limits of self defense** then his action is considered to be an excusable act (taking the circumstance of the case into account) and so the offender will be exposed to a reduced penalty.
- As stated earlier excusable acts are criminal acts. However, the circumstance under which the doer acted shows that the doer's mental element is not full. i.e the guilt of the offender is a reduced one. So the existence of a reduced guilt justifies the reduction of punishment to be imposed on the person who acted under the circumstance of excuse.

- Courts tend to recognize the defense of consent when people **exercise their autonomy and choose to inflict injuries** on themselves.

- **crimes as acts performed contrary to the will of victims.**

➤ **Art. 70 (1) Consent as a Defence**

- o A crime is not liable to punishment where it is punishable up on complaint,
- o the consent has been give by either the **victim himself or his legal representative**

Eg. injuries caused during **sports without foul play**

➤ **Art. 70(2)**

- A person is free to **donate** any of the above said things to:-
 - Another person for personal use or
 - to a juridical person for appropriate scientific research or experiment, the recipient shall not be punishable.

❑ **Limitation to Consent as a Defence:**

- **Consenting to donate** any of his bodily parts while alive or after his death **for any commercial purposes** is absolutely prohibited.

Art 573

- The main **type of excuse** is the defense of duress.
- common circumstance where one disregards the law out of his free will is when he/she is **compelled by another to violate the law**.
- Under certain circumstances, however, an accused person might have no choice other than to commit the act.
- In these situations the criminal law lets them go unpunished.
- Arts. 71 and 72 deals with such events of coercion that compels a person to commit an offence.
- Art. 71, paragraph 1, justifiable
- Physical or moral coercion?

Duress of threats and Duress of circumstances

- Some legal systems use the terms *constraint, force, duress*, and so forth instead of coercion.
- French = *force or constraint* to include other factors such as force of nature, acts of third parties and other internal constraints like illness
- No duress of circumstances under Ethiopian Criminal Law
- In fact, some of these circumstances can fall under necessity
- Yet, there can be events which might

- ***For instance***, if A kidnap B's lovely son and threatens to hang his son unless B kill C, who is A's enemy, and if B killed C, then it is a coercion. B acted to defend the right of another.

I. Resistible (moral) coercion: -

It is a coercion, which arises when an offence is committed under a pressure of a lesser degree than that is required. is, w/c the coerced person could resist.

Example, if A's priest Aba B, tried to convince A to kill C and if A after a lengthy discussion agreed to kill C, fearing excommunication by his priest then A is said to have been coerced morally to kill C. In this case the court may reduce the penalty taking in to account the circumstances of the case.

Resistible Coercion

- Art. 72
- **Amharic Version** = “the court shall without restriction reduce the penalty”
- **English Version** = “the court shall pass sentence on the criminal”

**In such a cases contradiction
b/n Amharic and English Version
w/c law is prevails?**

II. Absolute (physical) coercion: -

- is a coercion, which the coerced person could not be resisted. A person who commits a crime b/c **extreme influence or pressure** upon him may have the defense of duress /
- So the coerced person will not be liable to criminal pun't.
- **Eg**, if A at gunpoint order B to kill C and B does the killing
- ❖ ***Most jurisdictions allow the defense of duress only w/n coercion:***
 - (1) is immediate and substantial;
 - (2) a reasonable person in the offender's position; and
 - (3) offender did not willingly participate in creating a situation.
- Thus, punishing a coerced person would be absolutely contrary to the basic principle of criminal justice.

- Hateta Zemikinyat of Art. 71 states under the **1957 penal code**, the distinction made b/n physical and moral coercion and the assumption that the latter is resistible is improper.
- But, the wording of the provision does not show this.
- The phrase “without causing greater harm than *he could have suffered*” in particular ⁵³ is

2.2.2. Absolute Coercion: Two conditions:

- o The coercion must be absolute (irresistible)
- o Proportionality of the offence to the harm that would have occurred.

➤ **Absolute Physical Coercion**

- o Heroic standard of resistance is not required
- o The reasonable man's standard with a particular reference to the defendant's age, sex, health, physique and experience.

➤ **Absolute Moral Coercion**

Superior Orders

- Juridical persons carry out their activities through a hierarchy; superior – subordinate
- Certain legal systems do not recognize this as affirmative defence
- Under ECL, certain acts committed under superior order may be **excusable**
- Arts. 73 & 74 deal with these things and they are applicable to the hierarchy in public administration or to military hierarchy.
- **Superiors Responsibility Art. 73**
 - If the offence is committed on his express order (the superior will be liable to his unlawful order), and
 - The subordinate's act did not exceed the order given

➤ Responsibility of the subordinate

❖ **Acc to Art.74**, the subordinate who has carried out an order to commit an offense **shall be liable** to pun't on the following three conditions:

- a. The awareness of the illegal nature of the order, or
- b. The knowledge of the fact that the order was given w/t authority.
- c. When the subordinate knows the criminal nature of the act ordered... the act constitutes "homicide, arson or any other grave offences against persons or property, essential public interests or international law" he is punishable. **See art 28 of FDRE constitution**

- Obedience is therefore one of the essential prerequisite to make the public service efficient.
- The duty to obey, ceases to bind the subordinate when the doing of an act is ordered which is contrary to the law.
- He/she is required to refuse execute an order, which is ***manifestly unlawful*** as regards to its form and or contents.

4. Necessity Arts.75-76

- Necessity: Defendants argue that their actions were necessary to prevent a greater harm from happening.
- A necessary act is an act performed in a so critical situation that the doing of harm is the only alternative to the suffering of harm.
- The rule for the defense of necessity is similar to that of legitimate defense.
- In fact in cases of necessity the threat to the actor comes from nature (an “act of God”).
 - fire, a storm, and an earthquake, or a shipwreck that compels the actor to do something that otherwise would be illegal

- **Article 75:-** necessity an act which is performed to protect from an imminent and serious danger a legal right belonging to the person who performed the act or a third party is not liable to punishment if the danger could not have been otherwise averted.
- **The principle of necessity** can be extends to include the followings:
 - destroying property to prevent the spread of a fire
 - violating the speed limit to get a dying person to a hospital
 - throwing cargo overboard to save a sinking vessel and its crew
 - dispensing drugs without a prescription in an emergency
 - breaking & entering a mountain cabin to avoid freezing to death

The Defense of Necessity under Ethiopian Law (Art. 75)

• Scope Art 75

- The law stipulates that persons who have special professional duty to protect life or health may be entitled to mitigation but cannot invoke necessity.
- The professionals are there to protect others from the danger even at the expense of their lives.
- They shall not breach the special duty imposed upon them to take care of others' life and health.
- If the duty is breached, they will be liable to punishment even if the punishment is to be extenuated (180).
- Therefore, the criminal code has reduced the scope of the defense of necessity.

Conditions of the Defense

- To evoke the defense of necessity the following basic requirements should be fulfilled:-
 - A. There must be a Danger... acting with a view of avoiding this danger
 - B. The Danger must be Imminent.. the danger must be reasonably certain to eventuate. No time to resort (last resort) to a third choice that can be used to avoid the danger

C. The Danger must be Serious...more than a simple inconvenience.

D. The Danger Could Not Otherwise Be Averted... no legal means in existence to avert the threat. Last resort or no possibility of resolving the conflict between the two interests by acting in accordance with the law.

E. The Harm must be Proportional ... This condition implies that, when causing harm is the only way to avoid danger, the doer is

- Means that a person in a serious and imminent danger may not avoid this danger *at any cost*.
- The threatened right must, as a rule, be at least as important as the right infringed upon by the actor.

➤ **The Exception: Fault**

- Under Art.76 of the code, it is provided that the defense of necessity ceases to exist if the emergency situation is created by the fault of the actor.
- Therefore, the absence of fault on the side of the doer is another requirement to avail himself of the defense of necessity.
- Excess of necessity entitles the actor only to a mitigated penalty.
- *Dudley and Stephens case*

- Also referred to as “Legitimate Defence” (self-help)
- Under the criminal law of Ethiopia the individual is given with a means of defending his personal and property rights, by using personal force w/t the need to go to the law enforcing authorities. The right providing the individual with a means of enforcing his rights by himself is called as a **self-defense**.
- Legitimate defence is one of the oldest criminal law defences. It has about three components:
 - a. the defence of 'self-preservation (himself) ',
 - b. the defence of others and
 - c. his property as well as the property of others

➤ Legitimate defense is one specific type of necessity

- ***Similarity***

- In both cases, a situation of distress arises which cannot be solved otherwise than by the doing of harm.

- ***Difference***

- necessity is basically one of aggression while an act under Art 78 is one of defense
- the doer of a necessary act, unlike a person who defends himself, is not resisting an unlawful assault.
- in the case of necessity the conflict occurs is between two legitimate interests but in the case of legitimate-defense the conflict occurs is not between two legitimate interests.

- According to the theory of legitimate defence, if a person causes harm to another to defend his own or third party's right he must be allowed to go free. This is so, b/c, in particular, when the issue pertains to self-defence, individuals must be allowed to protect themselves where the state fails to accord them protection against aggressors. The legally recognized means of private justice.
- But one may wonder why the law permits a person who causes harm to another for the purpose defending other's interest for that matter, w/t being invited by the victim, to go free. The reason is it is not b/c the law wants the interest of the victim to prevail over that of the aggressor that it permits an intruder to go unpunished; rather, the law has the stand that in a civil society every person has the right to protect the other b/c an attack against one is an attack against all

➤ The prov of **Art 78 provides preconditions** that must be fulfilled to exercise the right of self defense. These are:-

1. There must be an imminent attack or a threat of an attack
2. The Attack, Whether Actual or Imminent, Must be Unlawful
3. The act of Defense should be Proportionate
4. No other Choice (Could Not Have Been Otherwise Averted)

- **For instance**, A sees B who is tempting to remove a heavy box from his bed-room. A lives next to a police station and, if he telephoned to the station, he could obtain the assistance of the police before the box is removed. Should “A” call the police or is he entitled personally to defend his property?
- The attempt to defend personally, as a rule, is no legitimate if the removing of the box could have been effectively protected by calling the police. Further, A is not justified to use force where he is able to prevent the box being removed merely by arresting B.

Excess in Self-Defense:

- Under Art.79, the defender is deemed to exceed the limits of legitimate defense in the following two conditions:
 - Uses disproportionate means. (Want of proportionality requirement):
 - Does more than should reasonably be done to avert the danger (want of necessity requirement): he no longer defends himself, as he is no longer in danger.

□□ legal effect of Excess in Self-Defense:

- The court according to Art.79 (1) shall without restriction, **reduce the penalty** under Art.185
- According to Art.79 (2), the court may exempt the actor from punishment when it is satisfied that the excess is due to the ‘excusable fear, surprise or excitement caused by the attack.’

6. Mistake of (fact and law)

- Mistake may vitiate awareness, one of the ingredients of criminal guilt, and may thus render the act unpunishable. Two kinds of mistake

A. Mistake of fact:

- The principle of mistake of fact excuses when it negates a material element in the crime. It can serve as a defense if it negates the state of mind (mens rea) required for the crime.
- The mistake must be both **honest and reasonable**.
- If it has always excused criminal responsibility

When Mistake of Fact May be Invoked (Applicable):

1. When the doer is mistaken as to a fact, which is a material ingredient of an offence.
2. When the doer is mistaken as to fact, which did it, exist, would legitimate or justify his act.
3. When the actor is unaware of the fact that he acts in aggravating circumstances:

- **For eg**, If a person takes another's coat, mistakenly believing that it is his or her own coat, this mistake negates the intent to steal that is required for the crime of theft. On the other hand, if a person, with the intent to steal, takes another's coat mistakenly believing that the coat belongs to a third person, this mistake does not negate the person's intent to steal, and he or she is guilty of theft. In certain instances a crime is committed even if the perpetrator made a mistake that negates his or her intent to commit a crime.
- Mistake of fact is a defense b/c it negates the **means rea element** of the crime of larceny/theft. A court would assess the circumstances to determine whether the mistake was both honest and reasonable.

❖ **Negligence (Bad-faith): Punishable (Art.80 (1)),**

- A person who commits an offence in consequences of erroneous appreciation of the true facts of the situation shall be excluded from pun't but, the doer may nonetheless be punished for having committed this offence b/c of negligence, he could have avoided the mistake by exercising the care which could reasonably be expected of him in the circumstances (Art.80 (1)),

❖ **Separate and Independent Offence shall be Punishable: Art.80 (2)**

- The doer of an act who is free from any pun't due to the mistake of fact is not free from pun't of another offence which in themselves constitute a separate offence

- **Eg:** Suppose A, in sight of the public, has sexual intercourse with a girl whose age he is mistaken. He A is punishable for committing an offense of **public indecency intentionally** committed even though he is not punishable for sexual intercourse.

❖ **Mistake of the Identity of the Victim or the Objective of the Offense: Acc to Art 80 (3):**

- such mistake is not to be taken into account.
- Mistake of this kind are sometimes referred to as non-fundamental mistakes, in opposition to fundamental or essential mistakes which are the only ones zt w/c Art.80 is concerned with

- **For eg**, if Abebe wants to kill Belay but by mistake he kills Chala who wears Abebe's clothes, he will be punished as if he intentionally killed Chala. Similarly, if Abebe wants to steal Belay's property but by mistake steals Chala's property b/c the two items are the same/similar, he will be punished as though he intentionally stole Chala's property. The idea in this case is as long as the intention of the person to commit a given crime is ascertained with sufficient precision, the law should take measures against him so as to achieve its purposes. Hence, the law should not excuse a person who claims that he wanted to kill Belay, not Chala, **since whether Belay or Chala is killed, the effect of the crime is the same, and also it does not affect the dangerous disposition of the criminal.** Moreover, mistake as to the identity of the victim or the object of a crime is not as such fundamental to earn a person an excuse

✓ *There are few points worth considering at this juncture.*

- **First** ignorance or mistake of fact cannot relieve a person from liability if he is found negligent (in the light of art 59) in doing something and the negligent doing of that thing is punishable. **For eg**, if Abebe kills Belay thinking that he is **shooting at a hyena**, he will be liable for negligently killing Belay if he could or should have avoided the consequence by taking care or sufficient care.
- **Second**, if what a person does gives rise to an **independent crime**, he will be punished therefor. **For eg**, if Abebe throws a bomb to kill a Hon standing nearby Belay's house (**w/c in fact is only a goat**), he will be liable if damage is caused to the house (Art 685), not for killing the goat, since this is another crime following his mistake.

B. (Mistake (Ignorance) of Law Art.81)_

➤ **Two schools of thought**

- o **Utilitarian** – gives precedence to public interest and argues that taking unawareness of the law in to account would encourage ignorance.
- o **Pragmatic** – Mistake of law, no less than mistake of fact , affects a person's volition (will) and thus moral guilt, in the absence of which pun't becomes unfair.
- The **E C Cod** have taken a middle course of compromise
- As a general principle, it adopts utilitarian conception
- Accepts pragmatic conception as an exceptional mitigating factor

➤ **Art. 81(1) - Ignorance of law or mistake regarding the law is no excuse**

- *ignorantia juris non excusat*
- The legal presumption that everyone knows the law
- Therefore, if a person engages in a criminal act w/t knowing that the act is illegal, the mistake is no defense to criminal liability. This rule applies even if the mistake is based on the advice of a lawyer, b/c a contrary rule would encourage ignorance of the law.
- Acc to Art.81 (2) of the cri cod ignorance of law is not excuse but the court may reduce the pun't applicable to a person who in good faith believes that he has a right to act and has definite and adequate reasons for holding this erroneous belief

- **_Art. 81(2) - provides mitigation of penalty** - two cumulative conditions: in good faith believe he had a right to act + definite and adequate reason for holding the erroneous belief, **The court shall w/t restriction**, reduce the pun't (Art 180)
- **Art. 81(3) - the court may exempt** the accused from pun't where:
 - o Absolutely ignorant of the law
 - o If it is justifiable
 - o Committed in good faith
 - o Intention of the accused is not apparent

Other affirmative criminal law defences

- Article 58(2) of the Cri Cod stipulates that intentional crimes are always punishable save in cases of justification and excuse expressly provided by law under art 68-81. This stipulation gives the impression that **affirmative defences** are only those which are provided under articles 68-81. However, there are **other affirmative defences** which can be invoked to escape liability to punishment for intentional crimes. **Some of them will be considered below.**

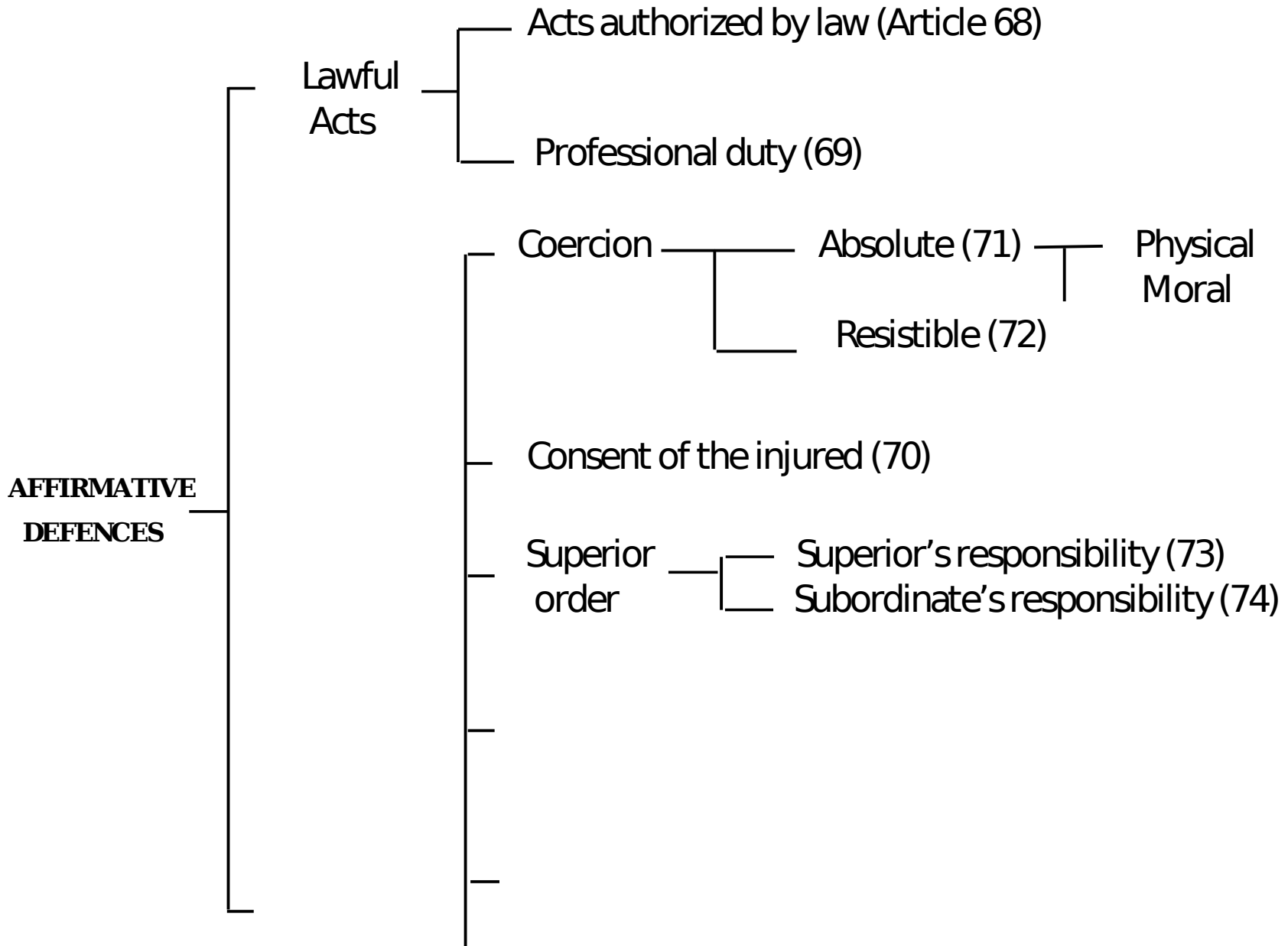
A. Immunity:

B. The defence of period of limitation: Art 216 cr cod 217, 218 and 222.

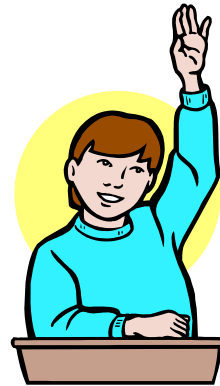
C. The defence of amnesty: art 230 cr cod and art 28(1) FDRE const

- 1. Diplomatic immunity:** Article 11(1),
cri code
- 2. Legislative immunity:** article 54(5)
const
- 3. Witness immunity:** article 19(5) and
20(3 and WP Proc No.699/2010
- 4. Other immunity:** Revised Anti-
Corruption Special Procedure and Rules
of Evidence Proc art 43(1)

Table 4. Lawful, Justifiable and Excusable Acts



Group activities



CHAPTER THREE

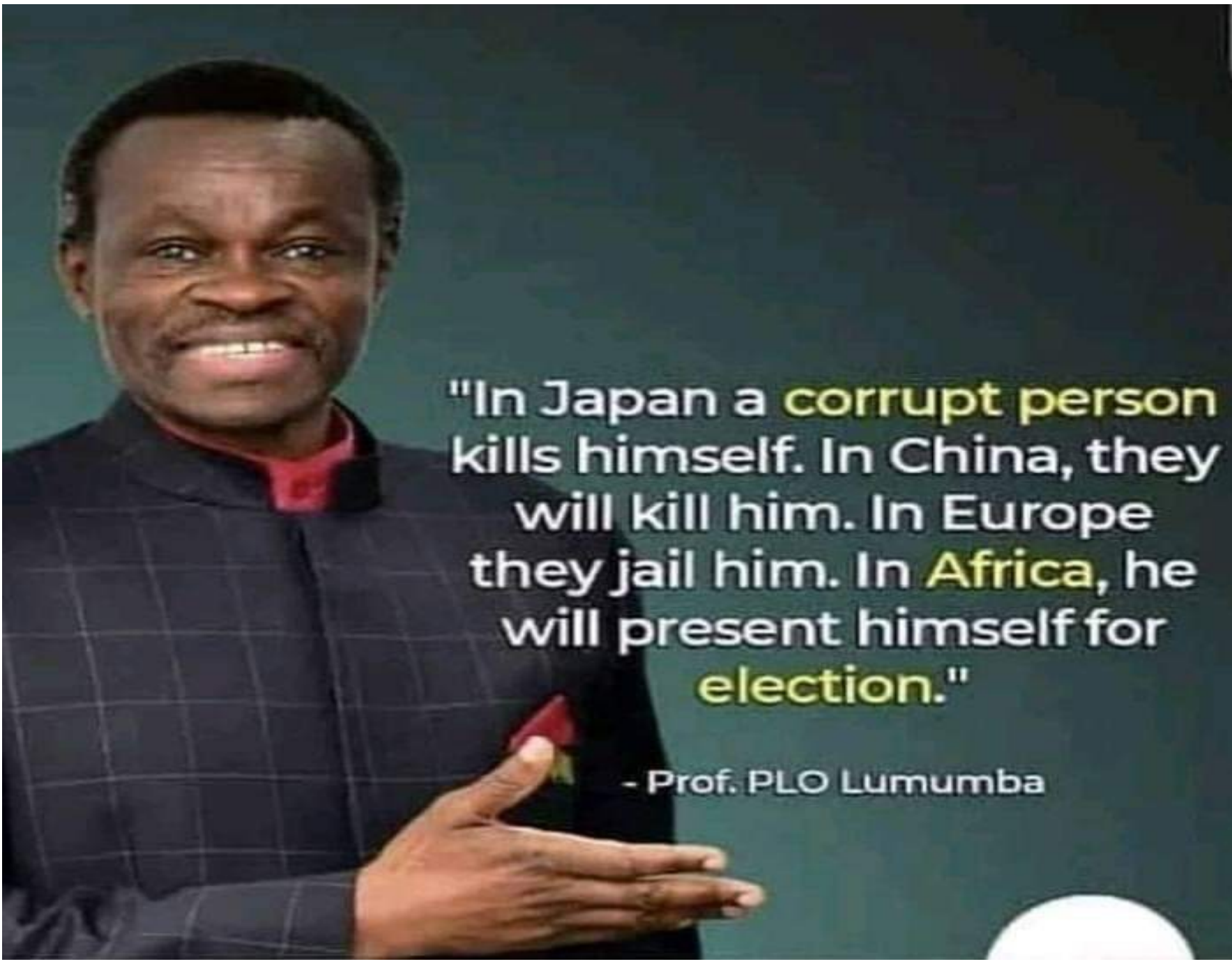
Criminal Punishment and its Application

- The issue of punishment evokes four questions:
 - ✓ Why punish?
 - ✓ Whom to punish?
 - ✓ How to punish?
 - ✓ How much to punish?
- Criminal law gives due notice of prohibited acts/omissions, states penalties and punishments.

- What distinguishes criminal punishment from other painful measures that families, communities, private organizations, civic or governmental institutions may impose or take against individuals? (Contrast with taxation, fee charges, deportation orders, entry bans, commitment to social or rehabilitative center, hospitalization, confessions' orders, etc);
- What does punishing a person mean? Does it mean merely censuring, blaming, condemning? How does it differ from ordinary moral condemnation?

Introduction

- Once a person is found guilty of the crime he/she is accused of, the next thing to do for the court is **to pass sentence and penalty** that it deems appropriate for the crime committed.
- The court takes **many things into consideration** before passing the sentence b/c pun't is a very decisive step on the life, liberty and property rights of the accused.
- The use of pun't as a sanction against rule-breaking is a universal feature of all human societies.
- ***For instances, the nature of pun't imposed on corrupted man in various states, as follow:-***



"In Japan a **corrupt person** kills himself. In China, they will kill him. In Europe they jail him. In **Africa**, he will present himself for **election.**"

- Prof. PLO Lumumba

Definition of Punishment

- Not easy to give a precise definition to the word “punishment”.
- Because its meaning is **highly interrelated** with what is considered to be the purpose of punishment.
- Punishment could be taken to mean the **major mechanism** by which the purposes of criminal law are achieved.
- Pun’t is the response of the society to socially dangerous behavior.
- “Punishment **in all its forms** is a loss of rights or advantages consequent on a breach of law.

- **D/t writers gave definitions about punishment.**

- ❖ According to, **Hart (1968)** uses **four elements** to fix the word's central meaning. **Punishment must-**

- *"Involve pain or other consequences normally considered unpleasant;*
- *Be administered for an offence against legal rules;*
- *Be for an actual or supposed offender for his offence; and*
- *Be imposed and administered by authority constituted by the legal system.*

□ **Pun't signifies** the infliction of pain upon a subject on account of criminal commission;

- ***Punishment*** is a conventional device for the expression of attitudes of resentment and indignation, and of judgments of disapproval and reprobation, on the part either of the punishing authority himself or of those “in whose name” the punishment is inflicted. It expresses censure or blame - expressive theory. It has symbolic significance (Joel Fienberg);
- Punishment is the way in which society expresses its denunciation of wrongdoing;
- It is the social practice of intentionally inflicting suffering on certain individuals;
- Punishment is, perhaps arguably, an evil; it brings harm or dissatisfaction to those punished;

The two major theories in comparison

Utilitarian/ Consequentialist

- relies on the idea of a fair distribution of benefits & burdens;
- It represents “the idea that criminals should be punished b/c they deserve it.” □
- What does retribution signify? Requital-of-evil or paying back of evil?, expiation? Vengeance? □
- Is there distinction b/n “desert” and “retribution”? □
- Where lies the emphasis- on culpability of the wrongdoer or on the degree of harm occurred? □
- The benefits-and- burdens theory vs Expressive theories of desert;
- Also named Deontological theories
- ❖ (Just Deserts)- suffer similarly
- ❖ **Backward looking** justifications

- tend to focus on the crime-preventive benefits of pun't;
- >> focus on future consequences, viewing crime prevention as an ultimate goal of pun't that is realized by rehabilitation, deterrence and incapacitation.
- >> attempt to “weigh” preventive benefits against pun't's human and financial costs;
- perspective views pun't as justifiable as long as it effectively advances the best interests of society.
- This approach **encompasses**:
 - Theories of Deterrence,
 - Theories of Incapacitation &
 - Theories of Rehabilitation
- ❖ **Forward-looking** justifications.

Purpose of Punishment

- Changing from **time to time** with the dev't of human knowledge about the criminal mind i.e. the dev't of criminology
- While the rationale for punishing offenders may appear self-evident, there are in fact a number of justifications for its use.
- The **four major such justifications (purposes) of Punishment:**
 1. Retribution
 2. Deterrence
 3. Prevention/Incapacitation
 4. Reformation

- It is the oldest rationale of pun't motivated by revenge and reciprocity.
- It expects pun't to be equal and proportionate to the offence committed and the harm caused, and dates back to the earliest laws of "eye for an eye and tooth for a tooth" **of** and life for life".
- *The theory of retribution holds that pun't is imposed on the blameworthy party in order for society to vent its anger toward and exact vengeance upon the criminal.*
- is known as 'just deserts' or 'commensurate deserts or revenge
- pun't not as a tool to deter future crime but as a device for ensuring that offenders pay for past misconduct.
- **Is backward looking** as it concentrates on the past criminal behaviour of an offender than on his future behaviour and that of the remaining members of the society.
- **Pure retributions** view makes pun't barbaric and leaves little room for reformation.

B. Deterrence

- Deterrence is defined as “*A justification for pun’t based on the idea that crime can be discouraged or prevented by instilling in potential criminals a fear of punishing consequences.*”
- *The purpose of the pun’t is to deter the criminal from committing crime in future and to set as an example to the prospective criminals.*
- *Pun’t is justified by its perceived ability to prevent further offences from occurring.*
- In official circles, **deterrence** is strongly supported as a necessary and potent defense of social values.
- It relies on threats and fear;

□ Such punishment can serve ***two purposes:***

a. General Deterrence:

- describes the effect that pun't has when it serves as a public example or threat that deters people other than the initial offender from committing similar crimes.

b. Specific/Individual Deterrence:

- Is pun't assumed to keep that specific criminal from committing other crimes in the future.
- deterrence is **forward-looking** in that it aims at shaping the future behaviour of criminals and would-be criminals.

Limitations of Deterrence rationale □

- Making individual offenders as means (object of warning) to deter others; □
- Disrespect to the dignity of the deterred other human beings- treating people as animals such as dog; □
- Unreliable prediction of the behaviors of specific offenders & potential offenders.

- According to this conception, pun't is to prevent the criminal from committing crimes by **physically disabling him by separating him and keeping** him in seclusion from the society for a certain period of time.
- preventive pun't **aims** at disabling offenders from harming society. i.e. **temporarily (imprisonment) or permanent (death penalty)**.
- ❖ The d/c b/n **deterrent and preventive theory:**
 - **Deterrent purpose** the criminals and the prospective criminals learn a lesson by the fear of severe pun't and voluntarily abstain from committing crimes.
 - **In prevention** they are physically incapacitated or disabled since they lack self-control and must be restrained.

- ***Prevention or incapacitation*** is a more general objective of correctional administration. Prisons are usually viewed as institutions in which prisoners are isolated or incapacitated, i.e., prevented from committing further crimes.
- forward-looking

Limitations □

- Prediction problems; □
- Cost; □
- No lasting outcome;

D. Reformation/Rehabilitation:

- By reformation of the criminal is meant his moral regeneration, and developing the sense of honesty.
- Pun't is to **change the character** of the offender is known as reformative pun't.
- This theory is also known as corrective or rehabilitative theory'.
- This is also referred to as 're-socialization' or reformative/corrective rationale;
- *The major goal of rehabilitation is to change offenders' behavior and prevent future offending through **correctional programs designed** to address the factors that cause offenders to break the law*
- *Rehabilitation is based on the premises that through correctional **intervention(educational and vocational training and psychotherapeutic programs)**, an offender may be changed and returned to society as a productive citizen.*

- **The philosophy** behind rehabilitation rests on the assumption that “persons who commit crimes have identifiable reasons for doing so, and that these can be discovered, addressed and altered”.
- **The aim of rehabilitation** is to modify the behavior of the individual and reintegrate him into the society as a productive member
- **The goals of rehabilitation** are widely supported b/c in contrast to other sentencing philosophies, it takes a +ve approach in the attempt to eliminate criminal bhr.
- Supporters of rehabilitation argue that unlike “other pun’ts” it is the only **humanitarian mechanism** for altering the criminal behavior of offenders.

❖ However, the effectiveness of rehabilitation has been seriously questioned.

- **Some argue** that efforts to modify the behavior of offenders are of questionable value because the causes of crime are not fully understood.
- **Others argue** that correction has only little and limited value since rehabilitative services in institution and community based programs are either minimal or nonexistent.
- **Others argue** that rehabilitation never demonstrated and will never demonstrate its ability to prevent or reduce crime.

- The advocates of this theory emphasize that when the prisoner goes to jail he finds himself quite cut off from the rest of the world. The confinement the deprivation of social intercourse and other ways of subjection to rigid discipline never allow him to develop his character. Therefore, what is important is the reformation of the criminal by making him worthy of living in the society.
- This is also a forward-looking theory of punishment as it aims at rehabilitating criminals so as to enable them to lead normal (crime-free) life after completely serving their sentences.

Limitations □

- Treating offenders as sick- disregarding their capability & free will; □
- Forgetting victims of crime & the public's injury; □
- Costs the state/the public; □
- Not reliable to achieve its intended goals of reformation;

The Ethiopian Approach to Criminal Pun't

- What theory or theories are followed in the Ethiopian Crim Cod? Is the retributive rationale recognized?
- Which rationale has got priority? □
- Preamble of the Code; □
- Arts 87- 88; □
- Arts 82- 86. □

What is the role of public perception of crimes on the degree of severity of criminal punishment?

In our criminal system, pun't mainly and primarily aims at deterring and/or rehabilitating criminals. Art 1, Cr Cod, and the Preamble of the Code. So, the Criminal Code justifies pun't based on, at least as expressly provided under **article 1**, two theories-deterrence and rehabilitation.

- ✓ The issue of ***predominance*** is, however, left to judges to decide on case by case basis. Hence, judges can subject persons who are vulnerable to reform to rehabilitative pun't whereas they can impose deterrent pun't on those who are less vulnerable to reform.
- incorporated in **Art.1. Para 2** *"It aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective by providing for the pun't of criminals in order to deter them from committing another crime and make them a lesson to others, or by providing for their reform and measures to prevent the commission of further crimes."*

- Further, the purposes of deterrence, prevention, reformation and rehabilitation are specifically mentioned in the provisions relating to different types of punishments:

- **Art. 87 The Criminal Punishment and Its Application- Principle.**

- “The penalties and measures provided by this code must be applied in accordance **with the spirit of this Code** and so as to the achieve the purpose it has in view (Art.1)”

- There is **no uniform**, generally recognized and **universal theory** of punishment for all ages and for all people.
- Whatever punishment might have been suitable in past may not be so in the present, or useful in one country may not be so in another.
- The same kind of punishment may not bring about the desired effect on all types of criminals alike.
- It can be said that, universalization of punishment is impossible.

- We have discussed above various theories regarding the purpose of pun't.
- However, while each one of them has some value of its own **none of them is universally** acceptable. The various criminal pun't are not mutually exclusive.
- ❖ It is now recognized that 'the prevention of crime and protection of society' are ends asserted by every one.
- ❖ Thus, **an inclusive theory'** w/c is a cultivation of all the elements has been gaining ground in recent years.

The above theories of pun't have got their own pitfalls.

- **For instance, the theory of retribution:** is **backward-looking**. Pun't needs to be forward-looking if further harm is to be prevented.
- pun't to be directly proportional to the harm caused.
- Yet, at times, the imposition of such pun't is not possible. For instance, if a person **kill ten people**, killing him ten times will be directly proportional to the harm caused, which is plainly impossible.
Also what for Rapist in rape cases.
- Nonetheless, such pun't will be contrary to the prevailing constitutional prohibition of cruel, inhumane and degrading pun't.

- **The theory of deterrence**, on its part, allows the use of excessive pun't'. However, such pun't may not be appropriate particularly when it is seen in the light of the principle of proportionality of pun't.
- The **retributive and deterrence** theories call for the infliction of unpleasant experiences upon the criminal, including **harsh prison treatment**
- **The theory of rehabilitation** is more human rights principles friendly than the other theories of pun't. However, it **cannot be free from defects**. **rehabilitation has**
 1. *does not allow the use of death penalty; nor can it give any other solution to avoid the danger they pose to the society.*
 2. *it is contrary to the principle of proportionality of pun't*
 3. *the tendency to turn prisons to luxury places b/c very thing, such treatment to criminals may lead to the commission of further crimes.*
 4. *is individual-oriented. Hence, it does not have a place for would-be criminals*

➤ **The theory of incapacitation** is also susceptible to criticisms. As stated above, the only effective way of incapacitating a person from committing further crime is by taking his life. Nevertheless, death penalty is not a common practice. As a result, the incapacitation of a person such as by sending him to a jail is only temporary. Even in the case of life imprisonment;

- **first** a criminal can get back to the society by obtaining parole; and,
- second, he can commit an in-prison crime such as against his fellow prisoners or prisoner properties.

➤ therefore:

- no single theory can justify any perfect criminal system.
- Neither theories can, standing alone, fully justify the imposition of pun't at all times.
- ***As a result, currently,*** it is held that the **inclusive theory** (also known as integrated or unified theory), that is using all or most of them together, can be the justification for pun't or perfect criminal system.
- In the absence of such legislative answer to the question, a judge should give priority to any of them on case by case basis. ***For instance,*** if the criminal is a young person, ***rehabilitation*** should be given predominance over the other theories. If the criminal is a **recidivist**, ***deterrence or incapacitation***, based on which is recopied, can be given predominance.

It is useful to distinguish the **quality** of pun't from its **quantity** or the question of **how to punish** from the **how much to punish**.

- **Book II of the Cr Cod (Arts. 87 to 237)** deals with criminal pun't and its application.
- Arts. 90 to 128 – 2nd chapter of Title I entitled “Ordinary pun'ts applicable to adults” embodies “Principal Pun'ts” (Arts. 90 -120) and “Secondary Pun'ts” (Arts. 121 – 128)
- ✓ Under Ethiopian L/System there are three types of penalties:
 - A. **Principal Penalties**
 - B. **Secondary penalties**
 - C. **Special Measures Applicable to Adults**

A. Principal Penalties/Pun'ts

1. Pecuniary Penalties-art. 90-102.
2. Compulsory work (Arts. 103 – 105)
3. Pun'ts Restricting or Depriving Liberty (Arts. 106 – 116)
 - a. Simple Imprisonment
 - b. Rigorous Imprisonment.
4. Death Penalty – Art. 117-120

Segregation of Prisoners:

- Male and female (art.110(1))
- Criminals sentenced to rigorous imprisonment or special confinement to be kept away from (Art. 110(2)):
 1. Prisoners under the age of 18 years, or
 2. Adult prisoners who are serving a sentence of simple imprisonment.
- The following persons shall be kept separately from the prisoners serving sentence:
 1. Prisoners awaiting judgment, or
 2. Persons detained for civil debts, or
 3. Public servants who, by virtue of their official duty, had contact with prisoners, and who are imprisoned for a crime or detained for civil debts.

1. Pecuniary Penalties: (Arts. 90-102)

- Pecuniary pun'ts are criminal measures taken by a gov't against criminals so as to affect their property right leaving their liberty, person, or life intact.
- The Cr Code includes the *ff types* of penalties w/c are payable in terms of money:

- a) Fine
- b) confiscation
- c) Sequestration
- d) Other pecuniary effects

a. Fine: (Arts 90).

- Hence, courts are free to fix the fine they deem necessary to achieve the purpose of criminal law. But for the **determination the exact amount of fine**, courts should take into account the criminal's degree of guilt, financial condition, means, family responsibility, occupation and earning therefrom, age, health conditions and the gravity of the crime committed. Art 90(2),

- I. If the special part provs of the Cr Code provide **only for fine**, the court has to impose the fine.
- II. However, if the Code provides for **both fine and imprisonment as alternative penalties**, Art 91
- III. Moreover, fine may be imposed in **addition to imprisonment** even if the special part provs provide only for imprisonment provided **Art 92(2)**

➤ ***Advantages of Fine:***

- ❑ If the law the convicted person violated provides for fine and imprisonment as alternative pun'ts and the imposition of fine can serve the purpose of criminal law, it is advisable to impose fine than the imprisonment. B/c the imposition of fine does have many **incidental benefits**, in **addition to serving the purpose of criminal law**, which imprisonment does not have. The benefits include:

- **First**, fine, as the study of the law of public finance reveals, is one of the sources of public revenue.
- **Second**, the imposition of fine can ease some of our administrative problems. **For example** the prisons in Ethiopia are **over-crowded**.
- **Third**, the gov't will be able to divert some of its budgets for the execution of imprisonments to other developmental activities.
- **Fourth**, given the objective realities in Ethiopia, adding prisoners on prisoners when they can be fined would create conducive environment for inhuman treatment of the prisoners. **Acc to Art 87**, Cri Code orders the execution of any pun't to be in line with **human dignity**.
- **Fifth**, the criminal will maintain his liberty and continue to be productive.

Therefore, since the imposition of fine is tantamount to killing many birds with a stone, judges are strongly advised to resort to it whenever fine is provided as an alternative pun't provided, of course, that its imposition can serve the purpose of criminal law.

b. Confiscation: Article 98.-

- The concept 'forfeiture' as pun't refers to **seizing the property** that is used to commit a crime and the profit that is derived from such crime.
- This has **deterrent effect**.
- **For example, by seizing contraband** goods, governments get money by selling the goods.

c. Sequestration of Property:

- Refers to the act of **taking control of the property of a criminal**. Under the Criminal Code, this type penalty is recognized but only for serious crimes **art 99**. B/cs the Code stipulates that the property of a criminal who is convicted and sentenced in his absence for conspiring or engaging in hostile acts against the constitutional order or the internal or external security of the state may be sequestrated in addition to any other penalty.

- Alternative to Punishment

- Many l/systems have introduced community service as alternative to punishment for offences punishable with simple imprisonment.
- Art. 103 (1) provides for compulsory work w/t custody rather than free community service
- This type of penalty has more to do **with imprisonment** since it somehow involves restriction of the liberty of a criminal.
- But unlike imprisonment, **it is not a common** form of penalty as it is imposed only under certain circumstances.
- ❖ **First**, Criminal Code has given courts the mandate to **convert fine to compulsory labour** in case the criminal is unwilling or unable to pay fine. **Arts 95 and 96**,
- The duration for w/c the compulsory labour is to last will be determined having regard to the amount of fine. All the same, it cannot **exceed two years**.

- ❖ **Second**, can be imposed as a compulsory labour substitute for simple imprisonment,
 - should not **exceed six months**. Art 103(1),
- The other important situation where simple imprisonment can be converted to compulsory labour is envisaged under art 107.
 - where there are **administrative difficulties to execute the sentence** of simple imprisonment or the execution of this sentence in a prison is not conducive to reform the criminal
 - But the conversion of imprisonment to compulsory labour in accordance with this prov is possible only if the crime committed does not entail simple imprisonment in **excess of six months**.

- As far as the extent of compulsory labour under article 107 is concerned, cross-reference is made to arts 103 and 104, which means it can extend from one month to six months.
- Finally, compulsory labour can be imposed in the form of a mitigated punishment. Art 179.

- Hence, it is a measure that affects the personal liberty of a criminal.
- The Criminal Code classifies imprisonments into **simple and rigorous** imprisonments.

a. Simple imprisonment:

1. **Normally**, 10days min and 3years max.
 2. **Exceptionally**, it may extend up to 5years art 88(2)
- if the crime is somewhat grave or concurrent crimes entailing or the criminal is punished repeatedly, or the special part so provides
 - the court should fix the period of simple imprisonment by taking the factors stipulated under art **88(2) into account**
 - its execution is concerned, sentence should be served in a jail.
 - there is a **possibility of converting** it to **compulsory labour or fine**, if circumstances so justify.

b. Rigorous imprisonment:

1. **Normally**, ranges from a minimum of 1year to 25years.
2. **Exceptionally**, it may be “for life”, where it is expressly laid down by law (Art. 108(1))

- Unlike simple imprisonment the Cr Code has not expressly provided conversion of rigorous imprisonment to either fine or compulsory labour.
- The reason seems self-evident: the crime for which it is imposed is very serious and the author thereof is also very dangerous.
- The duration of rigorous imprisonment should be determined in accordance with article 88(2).

- which is also referred to as capital punishment,
- is imposed only as a last resort and it is recognized for very serious crimes and is imposed on **extraordinarily** dangerous criminals
- N.B. the **South African Constitutional Court** interpreted that death penalty is a kind of cruel, inhuman and degrading punishment and thus held it to be unconstitutional);

➤ **Constitutionality of Death Penalty in Ethiopia**

- Under **art 15**, the FDRE Const provides that nobody may be deprived of his life except as a punishment in a serious criminal offence determined by law.
- Art 117 (2) of the CC and Art 28 (2) of the FDRE Con.
- The body of the executed person shall be given to **his family**, upon their request. If no one claims for the body, it shall be given a decent burial (Art. **117 (4)**).

- The *application of death penalty* also recognizes and regulates, under **art 117 Cr Code**, *to exceptional cases*. in the presence of these five elements;
- if the crime is grave, or
 - if the crime is completed, or
 - if the criminal is exceptionally dangerous, or
 - the criminal has attained the age of 18, or
 - if there are no mitigating grounds,
 - Const and the Cr Code, no sentence of death can be executed w/t the **confirmation** of the Head of the State.
 - The means of **execution shall be determined** by the executive body having authority over the Federal or the Regional Prison Administration concerned.

A. Delay in executing death penalty and its ramifications:

- delays in carrying out sentence of death has been described as 'unacceptable' and the condemned person has brought proceedings based on a claim that, b/c of the inordinate delay, the execution of the sentence would amount to cruel and inhuman pun't and, as such, would be **unconstitutional**.
- Therefore, if the execution of death sentence is to be humane and constitutional, it should be executed in a **reasonable period**.
- **What is a reasonable period**® difficult to decide on.

B. Solitary confinement:

- **awaiting the execution** of their death of death penalty.
- Is a psychological pun't and this type of pun't is unacceptable, b/c it is cruel and unusual perse, it should not be imposed on such criminals merely b/c they are condemned to death.
- But, **if the criminal is committing crime 'in-prison' offences**, he can be subjected to solitary confinement.
- **In Ethiopia**, psychological harm to a criminal awaiting the execution of death penalty is prohibited under the **Cr Code (art 117)**.
- the Constitution prohibits cruel and unusual pun't or treatment (art 18). Hence, solitary confinement **cannot justifiably** be imposed on criminals condemned to death.
- All steps shall be taken for the **safety** of the prisoner under the supervision of the **Director of Prisons**.

Suspension and Commutation of Death Sentence:

- Suspension and commutation of death penalty are possible in the following circumstances:
 - In case of fully or partially irresponsible or seriously ill persons or a pregnant woman.
 - The death sentence may be commuted to “Rigorous Imprisonment for Life”, in case of a woman with child and if she gives birth to a live child.
 - The other cases of sentences of death may be commuted or remitted only by way of **pardon or amnesty** as provided by the **Arts. 229 and 230** of the Criminal Code.

B. Secondary punishments

- Secondary punishments – up on express direction of courts
- A court may impose **in addition** to the primary punishment.
- The court is not obliged. The law gives the **discretion** whether or not to impose secondary penalties to the court under **art 122(2)**.
 - Caution /ማስጠንቀቂያ/, reprimand /ወቅላ/, admonishment /ተግሳጽ/, and apology /ፆቅርታ/ - (Art. 122)
 - Deprivation of civil and political rights (Arts 123-126)
 - Dismissal from the Armed forces and reduction in rank (Arts. 127 – 128)

- Art 2(1) Criminal law specifies the various crimes, and the penalties and measures applicable to criminals.
- Our law does not only penalize a criminal but it also has designed protective measures specially to achieve reformative and rehabilitators purposes, that are stated under Arts. 129 - 165._
- **Measures applicable to adults (Arts. 129 - 156).**
 - Measures applicable to mentally irresponsible persons – confinement and treatment (Arts. 129 - 133).
 - Protective measures such as guarantee of good conduct (Art. 135), seizure of dangerous arts (Art. 140), & recognizance of good behavior (Art. 141)
 - Restrictions on personal liberty (Arts. 145 - 153)

- Under special rules of procedure (Art 22(2) and 17-180 CPC).
- Acc to Art. 52 of the penal code, infants are completely exonerated (excused) from criminal provisions. the lower limit of penal **minority is nine years**.
- ***If 9 years ≤ 15*** years old offenders commit an offence or petty **offence the following measures will be taken:**
Admission to curative institution (Art. 158); Supervised education (Art. 159); Reprimand (Art. 160); School or home arrest (Art. 161); Admission to corrective institution (Art. 162).

- Where If these **special measures (Arts 158-162) fail** to be effective the penalties of **fine (Art. 167), corrective measures (Art. 168 (1) (a)) or penitentiary detention (Art. 168 (1) (b)).**
- But, imprisonment shall not exceed 10 years
- Take place under the regime of simple imprisonment
- Be entitled to conditional release

- ❑ The imposition of criminal liability is only one means of regulating corporations. There are also **civil law** remedies such as **injunction and the award of damages which may include a penal element**. Generally, **criminal sanctions** include imprisonment, fines and community service orders. A company has no physical existence, so it can only act vicariously through the agency of the h/beings it employs.
- ❑ **A juridical person shall be deemed to have committed a crime and punished** as such if the following **essential elements are established**:
 1. *One of its officials or employees commits a crime as a principal criminal, an instigator or an accomplice,*
 2. *In connection with the activity of the juridical person*
 3. *With the intent of promoting its interest*
 4. *By an unlawful means or by violating its legal duty or by unduly using the juridical person as a means.*

➤ Principal penalty

- payment of fine (Art. 34 (2) + Article 90 (3) or (4))

➤ Measures

- Art. 142 – suspension or or withdrawal of license
- Art. 143 – prohibition and closing of an undertaking
- Individual liability on the officials or employees of the juridical person may be additionally imposed for their personal criminal guilt.

➤ In case of petty offences penalties stated under Arts. 752, 768 – 770 shall apply.

Principles & Policies of Sentencing

1. The principle of Law being Legitimate & Lawful: Legality- Arts 2 and 3 Cr Code
2. The principle of Equality before the Law (FDRE Const Art. 25 and Art. 4 of Cr Code)
3. The principle of Respect for Human Dignity (UDHR Art.5 ICCPR, Art.7, Convention Africa Charter, Art.5; ECHR, Art.18 of FDRE Const, Art. 87 Cr Code)
4. The principle of Rule of law & Due Process of Law (FDRE Const Art 19 & 20, Art.149 CPC)
5. Consistency, Proportionality & Transparency (Art.12 of the FDRE Constitution)
6. The Policy of Public Expenditure

- General Principles of Determination of Pun't: **Arts. 87-89:**
- Sentencing depends neither on an **arbitrary discretion** of **courts nor mathematical predetermination.**
- The court should determine the sentence according to the **principles of sentencing:**
- Pun'ts and measures designed by the Cr Code are supposed to be applied
 - o In accordance with the spirit of the Criminal Code, and
 - o In order to achieve the purpose of the **Cr Code in terms of Art.1**
 - o Giving due respect to human dignity. (**Arts.18(1) and Art.21 of the Const**)
 - o The calculation of sentences is expected to be by a meticulous correlation of the **General Part and the Special Part** of the Criminal Code.

- ❑ The principle of individualization of pun't should be given effect to by giving due consideration to
 - o the **personal circumstances** of the criminal such as degree of guilt, dangerous disposition of the criminal, his antecedents, motive and purpose.
 - o The standard of his education.
 - o Z gravity of the crime & z circumstances of its commission.
 - o Careful examination of the complete range of pun'ts from the **lightest to the severe**.

- o The Federal Supreme Court issues a 'Manual Relating to Sentencing' in order to ensure the correctness and uniformity of sentencing.
- o the code gives power to the Federal Supreme Court to enact the sentencing guideline under Art. 88 (4).
- o The court issued the guideline no. 1/2002 and replaced by the guideline no. 2/2006,

□ **Determination of sentences in cases of 'Minor Crimes'** there are 2 alternatives provided by Art. 89:

- The court may apply the prov's of Art. 122 relating to reprimands warning , or
- The provs of the Law of Petty Offences 'Minor Crimes' are defined as "crimes which are punishable with simple imprisonment not exceeding 3 months or fine not more than 1000 Birr.

- Art. 88 (2) says, the court should determine the penalty by taking in to account the **degree of guilt, gravity of offence & circumstances of the offence** (material, personal & mixed).
- Thus, circumstances submitted to the court may lead to extenuation(mitigation) or aggravation.
- If the court is found, the defendant guilty as per Art.149 (3) of the CPC, the prosecution and defense are allowed to present **aggravating and extenuating circumstances**.

Extenuating and aggravating circumstances.

- Are called as factors that affect Punishment
- The pun'ts to be imposed on a criminal **need not necessarily be exactly the one which is prescribed** for the specific crime.
- It can be mitigated (or extenuated or reduced) or aggravated (increased) in the circumstances listed out by the Criminal Code.
- **Arts. 82-86** categorize the circumstances into the following groups:
 - General Extenuating Circumstances- Art.82
 - Special Mitigating Circumstances- Art. 83
 - General Aggravating Circumstances- Art. 84
 - Special Aggravating Circumstances- Art. 85
 - Other General Extenuating and Aggravating Circumstances- Art. 86

Art. 82

- These circumstances could either lead to **reduced** or **more severe** pun'ts.
- Extenuating circumstances are those factors surrounding the commission of a crime which favour the criminals and thus lead to **ordinary mitigation of pun'ts in accordance with Art. 179 Of the Code.**
- This includes **personal circumstances** of the Criminal such as his/her
 - Age, Intelligence, Simplicity of mind, Motive, Moral distress, Grave temptation or serious provocation or violent emotion or an unjust insult etc.
 - Circumstances after the commission of the crime. For instance, sincere repentance, specially by rendering help to his victim,

❑ **No Double Mitigation: Art.82 (2)**

- Some of the **provs of the Special part** incorporate one of these extenuating circumstances as one of the essential element of the crime or as a factor of extenuation of a privileged crime.
- **For example, under Art. 541** it is essential to prove excess of self defense or excess of necessity, or presence of gross provocation, or violent emotion, or intense passion to establish the crime of 'Extenuated Homicide'. In such cases, the Court may not allow for the same circumstance to reduce the penalty

- These circumstances relate to **crimes by omission** of some legal duty, due to the fear of exposing a family member or someone close ties of affection to a criminal penalty or dishonour or grave injury.
- Such relationships include:
 - Any near relative by blood or marriage, or
 - Any person with whom he is connected by special close ties of affection

- The circumstances that can be considered as basis for free mitigation in relation to the special relationships above mentioned are:
 - Acting contrary to the law and in particular failing in the duty to report to the authority, or
 - Fails to afford assistance to the authorities,
 - Making a false statement or deposition or supply of false information, or
 - Giving assistance to a criminal in escaping the prosecution or a penalty.
- The existence and **adequate nature of the special relationship shall be examined and** determined by the Court.

➤ **Determination of Sentence under Extenuating Circumstances:**

- There are **three favourable** treatments available for the criminal basing on the extenuating circumstances. They are:

A. Ordinary Mitigation Art.179:

- In all the cases of general extenuating circumstances mentioned in Art. 82 the sentence is subject to ordinary mitigation.
- In this type mitigation, the extent of mitigation that should be allowed is clearly mentioned.
- The Court cannot go beyond the prescriptions in reduction of penalty.

B. Free Mitigation Art. 180:

- Where special mitigating circumstances exist the sentence may be freely mitigated by the Court without any restriction.

C. Exemption from Punishment Art. 83 (2):

- Under this provision the Court may exempt the criminal from punishment and leave him by reprimand or warning as has been provided by Art.122.
- The special circumstances under which this kind of reduction are:
 - Where the act committed is not very grave, and
 - If the ties in question are so close, and
 - The circumstances are so impelling that they placed him in a moral dilemma of a horrifying nature.
- For eg, if a person hides his wife who is wanted for committing a crime, he may be granted exemption if the crime is not serious.

C. General Aggravating Circumstances Art. 84:

- The court shall increase the penalty as provided by law (Art.183) in the following cases
- Since these are factors that can be used to increase the pun'ts in all types of crimes.
- The increase in the penalty is based on the degree of the guilt which can be aggravated by the presence of these circumstances.
- The injury caused may be the same but the punishments get aggravated due to the heinous nature of the mental element.
- However, for each of these specific crimes the quantum of punishment differs considerably b/c of the difference in the mental element and the material circumstances preceding, attending or following the commission of the crime.

- Art. 84 suggests the increase in the penalty in the following **general aggravating circumstances:**

- ➡ When the criminal acts with treachery, base motive, envy, greed, special perversity or cruelty.
- ➡ When the crime is done in abuse of power or functions of confidence, or authority given to him.
- ➡ In case of a person who can be found to be dangerous having regard to his previous criminal record, habitual nature of his criminality, circumstances of commission of the crime, use of

- ➡ If the criminal commits the crime together with others, or is a member of a gang organized to commit crimes, organizer or ringleader.
- ➡ Where the crime is committed against a victim who deserves special protection such as, a child or an old person, a woman, a defenseless person, a feeble minded person, a prisoner, a relative, a superior or inferior, a minister of religion, a representative of a duly constituted authority, or a public servant in the discharge of his duties.

D. Special Aggravating Circumstances:

- The special cases of aggravation as enumerated by Art. 85 are:

- The cases of concurrence of crimes, and
- The cases of recidivism

❖ **No Double Aggravation: Art.84 (2)**

- Some of the prov's of the Special part incorporate one of these aggravating circumstances as one of the essential element of the crime or as a factor of aggravation of a serious crime.
- **For eg, under Art. 539** it is essential to prove premeditation, or motive or use of dangerous weapon or the crime being committed by a member of a band organized to commit homicide or armed robbery, to establish the crime of 'Aggravated Homicide'. In such cases, the Court may not take into account the same circumstance to aggravate the penalty applicable to that crime.

Determination of Sentence under Aggravating Circumstances:

➤ There are two serious consequences available for the criminal basing on the aggravating circumstances.

A. Ordinary Aggravation Art.183:

- In all the cases of general aggravating circumstances mentioned in Art. 84 the sentence is subject to ordinary aggravation.
- In this type aggravation, the extent of aggravation that should be allowed is clearly mentioned.
- The Court should take the following things into account before fixing the amount of punishment:
 - The nature and the multiplicity of grounds of aggravation, and
 - The degree of guilt of the criminal

B. Aggravation of Penalty in Special Aggravating Circumstances Arts. 184-188:

- Where special aggravating circumstances exist the sentence may be aggravated by the Court in accordance with the following provisions:
 - Aggravation of Penalty in case of Concurrent crimes- Art. 184
 - Special cases of Concurrence-Art. 185
 - Aggravation in case of Notional Concurrence- Art. 187
 - Aggravation in case of Recidivism- Art. 188
- It occurs when a person commits two or more successive crimes; when the same criminal act simultaneously contravenes several criminal provisions; or when the commission of a single crime harms the interests of more than one person,
Criminal Code, Article 66.

E. Other General Extenuating and Aggravating Circumstances Art. 86:

- This provision is for giving some discretionary power to the Court to consider the existence of any other aggravating or mitigating circumstance other than those which are expressly enlisted in the above discussed provisions.
- The Court may apply the provisions of Art. 179 or Art. 183 respectively, either to reduce the punishment or increase the punishment as the case may be.
- In such case record the reasons for such departure made from the express provisions of the law.

- **Cumulation of D/t Extenuating and Aggravating Circumstances: Article 189**
- Cumulating means addition of penalties.
 - In case of d/t extenuating and aggravating circumstances, the Court shall determine the penalty as provided below:
- **In case of concurrent general aggravating and extenuating circumstances:**
 - The Court shall first fix the penalty having regard to the aggravating circumstances (Art. 183) and then shall reduce the penalty in light of the extenuating circumstances (Arts. 179,180).

➤ **In a case of recidivism:**

- Where the criminal has at the same time been convicted of concurrent crimes the Court shall first assess sentence for the concurrent crimes and then increase it having regard to recidivism.

➤ **In case of different types of aggravating and extenuating circumstances:**

- Where there exist both concurrent general aggravating and extenuating circumstances and recidivism as specified in sub-article (1) and (2) above, the Court shall first fix the penalty having regard to the aggravating circumstances and then shall reduce the penalty in light of the extenuating circumstances.

The following are the 'post conviction procedures':

❑ **Suspension of Penalty**

- a. conditional suspension of penalty and
- b. conditional release,
- c. Reinstatement Arts.232-237

❑ **Discontinuance of the enforcement of penalties**

- 1. Death of the convict
- 2. Period of limitation
- 3. Pardon and Amnesty 129 & 130

Rationales: Suspension of Penalties

- In the past, all types of penalties were executed after they were imposed of criminal pun't.
- But, nowadays, it is believed that at times the **interest of justice** may require resorting to a d/t measure; that is, suspension instead of execution.
- The **principal justification** behind suspension of penalties is the need to **rehabilitate criminals**.

□ **Types of suspension penalties**

1. Conditional suspension of penalties (**probation**) (Art. 190-200)
2. Conditional release (**parole**) (Art. 201-207, 113)

- **probation** is recognized in relation to sentence of simple imprisonment Arts 190 and 191, if its use is found relevant in the light of the purposes of the Cr Code.
- In **‘suspension of pronouncement of penalty’**, the court suspends the sentence and places the offender on probation after conviction.
“**Probation** is a sentence served in the community w/t confinement in the prison, under the supervision of a probation officer and conditional upon strict obedience to the rules established by the courts.”
- It is a process of testing or putting to proof the criminal’s conduct or character by placing under the supervision of a probation officer who acts as a friend and advisor.

2. Conditional release of criminals (Art. 201-207, 113)

- is based on the consideration that it serves as a means of reform and social reinstatement.
- which is also called parole, refers to the suspension of a penalty which is under execution subject to certain limitations (conditions). under Art. 202.
- As far as the initiation of conditional release is concerned, the court may order the conditional release upon the recommendation of the prison management or upon the request of the criminal.
- The director of the prison has the duty to recommend the conditional release of the prisoner where the conditions for granting it are satisfied.

- The reasons for such discontinuance of the execution of sentences include impossibility to execute or continue to execute, fairness, or other factors such as politics

1. Death of the convict Under article 215,

2. Lapse of Period of limitation 223-228

3. Pardon and Amnesty:229-231

Pardon and Amnesty:

- Pardon may be defined as “the act or instance of officially nullifying punishment or other legal consequences of crime”. The chief executive of a government usually grants a pardon. The president has the sole power to issue pardons.
- **Amnesty** is also a species of pardon but applies to a certain class of criminals and specific type of crimes only. Amnesty means, “a pardon extended by the government to a group or class of persons usually for a political offense; the act of a sovereign power officially forgiving certain classes of persons who are subject to trial but have not yet been convicted.
- Unlike an ordinary pardon, amnesty is usually addressed to crimes against state sovereignty i.e. to political offences with respect to which forgiveness is deemed more expedient for the public welfare than prosecution and punishment. Amnesty is usually general, addressed to classes or even communities, which is also termed as ‘general pardon’.

- Articles. 229 and 230 of the Criminal Code deal with the concepts of 'Pardon' and 'Amnesty'.
- In Ethiopia, too, pardon can be granted and the main purpose of granting pardon is to ensure the welfare and interest of the public. [Article 11 of the Procedure of Pardon Proclamation No. 395/2004,](#)
- In Ethiopia, who does have pardoning power? Can the office of prime minister give pardon? What about the President? Parliament? Council of Ministers? Courts? Can pardon be granted in relation to all kinds of crimes? See article 28 of the FDRE Constitution and articles 3, 4 and 10 of the Procedure of Pardon Proclamation, Proclamation No. 395/2004.

Differences between Pardon and Amnesty:

- Pardon is remittance of penalty while amnesty is a general pardon especially for political crimes against government.
- Pardon is granted by the competent authority where as amnesty is granted by the appropriate competent authority.
- In pardon, the remission of sentence may be whole or in part and in amnesty, it is always complete remission.
- Pardon may completely remit the penalty or commute the same to a penalty of lesser nature or gravity.
- Pardon may apply to all penalties and measures whether principal or secondary. But amnesty may be granted in respect to certain crimes and certain classes of criminals only.
- The order of pardon may determine the conditions to which it is subjected to and its scope. Amnesty may be either absolute or subject to certain conditions and obligations.
- Pardon shall not cancel the sentence. However, amnesty, cancels both the indictment and the sentence and bars or discontinues any prosecution from the moment of its promulgation.

The Roles of the Wings of the Gov't in Determination of Sentencing

- ❑ In modern CJS, the determination of sentence for a particular offence is shared among the three organs of the gov't.

A. The Role of Legislature

- is the **custodian of the principle of legality** for it is this branch of the gov't that defines the offence and the respective penalty.
- it sets the lower and higher limit for each offence according to the seriousness of the offence.

B. The Role of the Judge:

- The court individualizes penalty and required to exercise his discretion in identifying the following important factors;
 - I. The circumstances of commission of the crime
 - II. The personal circumstances of the criminal.

- He has the guidelines enlisted in this regards under the heads of aggravating circumstances, mitigating circumstances. **Arts 86, 87 and 88** give reasonable guidance for the judge to play his role effectively.

C. The Role of the Executive. Arts.229-231

- This organ of the gov't varies the application of sentence by reducing and individualizing the pun't through
 1. pardon, (Amnesty),
 2. penitentiary system, and
 3. conditional release.
 4. Prison Administration
- It has at its disposal a tangible way of calibrating the severity of the sentence by affection the method of execution which may perceptibly **modify the judge's sentence.**

Chapter-IV

Special Part of Criminal Code



(496 Art, from Art 238-733)

The chapter helps to draw lesson on:

- ❖ How are the different parts of the Criminal Code interrelated?
- ❖ How do you find the prov relevant to the facts of the case at your hand?
- ❖ How do you go about finding the most suitable provision when more than one prov of the Special Part applies to the conduct in question?
- ❖ The philosophical foundation for classification of Crimes **under d/t l/s**, offences may be classified based **on two criteria**:
 1. Classification based on the “Seriousness of the Crimes”.
 2. Classification based on the “Subject matter” of the Crime.

✓ Scheme of the Criminal Code of FDRE, 2005:

PART I -THE GENERAL PART; has two Books, namely:

- **Book I Arts. 1-86 - crimes and the criminals**
 - "General principles" as regards to "criminal law and its scope" (1-22),"
 - the offences and its commission" (23-47) and
 - "Conditions of liability to punishment" (48-84)
- Is the **most technical part** of the Code and **the basic tool in the interpretation** of any provision that embodies a specific crime.
- **Mentioned** issues such as the principle of legality, criminal responsibility, participation, lawful acts, justifiable and excusable acts, extenuating and aggravating circumstances etc,

- **Book II- z criminal pun't and its application**
(Arts 87-237)

- This book deals with calculation of sentences, kinds of pun't, ordinary pun'ts applicable to adults, special measures applicable to adults, penalties applicable to young persons and also rules regarding determination, suspension, discontinuance and extinction of penalty.

PART II-SPECIAL PART

- Part II - Special Part, contains 496 articles, from Art 238-733
- very **grave** in terms of the gravity of offences when compared to the petty offences part
- describes the various acts which are deemed to criminal and lays down the penalties applicable thereto it defines the elements of each offences
- the said penalties may not be ordered unless the conditions prescribed by the general part with respect to liability to punishment are fulfilled

❖ **Special part** states zt:

- the kind of each act
- how it implemented
- the maximum and minimum range of punishment

❑ **Further it divided; Crime committed against:**

1. state, National or international interest (Arts.238-374)
2. public interest and social life (Arts.375-537)
3. individual person and family (Arts. 538-661)
4. property (Arts. 662-733)

- ❑ The '**General Part**' of the Criminal Code sets out:
 - the meaning of criminal act, criminal intention or negligence i.e. 'the guilt' and z kinds of pun'ts and measures to be applied in each case.
- All these provs are commonly applicable to all crimes for two important purposes of a criminal trial:
 - a. To establish the 'criminal liability' by finding the concurrence of the 'act' and the 'guilty mind' of the accused
 - b. To determine z type and the quantum of pun't to be applied to the criminal.

❑ ***Purpose of the special part of the criminal code***

The special part has consists d/t types of crimes. It **classifies crimes according to their gravity** and their classes and put it in an orderly manner. Through this it gives due notice to the public so as to prevent them from committing the crime.

- it states prohibited acts in the society and it manage a normal relation among the people.
- it gives precaution to member of the society by stating different types of crime and the corresponding penalties
- it decides the degree of penalty
- it facilitate the works of the criminal justices organizations, particularly, the court and prosecution.

➤ **The applicability of the General Part to the Special Part** can be understood in the following ways:

a. Establishing the Commission of the Crime:

- ❖ To attach criminal liability to the accused as per the requirements of Art 23, three essential elements of the crime have to be established.
- ❖ Have to find out the 'cause' of the harmful result. (R/ship , of Cause ~d Effect (shall be not mismatch) Art 24.

- Thus, the provs of General Part **direct us to the exact prov** of the Special Part to be applied to punish a criminal. Therefore, to establish the commission of a crime it is very important to understand the interrelationship b/n both the parts of the Code.

Criminal liability=

- 1. The legal element +**
- 2. The material(omission or commission) +**
- 3. The moral element(Negligence or intention)-**
- 4. Defense(serve for mitigate or exempted pun't)**

b. To Fulfill the Req'nts of z Principle of Individualization of Criminal Pun't:

- As discussed above, the principal **guiding principles relating to how the sentences** are calculated are found in the ff important provs:

1. Art 87 of the Cr Code: It refers to Art 1 and says that “*the penalties and measures provided by this Code pun't must be applied in accordance with the spirit of the Code and so as to achieve the purpose it has in view*”.

2. Art 88: This prov lays down very important guidelines relating to calculation of sentences including the individualization of criminal justice and further emphasize the r/ship b/n the General and Special Parts of the Cr Code:

3. Aggravating and Mitigating Circumstances:

Arts 82-86 enumerate the circumstances in which the pun't to a crime may be increased or decreased as the circumstances warrant in each case though the prov defining that crime suggests a specific pun't.

4. Special Treatment for Young Criminals, Women and Mentally Challenged: The provs of Cr Code that also emphasize the need to make references to the General Part of the Code while deciding the cases involving women, children and the feeble minded.

2.Finding the Relevant Law:

- ❖ to find the relevant law in this case is to look for the specific crime
- ❖ establish the state of mind of the accused towards the victim
- One has to have a clear idea about finding the law relevant to the case at hand. Let us understand the method with the help of an example. Alemayu and Cherinet had an argument over an issue and it resulted in physical altercation b/n the two on a dark night. In the course of the fight Alemayu aimed a blow with his stick at the head of Cherinet. To ward off the blow Cherinet's wife who had a child on her arm intervened b/n them. The blow missed its aim and fell on the head of the child causing severe injuries, due to w/c the child died. Alemayu has been charged with homicide of the child. **Decide.**
- Now the first step to find the relevant law in this case is

- Was the killing 'intentional'? Or
 - Was it a 'negligent' killing?
- ❖ To establish the **state of mind of the accused** towards the victim we have to consult either **Art 58 or 59** as the case may be. But in any case the accused's state of mind should be established towards the harm that is caused and now is in question. In fact the **accused's act and mind** both were directed towards injuring Cherinet with the stick. Since it was dark in the night he missed the aim and the unexpected interference of Mrs. Cherinet also could not be noticed by him. So now, had the blow rightly landed on Cherinet it would have caused only a common willful injury. This is what could be expected in his **"foresight of consequences"**. Therefore, the death of the child may be considered as an accident and he should be convicted for Common Willful Injury under Art 556 which was in his intention and could not be achieved because of the **circumstances beyond his control**.

- Art 58/3 too lays down this principle: “ No person shall be convicted for what he neither knew of or intended, nor for what goes beyond what he intended either directly or as a possibility, subject to the provs governing negligence”. Here we can’t even say that he had been negligent to avoid injury to the child b/c the entry of both mother and the child was unexpected and could not even be noticed due to darkness. That’s how we locate the relevant law and ultimately we may land up in a provision w/c we might not have expected. The injury which he had in fact contemplated was never caused but he will be held liable for that and the death of the child which he neither intended nor expected cannot be attributed to him.

3. Interrelationships of Provisions

- In every section of the Special Part we will find the crimes being arranged and this further simplifies our efforts to find the relevant law, in the following order:
 - The principle relating to the crime
 - Aggravated forms of the crime
 - Ordinary or simple form of the crime
 - Extenuated form of the crime
 - Negligent commission of the crime, in any.

❑ Thus, we find that the crimes are arranged in an order starting for more serious forms to less serious forms. For example:

- **Book-V**
- Title-I Crimes Against Life, Person and Health
- Chapter-I Crimes Against Life
- **Section-I Homicide and It's Forms**
 - o Art. 538- Principle
 - o Art. 539- Aggravated Homicide
 - o Art. 540- Ordinary Homicide
 - o Art. 541- Extenuated Homicide
 - o Art. 542- Instigating or Aiding another to Commit Suicide
 - o Art. 543- Homicide by Negligence

4. Cross-References within the Code

- We find a certain article referring to other articles, on two d/t occasions:
 - a. To Find Complete Picture of Crime or a Concept:
 - should be very carefully followed; otherwise it could lead into improper applications of law and thereby serious miscarriage of justice might result in.
 - b. Where one prov serves in some respect as a general article to a series of articles:
 - ❑ **For ex,** Art 628 deals with 'Other Grounds of Aggravating the Crime' in relation to rape and other sexual outrages. The article starts with

- Therefore, the aggravating circumstances enlisted thereunder have to be read into every related prov in the series.

□ **Where More than One Special Part Provs Applies to a Particular Criminal Act:**

- This situation relates the concurrence of crimes. The provs relating to **concurrence of crime** mainly Art 61-66, 85, 184-187 are very complex in nature.
- While dealing with these provs the **ff things** have to be kept in mind:
 - o The fact zt the other provs applicable might provide for a higher pun't, and
 - o The purpose, scope or meaning of the article we are dealing with under the Special part i.e. the crime committed by the accused.

- **For instance**, A and B got into a fight. A hit B by his fist and B fell on a rock and his skull got fractured and died. Now A is charged under Art 540 for committing Ordinary Homicide. Here there is a simultaneous breach of provs relating to causing willful injuries Arts 555 or 556 as the case may be and the provision punishing ordinary homicide Art. 540. **The question is should** he be punished for causing death of his victim or only for causing injury? Here in this case the foresight of the accused and his desire to kill his victim are highly doubtful.

- Here there is a possibility of the judges jumping into conclusions, as they usually react with strong feelings against killings and may be sometimes even hasty in punishing the criminals with long terms of imprisonment.
- The **purpose of the criminal law** is to punish only for the contemplated or reasonably foreseen consequences. Here in the given case as the foresight of the accused may reasonably be related to the “injury” rather than to the “death” of the victim application of Art 555 or 556 would be justified.

Relation b/n General and Special Parts of the Code:

The General Part

- sets out the general principles of liability which are common to all serious crimes.
- explains what is meant by a criminal intention, negligence, imprisonment, probation and the like.

The Special Part

- describes the various acts which are deemed to be criminal,
- defines the essential elements of each crime such as murder, theft, robbery etc, and
- prescribes appropriate punishments for each of such crimes.

➤ **No automatic punishment**

- **Penalties cannot be ordered unless the conditions prescribed by the General Part with respect to liability to pun't are fulfilled,**
- **The Special Part does not operate by itself but has to be considered together with the General Part**

➤ **No mechanical imposition of sentence**

- **Dealing with “criminals” rather than “crimes”,**
- **Dealing with “human beings” rather than with “cases”,**
- **Individualizing decisions,**
- **“pun'ts have to be tailor-made” (to adapte special need or purpose)**

Finally:

- Both z general and special part of the code doesn't function alone w/t the conjunction of special part.
- The general part states that how the penalty is decided and how it implemented. One serves to the other as complementary.
- Therefore, the joint function of the two gives life for the criminal code.
- Therefore, code testimony **on:**
 1. The R/ship of the General and Special Parts:
 2. Finding the Relevant Law:
 3. Interrelationships of Provisions
 4. Cross-References within the Code

- It should be apparent by now that **all crimes are an injury against society**. Society as a whole, via its legislatures, has presumably made a collective judgment that certain behaviors are harmful to certain "societal interests".

1. TREASON:

- crime of attacking the safety of a sovereign state &
- is an attempt or conspire to overthrow the gov't, even if no foreign country is aided or involved by such an endeavour.
- is the crime of disloyalty to one's nation or state. A person, who betrays the nation of their citizenship and/or reneges on an oath of loyalty and in some way wilfully **cooperates with an enemy**, is considered to be a **traitor**.

➤ **Treason under d/t jurisdictions** around the world:

❖ **Traitor** may also mean a person who betrays: his own political party, family, friends, ethnic group, religion, or group to w/c he may belong.

❖ **Misprision of Treason:** consists in the concealment or keeping secret of any high treason or is about **doesn't report** it to a proper authority.

❖ **Petty Treason or Petit Treason:** the act of killing a lawful superior

- jurisdictions around the world **abolished and faded** petty treason

- today "treason" generally refers to "high treason."

❑ **Petty treason was also consisted of:**

1. a wife killing her husband,
2. a man (whether a priest or not) killing his prelate, or

➤ **Treason:** Arts 248-250 of Code define **3 types** of treasons namely, high treason, treason and economic treason

i. High treason:

❖ **Is** participating in a war against one's country, attempting to overthrow its gov't, spying on its military, its diplomats, or its secret services for a hostile and foreign power, or attempting to kill its head of state.

➤ **Art 248** of Code **requires the fulfillment** of *essential elements*:

1. To establish the crime of treason the accused should have been...
2. And any of the following activities must be established against him:
3. That he has delivered to the enemy whether directly or

➤ **Pun't for High Treason:** *alternative penalties Art 250*
having regard to the seriousness of the consequences:

ii. **Treason: Art 249:**

- Treason is not necessarily related to the acts of 'war'.
- Our law and the laws of certain countries describes; **treason and high treason** as separate offences.

➤ **Art 249** Code requires the fulfilment of **essential elements**:

1. To establish the crime of treason the accused should have been...

2. And should have been engaged in anyone of the following activities:

❖ **Puni't for Treason:** There are **3 alternative** penalties under Art 249 having regard to the seriousness of the consequences:

iii. Economic Treason: Art 250:

❖ is intended to protect the economic structure of the country. Unauthorized disclosures and communications relating to economic negotiations of the State are prohibited.

❖ **Art 250 Code** requires the fulfilment of the following essential elements:

1. To establish the crime of treason the accused should have been...

- a. An Ethiopian national; or
- b. A person who has been officially entrusted with the protection of Ethiopian national interests.

2. And should have been engaged in anyone of the following activities:

❖ **Art 250 provides for d/t penalties** for intentional and negligent commission of the same in the following way:

2. Espionage:

- refers to the practice of obtaining secret or confidential information w/t the permission of the holder, often for a foreign power. often through spying, cyber hacking, or surveillance.
- Individuals engaged in espionage might not always be citizens of the country.
- is often conducted by individuals or small groups on behalf of a gov't or organization.
- A '**spy**' is an agent employed to obtain such secrets
- Espionage occurs in societies at peace and at war.

➤ **Art. 252:** requires the following **two essential elements:**

1. To establish the crime of espionage the accused should have been...

❖ Acting on behalf of a foreign state, political party or organization, and

❖ To the detriment of Ethiopia or of its institutions, organization or nationals

2. And should have been engaged in anyone of the following activities:

➤ **Pun't for Espionage: Art 252** proposes **five d/t types** of sentences depending on the serious nature of consequences.

C. Crimes Against life:

- The concept of a right to life is **central to debates** on the issues of ***capital pun't, euthanasia, self defense, abortion and war.***
- ❑ The right to life is enshrined in: **General Principle**
 - **Art 3 UDHR and Art 6 ICCPR**, making it a legally enforceable right in every UN member state: “ *Every h/being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*”
 - **Art 15, the FDRE Const** provides that nobody may be deprived of his life **except** as a pun't in a serious criminal offence determined by law.

❑ **Exceptions:** Deprivation of life resulting from the use of force w/c is no more than absolutely necessary; includes:

- a. In defence of any person from unlawful violence; (In cases, that self-defence is justified).
- b. In order to effect a lawful arrest (...providing it is a result of a judicial process) or to prevent the escape of a person lawfully detained;
- c. In action lawfully taken for the purpose of quelling a riot or insurrection. (In cases deaths resulting from lawful warfare i.e war which meets the standards of IHL).

- *HR law is silent* on other controversial areas concerning the **right to life**, namely abortion and the right of the unborn child and euthanasia. (**Euthanasia**: the act of killing someone painlessly (especially someone suffering from an incurable illness)).

- **Art 538. Principle:** defines homicide as causing the death of h/being intentionally & negligently, no matter what weapon or means used.
- There are 4 types of homicide, under criminal code, namely;
 - I. Aggravated Homicide: Art.539
 - II. Extenuated Homicide: Art 541
 - III. Ordinary Homicide: Art. 540
 - IV. Negligent Homicide: Art. 543
- The 1st three kinds of homicides that require the proof of 'intention' as the moral ingredient of the crime,
- Instigating and aiding another to commit suicide and infanticide are offences punishable under Art 542 and 544 respectively.

- **Infanticide: is** defined as child murder by the mother.
- **Socio-economic Reasons for Infanticide:** Mothers who were poor, socially isolated, full-time caregivers, who and were victims of domestic violence or had other relationship problems, were found among the perpetrators of infanticide.
- ❖ **The Ethiopian Law on Infanticide: Art 544/1**, to constitute a crime of infanticide the following essential elements must be fulfilled:
 1. There should be an intentional killing of an infant
 2. By its mother under either of the two conditions:
 - while she is in labour, or
 - while still suffering from the direct effects of labour
- ❖ **Pun't for Infanticide: Simple impr'nt** for the completed crime and **Mitigated pun't under Art 180**,

D. Crimes against Persons

1. Grave Willful Injury: Art. 555
2. Common Willful Injury: Art. 556
3. Injuries by Negligence: Art. 559
4. Assaults: Art 560

1. Grave Willful Injury: Art. 555 The expression 'grave or serious injury' covers the following types of injuries within the meaning of clauses (a) to (c):

- Wounds that endanger life
- Injuries that jeopardize physical or mental health
- Maiming of body or one of the essential limbs of body
- Disabling body or limbs
- Grave or conspicuous disfiguration of a person
- Infliction of any other injury or disease of a serious nature

3. Grave Wilful Injury and Assault

– Definition and Elements

- The constitutive ingredients that establish the offence of grave wilful injury (Article 555) are
- the *mens rea* (moral guilt) or intention, and
- the *actus reus* and resultant harm of
 - wounding a person to endanger the victim's life or to permanently jeopardize his physical or mental health, or
 - maiming the victim's body or one of his essential limbs or organs, or disabling them, or gravely and conspicuously disfiguring the victim; or
 - in any other way inflicting upon the victim an injury or disease of a serious nature.

- **Pun't:** Simple imprisonment not less than 1 year to rigorous imprisonment not exceeding 15 years.

2. Common Willful Injury: Art. 556

- All other injuries to the person other than those that fall under the specific descriptions under Article 555 are common willful injuries.

3. Injuries by Negligence: Art. 559

- The nature of the injury is determined in accordance with 228 articles 555 and 556(Aart559/3).

4. Assaults: Art 560

- Whoever makes any gesture, or any preparation, intending or knowing to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force, to that person, is said to commit an assault.
- Normally, both the one making the threat and the victim must be physically present b/c, otherwise, there would be no immediate danger. However, if a mobile phone is used to transmit the threat, the victim reasonably understands that an attack is imminent, this may constitute an assault

❑ A common assault

- is a crime when the defendant either puts another in fear of injury or actually commits a battery.
- there is no actual use of force or violence, there is only a threat to use force or violence.
- ***However, according to Art 560 Cr Code the crime of assault is not defined.***
- But the wording of the article indicates that the article covers both the assaults without use of actual violence and actual violence too, but without causing bodily injury or impairment of health.

E. Crimes against Women and Children:

1. Some Serious Crimes Committed Against Women and Children:

- Abortion
- Harmful Traditional Practices: **Arts 561-570**
- Bigamy Art 650-651
- Rape Art 620-628
- Maltreatment of Minors: Article 576
- Failure to Maintain: Article 658
- Failure to Bring Up: Article 659
- Traffic in Women and Minors ...

5.1. Constitutional Principles Relating to the Protection of Women and Children:

- ❑ Ethiopia has ratified international human rights conventions and treaties
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which provides the foundation for reproductive rights,
- The Tehran Proclamation, the Int'l Conference on Population and Development (ICPD),
- Fourth World Congress on Women, and the 2000 (UN) Summit are some of the major forums at w/c national gov'ts have expressed their commitment to improving the status of women in society.

- **Art 35** refers to **women's equality with men** and their rights to information and the capacity to be protected from the dangers of pregnancy and childbirth.
- **Art 35/4 of the Const:** "The State shall enforce the right of women to eliminate the influences of harmful customs."
- ❑ **Art 36/1 the Const of FDRE, 1995:** "Every child has the right:
 - To life;
 - To a name and nationality;
 - To know and be cared for by his or her parents or legal guardians;
 - Not to be subjected to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being;
 - To be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children."

Some Serious Crimes Committed Against Women and Children:

1.Abortion: Abortion is the termination of pregnancy before fetal viability, which is conventionally taken to be less than 28 weeks from the last normal menstrual period (LNMP).

❑ Where Abortion Is Legal:

- Art 551 lists out the conditions in w/c termination of pregnancy may be allowed. Abortion performed under those circumstances is not a crime.
- Art 552 provides for the Procedure of Terminating Pregnancy and the penalty of violating the Procedure.

2. Harmful Traditional Practices:

- include female circumcision/genital mutilation, facial scarring, and the force-feeding of women, early or forced marriage, and nutritional taboos, traditional practices associated with childbirth, dowry-related crimes, honor crimes, and the consequences of son preference.
- These practices adversely affect the health of women and children. Through controlling women's bodies for men's benefit and through ensuring the political and economic subordination of women, harmful traditional practices perpetuate the inferior status of women.
- **Prohibited Under the Cr Code of Ethiopia: Arts 561-570**

3. Bigamy:

- condition of having **two wives or two husbands** at the same time.
- The one who knowingly enters into a bigamous marriage is guilty of the crime of bigamy.
- Having several wives at the same time is called "**polygamy**" and being married to several husbands is "**polyandry**."
- Bigamy Jeopardizes Traditional Institution of Marriage:

❑ **Bigamy Under Ethiopian Family Law: Article 650-651**

- Art 650 requires the following essential elements to constitute a crime of bigamy:
 1. Intentionally contracting another marriage
 2. While still being tied by the bond of a valid marriage i.e. before the first union has been dissolved or annulled

❑ **Exception to Bigamy: Article 651**

- Marrying again during the subsistence of a valid marriage may not amount the crime of bigamy where it is in conformity with religious or traditional practices recognized by law.
- **Under Art 34/4 the Const** provides that, laws may be enacted to give recognition to religious and customary marriages.
- **Art 78(5) of the Const** provides that “...the Council of people’s Representatives and state councils can establish or give official recognition to religions and cultural courts.”
- **Art 651 of Cr code** and **Art. 34(5) FDRE Const** provides that adjudication of family disputes by religious and cultural laws is allowed ... if all parties to the dispute agree.

❑ But this goes contrary to CEDAW Art.5 (a)

- Since bigamy is an indignity to women and a violation of **CEDAW Art.5(a)** which requires the modification of cultural practices which are prejudicial to women, the revision of **Art 34/5 of the Const and Art 561 Cr Code** should be seriously considered in order to meet the standards of the international instruments.

❑ **Art. 588 of civ cod and FDRE Family code – Art 33- Bigamy I)** The dissolution of a bigamous marriage shall be ordered on the application of either of the spouses of the bigamous marriage or the public prosecutor.

❑ **Questions how the contradiction b/n:**

- Int'l law and national law b/n (CEDAW and Const & Cri cod) compromise.
- Domestic law (const and cr code and Federal RFC and Civ cod) compromise.

4. Rape:

- is an act of sexual intercourse w/t women's consent. It is a pervasive form of gender-based violence.
- is simply the ultimate weapon that men use to exercise their power over women.
- The offences of Rape in its very nature involves intention

❑ **Causes of Rape:** culture and tradition, poverty and war.

❑ **Consequences of Rape:**

1. Psychological Injury:
2. Effects on Physical Health: brings health problems to the victims.
3. Social Stigma: the victims lose their dignity

❑ **Art 35(4) Const** provides protection for women and children from crimes of raping and abduction.

• **Art 620 cr cod:** To establish a crime of raping the following essential elements should be proved:

- Compulsion of a woman to submit to sexual intercourse
- Outside the wedlock
- The compulsion may be by any of the following means:
 - Use of violence; or
 - Grave intimidation, or
 - After having rendered her unconscious or incapable of resistance

❑ **Marital or Spouse Rape:**

- ❑ The long held view that a husband can't be guilty of rape currently being challenged.
- ❑ ***The rationale for the concept*** "husband immunity" that marital relations involve mutual consent to sexual intercourse.
- marital rape is any case where someone uses violence or the threat of violence to force their wife or husband to have sex.
- In Ethiopia, rape is a criminal offence punishable with a prison sentence, but there is **no legal protection from rape within marriage.**

Maltreatment of Minors: Article 576

- Maltreatment of minors includes physical abuse, sexual abuse, neglect, and corporal punishment. Causing mental injury is also included in the physical abuse. Neglect means conduct involving failure to provide required care for a child, failure to protect a child from endangerment, or failure to provide appropriate supervision.

- The Ethiopian Cr Code deals with the crime of trafficking under two d/t heading basing on the purpose of this criminal conduct. They are;
 - Trafficking for the purpose of forced labor, Arts. 597-600
 - Traffic for the purposes of prostitution, Arts. 634-638

F. Crimes Against Property (Arts. 662-733)

A. Offences against life in property Art 662-715

B. Economic and commercial offences Art 616-733

1. Constitutional Principles Relating to Right to Property:

- **Art 40 of the Const:** The constitutional protections of state, public and private properties
- **Article 662 of the Cr Code** declares all interference with property and economic rights or rights capable of being calculated in money *forming a part of the property of another* as punishable conduct. **State, public and private** properties are protected under the Criminal Code.

❑ Crimes against property include one of the following essential elements:

- Damage to the rights of the owner or possessor in the **property rights(Art 663)**, e.g. disturbance of possession, disturbance of another's holdings etc.
or
- Damage to the rights of the owner or possessor in the property rights and **unlawful or unjustifiable enrichment to the criminal (Art 664)**, e.g. Theft, Robbery, misappropriation etc.

- **Theft**

- Theft is deemed to be committed where a person “with intent to obtain for himself or to procure for another an unlawful enrichment abstracts a movable or a thing detached from an immovable, the property of another, whether by taking and carrying, by direct appropriation or by having it pass indirectly to his own property.

- The provision has four constitutive elements:
 - The intention to obtain unlawful enrichment to oneself or procure same to another person (the *mens rea* of the offence).
 - The act of abstracting a movable object or a thing detached from an immovable (the *actus reus* of the offence).
 - The act of taking and carrying or direct appropriation or having it pass indirectly to his own property (*actus reus*).
 - The fact that the object is the property of another person (the *material circumstances*).

- These elements are in conformity with the elements of Article 665, which can be identified as
- intention of unlawful enrichment
- abstraction of an object
- appropriation
- the fact that the object belongs to another person

Robbery

- Robbery shares the constitutive ingredients of theft i.e. the intention of unlawful enrichment coupled with the abstraction and appropriation of property which belongs to another person, in addition to which it includes violence or threat.

- The constitutive elements of robbery as stipulated under Article 670 of the Criminal Code are:
 - intention to obtain for oneself or to procure to another an unlawful enrichment
 - having the objective of facilitating the abstraction of a movable object which belongs to another person
 - use of violence or grave intimidation towards a person against any resistance during or after the act of abstraction; or rendering such person incapable of resisting

Questions or comments



This is all about the Criminal II Module

Thank very much!!!