

UNIT-I

CRIMINAL RESPONSIBILITY

Introduction:

Defenses for criminal liability are circumstances that relieve an accused from conviction of guilt and its consequent penalty. These circumstances exempt a criminal from criminal liability or entitle him/her to a reduced punishment.

Defenses for criminal liability are incorporated in criminal law in different ways. Some are clearly provided by the law as defenses while others are not. The latter categories are special defenses. They are defenses that apply in particular crime. Special defenses could be non-fulfillment of essential conditions of the crimes provided in the special part of the Criminal Code.

The other categories of defenses are those expressly provided by law as defense. They are general defenses. They are applicable to all crimes. They are excuses and justifications. The Criminal Code of 2005 does not follow this dichotomy.

❖ Justification for Defences:

The basic reason for the existence of the defense is that it is not just to hold persons guilty for a crime for which the society does not blame them as a criminal.

It is the basic principle of criminal law that there is no crime unless all its elements are fulfilled. Article 23(2) of the Criminal Code provides that a crime is only completed when all its legal, material and moral ingredients are present. The absence of one of these ingredients necessarily implies the absence of crime.

Objectives of the unit

- Define criminal responsibility
- Know that an insane person is criminally irresponsible

- Know that a person who is criminally irresponsible for his acts shall not be punished
- Understand the conditions under which an adult may be regarded as irresponsible
- Know the legal effects of criminal irresponsibility.

Burden of Proof in Cases of Defences:

The general rule is that it is the duty of the prosecution to prove the accused's guilt and if at the end of and on the whole of the case, there is a reasonable doubt created by the evidence, given by either the prosecution or the defence, as to whether the accused had committed the crime or not, the accused is entitled to acquittal on the ground of benefit of doubt.

Section 1: Criminal Responsibility and Irresponsibility

Responsibility is a person's mental fitness to answer in a court for his/her action. Persons are criminally liable only if they are responsible for their acts. Thus, the court should not punish the criminals unless it finds them responsible for their acts. Therefore, to determine the guilt of persons it is necessary to ascertain their responsibility. 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. With regards to adults, it may arise from ***insanity*** or ***intoxication***, and with regards to ***infants***, it may arise from their 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. This means that of the important things necessary to make a person liable for punishment within the meaning of Art.49/1 are established the in the following way:

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. The Court may entertain such a doubt at any stage of the trial from the conduct of the accused on the trial.

Once the 'question' arises it becomes necessary to decide the facts in the light of Arts. 48 and 49. Then it becomes the burden of the defence to prove the accused is irresponsibility beyond reasonable doubt. Then the burden of the prosecution is only to raise a reasonable doubt in the mind of the Court that the accused is responsible and deserves punishment.

1.1. Absolute Irresponsibility: Art. 48

According to Art. 23 (3), a criminal offense is not punishable unless the accused is found guilty. Moreover, no person is liable to punishment unless he is found responsible for his acts (Art. 48).

1.1.1. Insanity:

Insanity is a complete defense to a criminal charge. It is based on the assumption that one who is insane has no mind and hence cannot have the necessary mens rea to commit a crime.

Insanity, according to medical science, is a disease of the mind, which impairs the mental faculty of man. In law, insanity means a disease of mind, which impairs the cognitive faculty, namely, the reasoning capacity of a

man to such an extent as to render him incapable of understanding the nature and consequences of his act.

The following are some of the short-lived insanity tests:

- The *irresistible impulse addition* to the M’Naghten test: A defendant may be acquitted if he or she was unable to control the action due to mental illness.
- The *Durham Rule*, or “*product test*” (1954): The defendant must be acquitted if the crime was the product of mental disease or defect.
- The *Currens Test* (1961): The defendant must be acquitted if he or she “lacked substantial capacity to conform his conduct to the requirements of the law...as a result of mental disease or defect.”

➤ **Essential Conditions to Establish the Defence of Insanity:**

Art. 48(2) requires the proof of the defence of irresponsibility i.e. the incapacity of the defendant to form a guilty intention basing on the following important things:

- 1. Nature of the incapacity:** That the accused is incapable of understanding the nature **or** consequences of his act **or** of regulating his conduct according to such understanding,
- 2. Reason of the incapacity:** That such incapacity is due to age, illness, abnormal delay in his development **or** deterioration of his mental faculties, (one of the causes specified under Art. 49 (1) i.e. a derangement or an abnormal or deficient condition).
- 3. Time of the incapacity:** That such incapacity exists **at the time of his act** that produced the consequences in question.

The Code resorted to one of the three principal methods of defining criminal responsibility, namely: The *biological method*, the *psychological method* and the *bio-psychological method*. The three methods differ on factors that deem to be the source of irresponsibility. The biological method consists in specifying a number of physical or mental disabilities or defects deemed to render the person concerned irresponsible. The psychological method on

the other hand consists in prescribing that a person incurs no liability that, at the time of the offense, was incapable of understanding the nature of his acts or of controlling himself. And according to the bio-psychological method, followed in many modern Codes including the Criminal Code of Ethiopia, a person is regarded as irresponsible only if, at the time of the commission of the crime, he was deprived of his mental faculties in consequence of certain biological defects.

Sub-Article 2 of the provision clearly provides the test of insanity. It

provides both the biological and psychological tests, which are enumerated below:

- **Age:** refers to old age, for senility may affect a person's mental faculties;
- **Illness:** refers to any form of mental as well as physical disease as a result of which a person is deprived of his mental faculties.
- **An abnormal delay in the offender's development,** which includes cases such as idiotism, cretinism, the consequences of deafness, dumbness sleeping sickness, and the like;
- **Deterioration of mental faculties** of the offender due to poison, intoxication by alcohol or drugs, hypnosis or **somnambulism**;

The sub-provision further cross-referred to the unlimited biological causes recognized under Article 49 as capable of affecting person's state of mind.

Regarding the psychological consequences in most legal systems two different mental conditions are recognized to claim exemption from criminal liability.

These are:

- a) the accused was incapable of knowing the nature of the act, owing to unsoundness of mind, or

b) the accused was precluded by reason of unsoundness of mind from understanding that what he was doing was either wrong or contrary to law.

In this regard, our law in the same sub-Article specifies three manifestations.

They are:

- inability to understand the nature of the act. For example, if person strikes another, and in consequence of an insane **delusion** he thinks that he is breaking a jar.
- inability to understand the consequences of the act for example a person may kill a child under an insane delusion that he is saving him from sin and sending him to heaven
- inability to regulate one's conduct according to such understanding (some suggests this implies the notion of 'irresistible impulse' which includes cases where the offender is deprived of the power of controlling his conduct/Graven) by disease.

These psychological failures can also be categorized into *lack of intelligence* and *absence of will power*. In the first category, due to some kind of disease the doer is deprived of minimum of intelligence, which should be present in a responsible person so as to enable him to know what he is doing. In the second category, the doer is deprived minimum of 'power of will', which should be presented in a responsible person so as to enable him to make a reasonable decision or to act in accordance therewith. For a person to be regarded as criminally irresponsible, it is not necessary that both his intelligence and volition should have been abolished. It is sufficient to show that the offender at the time of the act was totally deprived of either his intelligence or volition. Further, it is of no importance whether the biological causes are temporary or permanent nature. Only the presence of one type of disease at the time of the act is relevant.

1.1.2. Legal Effects of Criminal Irresponsibility:

The legal effects of criminal irresponsibility are of two kinds. One is that an irresponsible person incurs no liability since, according to sub-art. (1), “the criminal who is responsible for his acts alone liable to punishment. The other is that hand the law required the court to ensure the irresponsible person will not be any more a menace for others. . Therefore, sub-art. 3 authorizes the court to make orders under Arts. 129-131, whenever these measures are necessary for the treatment of the offender or the protection of the public or both.

1.2. Limited Responsibility: Art. 49

between insanity and sanity, there exists intermediary stages where an offenders faculties are affected to such an extent that, although he is certainly able to understand what he does and to act accordingly, it is equally certain that his intelligence or will-power is not that of a “normal” person and that his degree of guilt is consequently lesser than that of such a person.

Unlike irresponsible persons, who are for some biological reasons totally deprived of their mental faculties, semi-responsible offenders are persons who are for some biological reason only partially deprived of their understanding or volition.

1.2.1. Characteristics of Limited Responsibility

It was believed that some biological diseases or defects are less serious to cause absolute irresponsibility. Accordingly it was proposed that the biological causes of limited responsibility described under Art. 49, stated as a *derangement of the mind or understanding (e.g. hysteria), an arrested mental development (e.g. imbecility) and an abnormal or deficient condition (e.g. alcoholic intoxication)* do not have the effects specified under Art. 48. But according to the contemporary view, the causes and characteristic ingredients of limited responsibility are similar to those of irresponsibility.

1.2.2. Legal Effects of Limited Responsibility:

Like that of irresponsibility, the legal effects of limited responsibility are of two kinds:

1. The accused is liable to punishment since he was not irresponsible at the time of the act and he is capable of understanding the meaning and purpose of punishment; however, the penalty must be reduced because the offender's responsibility, and consequently his degree of guilt, is reduced. Since persons who are not fully responsible for their acts may, like irresponsible persons, be in need of medical treatment or threaten public safety, the court must, whenever the necessity is present make an order under Art. 130 or 131, as the case may be.

Thus, unlike other defenses, the legal effects of insanity, whether absolute or limited, shows that the court is duty bound to deal with the causes of the insanity. If the court orders confinement or compulsory treatment, that is for the benefit of the offender himself or the community in which the defendant is living.

Section.2. Intoxication-Intentional or Culpable Irresponsibility: Art. 50

Alcoholism may constitute a disease provided it has damaged the brain to an extent as to grossly impair the ability to make rational judgment and emotional responses.

2.1 Voluntary and Involuntary Intoxication:

Regarding intoxication, whether voluntary or involuntary, most penal codes flatly state that intoxication is not defense which is actually, not true. Involuntary intoxication, for example, because of prescription medication or coercion can constitute a defense. Where an offense is committed under intoxication caused due to fraud or coercion, the intoxicated man may not be said to have acted on his own accord, and therefore, is not responsible for the consequences of his acts. The justification for such a provision is based on the contention that the accused had himself not contributed to his drunkenness, which was not likely to be repeated as in case of voluntary drunkenness.

Most courts in America have held that even voluntary intoxication, when severe, may render a person incapable of forming certain specific types of criminal intent, which is an ingredient element of the crime in question. For example, murder in the first degree requires, among other things, **premeditation** and deliberation. Many courts have also held that if a defendant was so grossly intoxicated that he or she could not premeditate and deliberate, he or she can at best be found guilty of murder in the second degree. To that extent, the law on intoxication conforms to the *mens rea* principle. But American law does not absolve intoxicated perpetrators of all criminal liability: gross voluntary intoxication may simply lower the degree of the crime committed. (**Adler, Mueller and Laufer**)

Generally the development of the law on drunkenness has passed through the following three stages:

1. That insanity, whether produced by drunkenness or otherwise, is a defense. The distinction between the defense of insanity in the true sense caused by excessive drinking, and the defense of drunkenness, which produces a condition such that the drunken man's mind becomes incapable of forming specific intention, has been preserved throughout the case. The insane person cannot be convicted of a crime. There was no law that takes note of the cause of insanity. If actual insanity in fact supervenes as a result of alcoholic excess, it furnishes as complete an answer to a criminal charge as insanity induced by any other cause.

2. That evidence of drunkenness, which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts, proved in order to determine whether or not he had the intent.

3. That evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts. (**Gaur**)

The defense of drunkenness and its legal effects in Ethiopia is prescribed under Art. 50 and the discussion are followed here after. The provision is chiefly intended for persons who with some state of mind contravene the law while under voluntary influence of alcohol or drugs or any other means. It is based on the rule that intoxication is no defense if caused by the offenders' voluntary act.

The main deference between Art. 50 and 48, 49 is not the bio-psychological condition of the offender but it is the condition, that creates the irresponsible nature of the offender. Unlike the legally recognized causes under the preceding articles, under this article, it is the doer who puts himself into a condition of irresponsibility or of limited responsibility by means of alcohol or drugs or by any other means. Speaking objectively, the doer's condition at the time of the offence was that of a mentally deficient person and may lead to say he should be treated in the same manner as the mentally deficient a person regardless of the fact that he himself deliberately created this abnormal condition. But speaking subjectively, intent existed before the offence was committed, since the accused was capable of forming a specific intention prior to intoxicating himself. Under this condition, the person not only did he voluntarily place himself in an abnormal condition, but he did so in order to carry out a decision which he had freely **made**. This is also applicable to circumstances under which a person voluntarily places himself in a state of irresponsibility when he knows and accepts the possibility of doing wrong. Therefore, in the cases coming under this condition, the court must ensure that the case actually committed is that which the accused **directly** or **indirectly** intended when

he intoxicated himself. This is applicable in relation to both offenses of commission (if *A* drinks in order to kill *B*) or omission (if *A*, a soldier on leave drinks so as to disable himself from going back to his unit). Art. 50(1) supports the second conception, which prevents an accused benefiting from the provisions of Arts.48 and 49 on the sole ground that he committed an offence, while in an abnormal condition that was created by himself. Thus, the fault of the doer operates as an absolute prohibition from invoking Arts.48 and 49. Instead, in such cases, the offender may be convicted and sentenced as though he had been fully responsible at the time of the act.

The second condition by which an offender shall not be benefited from the provisions excluding or reducing the punishment is when a person who commits an offence in a state of partial or complete irresponsibility in which he placed himself, not for the purpose of committing an offence, but when he knew or should and could have known that he was apt to do wrong while being in an abnormal condition (Art.50/2). Under this sub-article, a person drinks or consume drugs, though he foresees, but rejects, the possibility of doing wrong or he is not, but should and could be aware that he may do wrong. This therefore is applicable to states of negligence—advertent and inadvertent. The implication here is that the doer will not be held liable if the wrong he has done is not punishable.

The third situation with which Art.50 deals is that of an accused who, having placed himself in a condition of complete irresponsibility commits or attempts to commit an offence with which he did not intend to commit; nor could and should he have foreseen the possibility of committing it. For instance a person may in a particular quite and cold evening staying home alone begin to drink with intent to get himself warm and relaxed but may get completely drunk and commit a punishable act. In such instances, the accused is not liable to punishment under sub-art.3, as the person has neither criminal intention nor criminal negligence existed before he

intoxicated himself. According to Art.57 (1), he should, therefore, go free because he is not guilty of the offence committed. However, the need to ensure the peace of the public justifies that the offender should be punished and should not be permitted to excuse himself on the ground that he did not mean to do any harm prior to getting drunk. Under sub-art.3, this conflict is solved by holding the doer not of the offence actually he committed but of a special offence against public safety (Art.491). Art.491 is based on the assumption that anyone who intoxicates himself is always a latent menace for others and that he is punishable as soon as he creates a concrete danger, i.e. he commits an offence.

The Defence of Intoxication At A Glance:

S u b- A rt .	State of the Defend ant	State Induc ed By	Crime Comm itted	Legal Conse quenc e
Ar t. 5 0/ 1	Absolut e or Limited irrespo nsibility	Own fault (Volun tary Intoxic ation)	Intenti onally (In order to...)	Fully liable to punish ment
Ar t 5	Absolut e or Limited	Own fault (Negli	Neglig ently	Punish able for neglige

0/2	irresponsible	guilt)		not commission of the crime
Art. 50/3	Absolute irresponsibility	Own fault	Accidentally (Neither contemplated nor intended)	Punishable under Art. 491 provided the crime is punishable with at least 1 year.
Art. 50/4	Absolute irresponsibility	No fault on his part (i.e. has been coerced)	While incapable of forming any mental element	Shall not be liable to punishment

2.1.1 Doubtful Cases (Art. 51 cr.c)

Although nowhere in the Code specifically said so, every accused is presumed to be responsible for his acts. Therefore, as a general rule, the alleging party need not prove that the accused was capable, at the time of the offence, of understanding what he was doing and of behaving accordingly. This presumption, however, is destroyed if doubt arises regarding the offender's mental stability. The court may fall in doubt about the responsibility of the accused as there are objective reasons to doubt or any of the conditions identified by law are found. And the court cannot proceed before clearing the doubt either through medical examination and inquiry into the character, antecedent and circumstances of the accused.

Section. 3. Infancy/Immaturity: Art. 52

Accordingly, the Criminal Code of Ethiopia deals with infancy (which ends at the age of nine years), adolescence (which extends from nine to fifteen years, this being the limit of penal majority), and an intermediary period extending between penal and civil majority, i.e., between fifteen and eighteen years of age.

It is also common in many jurisdictions to have different age groups for young offenders with different treatment and punishment prescribed.

3.1. Infancy under Ethiopian Law:

According to Art.52 of the Ethiopian Criminal Code, infants are completely exonerated from criminal provisions. The lower limit of penal majority is made nine years under this article. Therefore, the Ethiopian criminal code never applies to children who commit an offence before having completed their ninth year.

3.1.2. Classification of Young offenders under the Code:

Immaturity refers to inability to appreciate the nature and consequences of an act due to early age. It includes infancy, young criminal and persons in the transitory age.

3.1.2.1. Infancy

Infancy is the period extending from birth to what might be called criminal majority. The age limit that marks the end of infancy varies from one country to another. In our country, infancy ends at the attainment of ninth year (article 52). The infants who have not attained the age of nine years are exonerated from criminal liability.

3.1.2.2. Young Persons:

Young persons are persons whose age is between nine and fifteen (article 53(1)). Young persons do not enjoy complete immunity from criminal liability. They are considered responsible for their acts. However, the court may not treat young persons in the same manner as it does adults. The court orders the penalties and measures provided under article 157-168 rather than the punishments provided under the special part of the Criminal Code.

Young persons are criminally liable for two reasons. First, persons begin to understand the nature of their acts, to be able to form a decision and to keep to it between the age of nine and fifteen. During this period, their intelligence and volition develop and become gradually closer to those of adults. Secondly, the commission of a crime shows that the time has come to take action because no action has been taken at home or school or it has failed.

The objective of subjecting young persons to any action is to turn juveniles into useful citizens. Therefore, the primary aims of any action taken with respect to young persons are and must be education and correction.

3.1.2.3. Transitory Age:

The criminal responsibility and guilt of persons between the age of fifteen and eighteen years are determined as though they were an adult, but the punishment that may be ordered is not necessary that which would be ordered if they were adults. As a result, the court has three options. First, it may order any of the penalties applicable to adults and mitigate it according to article 179. However, the mitigation is not compulsory. In such case, the court may not sentence the criminal to death penalty. Second, the court

may order one of the special penalties applicable to young persons. Finally, the court may order special measures applicable to young criminals based on the conditions laid down under article 177.

3.2. Special Provisions Applicable to Young Persons: (Art. 157-168 cr. Cc)

Complete immunity from criminal liability is enjoyed only by infants and ceases to operate when they attain their tenth year. Thereafter and until they reach penal majority (i.e., when they attain their

sixteenth year), young offenders, known in the Code as “young persons”, are no longer exonerated from criminal provisions, though they may not be treated in the same manner as adults.

3.3. Reasons for Young Persons Criminal Liability

There are two basic reasons that underlie why young persons have to be held criminally liable. First, young persons are assumed to begin to understand the nature of their acts and able to form a decision and keep to it.

Second, the commission of an offence by them calls action by the

society because no action has been taken at home or at school or it has failed.

3.5 Measures for the Problem of the Young Criminals

Problem s of young persons	Meas ures	Articl es	Duration of Measure s
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1	Feeble minded ness, arrested develop ment,	Treatm ent	15 8	When the purpose is served or when the court ordered
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mental disease, epilepsy , addictio n to			or when the criminal attained 18 years (article
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	drink etc.			164(1))
2	Moral abandonment, corruption, absence of care and protection	Supervised education	15 9	When the purpose is served or when the court ordered or when the criminal attained 18 years (article 164(1))
3	Spending free hours and holidays with bad friends and places	Keeping the young criminal at home or school	16 1	The duration is fixed by the court (article 161)
4	Dangerous disposition, commission of	Admission to corrective institutions	16 2	Between one to five years or when the young criminal

grave crime	on		attains 18 years (article 164(2))
Any other problems	Reprimand and censure	16 0	No duration

The court may impose penalties on young criminals. These penalties as provided under article 166-168, are of two kinds. These are fine and imprisonment.

Unit Summary:

General defenses for criminal liability are circumstances that relieve an accused from conviction of guilt and its consequent penalty. These circumstances exempt a criminal from criminal liability or entitle him/her to a reduced punishment. These defences arise either due to negation of *mens rea* i.e. moral ingredient of crime in case of irresponsible persons. Insane persons, intoxicated persons and infants are exempted from criminal liability due to the fact that they lack the capacity to

form the mental element required for attaching any criminal liability.

The defence of insanity includes two different grounds. There are, absolute irresponsibility under Art 48 and limited responsibility under Art 49. In case of absolute irresponsibility the accused is absolutely immune from any criminal liability but shall be subjected to special treatment as provided under Arts 129-132. Where as, in case of limited responsibility the court shall freely mitigate his penalty as per the provisions of Art 180. In addition to that the accused is subject to the treatment specifies under Arts 129-133.

The defence of intoxication has been dealt with in the Criminal Code under Art 50. Involuntary intoxication leading to an absolute irresponsibility is an absolute immunity under Art 50/4. If the absolute irresponsibility is the result of coercion or according to a strategy for which the accused has no fault it amounts to in voluntary intoxication. Voluntary intoxication

as a basic rule is no defence for criminal liability. But it might become a qualified defence under the circumstances mentioned in Sub-articles (2) and (3) of Art 50. Where a person is voluntarily intoxicated *in order* to commit a crime, the person becomes completely liable for punishment whether the irresponsibility produced due to intoxication is an absolute one or partial (Art 50/1). However if the voluntary intoxication falls under Sub-Art.(2) the person is liable for negligent commission of the crime as per Art 59.

Infancy under Ethiopian Criminal Code has been dealt with very carefully. The young offenders fall under three categories: infants, young offenders and of intermediary age group. Infants under nine years of age are completely exempt from any criminal liability. Young offenders falling in between nine and 15 years are liable criminally but are not punished on par with adult criminals. The Code designed

special types of measures with curative, educational and corrective values. Young persons above the age of 15 but below 18 fall under intermediary age group. They are normally liable to penalties as adults but in cases of abnormal delay in mental development the measures designed for the below 15 may be applied to them.

UNIT-II

AFFIRMATIVE DEFENSES

Objectives:

- Understand the meaning and essence of affirmative defenses
- Identify the categories of affirmative defenses
- To make distinction between absolute defenses and limited defenses

Discuss the ideal time in the process where the defenses could have been invoked.

Section.1. Lawful, Justifiable and Excusable Acts:

- **The Ethiopian Criminal Code on the Subject:**

According to Art.58 (2), a person who intentionally commits an offence is always punishable except where he acts in circumstances providing him with a justification or an excuse that is in any of the circumstances defined in Arts.68-81.

The definition and classification of lawful, justifiable and excusable acts sometimes vary. In some jurisdictions, for example, the only distinction is between justifications and excuses (e.g. France). The first one comprises of acts required or authorized by law, legitimate defense, necessary acts and acts done with the consent of the injured party, while the second ones, which are said to be either *absolutoires* or *attendantes* according to their effect on the penalty, are similar to the circumstances with the Ethiopian Code regards as general or extenuating circumstances.

The Ethiopian Code does not follow any of the above-mentioned models but provides for three classes of acts with respect to

which the ordinary rules concerning criminal guilt do not apply or fully apply, namely lawful acts (acts done in circumstances which legitimate them), justifiable acts (acts done in circumstances excluding intentional guilt) and excusable acts (acts done in circumstances reducing the degree of guilt).

1.1. Lawful Acts

A lawful act is an act, which a person is legally authorized to do. Even in some circumstances the law provides more than authorization and obliges a person to behave in contradiction to the law.

The defense of lawful acts therefore provides a counter-law to the prohibitory law.

On the other hand, the availability of the defense is conditioned upon the fulfillment of two conditions. Firstly, one cannot claim protection under the defense unless he/she is one who has acquired the status required in the law.

Secondly, the mere fact of having the status envisaged in a law does not entitle the person to act in contradiction to the prohibitory law. Instead the objective circumstances that necessitate the action in question must be present. Therefore, despite the fact that the doer is one envisaged in the law, his act would remain a punishable crime so long as it is committed in the absence of objective circumstances that necessitate the act.

Acts Required or Authorized by Law: Art.68

Under Art.68 of the Criminal Code of Ethiopia, lawful acts comprise of particular acts connected with:

- A. Public, state or military duties,
- B. Acts done in the exercise of a right of correction or discipline, and
- C. Acts of private justice.

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

The defense is nowhere applied more appropriately than in conjunction with the defense of public duty. Furthermore 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. However, the Art.68 is silent as to what constitutes “acts in respect to public duties”.

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.

B. 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.

for instance, Art.2039(c) of the Civil Code impliedly authorizing the parents, guardians and masters to use reasonable use of force for the purposes of chastisement. Accordingly, Art.576/3 of the Criminal Code dealing with maltreatment of minors expressly limits the right of correction or discipline. Thus, there shall be 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.

C. Exercising Private Rights:

The last type of lawful acts expressly provided under this defense is that of acts done in exercising private rights recognized by law, the acts that are sometimes referred to acts of

private justice. Thus, Arts.1148 and 2076(2) are just some provisions of the Civil Code that justify the protective actions of a holder of a thing and a possessor of a land however their action may cause harm to others. In both cases, the doer is not guilty of an offense of bodily injury or damage to property, since the law expressly authorizes him to act as he does.

1.2 Professional Duty: Art. 69

Certain socially beneficial professional duties can only be discharged in contravention to what is prohibited by law. In the absence permission by law to contradict itself any act done in the exercise of such professional duties would thus remain criminal and punishable.

Acts done in the exercise of a professional duty come within the general category of acts authorized by law.

1.2.1. Defining 'Profession':

Only a person entitled to practice a profession is exempted from criminal liability. Thus, if an eye-

doctor should cause the death of a person in attempting to remove the appendix of this person, he could obviously not be deemed to have acted in the exercise of his profession, and would therefore not be justified under Art.69. Similarly only an advocate filing a petition for divorce on the ground of adultery does not commit defamation; only a surgeon performing an operation does not commit an offence of bodily injury and only a mechanic dismantling a car entrusted to him for repair may not be punished for damage to property. In all the above cases, only a person who acquired the required profession is allowed in the law to perform the acts.

1.2.2. Justification for a Harm Caused by a Person in the Exercise of Professional Duty:

Whenever a person is exempted from criminal liability for the acts he has done in discharge of his professional duty, the justifications is not the fact that the doer carries out a professional duty; it is rather the fact that the act is ordered by

law. If it were not due to the law, the doer would remain criminally liable regardless of the fact that the act is necessary in carrying out his profession.

The law not only authorizes some acts to be done in the exercise of some professions but also prescribe the conditions under which the authorization is valid.

Any act, though may be required under the profession is therefore not justified unless it is done only within the legal boundary set for such acts in legislations pertaining to each act. In this respect, even the consent of the person to whom harm is done may not be regarded as the source of justification.

1.2.3 Conditions where

Professional Duty is not

Justified:

Art.69 applies only when the doer acts in accordance with *the accepted practice of the profession* and does not commit *any grave professional fault*.

2.3 Consent As a Defence: Art. 70

This provision is inserted by the Revised Criminal Code. The previous Penal Code under its Arty 66 categorically stated that consent is no defence for criminal liability. But in fact that was a technically wrong statement since there are crimes such as rape, theft etc. for which 'lack of consent' is an essential element of the crime.

However, consent is a qualified immunity to criminal liability.

Limitation to Consent as a Defence: Art 70/2 places an important limitation to this defence. Consenting to donate any of his bodily parts while alive or after his death or his body after his death for any commercial purposes is absolutely prohibited. This is a punishable crime under Art 573.

1.3.Coercion/Duress: Arts. 71 & 72

Generally law, and in particular criminal law is always expected to attempt regulating the behaviors of only an average person. The law shall expect neither extreme

heroism from individuals nor encourage cowardice. It shall give due notice of an average person the criminal behaviors together with the consequential penalties.

One common circumstance where one disregards the law out of his free will is when he/she is compelled by another to violate the law. In these situations the criminal law lets them go unpunished.

The defense of coercion is therefore, a defense that the actor engaged in the conduct charged to constitute an offense because he is coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.

A coerced person is justified first, because like an insane person or intoxicated person he is totally deprived of his freedom of choice and therefore equally deserves the same treatment as long as the loss of will power is involuntary.

- **The Defense of Coercion under Ethiopian Law:**

- 1.4.1. Absolute Coercion:**

Regarding the degree of coercion required to justify the wrongful act of a person under compulsion, Art.71 requires that to be 'absolute'. Therefore, coercion is no defense unless it is absolute.

1.4.2. Coercion under Art.71 can be of either physical or moral. Physical coercion is "violence exercised by someone in consequence of which a human agent is materially obliged to commit an offence".

Moral coercion on the other hand is exercised when an act is which does not render the agent's movements involuntary is done, but deprives him of his freedom of choice. It is usually in the form of threats intended to break the will of a person and make him yield to the demands of the person exercising the coercion.

- 1.4.3. Resistible Coercion:**

Resistible coercion, with which Art.72 deals without distinguishing

whether it is of a physical or moral nature, is a coercion of intensity such that the coerced person could reasonably be expected “to resist or avoid committing the act”. In other words, Art.72 is applicable when the coerced person, by reason of his strength, age, or sex and having regard to the strength, age or sex of the person exercising the coercion, is capable of resisting the coercion. Coercion can be resistible when it is physical as well as moral.

1.4. Superior/Subordinate

Relation: Arts. 73 & 74

The problem of superior subordinate relation arises when a person commits an offense on the order of someone to whom he owes obedience. This can happen in numerous occasions. It can happen for example in family administration between parents and children, and in the previous times between landlords and the serf. Arts.73/74 are not applicable with regard to orders given by any “master”.

Arts.73/74 on the other hand are applicable only to specific types of

relation, i.e. administrative and military superior subordinate relation.

1.5.1. Responsibility of a

Person Giving an Order:

In both administrative and military superior subordinate relation, the orders that can be given to a superior are unlimited. Instead they are restricted to fit two essential conditions. Firstly, orders may be given only with regard to the so called “service matters”, that is matters concerning the business transacted by the organization to which the superior and subordinate belong. An order of hospital administrator to evict residents from certain area is therefore susceptible of being regarded as unlawful and punishable. The same is true with an order of a higher rank military officer to release tons of wheat stored for state of emergency. Secondly, only such acts may be ordered as must be done so that the said business is properly transacted. If the act ordered has little or no significance at all to the

proper functioning of the transaction in question, the likelihood for unlawfulness is higher. Generally, a superior, who gives an order with full knowledge of the fact that the above conditions are not fulfilled, may not invoke the defense mentioned under 68 and escape punishment since the act ordered is neither “in respect of public, state or military duties” nor “within the limits permitted by law”.

Besides, for Art.73 to be applicable, it is not required that the superior should be a high-ranking official or military commander. It rather suffices that he/she should be of a higher rank than the person executing the order, i.e. he/she should have the right to give orders and that his subordinate should have corresponding duty to obey. He who gives the order must, therefore, be a person in authority. But his being in a position to give orders does not entitle him to demand from his subordinates that

he should act in violation of the law.

Further, the superior who orders an act to be done, which is unlawful, is liable only for those acts. This is to say that, if the subordinate exceeds or departs from the order, the superior is not answerable for the excess or departure unless he directly or indirectly intended it to occur.

1.5.2. Responsibility of the Subordinate:

Art.74, the subordinate who has carried out an order to commit an offense shall be liable to punishment on the following three conditions:

- a) When the subordinate is aware of the illegal nature of the order,
- b) When the subordinate knows that the order is given without authority, or
- c) When the subordinate knows the criminal nature of the act ordered,

In the first condition it is a subordinate who knows that his superior is not allowed by law to give an order of the type in question.

Section: 2. Necessity and Legitimate Defence:

▪ General State of Necessity: Arts.75-76

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. It is sometimes called an “act of God,” and it may be a fire, a storm, and an earthquake, or a shipwreck that compels the actor to do something that otherwise would be illegal.

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

2.1.1 Scope of the Defense:

2.1.1.2. Conditions of the Defense:

The defense of necessity is not available unless some basic requirements, which are enumerated below are not satisfied. It is true that, whichever of the conditions below is missing; the justification of necessity may not be invoked. Thus, some of the following conditions are expressed under Art.75 and Art.76 and others are just implied from.

a) There must be a Danger:

b) The Danger must be Imminent:

c) The Danger must be Serious:

d) The Danger Could Not Otherwise Be Averted:

e) The Harm must be Proportional:

f) 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.

At any rate, if the requirements provided both under Art.75 and Art.76, either expressly or impliedly, are met, necessity can successfully be raised as a defense. The types of harms avoided and caused are irrelevant. If the requirements are, however, not satisfied, the defense does not exist. Instead, excess of necessity may exist like if the state of necessity does not exist because the danger is not imminent, or is created by the fault of the actor, or the measure taken is in excess of what is necessary. Excess of necessity entitles the actor only to a mitigated penalty.

2.2 Legitimate Defense: Arts. 78, 79

Legitimate defense is one specific type of necessity, and therefore has much in common. In both cases, a situation of distress arises which cannot be solved otherwise than by the doing of harm. But there also some fundamental difference between general state of necessity and legitimate defense. Some of the differences are as follows:

(i) necessity is basically one of aggression while an act under Art 78 is one of defense,

(ii) the doer of a necessary act, unlike a person who defends himself, is not resisting an unlawful assault.

(iii) 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. This entails that in the first case it is **strength**, while in the second case it is the **law**, which has the last word.

From whichever angle one looks at it, the position, therefore, is not the same in both cases. Hence, the fact is that, in the criminal law, the requirements of self-defense are not identical to those of necessity.

2.2.1. Legitimate Defense under Ethiopian Law

▪ Conditions Required for the Defence;

The right to repulse attacks, which are contrary to the law, is not

unrestricted. Its exercise is governed by the following conditions.

1. There must be an imminent attack or a threat of an attack
2. The attack must be unlawful
3. The attack must be proportional
4. The attack could not have been otherwise averted

5. Rights Protected:

Legitimate defense exists against attacks endangering *any right*, i.e. in Jherig's terms, any interest is protected by law, such as *life, bodily integrity, honour, sexual liberty or property*.

2.2.3. Excess in Self-Defense:

Under Art.79, the defender is deemed to exceed the limits of legitimate defense in the following two conditions:

1. Uses disproportionate means. (Want of proportionality requirement):

What Art.79 (1) actually implies, is that an act of defense is not lawful when the defender causes more harm than that which he had

reason to fear, i.e. when the defense is, "manifestly excessive"

2. Does more than should reasonably be done to avert the danger (want of necessity requirement):

The second case in which an act of defense is unlawful is that where the defender goes beyond what is necessary to repel the unlawful assault. Although there may appear to be no difference between this situation and the preceding one, what is meant is that the doer is not justified whether the excess accompanies or follows the attack. In the first case, the defender is punishable because the defense itself is disproportionate while in the second case he is punishable because he continues to do harm even though this is not necessary since the assault has already been repelled in an adequate manner.

Section. 3. Mistake of Fact, Mistake of Law and Ignorance of law:

Arts.80&81

3.1 Mistake of Fact and Mistake of Law:

Mistake or ignorance of fact can serve as a defense if it negates the state of mind (mens rea) required for the crime. The mistake or ignorance must be both honest and reasonable.

Under Art.80, a mistake must be one of fact and not of law.

3.1. 1The Meaning of 'Fact':

A "fact" within the meaning of Art.80 is any event, circumstance or quality of a material of personal nature the existence or non-existence of which affects the court's decision on guilt and /or sentence.

A fact may consists of:

1. a phenomenon perceptible by the sense. (e.g. the doer mistakes arsenic for sugar) or
2. a state of mind (e.g. the doer believes that someone intends to kill him)

3.1.2. When Mistake of Fact May be Invoked (Applicable):

According to Art. 80 of the criminal code, a person who commits an offence in consequences of erroneous

appreciation of the true facts of the situation must be tried as though the situation, which he believes to exist, did actually exist. Art 58 (3) of the criminal code supports this rule stating that " 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 possibility, subject to the provisions governing negligence " because the " awareness" (mens rea) component of intentional guilt is vitiated by the mistake.

Article 80 therefore may be invoked on the following cases:

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.

Mistakes in doing an act of the nature defined in Art.68: as imaginary necessity; imaginary legitimate defense.

This Article excuses a person who has done what by law is an

offence, under a misconception of facts, leading him to believe in good faith that he was commanded by law to do it.

3. When the actor is unaware of the fact that he acts in aggravating circumstances:

Example

A insults B, not knowing that the latter is a public servant on duty. In this case, A is not liable to the aggravated punishment as he does not know of the fact in consequences of which the penalty is increased, namely the special status the victim has.

3.1.3. Negligence (Bad-faith): Punishable

According to Art.80 of the criminal code, a person who commits an offence in consequences of erroneous appreciation of the true facts of the situation shall be excluded from punishment but, the doer may nonetheless be punished for having committed this offence because 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), second aliena).

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

The doer of an act who is free from any punishment due to the mistake of fact is not free from punishment of another offence which in themselves constitute a separate offence Art.80 (2).

Example I

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 offence of public indecency intentionally committed even though he is not punishable for sexual intercourse.

Example II

Suppose A, deliberately fails to come to the assistance of B, whom he has wounded in a state of imaginary legitimate defense that brought about by an unavoidable mistake or uses, in defending himself in such a state, an unlicensed gun he is punishable for having acted in violation the relevant provision in the special

part, even though he is not punishable for having, caused bodily injury.

3.1.5. Mistake of the Identity of the Victim or the Objective of the Offense:

According to Art.80 (3), a mistake as to a fact, such as a mistake concerning the identity of the victim or the object of the offense 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 that which Art.80 is concerned with.

Illustration:

'A' waits near B's house with intention of shooting him when he comes home. Seeing someone approaching the house, he shoots C thinking that it is B. In this case, A is guilty of intentional homicide and he cannot invoke Art.80. Since the identity of human being one kills is not an ingredient of the offense of homicide.

3.2. Mistake of Law and Ignorance of Law:

Mistake from the point of view of the law in a criminal case is no defense.

Mistake of law ordinarily means mistake as to the existence of any law on a relevant subject as well as mistake as to what the law is.

Ignorance of the law has rarely been sufficient to excuse criminal conduct. It is permitted as a defense only in situation in which the law is not widely known and a person cannot be expected to be aware of a particular law. These situations are not common because citizens are generally expected to know the law and a claim of ignorance could be used to excuse virtually any type of illegal conduct.

3.2.1. Schools of Law Regarding the Rule of Ignorance of Law is No Excuse:

The question of whether mistake of law and ignorance of law is excusable has been a controversial issue for a long time. With regards

to this question, there are two main schools of thought.

a) The first school supports the general rule: that states "Ignorance of Law is no Excuse."

According to this school of thought an offender is not justified by his unawareness or misconception of a legal provision. Whether or not he actually knows the law is immaterial for he is in any event conclusively presumed to know it. This presumption will make the courts free from ascertaining whether the offender knows his act is contrary to the law or not which is almost impossible. This presumption is laid down in the general interest, regardless of the fact that the consequences may be hardship upon individuals, so that social peace and order be not constantly disrupted with impunity. "Every person must be taken to be cognizant of the law; otherwise there is no knowing to what extent the excuse of ignorance might be carried". For purposes of criminal liability, therefore, it is irrelevant whether

the doer is aware of the unlawfulness of his act or not.

b) The second school supports an exception to the general rule and states: "Ignorance of Law May be an Excuse in Certain Circumstances"

According to this school of thought, the maxim "ignorance of law is not an excuse" It is not acceptable on the following grounds:

- (1) The complexities of modern life and the consequent increase in the volume of laws, makes it completely impossible for anyone to know the laws, be it be the laws of his own country, let alone to understand them.
- (2) It is inconsistent with the principle "nulla poena sine culpa" (no penalty without intentional guilty) upon which so many modern codes, including Ethiopian criminal code, are based.

Thus a mistake of law, like a mistake of fact, affects the "knowledge" component of intentional guilt. When it entails that "there is no criminal intention" (Art.80 (1) second

aliena), it should produce the same juridical effects as a mistake of fact.

Unit Summary:

Defenses for criminal liability are circumstances that relieve an accused from conviction of guilt and its consequent penalty. These circumstances exempt a criminal from criminal liability or entitle him/her to a reduced punishment.

Criminal law recognizes two categories of defenses for criminal liability. These are special defenses and general defenses. Although our Criminal Code does not follow this dichotomy, general defenses are categorized into justifications and excuses. Criminal law provides for defenses because of two main reasons. First, justice requires the provisions of defenses for certain criminals. Secondly, a crime is not complete when there are defenses available to the accused.

Excuses are the defects and unusual conditions of the criminal during the commission of the crime. Thus, if persons commit crime unwillingly, without

understanding the nature and consequences of their act, with mistaken belief of facts or law, the law excuses them from criminal liability. In the cases of the excuses, the focus is on the individual criminal rather than on the crime committed.

Justifications are another category of defense for criminal liability. In cases of justifications, there are preliminary conditions that enable the doer of the act to take necessary and proportionate action. Thus, when there is an attack on legally protected rights, the steps taken to reverse the attack is justifiable act. Similarly, if the persons found themselves in imminent and serious danger and their only choice is to avoid this situation by committing a crime, their act is justifiable if they have chosen the lesser harm. In justifications, the focus is on the act rather than on the criminal. The society encourages those acts. Justifications include acts required or authorized by law, legitimate defense, necessity and professional duty.

Persons who raise defenses for criminal liability in the courts of law admit that they have done the crime that they are charged with. However, they claim that their acts are justifiable or excusable in the eyes of the law because of the conditions of the criminal and circumstances in which they are committed.

UNIT-III

CRIMINAL PUNISHMENT AND ITS APPLICATION

Introduction:

In this unit, you will study how a court passes sentence or penalty on an accused that is found guilty beyond reasonable doubt. 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 because punishment is a very decisive step on the life, liberty and property rights of the accused.

Objectives:

- Define and understand the purposes of punishment in general and as it is incorporated in the Criminal Code;
- Know the different types of punishment incorporated in our Criminal Code and their application;
- Identify the principles guiding the determination of punishment;
- Identify the circumstances which may lead to the reduction of penalty ((extenuating circumstances); and
- Identify the circumstances which may lead to the increase of penalty (aggravating circumstances).

Section. 1. Definition and Purpose of punishment:

1.1. Definition of Punishment:

It is not easy to give a precise definition to the word “punishment”. since because its meaning is highly interrelated with what is considered to be the purpose of punishment. In this regard punishment could be taken to mean the major mechanism by which the purposes of criminal law are achieved.

But let us try to understand some conceptions about the meaning of the term punishment. Broadly speaking punishment is the response of the society to socially dangerous behavior. It is intended to make the offender no more dangerous to the integrity of the society. But if it is not imposed according to certain reasonable principles it might even produce unwanted effects. "Punishment in all its forms is a loss of rights or advantages consequent on a breach of law. When it loses this quality it degenerates into an arbitrary act of violence that can produce nothing but bad social effects."

1.2. Purpose of Punishment:

1.2.1. Retribution:

Punishment satisfies the feeling of revenge.

It largely stems from the Biblical saying of "an eye for an eye: a tooth for tooth; and life for life".

1.2.2. Deterrence:

The purpose of the punishment is to deter the criminal from committing crime in future and to

set as an example to the prospective criminals.

Punishment serves as deterrence in two ways:

A. General Deterrence:

The punishment of one criminal and the publicity given to it are assumed to discourage other potential law breakers.

B. Specific / Individual Deterrence:

Punishment of the criminal is assumed to keep that specific criminal from committing other crimes in the future. Some theories assume that criminals lack internal inhibitors, and hence unpleasant sanctions must be used to teach them a lesson.

1.2.3.

Prevention/Incapacitation:

According to this conception, the purpose of punishment 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.

1.2.4. Reformation /Rehabilitations:

Punishment the purpose of which is to change the character of the offender is known as reformatory punishment.

This theory is also known as corrective or rehabilitative theory'. Reformation means "the effort to restore a man to society as a better and wiser man and as a good citizen."

Rehabilitative element of the punishment includes restoration of the criminal to effectiveness or normal life by training etc. In modern time's reformatory measures are adopted in cases of juvenile offenders. In prison they are given some education and are subjected to some such prison programs so that they can learn some kind of work which may help them in earning their livelihood after coming out of the prison.

1.2.5. The Integrative view:

It is now recognized that 'the prevention of crime and protection of society' are ends asserted by everyone. Thus, an inclusive theory' which is a cultivation of all

the elements of retribution, deterrence, prevention and reformation has been gaining ground in recent years.

Purposes of Punishment under the Criminal Code of 2004:/Art. 1/2 of cr.c

Further, the purposes of deterrence, prevention, reformation and rehabilitation are specifically mentioned in the provisions relating to different types of punishments. Let us see some of them:

Art. 87 The Criminal Punishment And Its Application- Principle.

Article. 107: Substitution of Compulsory Labour for Simple Imprisonment.

Article. 108 Rigorous Imprisonment.

Art. 190 Conditional Suspension of Penalty:

Now, let us find the provisions of the Code which advocate for the principle of individualization of punishment.

Art.88 Calculation of Sentence.

Sub. Art (2)"The penalty shall be determined according to the degree of individual guilt, taking in to account the dangerous disposition of the criminal, his antecedents, motive and purpose, his personal circumstances and standard of education, as well as the gravity of the crime and the circumstances of its commission."

1.2. The Principle of Individualization of Punishment:

2. universalization of punishment is impossible. Therefore, we have to study the criminal before prescribing the proper form of punishment to him according to his physical, social, educational or cultural make-up to design a punishment that suits him perfectly to achieve the specific objectives of criminal justice. Modern criminal law, therefore, emphasizes up on the individualization of punishment although there are difficulties in its implementation.

Section.2. Kinds Of Punishments:

The Criminal Code carefully designs and prescribes punishments for crimes of various kinds and criminals of various categories.

Thus, there are three different sets of punishments under the code.

➤ Ordinary punishments applicable to Adults -Book II, Title I, Articles 90-156.

➤ Measures and penalties applicable to young persons-Book II, Title I Articles 57-177.

➤ Penalties and measures applicable to Petty offences-Petty Code, Book VII Title II Articles 746-764.

Punishment applicable to adults:

We find three categories of punishments mentioned in Articles 90-156:

I. Principal penalties

II. Secondary penalties

III. Special measures applicable to Adults

2.1. Principal Penalties

Principal penalties can be put under the following heads:

➤ Pecuniary Penalties-art. 90-102.

➤ Punishments Restricting or Depriving Liberty - Art. 103-116

➤ Death Penalty – Art. 117-120.

2.1.1. Pecuniary Penalties:

The Criminal Code includes the following types of penalties which are payable in terms of money:

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

❖ In case the Criminal is a

Natural Person:

- The degree of guilt.
- His/her financial condition
- His/her family responsibilities
 - His/her occupation and earning
- His/her age and health.
- His/her age and health.

❖ In case the Criminal is a Juridical Person:

Where a juridical person (Art. 90(3)) such as a corporation is convicted of a crime punishable by only imprisonment it shall be converted in to fine.

B. Confiscation of Property: Art.98

‘Confiscation’ means, “appropriation of private property to the public treasury by way of penalty.” The Court may order

confiscation any of the following properties of the criminal:

- o His estate or part of his estate.
- o Any property of the criminal:
 - Acquired in the commission of the crime directly or indirectly.
 - Acquired lawfully by the criminal, if necessary.

• Property Exempt from Confiscation:

Sub. Art (3) 98 exempts the following properties of the criminal from confiscation:

➤ Articles necessary for the livelihood of the criminal and his family, include:

- domestic articles normally in use,
- instruments of trade or profession and agricultural implements;
- Food stuffs and money as are necessary for the support of the family of the criminal for a period of not less than 6 months or for a longer period that the court regards just and reasonable having regard to the circumstances.

C. Sequestration of property:

‘Sequestration’, is ‘a legal process consisting of temporary deprivation of a person or his property, until the claims on such property are settled or to make him to do or abstain from doing an act within a specified time.” This penalty is resorted to in the case of specific category of crimes mentioned in Art 99, namely:

- Conspiring or engaging in hostile acts against the constitutional order, or,
- Conspiring or engaging in hostile acts against the internal and external security of the state.

▪ **Sequestration may be ordered subject to the following conditions:**

- The criminal should have been convicted and sentenced in his absence,
- Sequestration of the property of the criminal may be ordered in addition to any other penalty.

The properties of the criminal which are exempted from confiscation under Art. 98(3) are also exempt from sequestration.

D. Other Pecuniary Effects:

The pecuniary penalties include the following ‘other pecuniary effects’. These are:

1. Forfeiture of material benefits to the state
2. Compensation for damages caused to the victim.
 - a. To be paid by the criminal Art.101.
 - b. To be paid from the proceeds of sale of confiscated property, etc. Art 102.

The following are the important points relating to these pecuniary effects:

❖ **Forfeiture to the state:**

Any material benefits given or intended to be given to a criminal to commit a crime shall be forfeited to the state. (Art.100). If such materials do not exist in the form they are acquired, the person who received them shall be ordered to refund their value. (Art. 100(1))

Forfeiture of the ‘crime proceeds’ to the state is subject to the following provided by Art. 100(2):

- Any fruits of a crime shall be returned to the owner or any other claimant.

- Where the owner of such property recovered under sub. Art(1), is not found the following steps shall be taken by the court:
- o A notice shall be published notifying the recovery of such property.
- o In case the owner or other claimant of the property does not appear to claim them within 5 years from the date of publication of notice, the fruits of crime shall be forfeited to the state.
- o If such property is a perishable property it shall be sold in accordance with the usual procedure. The money shall be entrusted to a competent authority for a period not exceeding 5 years. After this period it shall be forfeited to the state(Art 100(2))

❖ **Compensation to the Injured:**
Art. 101

A. To Be Paid by the Criminal or Those Liable on His Behalf:

Article.101. intends to compensate the injured party for the 'damage' he suffered. 'Damage' means "loss or injury to person or property."

2.1.2. Penalties Resulting in Restriction or Loss of Liberty:

Compulsory Labour:

In cases of minor crimes which are punishable with simple imprisonment for a term not exceeding 6 months; the court may sentence the criminal to compulsory labour with the following variations:

- Compulsory labour with deduction of wages to the benefit of the state, (Art, 103)
- Compulsory labour with restriction of personal liberty (Art. 104)

Imprisonment:

There are two kinds of imprisonment. These are:

1. Simple Imprisonment

2. Rigorous

Imprisonment.

'Imprisonment', as a punishment, is defined as the deprivation of the liberty of the criminal by detaining him in prison. The expression 'imprison' literally means, to confine, to incarcerate or to deprive one of his liberty.

1. Simple Imprisonment:

The rules relating to simple imprisonment are laid down in Articles. 106 and 107 as follows:

- The sentence is applicable to less serious crimes which are committed by persons who are not serious dangers to the society.
- The duration of this sentence ranges shall be fixed by the court in its judgment. The period shall be:

Normally, ten days minimum and three years maximum.

Exceptionally, it may extend up to five years under the following circumstances:

- o Where it is prescribed so by the Special Part of the Code owing to the gravity of the crime, or
- o Where there are concurrent crimes punishable with simple imprisonment, or
- o Where the criminal has been punished repeatedly.
- o The sentence of simple imprisonment shall be served in a prison which is specially kept for the purpose of simple imprisonment

- o In certain cases simple imprisonment may be substituted by compulsory labour. For two important reasons substitution may be given (Art.107):

- o If by reason of local administrative difficulties, the execution of the sentence of simple imprisonment is not possible.

- o If it is found that the carrying out of such sentence is not conducive to the reform or the rehabilitation of the criminal.

- Such substitution is possible only in respect to crimes for which the special part of the code provides for a term of simple imprisonment not exceeding six months.

- The substitution of simple imprisonment by compulsory labour under Art. 107 is possible though no such reference is made under the special part of the Criminal Code.

2. Rigorous Imprisonment:

‘Rigour’ here means ‘the quality of being strict.’ Art.108 expressly speaks about the nature of the rigorous imprisonment, but not

very clearly. It says that this sentence is intended to provide for:

- A strict confinement of the criminal,
- Special protection to society, and
- The punishment and rehabilitation of the criminal.
- **The duration of rigorous imprisonment is:**
- **Normally**, ranges from a minimum of one year to twenty five years.
- **Exceptionally**, it may be “for life”, where it is expressly laid down by law (Art. 108(1)).
- The sentence of rigorous imprisonment shall be served in those prisons which are established for the purpose. (Art.108(2)).

❖ **Provisions Common for both ‘Simple’ and ‘Rigorous’ Imprisonments:**

Articles 109-116 lay down the following provisions which are commonly applicable to both forms of imprisonment:

2.1.3. Death Penalty:

This is state imposed death as punishment for a serious crime and is also termed "capital punishment".

2.1.3.3 Constitutionality of Death Penalty:

The death penalty or capital punishment as it is, otherwise known, continues to be legitimate and practiced in a number of states around the world. Some states have outlawed the death penalty except for most extreme cases e.g. crimes committed during war. Other states while they may not have outlawed the death penalty are in practice abolitionist by not actually sentencing offenders to death. Some of the earliest human rights activism, for example, by Amnesty International concerned with protecting political prisoners from being sentenced to death for their political beliefs.

The death penalty might appear to constitute a violation of the right to life but human rights law falls short of insisting that it does. It leaves states the option to impose the death penalty but urges them

to move towards abolition and also imposes certain limits on the way in which the death penalty can be imposed. Capital punishment:

1. May only be imposed for the most serious crimes, pursuant to a final judgment rendered by a court and providing it is not contrary to the provisions of human rights law e.g. not a crime of genocide.
2. Anyone sentenced to death has the right to seek pardon or commutation of the sentence;
3. Death sentence is not to be imposed on anyone below the age of 18 or carried out on pregnant women.

3. Right to Survival:

When talking about children, the right to life can often mean the right to survival. Human rights law already forbids the use of the death penalty for children. However, child rights treaties impose another obligation on states to meet the basic needs of the child in terms of nutrition, health, food, shelter etc. to enable the child's survival.

4. Rights of Victims

Victims of extrajudicial, summary or arbitrary executions are entitled to adequate compensation from the state where the violation was committed. Granting compensation is separate from the additional obligation on states to conduct investigations and punish perpetrators.

5. International and Regional Instruments for Protection and Promotion:

International legal instruments take the form of a *treaty* (also called agreement, convention, or protocol) that binds the contracting states to the negotiated terms. When negotiations are completed, the text of a treaty is established as authentic and definitive and is "signed" by the representatives of states. A state can agree to be bound to a treaty in various ways. The most common are *ratification* or *accession*.

When a state ratifies or accedes to a treaty, that state may make *reservations* to one or more articles of the treaty, unless

reservations are prohibited by the treaty. Reservations may normally be withdrawn at any time.

6. Ethiopia's Obligation to Stand Committed to the International Treaties and Instruments:

". Amnesty International works for an end to executions and the abolition of the death penalty everywhere. The major grounds for this argument are:

- o An execution, just like torture, involves a deliberate assault on a prisoner. Even so-called 'humane' methods such as lethal injection can entail excruciating suffering.
- o Capital punishment is irrevocable. All judicial systems make mistakes, and as long as the death penalty persists, innocent people will be executed.
- o It is also discriminatory and is often used disproportionately against the poor, the powerless and the marginalized, as well as against people whom repressive governments want to eliminate.
- o The death penalty does not deter crime more than other punishments. In Canada the homicide rate has fallen by 40 per

cent since 1975; the death penalty was abolished for murder in 1976.

- o International human rights treaties prohibit courts sentencing anyone who was under 18 years old at the time of the crime to death, or executing them. But a small number of countries continue to execute child offenders, violating their obligations under international law.

o Methods of Execution:

There are eight main methods of execution in current use worldwide:

- o **Beheading:** Only two countries execute people by chopping their head off: Saudi Arabia and Iraq.

Electric chair: (US only) Nobody knows how quickly a person dies from the electric shock, or what they experience.

Firing squad: The prisoner is bound and shot through the heart by multiple marksmen. Death appears to be quick, assuming the killers don't miss. In the U.S., only Utah used this method.

Guillotine: A famous French invention, not used in North

America. It severs the neck. Death comes very quickly.

- o **Hanging:** if properly conducted, *this is a humane method*. The neck is broken and death comes quickly. However, if the free-fall distance is inadequate, the prisoner ends up slowly being strangled to death. If it is too great, the rope will tear his/her head off. This method is used in Egypt, Ethiopia, Iran, India, Japan, Jordan, Pakistan, Singapore and others.

Lethal injection: Lethal drugs are injected into the prisoner while he lays strapped down to a table.

Poison gas: Cyanide capsules are dropped into acid producing Hydrogen Cyanide, a deadly gas. This takes many minutes of agony before a person dies.

Stoning: The prisoner is often buried up to her or his neck and pelted with rocks until they eventually die.

2.1.3.4. General Principles Relating to Death Penalty Arts. 117-120:

2.2. Secondary Penalties

A court may impose a secondary penalty on a criminal in addition to the primary punishment. Secondary penalties are not equal to primary punishment. Thus, before imposing a secondary penalty the court has to pronounce a primary penalty, which it deems to be appropriate for a crime. However, they may replace the principal penalty under the conditions stated by the provision of article 122(2).

- If such is specifically laid down by the law; or
- Where there are extenuating circumstances; or
- Where the law provides for a free mitigation of the punishment (article 82 & 83); or

Where enforcement of the sentence is postponed.

2.2.1. Types of Secondary Penalties:

There are different types of secondary penalties. These are:

- A. **Caution, Reprimand, Admonishment (Article 122):**
 - b) **Caution:** warning

c) **Admonishment:** expression of disapproval of one's actions or behavior

d) **Reprimand:** strong official disapproval of some one

e) Public apology (Article. 122)

The criminal does this to the person injured at the order of a court.

A. Deprivation of rights (Art.123)

2.3 Special Measures Applicable to Adults:

Our law does not only penalize a criminal but it also has designed protective measures specially to achieve reformative and rehabilitatory purposes.

Measures could be imposed both on a person convicted for a crime and those not responsible for a crime because it is a protective step. However, for the sake of clarity and understanding our code has three categories of measures. These are dealt with as follows:

2.3.1. Measures applicable Irresponsible persons and criminals with limited responsibility:

For a person to be punished for a crime he should be responsible i.e. there should be no irresponsibility. If a person commits a crime for which he is absolutely irresponsible or responsible in a limited manner, then he is either not punishable or the penalty is reduced as the case may be. However, there will be protective measures to be imposed on such persons.

These are the measures of confinement and treatment. According to articles 130(1), if a criminal is found to be a threat to public safety or order or if he proves to be dangerous to the persons living with him, the court shall order his confinement in a suitable institution. As per article 131, if such criminal is suffering from a mental disease or deficiency, deaf and dumbness, epilepsy, chronic alcoholism, intoxication due to the abuse of narcotics or any other pathological deficiency and requires to be treated or placed in a hospital or asylum, the court shall order his

treatment in a suitable institution or department of an institution.

2.3.2. General Measures for the Purposes of Prevention and Protection:

These types of measures are applied together with principal penalties when the circumstances of the case justify them in the opinion of the court. They are applied even if they are not mentioned in the special part of the code. Such measures are divided into three categories

2.3.3. Measures of a Material Nature:

- **Guarantee of Good Conduct (Article 135)**
- **Seizure of Dangerous Article (140)**

2.3.4. Measures Entailing Restriction on Activities:

- **Suspension and withdrawal of a license (Article 142):**
- **Prohibition and closing of an undertaking (article 143):**

2.3.5. Measures Entailing a Restriction on Personal Liberty:

- **Prohibition from resorting to certain places (Article 145):**

Prohibition to settle down or reside in a place (Article 146):

Obligation to Reside in Special Place or Area Article. 147:

- **Placing under Supervision (Article 148)**
- **Withdrawal of Official Papers Article. 149:**
- **Expulsion (Article 150)**

2.3.6. Measures for the Purpose of Information:

These are of three types:

- **Notification to the Competent Authority Article. 154:**
- **Publication of the Judgment Article. 155:**
- **Entry in the Judgment Register Article. 156:**
- **Section.3. Determination Of Punishment:**

3.1. General Principles of Determination of Punishment: Arts. 87-89:

3.3. Extenuating Circumstances:

The punishments 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

Let us first see the main categories of extenuating circumstances:

Section.4. Post Conviction Processes:

The following are the 'post conviction procedures':

- Suspension of penalty and conditional release,
- Pardon and Amnesty,

- Reinstatement.

1.1.1. Suspension of Penalty:

- **Meaning and Purpose: Art. 190**

The principle of conditional suspension of penalty is for the promotion of the reform and reinstatement of the criminal by giving him room to help himself in his own reformation. There are two kinds of suspension of penalties under the Criminal Code. These are:

- Suspension of Pronouncement of Penalty, Art. 191
- Suspension of Enforcement of Penalty, Art. 192

4.1.3 Essential Conditions for Suspension of Pronouncement of Penalty :Art. 191

- The criminal must not have any previous conviction i.e. he must be a first offender,
- He should not appear to be of dangerous character,

- The crime he is convicted of should be punishable only with fine, Art. 90 compulsory labour, Art. 103 and 104, or
- Simple imprisonment for less than 3 years, Art. 106

4.2. 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.

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Amnesty is also a species of pardon but applies to a certain classes 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 also termed as ‘general pardon’.

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Articles. 229 and 230 of the Criminal Code deal with the concepts of 'Pardon' and 'Amnesty'.

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. The entry of sentence shall remain in the judgment register of the criminal and continue to produce its other effects. However, amnesty, cancels both the indictment and the sentence and bars or discontinues any prosecution from the moment of its promulgation. If

the sentence is already, passed amnesty cancels it as well as all its consequences under the criminal law. The conviction shall be presumed non-existent and the entry shall be deleted from the judgment register of the criminal.

4.4 Conditional Release: Art. 201

This is provided towards the end of the enforcement of the penalty. This provision may be applied in all cases where a penalty or measure resulting in 'loss of liberty' is imposed. Conditional release also is based on the consideration that it serves as a means of reform and social reinstatement. Therefore, it must be awarded in case of criminals who satisfy the conditions laid down by the Code under Art. 202. Further, conditional release should be adopted only in cases where it affords a reasonable chance of success.

4.3. Reinstatement: Arts.232-237

4.3.1. Meaning of Reinstatement:

Principle: Article 232

Conditions for Reinstatement: Article 233

6. Reinstatement in Cases where the Penalty is time barred: Article 234

4.3.4 Effects of Reinstatement: Article 235

➤ **Dismissal and Renewal of the Request: Article 236**

➤ **Revocation of the Decision: Article 237**

Section. 5. Disposition of the Criminal

5.1. Systems of Determination of Penalty:

To understand the modern system of determination of penalties it is necessary to examine the two systems which are theoretically opposed as to the determination of penalty.

1. System of Discretionary Penalties:

This system was applied in Pre-Revolutionary French law.

The penalty is not determined by the law; the judge establishes it taking into account the particular circumstances under which the crime was committed and the personality of the criminal. He may, for instance, take into account the background of the criminal, his general character, the reasons for which the crime was committed, etc. This system would allow the penalty to be fitted to the guilt of the criminal, to the possibilities of his reform or, as we would say today to, the needs of "social rehabilitation"-in brief-to accomplish "an individualization of the penalty". It has, on the other hand, the disadvantage of tending towards the arbitrary and of weakening of the intimidation value of the penalty.

2. The System of Fixed Penalties:

This system is adopted by the legislators of the French Revolutionary period which consists in the legislative determination of the penalty to be applied to the crime without any possible modification designed to

fit the personality of the criminal. This system has the advantage of being strongly deterrent and therefore of maintaining the full intimidation value of the penalty. However, it has the disadvantage of being unjust and even ineffectual by not allowing the penalty to be fitted to the crime committed by the criminal and his chances to reform.

The Modern System:

Modern penal law has endeavored to borrow from both the systems; thus the penalty is in principle established by the legislature but individualized significantly in its application by the judge or the executive, to the specific criminal. This allows for the successive participation of the legislator, the judge and the administrative authorities.

The Role of the Legislator:

The legislator enacts the basic penalties. The scheme guarantees against arbitrary action by judges, at least in the sense that the judges cannot sentence beyond the maximum penalty provided by law. Such a scheme also allows for

deterrence by providing, when necessary, very severe penalties. In establishing the scale of penalties the legislator tries to set the penalty according to the seriousness of the crime.

The Role of the Judge:

Judge plays a key role in the application of penalties. He is required to exercise his discretion in identifying the following important factors;

1. The circumstances of commission of the crime
2. The personal circumstances of the criminal.

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1. The circumstances of commission of the crime
2. The personal circumstances of the criminal.

He has the guidelines enlisted in this regards under the heads of aggravating circumstances, mitigating circumstances as well as Art 86 giving him extra

discretionary power to identify any other aggravating or mitigating circumstances. Arts 86, 87 and 88 give reasonable guidance for the judge to play his role effectively.

Role of the Administrator:

The prison authorities are sufficiently empowered by the Criminal Code to make rules and regulations that are required to make the enforcement of punishment meet objectives of punishment as well as the ends of justice. The Court makes variations in the sentences either to make them stricter or less harsh at the recommendation of the prison management. The administrative individualization of punishment is very evident in the following three measures:

- ❖ Pardon and Amnesty
- ❖ Prison Administration
- ❖ Conditional release

Unit Summary:

Once a person is found guilty of the crime he is accused of, the court will pass sentence penalizing him with fine or imprisonment or both, which it deems, is appropriate for the crime

committed. The definition of punishment is linked with what is considered to be purpose of the punishment. In this regard punishment could be taken to mean the major mechanism by which the purposes of criminal law are achieved.

In the history of criminal law there have been many conceptions as to what the purpose of punishment should be. But modern criminal laws now consider that criminal law cannot have a single purpose but a combination of purposes according to the individual circumstances of each case. Thus, punishment has the purpose of deterring the criminal from committing another crime in the future, the purpose of separating criminal from mixing with the society they have disturbed for a certain time or indefinitely. Punishment also has the purpose of reforming or teaching the criminal so that he can rectify his criminal behavior to integrate himself back to the society.

Our Criminal Code provides for three categories of penalties. These are primary penalties, secondary penalties and measures. Primary penalties can affect the property of the criminal (fines), or liberty of the criminal (imprisonment), and the life of the criminal (death penalty). There is also one special category of penalties specially designed for the young offenders. These have been dealt with in the first part of this module.

Secondary penalties are not imposed as punishment by themselves. They are imposed in addition to at least one primary penalty. The court has the discretion to impose or not to impose secondary penalties. Caution, reprimand, admonition, public apology and deprivation of rights are the secondary penalties recognized under our Criminal Code.

Measures are not strictly speaking penalties. They are ordered for the reformation or protection of the offender and for the protection of

the society from the effects of criminal behaviors. The Code has three categories of measure namely: those applicable to adult offenders in special circumstances i.e. recidivists and habitual offenders and irresponsible offenders and offenders with limited responsibility; those applicable to young persons and those general measures taken for the purpose of prevention and protection.

UNIT- IV

SPECIAL PART OF PENAL CODE

Introduction:

The crucial part of the Criminal Code is the Special Part that enumerates the conducts that should be prohibited for the purpose of protecting various interests of the society in general and the individual interests of a person in particular. The special Part systematically arranges the crimes affecting different interests in a logical order. The crimes affecting the 'interests of the State' take the first place in the

order as the safety, security and stability of the State are crucial for extending protection to its subjects and other inhabitants of the State. A State which is unstable and is experiencing threats from inside and outside can not devote itself to the welfare of the people. Therefore, the law that protects the interests of the State is of utmost priority in criminal law. The crimes that affect the general interests of the community occupy the next place in the Criminal Code. The crimes against the public order, morality, public health etc are found in the second place. The crimes affecting the life, personal liberty, property, marriage and honor of an individual fall in the subsequent sections of the Criminal Code. Finally, the offences of petty nature are incorporated in the Petty Code.

The newly incorporated crimes such as harmful traditional practices, cyber crimes, hijacking of air crafts, money laundering, crimes related to corruption of drugs indicate a remarkable

progress in the development of criminal law of our country.

Section.1. General Considerations:

1.1. The Relationship of the General and Special Parts:

The first most important thing that the criminal law students should understand is the relationship between different parts of the Criminal Code. The 'General Part' of the Criminal Code sets out the general principles of criminal liability which are common to all crimes. This part explains the meaning of criminal act, criminal intention or negligence i.e. 'the guilt' and lays down the principles following which an accused's act can be declared punishable. Further, the general part prescribes and defines the kinds of punishments and measures to be applied in each case. The concepts like probation, suspension of sentences, periods of limitation for prosecution as well as enforcement of punishment and conditions relating to pardon and amnesty are clearly provided for in the general

part. All these provisions are commonly applicable to all crimes and are essential for two important purposes of a criminal trial:

- To establish the 'criminal liability' by finding the concurrence of the 'act' and the 'guilty mind' of the accused
- To determine the type and the quantum of punishment to be applied to the criminal i.e. the convict(the guilty)

The 'Special Part' of the Code describes the various acts which are considered harmful and thereby, criminal. This part of the Code clearly identifies the conduct it seeks to prohibit and defines the essential elements of each of such crimes. Each of the prohibited conduct is given a specific name, for example, homicide, theft, robbery, adultery etc., and the material and moral ingredients essential for the commission of such crimes are laid down clearly in those articles defining crimes. Further, the articles prescribe the punishment considered appropriate for each crime. The two parts of the Code do not

operate independently. The applicability of the General Part to the Special Part can be understood in the following ways:

a. Establishing the Commission of the Crime:/General part of the code/

b. To Fulfill the Requirements of the Principle of Individualization of Criminal Punishment:

Once the criminal liability of the accused is established the next important question is to determine his sentence. The provisions of the Special Part not only define the crimes but also prescribe the appropriate punishment for the crime.

The principal guiding principles relating to how the sentences are calculated are found in the following important provisions:

1. Article 87 of the Criminal Code: It refers to Article 1 and says that *“the penalties and measures provided by this Code punishment must be applied in accordance with the spirit of the Code and so*

as to achieve the purpose it has in view”.

2. Article 88 of the Criminal Code: This provision lays down very important guidelines relating to calculation of sentences including the individualization of criminal justice and further emphasize the relationship between the General and Special Parts of the Criminal Code:

3. Aggravating and Mitigating Circumstances:

Arts 82-86 enumerate the circumstances in which the punishment to a crime may be increased or decreased as the circumstances warrant in each case though the provision defining that crime suggests a specific punishment. These provisions thus give further guidance to the application of the principle of individualization of criminal justice.

4. Special Treatment for Young Criminals, Women and Mentally Challenged:

The provisions of Criminal Code that provide for the special treatment of these special groups

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.

Section 2. Crimes against the State:

3.1 Treason And Its Kinds:

- **Treason under Criminal Code of Ethiopia**

Articles 248-250 of the Criminal Code of Ethiopia define three types of treasons namely, *high treason*, *treason* and *economic treason*.

3.2 Espionage:

- **Espionage-Meaning and Definition:**

Espionage is the practice of obtaining information about an organization or a society that is considered secret or confidential (spying) without the permission of the holder of the information.

Espionage is usually thought of as part of an institutional effort (i.e., governmental or corporate espionage). The term espionage is most readily associated with state spying on potential or actual

enemies, primarily for military purposes, but this has been extended to spying involving corporations, known specifically as industrial espionage.

A '**spy**' is an agent employed to obtain such secrets.

- **Espionage and Spies:**

Espionage occurs in societies at peace and at war. Nations at peace use spies to gather information on a country's military preparations and plans for war. During war espionage is used to gather information about opposing armies and to mislead opponents through counterintelligence. Those engaged in spying risk imprisonment and death if convicted of treason.

- **Espionage Under the Criminal Code: Art. 252**

Section. 3. Crimes Against life:

3.4. Right to Life Under the

Constitution and the

Constitutionality of the 'Death Penalty':

- **Right to Life:**

Right to life is a phrase that describes the belief that a [human](#)

[being](#) has an essential [right](#) to live, particularly that a human being has the right not to be [killed](#) by another human being. The [concept](#) of a right to life is central to debates on the issues of [capital punishment](#), [euthanasia](#), [self defense](#), [abortion](#) and [war](#). The right to life is enshrined in Article 3 of the [United Nations' Universal Declaration of Human Rights](#) and in Article 6 of the International Covenant on Civil and Political Rights, making it a legally enforceable right in every United Nations member state:

“ Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

—Article 6.1 of the International Covenant on Civil and Political Rights

Every human being has the inherent right to life and this right must be protected by law. However, this right is not as sacrosanct and inviolable as it

sounds. The main principle in human rights law is that no-one shall be arbitrarily deprived of life meaning that states can take human life providing laws and procedures are followed.

Deprivation of life resulting from the use of force which is no more than absolutely necessary; includes:

- a. In defence of any person from unlawful violence;
- b. In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c. In action lawfully taken for the purpose of quelling a riot or insurrection.

Human rights law is silent on other controversial areas concerning the right to life, namely abortion and the right of the unborn child and euthanasia.

• **Homicide-Meaning of the Term:**

Homicide is a neutral term. It describes an act with no moral judgment. Murder is the term that is non-neutral. It describes an act with moral judgment.

1. Justifiable Homicides:

These are "no fault" homicides. They ordinarily involve the death of someone under circumstances of necessity or duty (commanded or authorized by law). Examples would be self-defense, capital punishment, and police shootings.

2. Excusable Homicides:

These are misadventures, accidents, or acts of insanity.

3. Criminal or Culpable Homicides:

a. First Degree Criminal Homicide (Murder):

These are acts involving the death of someone in "cold-blood" or by "lying in wait". They are distinguishable a mental state of "purposely" which is having three (3) elements: (a) premeditated -- meaning fixed or obsessed; (b) deliberate -- meaning "cool"; and (c) malicious -- meaning scheming or clever. Also, the crime of felony murder (someone dies during commission of a felony) is automatically first degree homicide.

b. Second Degree Criminal Homicide (Murder):

These are acts involving the death of someone in the "heat of passion".

c. Voluntary Manslaughter:

Manslaughter, in general, involves acts involving the death of someone without thinking. It involves "sudden passion". There's no premeditated deliberation.

d. Involuntary Manslaughter:

This is the crime of Criminal Negligence, sometimes called misdemeanor manslaughter. It's the least serious offense in the law of homicide.

3.2. Homicide and its Forms Under The Criminal Code of Ethiopia: Arts-538-544

3.2.2. Infanticide:

The tragedy of maternal filicide, or child murder by mothers, has occurred throughout history and throughout the world. *Maternal filicide* is defined as child murder by the mother. *Infanticide* is child murder in the first year of life. The term *neonaticide* was coined by Resnick to describe murder of an

infant within the first 24 hours of life.

▪ **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. Disadvantaged socioeconomic backgrounds and primary responsibility for the children were common reasons for infanticide.

▪ **Infanticide Laws:**

Infanticide laws often reduce the penalty for mothers who kill their children up to one year of age, based on the principle that a woman who commits infanticide does so because "*the balance of her mind is disturbed by reason of her not having fully recovered from the effect of giving birth to the child*".

▪ **The Ethiopian Law on Infanticide:**

Under the Art 544/1 of the Criminal Code, 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:
 - A. while she is in labour, or
 - B. while still suffering from the direct effects of labour

➤ **Punishment for Infanticide:**

1. **Simple imprisonment** for the completed crime, having regard to the circumstances of the case.
2. **Mitigated punishment under Art 180**, for an attempted infanticide, if the infant has suffered no injury after the attack by the mother.

Section.4. Crimes against Persons

The principles relating to crimes against person and health are laid down in Article 553. *Intentional* or *negligent* causing of bodily injury or impairing of another's health no matter whatever means or manner

used is punishable under this part of the Code. Causing of any manner of whatsoever including bodily assaults, blows, wounds, maiming, injuries or harm and all damage to the physical and mental health of an individual is prohibited. Therefore, injury under the Code means both 'physical' and 'mental injury'.

4.1.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

Punishment: Simple imprisonment not less than 1 year to rigorous imprisonment not exceeding 15 years.

1.1.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.

1.1.Injuries by Negligence: Art. 559

4.4.Assaults: Art 560

Section.5. Crimes against Women and Children:

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

Ethiopia has ratified international human rights conventions and treaties that are legally binding and that form international law. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which provides the foundation for reproductive rights, is one such notable convention. The Tehran Proclamation, the International Conference on Population and Development (ICPD), the Fourth World Congress on Women, and the 2000 United Nations (UN) Summit are some of the major forums at which national

governments have expressed their commitment to improving the status of women in society. These and other international initiatives have yielded wider recognition of individuals' rights to lead safe and responsible reproductive lives and have underscored the responsibility of governments to not only respect those rights but also to create the legal and policy environment for their realization. Articles 14, 15, and 16 under Section I (Human Rights) of the Constitution refer to the rights to life, liberty, and security of the person. Article 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 Constitution of FDRE, 1995: "The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited."

Art 36/1 the Constitution of FDRE, 1995: "Every child has the right:

- A. To life;
- B. To a name and nationality;
- C. To know and be cared for by his or her parents or legal guardians;
- D. 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;
- E. To be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children."

5.2. Some Serious Crimes Committed Against Women and Children:

5. 2.1.Abortion:

“Abortion is more than a medical issue, or an ethical issue, or a legal issue. It is, above all, a human issue, involving women and men as individuals, as couples, and as members of societies” (Tietze, 1978).

- **Definition of 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:**

Article 551 of the Criminal Code of the FDRE lists out the conditions in which termination of pregnancy may be allowed. Abortion performed under those circumstances is not a crime. Article 552 provides for the Procedure of Terminating Pregnancy and the penalty of violating the Procedure.

5.2.2. Harmful Traditional Practices:

- **Meaning:**

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. Despite their harmful nature and their violation of international human rights laws, such practices persist because of the fact that they are not questioned.

There is an encouraging and a growing international awareness that harmful traditional values and practices act as root causes for discrimination and violence against girls. Several studies both scientific and social attest the fact

that value based discrimination is systemic and universal.

- **Harmful Traditional Practices Prohibited Under the Criminal Code of Ethiopia: Arts 561-570**

- **5.2.3. Bigamy:**

Bigamy is the condition of having two wives or two husbands at the same time. A marriage in which one of the parties is already legally married is bigamous, void, and ground for annulment. The one who knowingly enters into a bigamous marriage is guilty of the crime of bigamy. Unfortunately, it is seldom prosecuted unless it is part of a fraudulent scheme to get another's property or some other crime. 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

Article 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. This provision is in fact in line with the Constitutional provisions Art. 34 (4) and (5). Under Art 34/4 the Constitution provides that, laws may be enacted to give recognition to religious and customary marriages.

Article 78(5) of the Constitution provides that "...the Council of people's Representatives and state councils can establish or give official recognition to religions and cultural courts."

Therefore, under Ethiopian law, marriage could be concluded in anyone of the following three ways:

- before an officer of civil status,
- according to the religion of the parties, or
- according to local custom (Art.577 of the Civil Code).

All these types of marriages produce the same legal effects (Art.625 of the Civil Code). Arts. 605(2) and 606(2) specifically provide that *religious and customary marriages are subject to the conditions common to all forms of marriage*, most important of which are age, prohibition of marriage between persons related by consanguinity and affinity, the prohibition of bigamy, and the requirement of consent of the spouses. If this is so, Art 561 of the Criminal code seems to be contradicting with the provisions of Art 606/2 of the Civil Code which makes even the customary marriages subject to the common conditions of a valid marriage and thereby being in a valid marriage

is a disqualification for a subsequent customary marriage.

Art. 34(5) of the Constitution fails to protect the rights of women. Art.34(1) of the Constitution gives women equal rights as regards to marriage, during marriage and at its dissolution, and if religious laws, which are given recognition according to Art. 34(5) discriminate against women; it can be argued that they are unconstitutional.

The Civil Code prohibits bigamy (Art. 588). Bigamous marriages are dissolvable on the request of either spouse or the public prosecutor; and non-conformity with Art. 585 of the Civil Code is punishable.

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 Constitution and Art 561 of the Criminal Code should be seriously considered in order to meet the

standards of the international instruments on the point. In other words, Art.34(5) of the FDRE Constitution which allows adjudication of personal or family disputes by religious or cultural laws is by itself contrary to our treaty obligations.

5. Rape:

Rape is an act of sexual intercourse without women's consent. It is a pervasive form of gender-based violence. As a result, women suffer physically, socially, psychologically and emotionally. Rape is simply the ultimate weapon that men use to exercise their power over women and to exhibit their alleged natural domination.

• Causes of Rape:

Even though the potential causes of rape are varied and controversial, because of personal and cultural beliefs as well as economic status, the most commonly attributed causes of rape are inequality in gender power relations and the anger and sadism of the rapists.

In Ethiopia's case there is a range of other complex contributing factors

for raping, such as culture and tradition, poverty and war.

• Consequences of Rape:

1. Psychological Injury:

Though the complications of raping vary enormously, depending upon age, culture and other related factors, it leaves the victims, their family members, as well as their communities with enormous psychological trauma. Other forms of torture and ill-treatment that are always accompanied by rape leave victims scarred for life.

2. Effects on Physical Health:

Rape brings significant health problems to the victims. Most importantly, it can lead to unwanted pregnancies and transmissions of STDs, including HIV/AIDS.

o Social Stigma:

Because raping is associated with social stigma, the victims lose their dignity and respect in the society. They also find it difficult to participate in social activities, as a result of which they alienate themselves from the society.

❖ **The Ethiopian Constitution and Criminal Code on Rape:**

Article 35(4) of the Constitution provides protection for women and children from crimes of raping and abduction. Whatever the motivation for rape, the vast majority of the victims do not feel adequately protected by law.

❖ **Essential Elements of Raping: Article 620**

To establish a crime of raping the following essential elements should be proved:

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

1. **Maltreatment of Minors: Article 576**

- **Meaning of Maltreatment:**
- 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.

5.2.8. **Traffic/Trafficking in Women and Minors:**

❖ **Trafficking/Traffic in Women and Minors Under Ethiopian Criminal Code: Arts. 597-600 and 634-638**

The Ethiopian Criminal Code deals with the crime of trafficking under two different heading basing on the purpose of this criminal conduct. They are;

1. Trafficking for the purpose of forced labor, Arts. 597-600
2. Traffic for the purposes of prostitution, Arts. 634-638

Section. 6. Crimes Against Property:

Constitutional Principles

Relating to Right to Property:

The constitutional protections of state, public and private properties in Ethiopia are found in Article 40 of the Constitution of FDRE 1995. The criminal law is concerned with the unlawful violations of these protections guaranteed under the Constitution. Article 662 of the Criminal 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. Damage to rights in property within the meaning of this Criminal Code is constituted by *any injury or prejudice suffered in comparison with the normal situation in the absence of the crime.*

6.2. Some Serious Crimes

Committed Against Property:

6.2.1. Theft, Robbery and their forms:

▪ Robbery:

In the criminal law, robbery is an aggravated form of theft that involves violence or the threat of

violence against a victim in his presence.

o Categories of theft:

Robbery is the commission of theft in circumstances of violence and involves the application or the threat of force in order to commit the theft or to secure escape. Robbery takes many forms, ranging from muggings to bank robberies. The penalty for robbery is usually more severe than that of the larceny.

❖ General Principles relating to the Crimes against Property Under The Criminal Code:

Crimes against property include one of the following essential elements:

- o 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
- o 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.

- **Essential Elements of Theft Art. 665**

- ❖ **Robbery Art 670:**

Unit Summary:

A good understanding of the relationship between different parts of the Criminal Code is the first most important thing that the criminal law students should have. The 'General Part' of the Criminal Code sets out the general principles of criminal liability which are common to all crimes. This part explains the meaning of criminal act, criminal intention or negligence i.e. 'the guilt' and lays down the principles following which an accused person's act can be declared punishable. Further, the general part prescribes and defines the kinds of punishments, measures to be applied in each case. To find the relevant law the interrelationships of provisions and cross-references within the Code have to be appreciated very clearly.

The Special Part of the Criminal Code incorporates the conducts that are prohibited under the

threat of punishment. The objective of the criminal law is to protect the "interests" of the state, the community and the interests of the individual in order to ensure peace and security. Therefore, crimes against such interests are kept under various titles in a systematic order. The individual interests of a person protected under the Code include his life, his person (body), his liberty, his honor, his morals attributes, his family, his property etc.

Treason is betrayal of sovereignty of a state. There are three types of treason under the Criminal Code of Ethiopia. High treason is also called an 'act of war' as the acts included under the definition of high treason are essentially linked to the situation of war. Treason is not necessarily related to the acts of war. Economic treason is the species of treason which is intended to protect the economic structure of the country. Unauthorized disclosures and communications relating to economic negotiations of a state

are prohibited under this provision.

Espionage is the practice of obtaining information about an organization or a society that is considered secret or confidential (spying) without the permission of the holder of the information. During war espionage is used to gather information about opposing armies and to mislead opponents through counterintelligence. Those engaged in spying risk imprisonment and death if convicted of treason.

Under the Criminal Code there are three kinds of homicides that require the proof of 'intention' as the moral ingredient of the crime, namely Aggravated Homicide (Art 539), Extenuated Homicide (Art 541) and Ordinary Homicide (Art 540). The type of homicide that is defined under Art 543 is the only one that makes a person punishable for causing death negligently. *Infanticide* is child murder in the first year of life. Under the Criminal Code a mother gets a mitigated punishment

provided that she commits the crime while she is in labour, or while still suffering from the direct effects of labour.

Crimes against the person, women and children and property are very carefully treated by the Criminal Code. It is essential for the students to have a thorough understanding of the different crimes that are included under the Code. The students may follow the different ways in which crimes are interpreted in this unit for the fact the rest of the crimes are included in the Code.

UNIT - V

THE CODE OF PETTY OFFENCES

Introduction

Broadly speaking, petty offences can be described as '**public welfare offences**'. These are also called '**the regulatory offences**' which in fact assumed more importance in the twentieth century. These are conducts

declared by special statutes as offensive to the social interest. They are offences of minor character involving minor punishment. They are offences connected to sale of adulterated food or drugs, or offences of possession of prohibited articles, offences connected to road traffic, or offences against custom rules and foreign regulations.

All Criminal law is a compromise between two fundamentally conflicting interests, ---the public interest and the individual interest. The public interest demands restraint of all who injure or threaten the social well-being whereas the individual interest demands the maximum liberty and freedom from interference.

Objectives:

- Understand the concept of 'public welfare offences' and the basic philosophy underlying this category of offences
- Explain the Objective and scope of the Petty Code
- Identify the similarities and differences in the applicability of general principles of criminal laws

to the crimes under the Special Part and Petty offences

- Know the procedural requirements for the prosecution of petty offences

Section1. General

1.1. Petty Offence - Definition:

Within the meaning of Art 735 of the Criminal Code commission a 'petty offence' lies in anyone of the following conducts:

- An infringement of the mandatory or prohibitive provisions of law, or
- An infringement of a regulation issued by a competent authority, or
- Commission of a minor offence which is not punishable under the Criminal Law.

Such a petty offence is subject to punishment under the provisions of the law found in Articles 746-775 of the Petty Code.

The mandatory or prohibitory provisions of the law or the regulations mentioned under Art 735 should be understood having reference to Art 3 of the Criminal Code. It specifically refers to the

special laws of penal nature and makes the general principles of criminal law applicable to them as well. To make these laws more effective and meaningful there are penalties prescribed for certain violations of those laws.

- **Petty Offences Governed by the Petty Code:**

Art 736 clearly defines the classes of petty offences that are made punishable by the Petty Code. Art 736/1 giving effect to the principle of legality specifies for the applicability of the Petty Code, the offense in question should have been one that is defined:

- By one of the provisions of the Criminal Code, or
- By the provisions of a special law (Art 3 read with Art 735).

The penalties applicable to such offenses shall be those which are expressly prescribed in respect thereof.

2.1. Jurisdiction of Petty Code:

Art 738

Within the meaning of Art 738/1 the petty offences shall be governed by *the principle of*

territoriality (Art 11). The place of commission of the offence is the place of where the offender had either committed or omitted the act resulting in the offence (Art 25).

The only petty offences committed outside the territorial jurisdiction but are still triable in Ethiopia are 'petty offences of purely military character provided by the Ethiopian Military law' Art 792). Such offences shall always be tried by the military authority and punished according to Ethiopian law whether they were committed in Ethiopia or in a foreign country (Art 738/3). However, if such offender was already tried for the same act by the foreign Court he may not be punished here again.

- **Effect of Foreign Sentences: Art 739**

1.3. General Principles of Liability in case of Petty offences:

- **Requirement of the Moral Ingredients:**

It is evident from the provisions of Art 741 that the doctrine of *mens*

rea is generally applicable to petty offences too. The latter part of the Article 741/2, says that even all negligent petty offences are punishable except where the law creating the offence expressly exempts from liability to punishment in respect of an act committed by negligence.

In other words, in case of ordinary crimes negligent crimes are not always punishable unless expressly provided whereas in case of petty offences negligent offences are always punishable except where expressly exempted from liability.

The applicability of the provisions relating to irresponsibility (Art 48-50) to the Petty Code (Art 741/1) emphasizes the requirement of *mens rea* in these cases.

❖ **Principles of Liability that Differ from the Criminal Code: Art 740**

- In case of petty offences only completed offences are punishable. The stages of preparation and attempts are not punishable.

- In these cases only principal offender (Art 32) is punishable. Inciters, co-offenders, and accessories after the fact are not punishable. Each offender shall be punished for his own act irrespective of the participation of another. Art 741/3 clearly lays down that the responsibility and liability for petty offences shall always be individual (Art 41 and 88). There is no collective responsibility under the Petty Code.
- Juridical persons are also not liable for incitement or complicity relating to petty offences. A juridical person is punishable only when its employee violates laws, regulations or directives as a petty offender in accordance with Art 32 of the Criminal Code.

• **Expert Evidence only under Exceptional Circumstances: Art 742**

The general provisions relating to expert evidence under Arts 51 and 54 shall not be ordinarily resorted

to in cases of petty offences. They shall be ordered only if questions as to the petty offender's responsibility *cannot otherwise be decided* by the Court.

- **Applicability of Affirmative Defences: Art 743**

The following *justifications* that provided under the General Part of the Criminal Code are equally applicable to the petty offence too:

- Lawful acts (Art 68)
- Professional duty (Art 69)
- Consent of the victim (Art 70)
- Necessity (Art 75)
- Legitimate defence (Art 78)
- The cases of resistible coercion, excess of necessity and excess of legitimate defence are generally punishable but reduction of sentence is possible within the limits authorized by law (Art 766).
- In case of superior orders the subordinate shall not be punishable,
 - if he obeyed a person of higher rank acting within his authority
 - and the subordinate did not exceed the order he received

The superior giving the orders shall be fully responsible for any undesirable or unlawful consequences.

The subordinate shall be responsible for any conscious and intentional excess in the performance of the order received.

- Ignorance of law or mistake as to right is not justification to a petty offence as well (Arts. 744 and 81).
- Mistake of fact which excludes knowledge or intention to commit an offence is a valid defence under the Petty Code (Arts 744/2 and 80).

- **Applicability of the Extenuating and Aggravating Circumstances:**

Art 745

While determining the penalties under the Petty Code the Court may take into consideration the extenuating circumstances (Arts 82 and 83), aggravating circumstances (Arts 84 and 85) and even the combination of the both as in the case of the ordinary crimes.

Section.2. Kinds of Penalties and other Measures under the Petty Code:

The key issue that makes a remarkable difference between the petty offences and the ordinary crimes is the kinds of penalties. Art 746 declares that, '*Petty offences differ from ordinary crimes by reason of the different penalties they merit*'. The main points of departure from the ordinary crimes in this regard are the following:

- Art 746/1 clearly excludes imposing of ordinary penalties in the cases of petty offences. Therefore, petty offences shall not be punished with rigorous or simple imprisonment prescribed for ordinary crimes.
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The only punishments which may be imposed for petty offences are

those specified in Arts 747-775. The exceptions to this general rule are:

- Special forms of punishments applicable to military petty offenders, and
- Special measures applicable to young persons (Arts 157-168 of the Criminal Code)
- Protective or therapeutic measures in respect of irresponsible persons (Arts 130 and 131 of the Criminal Code).

In these cases Art 746/3 requires the Court to inform the matter to the competent authority (Art 154).

2.1. Principal Penalties of Arts 747-755

2.1.1. Arrest- Art. 747

a. Ordinary or police arrest-
Art. 748

b. Home arrest or arrest in an establishment-**Art. 749**

c. Arrest in case of members of armed forces and young offenders-**Art.750**

d. Compulsory labour in substitution for arrest- **Art 751**

Arrest is the only penalty involving deprivation of liberty which may be imposed in case of petty offences. The duration of this penalty shall be a minimum of one day and a maximum of 3 months. In cases of recidivism it may go up to a higher maximum as provided by Art. 769.

Arrest may be an ordinary one which shall be undergone in special premises for detention attached to Courts or in the home of the person sentenced or in the home of a reliable person or in a lay or religious community designed for this purpose.

In the case of military petty offenders arrest shall be carried out under military discipline and control in the premises used for this purpose in their establishments.

Young persons sentenced to arrest shall undergo their punishment either by school or home arrest (Art 161). Arrest in case of young offenders may be served at different times. And period of arrest shall be for less than 3

hours and the total period of arrest shall not exceed 15 days.

2.1.2. Fine-Art 752

a. Ordinary case-Art 752/1

b. Fine in addition to arrest-Art 752/2

c. Conversion of sentence into compulsory labour-Art. 753

d. Recovery of fine in special cases-Art 754

- Members of armed forces-Art. 754/1

- Young persons-Art. 754/2

This penalty may be imposed in addition to arrest, where circumstances justified. This is particularly followed where the law provides arrest and fine as alternative penalties or where the petty offender acted for unlawful gain (Arts 91 and 92).

The amount of fine may be normally fixed between 1Birr and 300 Birr. In cases of recidivism (Art 769), however, it may extend to a higher maximum as the law provides. Particularly, when the offender has acted for unlawful gain the fine may be increased to 500 Birr, without prejudice to

aggravation in case of recidivism. The amount of fine may be fixed having regards to the financial state of the petty offender, the gravity of the petty offence and the degree of guilt.

Section.3. Prosecution and Enforcement of Penalties:

3.1. Procedural Requirements for Prosecution in Case of Petty Offences:

- **Pardon and Amnesty:**

The usual conditions of pardon and amnesty (Arts 229-231) apply to petty offences as well. The penalties in respect of petty offences may be cancelled by pardon and amnesty.

3.2. Enforcement of Penalties under Petty Code:

The rules of enforcement of penalties relating to petty offences show certain departures from the rules of enforcement relating to the ordinary crimes. The main point of difference lies on the matter of suspension of penalties and conditional release.

- **Exclusion of suspension of penalties and conditional release in case of Petty Offences, Article 765:** The principle of conditional suspension of penalty (Art 199-200) is for the promotion of the reform and reinstatement of the criminal by giving him room to help himself in his own reformation. Such an objective of punishment is more relevant to the ordinary crimes where the sentences are punitive in nature. The penalties in case of petty offences are more formal in nature. Further, the uniform and rapid enforcement penalties in these cases are of utmost importance to indicate the strictness in applicability of the provisions of this part as well as the special laws and there by make those laws more effective and meaningful. Thus, strict enforcement of penalty is very essential for the attainment of the objectives of special laws and regulations. Therefore, policies relating to reformation and rehabilitation have little relevance

in enforcement of penalties imposed in cases of petty offences.

Unit Summary:

Petty offences can be described as '**public welfare offences**'. These are also called as '**the regulatory offences**'. These are conducts declared by special statutes as offensive to the social interest. They are offences of minor character involving minor punishment. They are offences connected with sale of adulterated food or drugs, or offences of possession of prohibited articles, offences connected with road traffic, or offences against custom rules and foreign regulations.

By virtue of Art 3 para 2 and Art 734 the principles laid down in the General Part are applicable to the Petty Code too except where it is stated to the contrary. Petty offences are not punishable retrospectively; there is no joint liability in cases of petty offences. Petty offences are punishable only if they are completed. The other stages of the offences are not punishable.

There is no question of either delegation of jurisdiction or extradition of the offender in case of petty offences. Petty offences committed in a foreign country by an Ethiopian or against an Ethiopian shall not be punished in Ethiopia.

In case of ordinary crimes negligent crimes are not always punishable unless expressly provided whereas in case of petty offences negligent offences are always punishable except where expressly exempted from liability. Justifications for criminal liability are generally applicable to petty offences. Ignorance of law is no excuse for petty offences. The provisions of Art 740/4 create a confusion relating to the applicability of the defence of 'infancy' to the Petty Code. It appears from the wording of the provision that the young offenders are not exempted from liability under the Petty Code. The wording of the articles seems to be erroneous.

The key issue that makes a remarkable difference between the petty offences and the ordinary crimes is the kinds of penalties. Art 746 declares that, *'Petty offences differ from ordinary crimes by reason of the different penalties they merit'*. Art 746/1 clearly excludes imposing of ordinary penalties in the cases of petty offences. Therefore, petty offences shall not be punished with rigorous or simple imprisonment prescribed for ordinary crimes. The only punishments which may be imposed for petty offences are those specified in Arts 747-775. Petty Code applies only in the absence of more severe penalties elsewhere in the Code. The penalties under the Petty Code are classified into, principal penalties, secondary penalties, safety measure and measures for the purpose of information. Expert evidence is only taken in relation to petty offences under exception circumstances. Foreign sentences produce no effect in relation to petty offences.

Arts.771-775 lay down the procedural requirements relating to the prosecution of petty offences. Prosecution for a petty offence shall be instituted as per the following rules (Art. 771):

UNIT-VI

CRIMINAL LAW IN A CHANGING WORLD

Introduction:

As expressed by an eminent American authority (Wechsler) 'the purpose of penal law is to express the social condemnation of forbidden conduct, buttressed by sanctions calculated to prevent it'. To understand this explanation of Penal law three questions have to be answered:

1. What kind of conduct is 'forbidden'?
2. What kind of 'formal social condemnation' is considered appropriate to prevent such conduct?
3. What kinds of 'sanctions' are considered as best calculated to prevent officially outlawed conduct?

The concept of forbidden conduct is not a static one; it changes with the change of social norms. The very definition and concept of crime itself is not only according to the values of a particular group and society, such as, faith, religious attitudes, customs, traditions and taboos but also according to the form of government, political and economic structure of society and a number of other factors. At the same time we should remember that 'public order' itself is not a static concept.

Objectives:

- Clearly understand the concept of social change and its impact on the concept of crime
- Have a wide perspective of the changes that are occurring in different legal systems of the world owing to the changing values
- Understand the increasing significance of the criminal liability of corporations in the context of an increasingly complex corporate world
- Know the impact of the modern advancements of psychology and

psychiatry on the principles of criminal responsibility

- Identify the changing purposes of punishments
- Appreciate the need for finding alternative penalties to increase the efficacy of the penal system

Section.1. Impact of Social Change On the Criminal Law

1.1. Social Values and the Ambit of Criminal Law:

Obviously, the type of conduct that a particular society considers as sufficiently worthy of condemnation to prohibit it by criminal sanctions is deeply influenced by the values governing that society. It therefore varies greatly, from one country to another and from one period of history to another.

It may suffice here to illustrate the dependence of the scope of prohibited conduct on changing values and canons of social policy, by presenting two examples:

➤ **The Area of Economic Crime:**

In this area, the transition from a *laissez-fair* to a regulated and, in

varying degrees, publicly controlled economy has led to the condemnation and criminality of actions in which, a system of economic individualism were legitimate and perhaps praiseworthy.

➤ **The Area of Sexual Behavior:**

The change is the other way round in the case of sexual behavior, where changing attitudes and social conditions have increasingly led to the abolition of criminality for actions that were formerly and severely condemned and subject to criminal sanctions. (W. Friedmann)

1.3. Environmental Pollution

and the Criminal Law:

1.4. Sexual Permissiveness and the Criminal Law:

In contrast to the increasing need for criminal sanctions to combat economic risks and social offences, notably the pollution of the environment, certain types of individual behavior, once severely condemned by prevalent concepts of morality and public order, have become widely tolerated and more acceptable to society. This is

notably so in the area of sexual behavior, as shown by the spreading abolition of criminality of homosexual conduct between consenting adult males who carries out in private, and the rapidly growing number of jurisdictions that have abolished, or greatly limited, the criminality of abortion.

The greater permissiveness towards homosexuality is essentially a product of changed ideas of social morality. In most western societies, homosexual conduct, if limited to adults and carried out in private, is no longer regarded as morally so blameworthy that it deserves the attention of the criminal law.

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Section.3. Changing Philosophy Underlying Criminal Laws

3.1 Purposes of Punishment:

Generally, the philosophy of deterrence still prevails in modern criminology. We continue to be concerned with preventing, by appropriate punitive sanctions,

both the individual offender and other members of the society from the repetition of the crime, or the imitation on the part of others by similar actions.

In the continuing controversy about capital punishment, one of the most powerful arguments of those who advocate the abolition of the death penalty is that 'there is no clear evidence... that the abolition of capital punishment has led to an increase in the homicide rate, or that its reintroduction has led to a fall' (Report on the Royal Commission on Capital Punishment 1953, section 65).

- Generally speaking, the increasing understanding of the social and psychological causes of crime has led to a growing emphasis on *reformation* rather than deterrence in the older sense, as the best way to protect both the individual criminal from himself, and the society from the incidence of crime. In

practical terms, this has meant the increasing use of corrective and educational measures, either in addition to, or in substitution for, punishment proper. The consideration of such alternatives has gradually spread from specialized categories of offenders to criminal offenders in general.

Unit Summary:

The type of conduct that a particular society considers as sufficiently worthy of condemnation to prohibit it by criminal sanctions is deeply influenced by the values governing that society. The very definition and concept of crime is not only according to the values of a particular group and society and ideals with faith, religious attitudes, customs, traditions and taboos but also according to the form of government, political and economic structure of society and a number of other factors. For instance, what is a sex crime in

India and Eastern countries may be a sweet heart virtue in West and Scandinavian countries. What is an offence against property in a capitalist culture may be a lawful way of living in a socialist society. What is permissible in a free and affluent society may be a pernicious vice in a conservative set up. The notion about crime also changes with time. What is an offence today may not be an offence tomorrow and what has not been an offence till yesterday may be declared a crime today. In short, the concept of crime changes with the change of ideology and other factors in the society. The socio-economic crimes, the sexual permissiveness etc are glaring examples of this truth.

The principles of vicarious liability and corporate liability are undergoing profound changes. Opinions are in favour of extensive application criminal sanctions to corporate crimes for the sake of deterrent effect. At the same time arguments supporting reformatory

returned to the dance floor, and found Diana on the dance floor still continuing her dance with her friend dancing standing very close to him. Addis ran across the floor shouting and shooting. He emptied the gun; He put three shots in his wife and three in her friend. Both died instantly.

There was sufficient evidence to prove that all the above said facts. Later, in his own statement to the police Addis said he loved his wife, intended her no harm, and was so drunk on the occasion in question that he could not remember anything that happened.

1. Suppose that you are the Public Prosecutor in this case. Prepare a prosecution case against Addisu for causing the death of his wife and her friend. Explain the essential ingredients of the crime you are charging the accused with and support your case with sufficient reasoning.

20 Points

Prosecution Case:

1. The Crime Committed: It is against the life of a person, i.e. 'Homicide'

Essential elements and causation of crime: Arts. 538, 58, 23 and 24 have to be applied to establish that it is an intentional homicide and the causation.

Intention to cause death is sufficiently manifested by the fact that he purposefully went to his car to pick up his gun and fired at both of them after returning back. There is no doubt about the causation since it was committed in a party in the presence of many eyewitnesses.

2. Specific type of homicide: Ordinary homicide under Art. 540

Addisu can be charged under Art 540 of the Criminal Code, 2005 for committing ordinary homicide by causing death of both his wife Diana and her friend.

Reasons for the Charge under Art 540:

1. **The killings in the case are not 'aggravated homicides'** because, though the conduct of the accused indicates the presence of premeditation it is not of such a serious quality as to bring the case under aggravated homicide. A husband killing a wife and her

male colleague under enraged condition cannot describe a dangerous or an exceptionally cruel personality as required by Art. 539. ***The quality of premeditation that is required under the Art. 539 is that it should be of such a mean nature that it suggests that the criminal is exceptionally cruel, abominable or dangerous person. Therefore, every case of premeditated killing may not necessarily fall under this article.*** A premeditation of lesser depravity may take the case to be treated under Art. 540 as an ordinary homicide.

2. The killings are not an extenuated homicides too for the following reasons:

- a. Though there is provocation it does not amount to 'gross' provocation as required by Art 541.
- b. Provocation to be a valid defence it should come from the deceased person. Here in this case Diana is the reason for provocation but that was not such a serious one to describe it as a 'gross

provocation'. So for the act resulting in the death of Diana provocation as required by Art. 541 cannot be established thereby disqualifying Addis from the benefits of extenuation.

- c. Diana's friend is ignorant of the disturbances between the wife and the husband. He did not do any thing in particular to provoke Addisu. Therefore, for causing death of Diana's friend Addisu can never claim the defence of provocation.

As the killings in the above case do not fit into the definitions of neither aggravated homicide nor extenuated homicide the right provision under which he should be prosecuted is 'ordinary homicide under Art. 540.

3. Intoxication cannot be a defence: Art. 50/1

The accused got intoxicated by his own fault and the act he committed was not a simple disturbance that can get the benefit defence of intoxication.

2. If you were the defense counsel what defense would you raise for the defendant.

State the principles, in detail, governing such defense/s under the Criminal Code. 20 Points.

Defence Case:

If I were the defence counsel for the defendant in this case I would raise the following contentions:

1. **Intoxication:** Art. 50/3 read with Art. 491

Though the defendant got intoxicated voluntarily, he neither contemplated nor intended that he would do any such act subsequent to his drinking. Therefore, he should be rightly treated under Art 50/3 read with Art 491. Following this, his sentence by no means should go beyond simple imprisonment not exceeding 1 year.

2. **Art 50/2 read with Art 543/1:**

If the Court is not convinced that his case does not fit into Art 50/3, it should at least be treated under Art 50/2 and is entitled to the benefit of his crime to be a negligent one. Under Art. 543/1 the accused may be punished with no more than 3 years simple imprisonment.

3. **Provocation Art 541/b:** The conduct of Diana and her friend were sufficiently provocative to a husband to react in such a way. There was no sufficient time to cool down there either. The provocation was from the deceased wife herself; therefore, provocation can be claimed as a defence. In this case his punishment should not exceed 5 years simple imprisonment. I humbly request the honorable Court to be considerate towards the accused having regard to the serious mental and emotional disturbances he had gone through and that his state of being intoxicated had made his state of mind even more incapable of regulating his conduct and grant him even a lesser sentence to him. In any case the defendant's case does not fall under Art 540. Therefore, I humbly submit to the honorable Court to consider the grounds for the defence so that justice is done my client.

**CASE
10 POINTS**

TWO

Alemayehu sold and transferred his estate to Zelalam. Alemayehu afterwards, executed a transfer of the same estate to Bayisa, dated six months earlier than the date of transfer of the estate to Zelalam, intending it to be believed that he transferred the estate to Bayisa before he transferred it to Zelalam. Did Alemayehu commit any crime? If so, establish the crime against him as per the essential elements of the crime under the relevant provisions of the Criminal Code.

Key Answer: Yes he has committed a crime of 'Material Forgery' punishable under Art. 375 of the Special Part. As this could cause serious material damage to the victim this case should be treated with sufficient seriousness and his sentence should be sufficiently severe too. The punishment for this crime is a minimum sentence of 3 months simple imprisonment and a maximum of 10 years of rigorous imprisonment.

III. PLEASE, GIVE EXPLANATORY ANSWERS FOR

THE FOLLOWING: 10 X 4=40 POINTS

- 1. "Every accused is presumed to be responsible". Discuss. What are the differences between Art. 48 and Art 49? 10 POINTS**

Key Answer: Generally, when a person is accused of a crime his/her responsibility is presumed by the Court. The prosecution need not prove it. This means that of the important things necessary to make a person liable for punishment within the meaning of Art.49/1 are established the in the following way:

1. The proof that the act was done by the accused---It is the burden of the prosecutor.
3. 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. The Court may entertain such a doubt at any stage of the trial by the conduct of the accused on the trial.

Once the 'question' arises it becomes necessary to decide the facts in the light of Arts. 48 and 49. Then it becomes the burden of the defence to prove the accused is irresponsible beyond reasonable doubt. Then the burden of the prosecution is only to raise a reasonable doubt in the mind of the Court that the accused is responsible and deserves punishment.

➤ **Differences between Art. 48 and Art 49:**

- Regarding the causes of insanity the articles supplement each other.
- Art. 48 deals with absolute irresponsibility where as Art. 49 deals with limited or partial

irresponsibility due to disease of mind.

- Absolute irresponsibility under Art.48 entitles the accused to complete immunity from the punishment, while under Art. 49 the accused is partially protected from punishment since he/she suffers from only partial incapacity to understand the nature and consequences of his/her conduct.
- Under Art. 48 the actions taken are, measures of treatment or measures for protection as provided Arts. 129-131. In case of Art 49 the accused is given free mitigation of punishment in accordance with Art. 180 as well as any other measures for treatment or protection shall be ordered.

2. The increasing understanding of the social and psychological causes of crime has led to a growing emphasis on *reformation* rather than *deterrence* in the older sense, as the best way to protect both the individual criminal himself, and society from the incidence of crime". Analyze this

statement critically.

10 POINTS

Key Answer: By reformation of the criminal is meant his moral regeneration, and developing the sense of honesty. A person, who commits a crime and suffers punishment for that, comes back to the society and lives in along with his other fellow beings. The advocates of reformatory theory aim at the rehabilitation of the criminal in the society. This theory admits only such types of punishments which are educative and discipline to the criminal, not those which inflict pain on him. Therefore, punishment must aim at making a man worthy of living in the society. However, purely reformatory punishment has the disadvantage of dilutes the pain of the penalty. And may not deter the criminal from repeating similar crime on the other hand it may even encourage the criminal to repeat his criminal behaviour.

The purpose of the punishment is to deter the criminal from committing crime in future and to set as an example to the

prospective criminals. It carries the message that those who violate the law will be punished like wise. The idea is that punishment will curb the criminal activities of the potential criminals. Strongly deterrent punishments may be successful in maintaining the full intimidation value of the penalty. However, it has the disadvantage of restricting the chances of reforming. Too lengthy and too harsh punishments in the name of deterrence may harden the criminal instead of reforming him. Therefore, punishment should be designed in each and every case by carefully including the deterrent as well s reformatory elements.

3. a. Petty offences are also referred to as 'regulatory offences', 'public welfare offences' etc. What do these different labels signify about the nature of these offences? 5

Points.

Key Answer: The petty offences originated as result of the need to protect the social interest i.e. the interest of the public in general. The necessity of social regulation

arose out of the growing complexity of social life. The special regulatory legislations such as examples of such laws may be, The Weights and Measures Proclamation, 1973, The Wild Life Conservation Order, 1970, the Currency Proclamation, 1942 (Proc. No. 31), the Currency Amendment Proclamation of 1947 (Proc. No. 99), road traffic rules etc., The violations of such mandatory provisions are made punishable more in order to give effect such laws than to inflict pain in the name of punishment on the law breaker. Therefore, the above said names signify that these offences are for the purpose of regulation of social conduct in the general interest of the community as opposed to the private interests of a specific victim.

b. Do all the general principles and rules of the General Part of the Criminal Code apply to the petty offences by virtue of Arts 3 of the Criminal Code and 734 of the Petty Code? State the exceptions, if any.

5 Points.

Key Answer: No, all the general principles and rules of the General Part of the Criminal Code do not apply to the petty offences. The following are some of the important differences:

Principles of Liability that Differ from the Criminal Code: Art 740:

- In case of petty offences only completed offences are punishable. The stages of preparation and attempts are not punishable.
- In these cases only principal offender (Art 32) is punishable. Inciters, co-offenders, and accessories after the fact are not punishable. Each offender shall be punished for his own act irrespective of the participation of another. Art 741/3 clearly lays down that the responsibility and liability for petty offences shall always be individual (Art 41 and 88). There is no collective responsibility under the Petty Code.
- Juridical persons are also not liable for incitement or complicity relating to petty offences. A

juridical person is punishable only when its employee violates laws, regulations or directives as a petty offender in accordance with Art 32 of the Criminal Code.

4. **a.** Define ‘trafficking in women and minors’. Are the definitions under the Ethiopian Criminal Code in conformity with those given under the international instruments?

5 Points.

Key Answer: The Ethiopian Criminal Code deals with the crime of trafficking under two different heads basing on the purpose of this criminal conduct. They are:

1. Trafficking for the purpose of forced labor, Arts. 597-600
2. Trafficking for the purposes of prostitution, Arts. 634-638

b. Does the consent of victim neutralize the crime of trafficking? Is the pecuniary gain of the criminal an essential element of the crime of trafficking?

5 Points.

Key Answer: No, the consent of a victim is irrelevant. These crimes are punishable even where there is consent of the victim or where

there is no pecuniary gain to the criminal. Art. 597 does not mention ‘pecuniary gain’ to the criminal as an essential element. Under Art. 635 ‘pecuniary gain’ is one of the two alternative purposes of the crime, the other being to ‘gratify another’.

Annex II. Key to Solve a Case Problem:

While solving a case problem the students are required to systematically deal with the facts given to them keeping certain key points in their mind in order to achieve these beneficial results:

1. To have clarity in presentation of their case, and
2. To avoid mixing up of prosecution and defense cases.

Students have this common problem of mixing up of prosecution case with that of defence. They should remember that while preparing a prosecution case they should stick to that side and challenge the defence with their contentions. Switching to defence points in between reflects their uncertainty and makes their

case weak. The same is true while preparing a defence case; the student should completely explore his chances of defending his case by identifying different grounds to establish the innocence of the accused in a right case or at least try to limit his liability in a case where the defendant's involvement is obvious.

I. Being a Prosecutor:

Before proceeding to prepare your case always read the facts thoroughly, if need be more than once to clear any lingering doubts about the facts in your mind. Note the names of the parties, dates, timings etc. perfectly in a chronological order (according to the order of occurrence). The prosecution case should necessarily consist of three important parts namely, identification of the conduct under specific provision of the Special Part, fixing the criminal liability of the accused and recommendation of the sentence.

1. Identification of the Accused's Conduct:

The first thing that comes to the mind after reading the facts is the specific kind of crime that the accused has committed. It is the harmful result that directs you to the relevant provision; say for example if the facts include the killing of a human being it will be identified as:

- A crime of homicide Arts 538-543
- The specific type of homicide i.e. whether intentional [Aggravated (Art. 539), Ordinary (Art. 540) or Extenuated (Art. 541)] or Negligent homicide (Art. 543)

At this stage just identification of the conduct under the relevant provision is sufficient.

2. Fixing the Criminal Liability of the Accused:

a. Essential elements of the crime identified:

The material and moral ingredients of the crime in accordance with the identified provision of the Special Part has to be discussed here clearly. For example, if it is a case of aggravated homicide, the facts should be shown to disclose:

- Intention of the accused in terms of Art. 58,
- At least one of the aggravating circumstances in terms of Art.539/1/a or b

b. Causation of crime:

If the facts include more than one cause then it has to be shown that the accused's act was the actual and adequate cause for the harmful consequence i.e. 'death of a human being' as in the case of the example we are considering. This is done in accordance with the rules laid down in Art.24 of the General part.

Always try to give sufficient reasoning for your stand. Yes/ No answers are neither useful for scoring maximum marks nor useful for your future practical application. This will help you to write nice reasoned judgments of academic as well as practical importance in future.

3. Recommendation of the Quantum of Punishment:

The last and very important part of the prosecution case is that it should contain a well reasoned recommendation for a specific

'quantum' of punishment. Though it is the judge that has the final word in deciding the nature and length of the sentence to be given, it should form part of the prosecution's request. For example, in a case of aggravated homicide you will conclude that the accused be given a sentence of rigorous imprisonment for life unless there are convincing grounds for demanding a death penalty. You have to support your sentence with sufficient reasoning too which will stand as an answer for the demands of the defence for mitigation of punishment.

The sentence recommendation should include aggravating circumstances, previous convictions, if any, and a description of the disposition of the accused.

II. Being a Defence Counsel:

Normally the defence case begins with a 'plea of not guilty' where in the accused denies all the charges made against him. The defence may base its case on anyone of the following grounds:

1. Absence of Legal Ingredient:

It may be shown that the harm caused is not one of those which are specifically prohibited under the Special Part of the Code. For example, 'raping' is a crime under the Ethiopian Criminal Code whereas 'fornication' is not. Therefore, unless there is a strong proof of an element of 'force' the conduct cannot be a crime. The principle of legality prohibits the creation of crimes by analogy (Art.2/3). Or,

2. Absence of Material Ingredient:

a. By proving the absence of 'cause' and 'effect' relationship:

In a case where several causes are present like preceding, concurrent or intervening etc. (Art. 24) 'the act/conduct of the accused' may be proved to be 'not the one' that had brought about the result or that it was the 'inadequate one' to have brought about the harmful result in question.

You need to show facts supporting your argument. Or,

b. By plea of 'alibi':

The Latin expression '*alibi*' literally means 'elsewhere'. It is a plea by a person accused of an

offence that he was 'elsewhere'... that having regard to the time and place when and where he is alleged to have committed the crime, he could not have been present.

The *plea of alibi* postulates the '*physical impossibility of the presence*' of the accused at the scene of the crime by reason of his presence at another place. It should be shown that the accused was so far away at the relevant time that he could not be presented at the place where the crime was committed.

Note: While solving a hypothetical case '*alibi*' can be raised only in the light of the given facts. You cannot modify the facts by imagination. You cannot assume the facts unless you are asked to.

Or,

3. Absence of Moral Ingredient:

a. By Proof of Incapacities: Arts. 48-56

The defence may claim anyone of the incapacities like insanity, intoxication or infancy to prove the incapability of the defendant to

form the guilty mind necessary to bring about the harmful consequences in question. Here again you have an obligation to support your contentions in the light of the facts given and the principles governing such a defence by referring to the relevant provisions of law. Or,

b. By Proof of an Affirmative Defence; Arts. 68-81

i) Where justifiable-No punishment at all:

Where all the essential conditions and the limitations specified under the relevant provision are fulfilled, the defence can claim complete immunity from punishment.

ii) Where excusable-Mitigation of punishment:

Where the conduct of the accused does not fulfill the requirements for an absolute justification a free mitigation of punishment pursuant to Art 180 can be claimed.

III. Being a Judge:

a. Analysis of issues on both sides:

If you are asked to decide the case assuming yourself to be a judge, you have to briefly discuss both

prosecution and defence cases and then come to a reasoned decision which can answer the contentions of both the parties.

b. Determination of punishment:

This exercise should be done carefully following important principles relating to determination of punishment incorporated in Arts. 87 and 88. Due attention should be given to the aggravating, mitigating as well as combination of both kinds of circumstances (Arts. 82-86, and 179-189). Supporting your sentence with sufficient reasoning is the most important part of your judgment.

