Criminal Law and Criminology

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Chapter One

Introduction to Criminal Law

- **Criminal Law** is the body of **law** defining **crimes and their respective punishments against the community at large**, regulating **how suspects are investigated**, **charged**, and **tried**, and **establishing punishments** for convicted criminals. **Criminal Justice Administration**
- The **criminal law identifies**, **defines and declares** the conducts that it seeks to **prevent and prescribes** the appropriate **punishments** for them.

The Place Of Criminal Law In Criminal Science

- **“Crime”** is an **offence committed** by an **individual** who is a basic unit of a society. Therefore, study of crime i.e. **Criminal Science”** is a social study.
- **Aims of Criminal Science**
  - To discover the **causes of criminality**,
  - To devise the **most effective methods of reducing the amount of criminality**,
  - To **perfect the machinery for dealing with criminals**.

Branches of Criminal Science

- **Criminology** studies about the **causes of crimes and the means of responding** to such phenomena and respective consequences to society and individual victims .
  - **Criminal Biology** – Crime is caused by the **inherent biological traits obtained genetically. Hereditary**
  - **Criminal Sociology** –asserts that crimes are caused by **societal learning and environmental factors**. **Criminal anthropology**

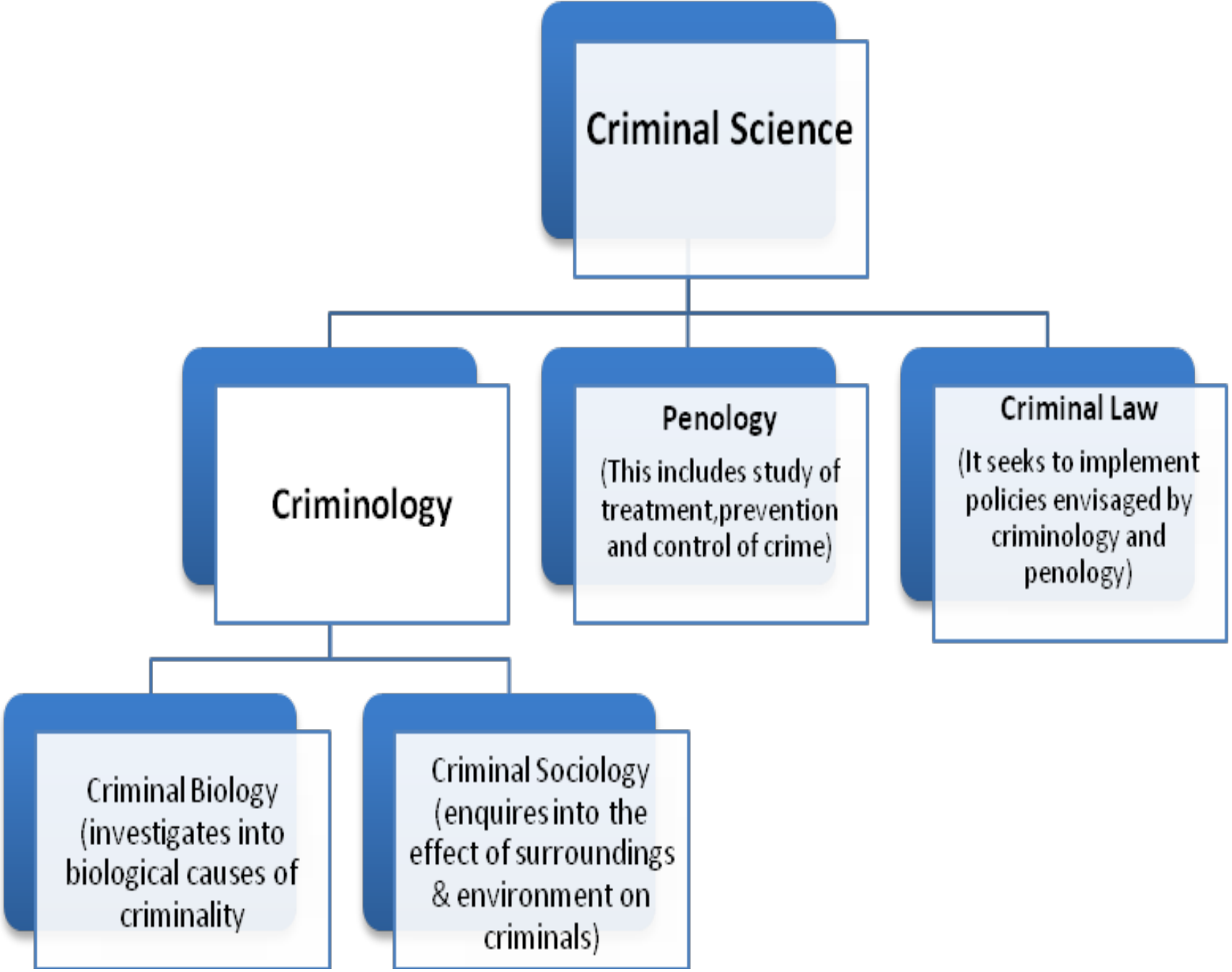
- **Penology /criminal policy –are designs crafted to prevent the commission of crimes,** means of treatment, perpetrators and procedure of handling such individuals by formulating the causes of crime and institutions(prison systems)
  - **Deals with treatment, prevention and control of crimes**

Cont'ed

- **Criminal Law- is an agency in which Criminology and Penology**, are implemented through the instrumentality of 'Criminal law' using different **punishments**
  - **Substantive Criminal Law**
  - **Adjective /Procedural Criminal Law**

- **Re-socialization and rehabilitation to the welfare of the society**
- **Sociological approach to criminology is the modern approach(where it study social behavior, systems and structures(social –structural and social process)**

- **Refer to Criminology and Sociology Course for further detail**


Criminal Science
Criminology
Penology
(This includes study of treatment,prevention and control of crime)
Criminal Law
(It seeks to implement policies envisaged by criminology and penology)
Criminal Biology (investigates into biological causes of criminality
Criminal Sociology (enquires into the effect of surroundings & environment on criminals)

Enacting criminal law: Whose Power?

- **Power formula** under the FDRE Constitution?(article 50(8) and 52(1) cum 55(5) of the FDRE Constitution)
  - All powers not given **expressly** to the **Federal Government alone**, or **concurrently** to the **Federal Government and the States** are **reserved to the States**.
  - The **States** may, **however**, enact penal laws on matters that are not **specifically covered** by **Federal penal legislation**.
- **What about criminal procedure code?**

Nature And Scope Of Criminal Law

- According to **Edwin Sutherland**, Criminal Law of a place can be defined as “a body of special rules **regulating human conduct promulgated by state and uniformly applicable to all classes to which it refers and is enforced by punishment.**”
- **Elements Criminal Law for its efficient Implementation**
  - **Politicality –**state prescribed command and sanctions enforced
  - **Specificity-**strict construction of terms
  - **Uniformity-**equal treatment and protection
  - **Penal sanction –**liabilities (penalties)

General Objectives of Criminal Law

- Protection of Persons and Property- **jus in rem-** security order & peace
- **Deterrence(special/individual and general/market)** of Criminal Behavior-article 18 of the FDRE Constitution
- Punishment of Criminal Activity
- **Rehabilitation of the Criminal(**Arts. 190-210 of the Criminal Code**)**
- **Class Group Discussion:**
  - Compare and Contrast the Objective of the **1957 Penal Code and the 2005 FDRE Criminal Code? Preamble of both Codes**
  - What specific objectives of punishment are fulfilled in **death penalty**? Should we still retain it as a type of punishment in our Criminal Code? Article 6(5) of the ICCPR, article 15 of the FDRE Constitution, article 117 of the FDRE Criminal **Code(Retentionist vs. Abolitionist**)

Cont'ed

- **Purpose** is the ultimate objective to be attained. Art. 1 para. One
- **Aims** are activities targeted to bring about the purpose
  - Prevention –Due notice
  - Deterrence -Punishment
  - Reform
- **Function** is specific activities actually implemented whereas **purposes** is the ultimate end of these activities.

Criminal Law, Private law and Morality- Distinguished

- A ***wrong*** is an act forbidden by the society. It is a violation of norms(values)
- **Question: What is morality? Right/Wrong dichotomy? Subjective, objective and inter-subjective elements**
  - **Moral Wrongs -are forbidden acts by the society. However, not all moral wrongs are legal wrongs. Are reprehensive acts**
  - **Legal Wrongs**
    - Public wrong (criminal wrong)- the state interferes by itself. What about upon complaint crimes?
    - Civil Wrong (private wrong)-the state takes action against the wrongdoer

Morality and Criminal Law

- Both aimed at **maintaining social order**. Most legal wrongs will have serious consequences when violated towards peace and order than moral wrong.
- Hate the crime not the criminal taken from the **Gandhian Philosophy** which stated hate the sin not the sinner. Hence, reformative justice is the philosophy of the state.

Class Discussion : Moral vs. Legal Wrong

- There were many people standing on the bank of the river Blue Nile. Among them there were several people who knew swimming. Suddenly, a woman fell into the water and started to scream for help. None of the onlookers made a move to help her. In front of all of those people the woman drowned and died.
  - Did any one of the people standing on the bank of the river have duty to save the woman from drowning?
  - If at all they committed a wrong, what kind of wrong was it? Can you prosecute any of those people for the death of the woman?
  - Can the moral duties make legal duties?

The Concept of Crime

- **Crime** is an ‘act’ or ‘omission’ which is prohibited by criminal law and the moral sentiments of the society.
- **Spatiotemporal** nature of crime(public opinion)
- **Wechsler** –the purpose of criminal law is to express the social condemnation of **forbidden conduct**, buttressed by **sanctions** calculated to **prevent** it.
- Government structure, economic and other social ties matters to define a forbidden act
  - Ex. Abortion in time
- **Social Change on the laws of crimes**
  - **Theft**-in primitive and modern societies

Cont'ed

- **Crime** is a **multidimensional problem** – becomes the concern of all people under a sovereign than law enforcement machineries. **Perspective wise**
- **Definitions of crime**
  - **Literal meaning** of crime-crimen (Latin) to charge. Greek Expression Krimos is synonymous to a Sanskrit word Krama means social order. Hence, **crime is an act which is against the social order worthy of serious condemnation**.
  - **General meaning of crime**
    - **Oxford English Dictionary** – crime is an act punishable by law as forbidden by statute or injurious to public welfare.

Cont'ed

- Crime is a public wrong –**Blackstone(1968)**
  - **Crime** as an act **committed or omitted** in violation of a **public law** either forbidding or commanding it.
- Crime is a moral wrong –**Stephen**
  - Crime is an act forbidden by law and which is at the same time revolting to **the moral sentiments of the society**. Treason is not immoral, drowning of a child.
- Crime is a procedural wrong –**John Austin**
  - A wrong which is pursued by **the sovereign** or his subordinates is a crime. Whereas a wrong which is pursued at the discretion of the injured party and his representatives is a civil wrong. What **about crimes upon complaint vs. crimes of accusation (11CPC)(212 FDRE CC cum 13 CPC)**?
- Crime is a creation of government policy
- Crime is a legal wrong
  - Article 23 FDRE Criminal Code

Crime vs. Civil Wrong

- Crimes are against the societal order whereas civil wrongs are against individual interest.
- Example
  - Criminal law vs. Tort law
    - Strict construction –analogy
    - Purposes (compensation and peace and order)
    - Preponderance vs. beyond reasonable doubt
    - Public prosecutor vs. plaintiff
    - Nature of wrong –private vs. public
    - Nature of rights violated (right in rem vs right in personanum)
    - Origin and nature of duty
    - Consent of the victim
    - Intention and negligence
    - Motive
    - Initiation of legal proceedings
    - Remedies available

Standard/degree of proof

- የሰ/መ/ቁ 104923
- በወንጀለኛ ህግ አንቀፅ 692(1) መሰረት የማታለል ተግባር ተፈፅሟል ለማለት መሟላት ባቸው ሁኔታዎች
  - በበቂና በአሳማኝ ሁኔታ ሲረጋገጥ ስለመሆኑ
- የወንጀል ህግ አንቀፅ 23(4)፣32፣40፣57 እና 58(1) and የወ/መ/ሥ/ሥ/ቁ/. 141፣142 እና 149
- **Clear and convincing vs. Beyond reasonable doubt**
  - Art.134(2) Cr. P.Code
  - Art.20(3) FDRE Con
  - Art. 13(2) cum 9(4) of the FDRE Con.
  - The Committee has noted a lack of **information regarding article 14**, paragraph 2 and, in some cases, has even observed that the **presumption of innocence**, which is fundamental to the protection of human rights, is expressed in very ambiguous terms or entails conditions which render it ineffective. **By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.**

Class Discussion

- “Crime is any form of conduct which is forbidden by law under pain of punishment”.
- Explain the concept of crime as a breach of public right. Does this explanation satisfactorily identify all crimes?
- “Crime is the creation of government policy”. Critically evaluate the statement giving practical examples from the experiences in the development of Ethiopian Criminal Law.
- Enumerate the specific legal aspects that differentiate crime, tort and a breach of contract.

Chapter Two

The Development Of Criminal Law Of Ethiopia

- **The Fewuse Menfessawi/Canonical Penance/Spiritual Remedy**
  - During Emperor **Zar'a Ya'equob(1434-1468**) first codified law
  - Only 62 articles on criminal matters
  - adopted from **Old Testament of the Bible**
- **The Fetha Negest/the law of the kings**
  - **Had two chapter on religious and secular matters**
  - **Intention and negligence**
  - **Proportion between fault and sanction**
  - **Individualization of punishment**
  - **Formally incorporated into the legal system in 1908 during Emperor Menelik II**
- **Drawbacks of FN was retributive**
  - **Lacks systematization**
  - **There were no specific and general and exception and principle**
  - **Aggravating and extenuating were not clearly regulated**
  - **Organized haphazardly**
  - **Had limited circulation (clergy only)**

Cont’ed

- 14th and 15th century **King Amde Tsion (r. 1314-1344**) -**Ser'ate Mengist**, the **'Law of the Monarchy** (short collection containing altogether twenty-one articles of law, which appears to record a **continuous legislative activity** which started in the 14th Century). The Law Consists in Majority Cases **Religious Affairs but Civil and Penal Matters were also found scattered in limited manne**r.

Cont'ed

- **The Ethiopian Penal Code, 1930.**
  - Regulates Era of Emperor Menelike II and Empress Zewditu
  - Was aimed at retribution –pay the price
  - Attributes of the Code
    - Crimes and punishments were clearly defined
    - Penalties were softened and improved by introducing fine to economic situation of the country
    - Protected interest includes (special part (the state and community, persons, and property) petty offences were incorporated too
    - Fetha Negast was the source
    - Frenchman drafter (believed)

Cont'ed

- The Penal Code of the Empire of Ethiopia, 1957.
  - **Jean Graven (Swiss)-Switzerland**
  - **The 1934 Swiss Penal Code and pre 1957 Swiss Jurisprudence were the sources**
  - **French Penal Code 1810 secondary source-general format**
  - **The 1951 Yugoslavia Penal Code –military offences**
  - **UDHR and Red Cross Geneva Convention were also incorporated(international)**
- **Improvements (collective punishment avoided, mutilation of human body as a punishment abolished, presumption of innocence introduced , rules applicable to young offenders, probation and suspension of sentences, personal nature of criminal punishment and measures and more sever penalty for arson**
- **Capital and corporeal punishment was retained**
- **Confiscation was limited only to crimes against the state**

Cont'ed

- **The 1974 Revolution and Criminal Law**
  - Emphasis for political crimes (Martial Law)
  - Crimes like anti-revolutionary and economic crimes was emphasized
  - Jurisdiction was given to **Revolutionary Operations Coordinating Committee at each *Awraja***
  - ***Torture was used to compel suspects admit***
- **Special Penal Code of 1981**
  - **Abolished the military tribunal by introducing special courts and inculcate new crimes(armed uprising, breach of trust by public official, grain hoarding and corruption etc**

Cont'ed

- **Criminal Code of FDRE 414/2004**
- **Reasons for a new criminal code**
  - **Incorporation of modern legal concepts**
    - Equality between religion, nations nationalities and peoples
    - Human Rights
    - Vulnerable groups protection
  - **To fill lacunae**
    - Crimes born out of time and technology
      - High jacking of aircraft
      - Money laundering
      - Corruption and drugs
      - Harmful tradition practices against women and children
    - **To adopt a comprehensive criminal code**
    - Increment of punishments for certain crimes
    - Matters concerning the determination of sentences
    - Redefining purpose and objectives

Cont'ed

- **Scheme of the FDRE Criminal Code**
  - **General Part –Part I**
    - Principles, conditions , defenses and punishments which are basic tool for the interpretation of the special part
  - **Special Part-Part II**
    - Various crimes and penalties
      - Crimes against the state or national or international interests (art. 238-374)
      - Crimes against public interest and community (art. 375-537)
      - Crimes against individuals and the family (art. 538-661)
      - Crimes against property (art. 662-733)
  - **Petty Offences – Part III**
    - **General**
    - **Special part**
- **Classification of crimes**
  - **Seriousness of the crime considered (Treason)**
  - **Subject matter (interest of the state, interest of the community and interest of individual)**

Class Discussion

- Do you think that the **Revised Criminal Code of Ethiopia** is close to the **prevailing social values** of Ethiopia? Do the **social values** of a country come in the way of implementation of criminal laws of the country?

Chapter Three

Basic Principles Of Criminal Law

- **The Principle of Legality(Historical antecedent)**
  - ***Nullum crimen, nulla poena sine praevia lege poenali*** (Latin, *No crime (can be committed), no punishment (can be imposed) without (having been prescribed by) a previous penal law*) is a basic maxim in continental European legal thinking.
  - **Used in French Revolution as a political right**
  - *there is no crime or punishment without a* ***pre-existing law that prohibits that crime'***
  - ***Fair warning*** *by duly notifying the crimes and respective punishments which reduces arbitrariness*

Cont'ed

- ***ex post facto* – unfairness and does not bring deterrence effect**
- ***The rule of lenity(***all ambiguities in statutory language be resolved in the defendant's favor***)***
- ***"nullum crimen sine lege(no law no offence), nulla poena sine lege(no law no punishment)" are important principles inherited from Roman Law***
- ***non bis in idem (Prohibition of Double Jeopardy)***

nullum crimen sine lege

- **Certainty in Legislation**
  - **Promotes certainty and definite** where people regulate their conduct and behavior in order to **avoid the hazard of falling** within the grips of the penal provisions of laws. Even the language of criminal law must be drafted **clear, *certain and unambiguous***

Cont'ed

- **Accessibility of the law**
  - Must be **certain and knowable** and **duly publicized in a language** the society can understand.
  - **What is Law in Ethiopia? One requirement is publication in Negart Gazeta.**
- **Rule of strict Construction**
  - **Prohibition of analogy**
  - **Principle of strict interpretation**
    - **Ambiguity/unclear**
    - **Doubt of meaning**
      - **Grammatical or logical interpretation**
      - **Historical interpretation**
    - **Doctrinal** –academic interpretation
    - **Judicial-in the course of judgment**
    - **Legislative-**

Non-retroactivity of penal laws

- **History**
  - first formulated in **Article 8 of the French Declaration** of the Rights of Man of 1789, which reappeared in the **French Constitution of 1791, and remains in the French Code Penal**
  - 1651, Hobbes wrote:
    - *"No law, made after a fact done, can make it a crime ... For before the law, there is **no transgression of the law**".*
  - Article 1, section 9(3) of the American Constitution which prohibited **ex post facto laws**. Article 7 of the European Convention on Human Rights provides
  - **Art. 15 ICCPR**
  - **Art. 22 of the FDRE Constitution and art. 5 of the Criminal Code**
- **Application of the more favourable law**

Non bis in idem(Prohibition of Double Jeopardy)

- **Art. 23 of the FDRE Constitution**
- The **previous acquittal** or **previous conviction** may be pleaded by the accused as a **bar to the subsequent trial**.
- **Multiple punishment ?**

Class Discussion

- Compare Art. 22 of the FDRE and Art. 5 of the FDRE Criminal Code
- Is Interpretation of law totally ruled out within the meaning of principle of legality? To what extent judges can be flexible?

Equality of What?

- Humans are **essentially equal , of equal worth** and should have this ideal reflected in the **economic , social and political structures of society.**
- **Formal Equality**
  - Treat equals equally and unequal unequally. Aristotle
- **Substantive Equality** – Content wise
- **Proportional Equality**
- **Moral equality**
- **Equality of Opportunities**
- **Equality of resource- distribution**
- **Equality of welfare**

The Principle of Equality

- **All men are equally** the children of God and Equal in his sight despite their widely differing temporal circumstances. **Harris, the quest for equality ,1960**
- Developed in the process of Roman Law. Non-Romans and Romans(governed by the ***jus civile (Civil Law)*** were treated separately.
- **Romans Developed Jus gentium (law of the nations)** to rule peoples they conquered. These laws were derived from principles of justice from natural laws. Consequently, **slaves** were considered to have **human rights** to be treated **fairly and decently**.

Meaning of the Equality Principle

- **Equality before the law** (treatment) **procedural equality - justice**
  - Application and enforcing of laws and the operation of the legal system.
  - Nondiscrimination clause
  - The existence of independent and impartial tribunal
- **Equal protection of the laws(substantive equality of protection)**
- **Article 4 Cr. Code cum art. 25 FDRE Constitution**

Exceptions: Founded Justifications for differential treatment

- **Immunities sanctioned by Public Int'al Law- Diplomatic immunity**
- **Immunity sanctioned by the FDRE Constitution-Constitutional Immunity**
  - HPR art. 54(5 &6)
  - HOF art. 63
  - Art. 39(1 c) cum 130(2g) criminal procedure
- **Requirements of individualization of criminal justice**
  - Art. 88(2) Cr. Code
  - Differential treatment in sentencing
  - Special treatment for women, young persons and feeble minded

The Principle of Individual Autonomy

- Each individual should be treated as **responsible for his or her own behavior**.
- **Factual element of autonomy**
  - Freewill(the capacity to choice)vs. duress, mistake, coercion etc
- **Legal Element of autonomy**
  - Independent agency
  - Euthanasia ?(should it be regulated)
- **Limitation to the individual autonomy?**
  - The right to life and the right to die

Chapter Four

Jurisdiction

- **Jurisdiction**, generally, means “the **legal competence of a particular court to hear a certain type or class of cases that is enforceable**.
- Hence, the conflicts of jurisdiction might arise when the courts of two or more places **decline to try a crime**, or when the courts of two or more places claim to have jurisdiction to **try one and the same crime.**

Cont'ed

- **Conflicts in jurisdiction** may be of two kinds
  - **Negative Conflict of Jurisdiction**
    - When two or more courts decline/deny jurisdiction to assume, this scenario enables the suspect to escape punishment.
  - **Positive Conflict of Jurisdiction**
    - When two or more courts claim to assume jurisdiction, the suspect may be subjected to double jeopardy.
  - **Levels of conflict of jurisdiction**
    - At national level –Ethiopian criminal courts art. 99-107 of the Criminal Procedure Code.
    - International –conflict between Ethiopian Courts and foreign courts art. 11-22 of the Criminal Code

Fundamental Principles Of Application Of Jurisdiction

- **The Principle of Territoriality- art.11**
  - Is a place where the crime is committed and it is advantageous for forum convenience
- **The Principle of Quasi-Territoriality or the Protective or Security Principle –art.13**
  - Are crimes committed abroad but will have significant impact to the country assuming jurisdiction
- **The Principle of Active Personality or the Nationality Principle-art. 14,15(2) & 18(1)**
  - Crimes committed abroad by Ethiopian citizens
- **The Principle of Passive Personality or the Passive Nationality Principle**
  - Crimes committed by aliens abroad against the nationals of the forum
- **The Principle of Universality or the Principle of Universal Jurisdiction**
  - Crimes by stateless persons(nullius or res communis), when a state refuse for extradition or unwilling to try

Crimes under Int'al Law

- **Eichmann Case** (crimes against humanity was arrested in violation of the sovereignty of Argentina)
- Ethiopian Cases –**Complementarity**?
  - Art. 17, 18(2)

Application of the FDRE Criminal Code as to Place

- **Principal Jurisdiction(art.11,12,13, 14 and 15(2))**
  - Territoriality Jurisdiction
    - **Art.11 Normal Case**
      - Crime committed by **any person(except art.11(2))**
      - The crime must be **punishable under Ethiopian** Law-p**rinciple of legality**
      - The Crime must have been committed on the **Ethiopian territory –art. 2 FDRE Constitution and art. 25 of the FDRE Criminal Code**
    - **Special case art. 12**
      - **Extradition art. 21 criminal code**
      - **Delegated jurisdiction**
  - **Extra territorial jurisdiction art.13-16**
    - **Vital interest of the country**
    - **Quasi-territoriality**

Subsidiary Jurisdiction

- Is a jurisdiction which relates to crimes that don't **directly or chiefly concern Ethiopia**.
- **Derivative Jurisdiction –helps avoid negative conflict of jurisdiction.**
  - **Art. 15(1), 17(1(a&b) and 18(1)**
- **Condition for application of subsidiary Jurisdiction art. 19**

Extradition

- **Extradition vs. Asylum**
  - **Extradition** is the **official process** whereby one country transfers a suspected or convicted criminal to another country. **Refuge country and a requesting country**
- Crimes usually kept outside extradition
  - Political crimes
  - Military crimes /desertion
  - Religious crimes
- **The Principle of Double Criminality**
  - Is a condition of extradition that the **crime is punishable acc.** to the **law both of the state of asylum and of the requesting state**.
- **The principle of Specificity**
  - The requesting state is under a **duty not**, without the consent of the state of refuge, to **try or punish the criminal for any other crime that that for which he was extradited.**

Chapter Five

Conditions of Criminal Liability

- **Essential Elements of Crime**
  - **Physical element (*actus reus*)**
    - Preparatory acts, attempted crimes and completed crimes
    - Causation
  - **Mental element (*mens rea)***
    - ***Intention***
      - *Direct and indirect*
    - ***Negligent***
      - *Advertent /conscious*
      - *Inadvertent/ unconcscious*
  - ***Legal Element***
    - ***Principle of legality***
      - *Nullum crimen sine lege*
      - *Nullum crimen pona lege*
      - *Non bis in adum*
      - *Non retroactivity*
  - ***Proof of criminal law***

Meaning of *Actus Reus*

- is such a result of **human conduct** as the law seeks to **prevent**. The **act done or omitted** must be an act forbidden or commanded by some law in force.
- defined as a **physical or muscular movement towards a given object which may also include willful restraint from doing a given act**.
- Whether the offender's act or omission has caused
- Whether bringing about such a result or state of affairs is prohibited by law.
- It is also called criminal act

Cont'ed

- Deed of commission(exercise of the behavior)
- Result of the commission-the consequence of the deed/act
- **Deed of Commission**
  - **Crimes of Commission ("Acts")**
    - These are characterized by **positive behavio**r, i.e. by **actively doing something to bring about the harmful 'result'.**

Cont'ed

- **Results of Omission**
  - **Crimes of Omission ("Failure") intentional non doing**
    - It is impossible to bring about these results by positive behavior. These are the results of negative conduct omitting to act expected of him.
    - ***Crimes of Omission: Where there is a Duty Imposed by Law***
      - Art.39, 254,256, 443, 308, 284-285, 448, 575, 658, 659, 779, 824, 855
  - Crimes of Commission by Omission **("Refusal")**
    - **Crimes of Commission by Omission: Where there is a Duty Recognized by Law**
      - **Art**. 537 , 778, 575(1 &2 and 659(1 &2))
    - These offences include behaviors which include both **positive and negative** elements refusal to perform a duty includes a positive expression of '**unwillingness to act' expected of him**.

THE ‘MORAL INGREDIENTS’ OF CRIME (*mens rea*)

- the guilty state of mind of a person which is associated with the principle ***“Nulla poena, sine culpa”*** which means there is no punishment without guilt. **Blameworthiness**
- **Art.57**
  - *“No one can be punished for an offence unless he has been found guilty there of under the law. A person is guilty if,* ***being responsible*** for his acts; he committed an offence either **intentionally or by negligence.**
- **Art. 20(3) presumption of innocence**
  - **Responsibility is presumed**
  - **State of mind (art. 58 and 59) at the time of the commission of the crime**

Tests in the evaluation of the state of mind

- **Objective standard of morality**
  - Reasonable man standard
- **Test of subjective standard**
  - Responsibility is presumed
- **Voluntariness of conduct**
  - Insanity, coercion
- **Foresight of consequences**
  - Negligence (lack of foresight)

Common Forms of ‘States of Mind’

- **Intention**
  - **directly**
    - There is **full knowledge** i.e., **awareness of consequences accompanied by with (intent)**.
  - **indirectly(recklessness)**
    - There is **awareness of consequences** and **unwillingness to renounce the course of conduct**.
- **Negligence**
  - Failure to exercise Reasonable care and prudence(reasonable man standard)
  - Failure to exercise due care and attention

- **advertent**
  - There is awareness of consequences but disregards the possibility
  - foresees the possibility of **some harm** but **disregards (or rejects) its occurrence**.
  - A' is driving a car and 'B' his passenger, points to him that he drives too fast and might hit someone, to which the driver replies 'you needn't worry, I am a good driver'. **Advertent**
  - **If the passenger insists but the driver responds that** it is 2 o'clock in the night, the police are asleep and no body will see us if something should happen. **Indirect intention**

Cont'ed

- **Inadvertent**
  - There should or could have been **awareness of consequences but lack of consideration of the same**
  - The accused is not **aware of a possible harm** and there is **no foresight about the result**
  - The accused believing that the gun is unloaded pulls the trigger and to his surprise finds some one injured.

Accident

- **Art. 57(2)An** effect is said to be an accident when the act by which it is caused is **not done with intention of causing it** and when its occurrence as a consequence of such act is not so **probable that a person of ordinary prudence ought under the circumstance in which it is done, to take reasonable precaution against it.”**
- **The act must be an accident or misfortune**
  - **the** doer suffers more than the injured
  - The absence of both intention and negligence
  - Act done with proper care and caution

Cont’ed

- The act must have not been done with any **criminal intention or knowledge**
- The act must have been done with **proper care and caution.**

Causation art.24

- ***Sine qua non* test/ theory of absolute causation**
  - Without which not…
  - Mixes causation and occasion of the harm
  - It provides possible candidates for liability
  - But for test
- **Adequate or proximate cause test**
  - Normal course of things
  - Pretending to shoot vs. death resulted out of pretention ?
  - Presumption in favor of the prosecution in the chains of causation
- **Factors That Might Break the Chain of Causation**
  - **Existence of preceding causes,**
  - **Existence of concurrent causes**
    - Simultaneous (if A and B shoot c and bring his death) who bullet kills c? art. 32 co offender
  - **Intervention of extraneous causes**
    - **After the event and external to it.**

Physical element of a crime

- **Where there is no physical participation art. 32 Criminal code**
  - Indirect participation
  - Another person intervened
  - Victim’s own conduct has affected the result
  - Contributory negligence of the victim
  - Where the participation is superfluous

Important Questions of Concurrence

- Whether the commission of concurrence will give rise to sever **degree of guilt or not to the doer**
- **Determination of punishment**

Concurrence of Crimes art.60-67

- **Material Concurrence/concurrence of crimes**
  - When **several unlawful acts** are done in contravention of **one or more article of the law**
  - **Successive criminal acts**
  - **Independent or related crimes art.65**
    - **Robbery(670) =theft + coercion (art.582 cum 665)**
    - **Art. 721 cum 723(related but ancillary or subordinate**

Cont'd

- **Notional Concurrence/concurrence of criminal provisions**
  - When one **unlawful act** is done in contravention of **several articles of the law.**
    - **Rape(620) incest(654), adultery(652), public indecency (639)**
- **Simultaneous notional concurrence**
  - When a **single criminal act results in several punishable crimes**
- **Non-simultaneous combination of crimes-art66**
  - **Concurrence of intentional crimes-66(1)a**
  - **Concurrence of intentional and negligent crimes -66b**
  - **Concurrence of negligent crimes 66c**
- If A sets fire to B's hut with an intention to destroy it. If B dies
  - Arson 494
  - Intentional homicide(indirect)
  - Negligent homicide (advertent)
- **Concurrence of victims (art. 60(c) FDRE CC**

Determination of punishment in cases of Concurrence

- Cumulative punishment is only allowed under art 768
- Upon finding concurrence of crimes, the court acc. to 184-187
  - Impose a penalty on the most sever crime
  - Aggravate the penalty without exceeding the max. limit art.184

Unit of guilt and penalty art.61

- **Imperfect concurrence** (unit of guilt and purpose)
- **Single act or combination of criminal acts 60/1**
  - Single or combination of acts committed
  - Against the same **protected right**
  - Flowing from a single criminal **intention or negligence**
- **If A stabs B but failed to kill him and causes injury**
  - **Attempted homicide**
  - **Not bodily injury**
- **Successive non concurrent acts/continuing offence60/2**
  - Repeated acts done
  - Against same protected right
  - Flowing from the same criminal Intention or negligence
  - Aiming at achieving the same purpose

Con’ted

- **Ancillary /subordinate acts -60(3)**
  - **Non-punishable acts of execution**
    - **The putting into circulation of counterfeit coins**
    - **The use of forged documents**
    - **Merger of intention and purpose**
- **Renewal of guilt and penalty -62**
  - **If a truck driver who did not fasten his load of bricks is aware of his fat that a brick has fallen off and killed one person and then having aware of this if the driver continues and killed another.**

Period of limitation

- Period **of limitation** is a limitation in time for the prosecution of a suspected criminal within a period of time.
- Art. 211 ff, 217 , 170

Corporate criminal liability

- Liabilities of juridical persons **Art.23(3) cum 34**
- **Kinds of corporate liability**
  - Criminal liability
  - Civil liability
- **Principles of corporate liability**
  - Vicarious liability
  - Direct liability

Chapter Six

Degree in the Commission of Crimes

- **Different stages of commission of crimes to realize a criminal design**
- **Material element**
  - Completed
  - Incomplete(**inchoate offences**)
- **Preparatory acts – a mere intention to commit a crime is not punishable**
  - Overt and covert acts –art. 23
  - Desire-Initial design /plan/preparation-decision-overt act/enforcement
  - Preparatory is harmless unless the preparation consists of a crime
  - Preparation must not be punished for individuals to change their mind

Cont'ed

- **Attempt**- is a **second degree in the material element of a crime** where a substantial effort but unsuccessful result. **An attempt is more than preparation**.
- **Elements of an attempt**
  - **Intent/internal mental process/covers the thing in full**
  - **Overt act/the intent must be manifested clearly (point of no return)-covers in part.**
  - **Failure to achieve the result**
- **Kinds of attempt**
  - Incomplete attempt-voluntary withdrawal, external intervention
  - Complete attempt (impossible offence and active repentance)
  - Impossible attempt

Preparatory vs. Attempt

- All preparatory acts are not punishable but all attempts are punishable
- The relative proximity between the act done and the evil consequences
  - Preparatory is devising or arranging the means or measures necessary whereas attempt is a direct movement towards the commission

The stage of Attempt

- **Reasonable interference test or unequivocality test**
  - Intention to commit the crime and overt behavior towards the commission of the crime
  - If there is one reasonable answer
- **The Commencement of the execution test**
  - Go beyond the point of no return/point of irrevocability/has taken decisive steps
- **Proximity test**
  - Last act for the result, not remote

Cont’ed

- **Locus poenitentiae test**
  - Place of repentance may make a certain behavior preparation or an attempt
- **Social danger test**
  - The seriousness of the crime attempted and the apprehension of the social danger involved is taken into account to distinguish an act of attempt from that of preparation.

Cont’ed

- **Renunciation and active repentance**
  - **Renunciation** –renouncing ones criminal pursuit of his own free will-reduced punishment 180
  - **Active repentance** is a scenario where the perpetrator having completed the criminal activity prevents or contributes to prevent the consequence of the crime out of his free will.

Chapter Seven

Participation in the Commission of Crimes

- **Degrees and roles** played by different persons in the commission of the crime.
  - **Two argument**
    - **equal liability** due to illegality for both principal and secondary criminals
    - **Differentiated liability** to the degree and role of their participation
- **Participation** in the principal capacity
  - **Narrow definition** –physical participation /material
  - **Broad Definition** –moral criminal /mastermind

Cont'ed

- In Ethiopia the broad definition is recognized
  - **Material offender**
    - Art.32(1a)
    - A bachelor performs sexual intercourse with a married woman.
  - **Moral offender**
    - **Full association with the commission of a cr**ime art. 32(2b)
    - Abebe, who is not a member of the military, promised 5000 birr to Bayuh, a military member to quit his membership and the latter did the same.
  - **Indirect offender**
    - Art. 32(1c) uses intermediaries
    - A woman persuades a man to commit rape against another woman.
- Legal effect of punishment
  - Art.35 cum 41

Cont'ed

- **Co- criminal /co-offender- art. 32(3) cum 33**
- **Participation in secondary capacity**
  - Before or during the commission of the crime (accessory before or during the commission of the crime)
    - Incitement/instigator
    - Complicity /accomplice
- **Criminal consiparacy-38**
  - may encourage each other.
  - may feel bolder than if they were on their own.
  - may fear reprisal from the other
  - may not want to loose face from the others
- Accessory after the fact -40

Chapter Eight

- **Criminal Defenses –**are defenses where a criminal will be subjected to a **reduced punishment or exoneration from liabilities**.
- Defenses are differently **incorporated in the criminal law (clearly as defenses and elements of certain crimes)**
  - **General defenses-** are defenses applicable to every types of crimes indicating the non-fulfillment of the essential conditions of a crime(art. 23(2) FDRE CC
  - **Special defenses-are** elements of a crime which indicate the non-fulfillment of these elements and are specifically applicable.

General Defenses

- Are expressly provided by the law as defenses

1. **Excusable Acts** -defenses that arise because the **defendant is not blameworthy for having acted in a way that would otherwise be criminal**
   - are the defects and unusual conditions of the criminal during the commission of the crime
   - if persons commit crime **unwillingly, without understanding the nature and consequences of their act, with mistaken belief of facts or law**

2. Justifiable Acts /lawful acts

- Are defenses that arise when the **defendant has acted in a way that the law does not seek to prevent.**
- The focus is on the criminal act not on the suspected criminal
- Legitimate defense, necessity and acts required or authorized by law
- **Art. 23(4) criminal offences and punishable offences**
  - **Deserving of punishment**

Burden of Proof in Cases of Defenses

- **Responsibility/capacity** is presumed and any person who alleges irresponsibility shall proof it. **Reasonable doubt**
  - **Art.57(1) second alinae cum 48(1), 130(2g) Cr.P C and art.196 Civil Code**
- **Mental /moral fitness**
- **Grounds of irresponsibility**
  - Age (infants)
  - Mental status (insanity)
  - Intoxication

Cont'ed

- **Criminal responsibility** is presumed. Every person is capable to offend the criminal law. Art. 57(1) cum 48(1) and art. 130(2g) of the criminal procedure code(preliminary objection). Art. 196(1 &2) civil code
- Who should proof responsibility?- the person who alleges irresponsibility. When? In the preliminary objection?
- Does this contravene presumption of innocence? No. because the proof is on the irresponsibility not on the guiltiness side.
- Responsibility is related to mind (moral element)-art. 23(2)

Causes of absolute or partial irresponsibility

- **owing to age, illness, abnormal delay in his development, deterioration of his mental faculties)**
  - **Psychological**
  - **Biological**
  - **Bio-psychological**
- **Incapable of understanding his act /regulating his conduct**
- **At the time of the commission of the act**
- **Evidence (proving insanity) art. 51**
  - About irresponsibility and time
  - Expert witness
  - Circumstantial evidence
- Art. 48 and 49= insanity

Art. 50 **intoxication**

- **Reason for incapacity –is other than the causes mentioned under art.48 and 49**
- **Voluntary and involuntary intoxication**
- intentional or culpable irresponsibility)-voluntary placement in a state of irresponsibility to commit a crime is punishable.
- Guilt mind vs. guilt action- the criminal law punishes guilt mind not the action taken

Cont'ed

- **Art.50/1**
  - state of the defendant (absolute or limited irresponsibility)
  - State induced by –own fault(voluntary intoxication)
  - Crime committed –intentionally in order to …
  - Fully liable to punishment
- **Art.50/2**
  - Absolute or limited irresponsibility
  - Own fault /negligent
  - Negligently
  - Punishable for negligent crime

Cont’ed

- **Art.50/3**
  - Absolute irresponsibility
  - Own fault
  - Accidentally /neither contemplated nor intended
  - Punishable under art. 491
- **Art.50/4**
  - Absolute irresponsibility
  - No fault on his part/has been coerced
  - While incapable of forming any mental element
  - Shall not be liable to punishment

Art. 52- **infancy/immaturity**

- ***doli inapax*** (**incapable of doing a criminal act**), because a child under such age group **cannot form the necessary intention to commit a crime.**
- what is birth? Art. 1 cum 2 civil code
  - [Birth-9) =exoneration of criminal liability due to lack of intelligence
  - [9-15)= young offenders Art. 53
  - (15-18)-transitory age/ ordinary provision Art. 56

Lawful Acts(Art. 68 & 69)

- Art. 68 is an **illustrative listings other than exhaustive** from the phrase **in particular** implicates **because it is to mean for instance, such as etc**
- **The law permits self contradiction for its proper implementation and execution.**
  - **Elements**
    - Acts required /authorized by law are not criminal offence and punishable offence because there is no legal element (it is not prohibited act) as per art. 23(2) cum art. 24
  - **Common Good/General interest**(acts in respect of public, state or military duties**)- to maintain the constitutional order**
    - **Eg. Art. 50 Criminal Procedure Code states that "any private person or member of the police may arrest without warrant a person… and hence, that private person despite that she hasn't any official status will not be punished for Art. 585(illegal restraint) due to Art. 68(1) a). The same holds true for Art. 57 of CPC(Assistance of arrest) which is an interference with liberty Art. 602(1)**
    - **Articles 443(1b) are acts contrary to Art. 613**

Cont'd

- **Gov't employees/public servants**
  - Eg. Police- Art.585 and 604
  - Death penalty executioner
- **Military duties** –combatants (soldier is justified to kill another). A soldier is by definition a person **licensed by law** to kill to be killed.
- **However, such lawful acts must obey the law and must be proportional**.
  - Eg. Art. 271 of the FDRE Criminal Code(civilians, POWs etc)
- **Acts done in the exercising** the **right of correction or disciple- Art. 36(1e) FDRE Constitution cum Art. 2039(c) Civil Code**
  - **Art. 576(3) Disciplinary Measures for purposes of upbringing?**

Cont'ed

- **Art. 68(1c) –Private Justice(taking the law into one's own hand)-**
  - **eg. Art. 1148 of the civil code right of holder or possessor to repel by force a usurper**
  - **Art. 2076(2)of the civil code to kill animal because Art. 2097(2) for good faith**
- **Art. 69 Acts done in exercising professional duty**
  - **This can be incorporated under art. 68 but treated differently under Art. 69**
  - **What is a profession?(elements of profession)**
    - **Extensive training**
    - **The service needs the society**
    - **Certification**
  - **As long as the service is needed by the society, the professional must render it /exercise it .**
  - **Limitation**
    - **Accepted practice of the profession**
    - **Grave professional fault (art. 2031 civil code)**
  - **Eg. Bodily injury, battery**

Defense of Consent

- **Art. 70 Consent of the Victim**
  - **Relatively Protected Rights** –despite the fact that crime is public, offences under the criminal code are arranged from most **sever to lenient crimes. Crimes against the state and group crimes are among serious crimes but petty offences and crime of predominantly private nature are lenient crimes. In most cases, relatively protected rights are crimes upon complaint (art.212) and hence, can be waived**
  - **Absolutely Protected Rights – are serious crimes which offend the state and the public at large and are punishable by accusation/without complaint.**
  - **The purpose of the harm (art. 573(2))**
- **The FDRE Criminal Code adopt the purpose of the harm theory and upon complaint crimes as indicated under art. 70(2) and 70(1) respectively.**

Legitimate Defense

- Art. 78. refers to the **use of force to prevent unlawful attacks against** individuals, their homes, property and the right of another person. (the taking of the law into one's own hand). Legitimate defense is **socially desirable behavior** because it tries to teach the unlawful attacker by using force.
- **Elements**
  - **Actual Attack or imminent attack** –attack should not be imagined and retaliation (it should not been future or past attacks)-preemptive strides
  - **Against legally protected rights**
  - **Last Resort –means of averting the attack should be exhausted**
  - **Proportionality** –attack and repel

Defense of Necessity

- Art. 75 presupposes the **choice of evils**. The evil is extraneous to individuals. **Lesser evil** will be chosen. The arbiter in necessity is **might to choice over the lesser evil.**
- **Elements**
  - **True State of Necessity**
  - **Last Resort**
  - **Proportionality-doing of harm and suffering of harm**

Excusable Acts

- **Art. 71 Coercion** is derived from Art. 32(1c) compelling another to commit a crime. It is obliging an individual to commit a crime at gun point. The individual is placed at two options ; to commit the crime or suffer the consequences of resistance**. The person who violates the law is deprived of his freedom of choice by coercion.**
- **Types of Coercion**
  - Physical
  - Moral
- **Requirements**
  - The actor must be under an absolute irresistible coercion
  - The harm to be caused by doing the act must not be greater than that would have been suffered by the actor had he not submitted to the coercion.

Defense of Superior Order

- **Art. 73 & 74 Chains of Commands-** authority to order some one to do something. It is a relationship between superior –subordinate in authority.
- **Theories**
  - **Blind /passive obedience –accepting order at all times is a merit because obedience is respecting the law**
  - **Intelligent infantry/bayonets-** questioning the legality and authority of the order is a merit. Inquisitiveness = **disobedience**
  - **Middle-of –the-road(reconcile** the legal and factual requirements by combing obedience and independence)- manifestly unlawful
- Stringent Exigencies to discuss over the authority /competence, express should be considered by the court to assess over superior –subordinate relationship. **Nazi officials**

Art. 80 Mistake of Fact

- As a matter of principle, mistake of the true facts of the situation **may not serve as an excuse to a criminal liability**. Presence/absence/quality which will vitiate understanding over things and brings mistake.
- **Mistake** can be **fundamental and non-fundamental**
- Mistake of the true fact negates intentional guilt and a person who commits a crime as a consequence of misappreciation of the true facts of the situation must be tried as though the situation which he believes to exist did actually exist.
- **Knowledge and Desire** must be considered in mistake of fact. Art. 58(1)(a&b) both direct and indirect intention-
  - eg;- Challa shoots something which he believes to be a **lion but actually is a human being**. **Material ingredient of intentional homicide is absent** and hence, Challa will not be held liable for intentional homicide .
  - Arsenic for sugar, poison for drug
- **Hence**, mistake of fact is arguably considered a defense to criminal liability for intentional crimes(materially ingredient of the crime).

Mistake of Law/Ignorance of Law

- Art. 81 Cum 2035 cc As a matter of rule ignorance of the law is not an excuse. Information
- Art. 1 para 2 –**Due notice is a prerequisite**
  - Physical accessibility –circulation of the legislation
  - Language
- Art. 81(3)-exception –absolute and justifiable ignorance +good faith + no criminal intent**.**
- **Exception should be interpreted to**

Punishment

- **Punishment** is a process of selecting a person who are antisocial from society to bring their reformation to make them important to society.
- **Criteria for punishment**
  - Impose pain or unpleasant consequence
  - Be described by the law –principle of legality
  - Be administered intentionally
  - Be administered by the state
- **Sentencing Structure /individualization of punishment (art. 41 cum 88(2) of the Criminal Code) decree 2/2006 cum 88(4) criminal code**
  - **Legislative fixed model-** the HPR provides a general guidelines of punishments /determinate circumstance
  - **Judicial Fixed model-discretion** /indeterminate circumstance
  - **Administrative model** –prison administration
    - Amnesty
    - Pardon

Purposes of Punishment

- Retribution Market deterrence
- Deterrence Individual Deterrence
- Incapacitation /disability
- Rehabilitation /reformation
  - Preamble cum art. 87
  - Principle of individualization Art. 88(2) cum 41
  - Principle of legality art. 2(1)
- **Correlation between purpose of punishment and types of penalties**
  - Incapacitation= death/rigorous /simple imprisonment
  - Rehabilitation/reformation= simple/rigorous

Types of Punishments

- **Primary Penalties**
  - Penalties affecting the criminal's property
    - Fine, confiscation, sequestration, forfeiture(90, 91, 97, 99 & 100)
  - Penalties affecting the life of the criminal (art. 117 cum Art. 15 FDRE Constitution**)- abolitionist vs. retentionist** (Art. 6 ICCPR)
    - The crime must be exceptionally grave
    - The criminal must be exceptionally dangerous
    - Completed crimes
    - There must not be extenuating circumstance
    - The criminal must have attained 18 years
  - Penalties affecting the personal liberties of the criminal

Secondary Penalties

- Caution, reprimand, admonishment and apology (art. 122)
- Deprivation of Rights 123
- Dismissal from the defense force 127(1)
- **Protective Measures** (134)
  - Measures applicable to adults in special cases Art. 130, 131 &132)
  - Measures applicable to young persons
    - Admission to a curative institution 158
    - Supervised education 159
    - Reprimand ; censure 160
    - School or home arrest 161

Extenuating and Aggravating Circumstance

- Art. 88(2)- **extenuating circumstance** are external/internal factors surrounding the commission of the crime which are not the legal ingredient of the crime committed but taken into consideration during sentencing.
  - Nature of the crime — High motive
  - Incidental circumstance of the crime — moral /material distress
  - Personality of the criminal — threat, reverential fear
  - State of mind of the criminal — temptation, repentance
  - Age, education , knowledge , character (before and after), health
  - Economic position, motive and provocation /impulse
- **Types of Extenuating** — General Art.82 material /external,

  internal and mixed

  Special element of the crime

Cont'ed

- **No double extenuation and aggravation** (art. 82(2) cum 179 and art. 84(2) cum 183
- **Aggravation** refers to factors that are relevant to the perpetration of a crime which indicate the degree of guilty and dangerous disposition of the criminal warranting an increase in the penalty to be imposed on such a criminal. **Aggravation** can be either **material or personal conditions** attending the commission of the crime which can be taken in sentencing.
- General and Special Aggravating circumstance
  - Treachery, base motive, deliberate intent, cruelty, abuse of power, antecedents, habitual or professional nature of the crime, the time and circumstance of the commission of the crime.

Aggravation in cases of concurrence and recidivism

- 184-188
- Notional and material concurrence
- Recidivism

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