Ethiopian Tort Law Short Note



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Part one
Definitions and Principles of Tort Law

Q. What are the basis of Ethiopian tort law?

- ✓ The background constitutional rights for Ethiopian tort law are;
  - Art 15
  - Art 16 (cum with Art 2038 of CCE
  - Art 40 (cum with Art 2053 & 54)
  - Art 17
  - Art 24 & 26 (cum with art 2044 CCE and Art 29 (6 &7) of FDRE constitution)
  - Art 40 and Art 41(1) (cum with art 2055-59)
- ✓ Thus, the violations of the above mentioned rights are under the covers of Ethiopian tort law as a part of civil remedies.

Q. What are the major civil remedies under Ethiopian tort law?

- ✓ The major civil remedies under Ethiopian tort law are;
  - **Damages**: Awarding compensation

Q. What are the major principles of tort law?

- There shall exist four essential requirements (usually referred as tort law principles), in order to make the person liable under tort law. They are;

1. ***Act or Omission***
2. ***Damage***
3. ***Causation:*** the damage shall be the result of the act or the omissio***n***
4. ***A kind of harm recognized as attracting legal liability.***

Q. Should the above 4 criteria's must be fulfilled to make the person liable under tort law?

No! because of two facts;

a) **Damnum Sin Injura**: in case of unfair competition, even if the damage is caused, however, it is not a kind of harm recognized or attracting legal liability.

b) **Injura sin Damno:** in case of trespass, the conduct is actionable without the need to proof of damage.

Conduct that gives rise to Liability

Q. What is conduct? And Discuss the major types of conduct?

- ✓ Conduct is a person behavior in a particular situation and in particular place.
- ✓ It have two forms;
  1) **Misfeasance:** is an act or external manifestation of the actor will and it also known as positive act.
  2) **Nonfeasance:** is the omission or a failure to act where the law requires a person to act in a certain way. (see for instance our Civil Code art 2052)

Intention and Negligence

Q. When intention is said to be existed?

- ➢ Intention exists where the defendant;
  a. Knows that the consequence of his conduct are bound to occur;
  b. Desire the consequence of his act; and
  c. He may not desire, but foreseen the result of his conduct.

Q. **When Negligence is said to be existed?**

- ✓ Four essential conditions must be fulfilled. Accordingly when the defendant;

a. Must have owed the plaintiffs duty
b. Must have breached that duty
c. The breach of that duty must have the actual as well as legal cause of the plaintiff injury; and
d. The injury must be that the law recognize and for which money damages may be recovered.

Q. What degree of duty exist to protect other person from harm

- ✓ Reasonable duty is a standard of ordinary skill and care, based up on the specific fact of each individual case.

Reasonable and Prudent Person

Q. What are the basic requirements for fulfilling the standard of reasonable and prudent person?

- ✓ It have basically three essential requirements;

A. Knowledge (see 2030 (2) & (3)

- ✓ It should be judged in the objective standard, provided that, it does not take in to consideration the particular ways of behaving, thinking or weakness of the defendant. (e.g. If the trainee of the car cause a damage to the trainer, then the trainee should be considered as a professional driver)

Q. Does it mean, the reasonable standard is considered as an absolute standard without exception?

- NO! one of its exception is unforeseen harm;

  provided that if a particular danger could not reasonably have been anticipated, the defendant has not acted in breach of his duty of care, because a reasonable man would not take precaution against unforeseeable consequences.

Q. Does our CCE adopted the reasonable standard under tort law section?

- Yes! It is embodied in our tort law under art 2030.

B. Investigation

- The law expected a person has investigated his actions and things that S/he is going to act or use.
- But if not a reasonable standard is violated. (E.g. Driving a car with out appropriate service by Auto mechanics)

C. Judgment

- The law in here expected us to ask ourselves the following questions;
  a) What is the likely hood that our particular activity will harm some one else?
  b) If the damage occurs, what is the likely hood of the extent of the harm? And
  c) What must I gave up in order to avoid the risk of others? (e.g. continuing shooting a pistol vs public peace)

Statutory Standard

- The objective standard is not free from subjectivity, that is left for individuals judge ***to decide on what is a reasonable or what could have been foreseen.***
- Thus, the majority rule is that breaching the statutory standard is negligence Per se, without the need for further proof. (e.g. driving a car without a light in the dark road, despite the fact that the law prohibit expressly)

Causation and Remoteness of Damage

A. Causation

- Is usually occurs when we look at the damage and see that it was actually caused by a number of different factors. (i.e. a number of factors combining together brought about damage

B. But…For Test

- According to this test the plaintiff will have to show that S/he would not have been injured in a way S/he was but for the defendant conduct.

Q. But, what if the scientific evidences can not proof the but for test?

In case where the technology has not reached a level to resolve the issue, the judge shall ***resort to a balance of probability.***

Remoteness of the Damage

- The remoteness of the damage is used to set the limit of legal accountability of the defendant.

Q. When a damage is considered as too remote?

- The damage is considered as too remote when the act causing a damage is unforeseeable consequence of the act.
- However, when the damage is the direct result of the tort feasor act or when the consequence of the act is foreseeable by a reasonable man it is considered as not remote damage.

Exceptions to the Foreseeability Test

- The following exceptions are acts that are unforeseeable, however, the tort feasor shall be liable to pay damage. Accordingly, they are;

A. The Egg- Shell- Skull Rule

- *Where a certain act causes a physical injury, which is different and much worse than the ordinary injury that would have been caused in the course of events.*
- Provided that the defendant could reasonably foresee the type of injury he suffered by the plaintiff, thus, he will be liable even if the damage caused other damage on the plaintiff.

e.g. if a molten metal from metal factory struck on a person leap and cause the that persons tissues on his lip changed to cancer, then if the victim is died. The factory is liable for the death of that person.

B. Economic Loss consequent on Physical Injury

- ✓ When one single act causes two injury and the later is not foreseeable by the tort feasor. (e.g. a car accident that cause physical damage on Mr X may prevents him to engage in his economic activity).
- ✓ in case of claim in tort damage constantly given for consequence of which the defendant had no notice.

Q. If so, can the victim claim the compensation for the economic loss in separate trial?

- ➢ Under Ethiopian tort law the victim who suffer both physical injury and economic losses shall claim it at the same time on the same trial. Unless, it amounts to resjudicata. (see art 2151)
- ➢ However, if the damage caused are independently of that for which S/he already claimed compensation, the victim may claim separately.

c. Psychiatric Illness

- ✓ If the physical injury brings about the victim psychiatric illness, even though, the

Defendant will not foresee that, he will be liable for the psychiatric illness. (e.g. a girl who is raped is for sure is exposed to psychiatric illness in addition to the physical damage)

Intentional Torts

- ✓ The foresee ability test to determine whether the loss suffered by the victim of a tort was a remote consequence of that tort does not seem to apply to cases where someone commits an intentional tort.

Q. What are the major forms of Intentional Torts?

Have two forms/ kinds;

a. **Non-intentional torts**

- ✓ the one which is committed by an actor who knows what she is doing. (e.g. battery, false imprisonment, defamation and private nuisance.
- ✓ They are referred to as non – intentional torts because they can be committed unintentionally or inadvertently.

b. **Intentional Tort**

- ✓ Committed intentionally, (e.g. malicious falsehood. and the intentional infliction of harm using unlawful means, deceit and malicious prosecution 2045 (1) & 2048 (2) CCE.)
- ✓ So the tort feasor may be held liable to compensate the victim for the loss she suffers even if the damage is not reasonably foreseeable at the time the tort feasor commits the act intentionally.

Statutory Torts

- Are human relations that are delicate and given special attention in statues or laws. Thus, they are mainly concerned with torts committed by discriminating persons in certain grounds. See art 25 of FDRE constitution
- It should be noted that in here; all provisions of laws that deals with discriminations shall be interpreted in line with art 2035 of Ethiopian Civil Code.

Boundaries of Non- Contractual Liability Law

Ground of difference	Contract	Tort
Source of obligation	Agreement (see art 1675)	Law (see art 2027 and ff)
Consent of parties	Necessary (see art 1678 &79)	Not necessary (see art 2068)
Exemption from liability	For instance minors, judicially interdicted persons and legally interdicted persons	No exceptions (art 2030(3), art 317 and 2099(1)
liability	By showing non performance is not materialized without the need to show the fault of the parties. Except art 1795.	By proofing fault (see art 2027, 2030) or the specific case provisions. However, strict liability is only when provided by the law(see art 2027(2) cum section 2).
Determination of the amount of compensation	where it is established that the breach is intentional or due to “grave” fault, (see art 1801(2) the compensation increased to cover the damage, which is greater than the normal damage	in the absence of intentional fault non – contractual compensation for wrongful harm may sometimes be decreased. (see art 2101 and 2091)
Period of limitation	10 years (see art 1845 and 46)	2 years (see art 2143)
Damages for Delay in payment	The amount of interest (see art 1803)	Assessed at the time of judgment (see art 2091 & 2150)

Non- Contractual Liability Law v Criminal Law

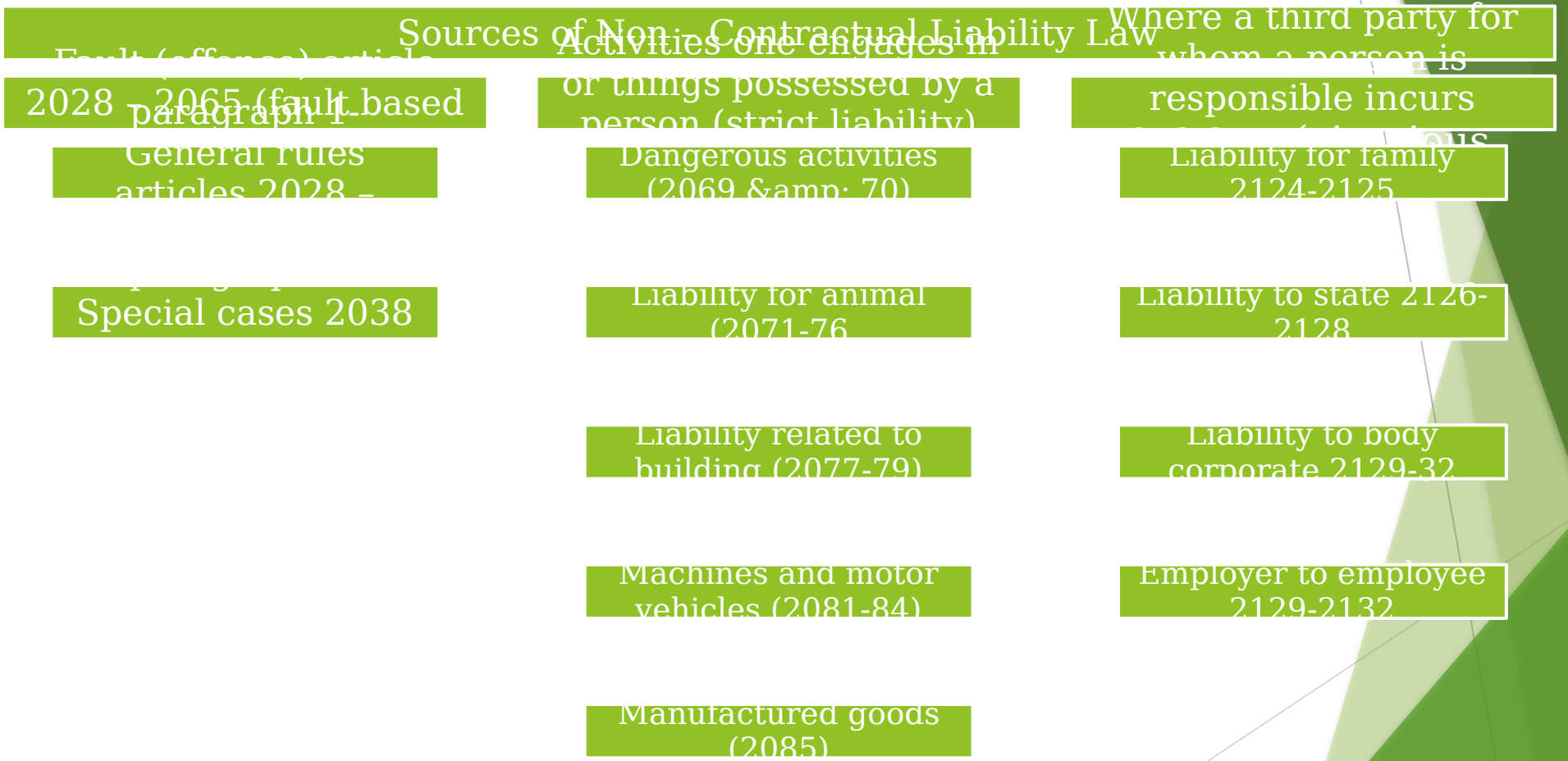
Ground of difference	contract	tort	criminal
Source of liability	agreement	law	law
remedies	Forced performance, specific performance and damages	Injunction, restitution and/or compensation	Imprisonment and/or fine
Parties to the case	Contracting parties	Victim and the tort feasor	Public prosecutor/state and the offender
Purpose	to obtain compensation for the loss sustained by the plaintiff	To compensate the victim	To prosecute and punish convicted person
N.B. for detail parts please refer my criminal law book one short note!!!			

Part II

Ethiopian Non – Contractual Liability LAW

Sources and Types of Liabilities

Q. What are the major sources of Ethiopian tort law?



A. Liability for Fault

General Rules

- ✓ This type of liability is an ordinary one while the other two, i.e. Strict and Vicarious Liabilities are exceptions, for they arise when the law says so.

Q. When or which act constitutes a fault?

- ✓ According to Article 2030 (1) when an act or forbearance of an individual is in a manner or in a condition. ***Which offends morality or the usual standard of good conduct, we say that person is at fault.***

Q. If so what are the different forms of offences?

- ✓ As per article 2029 the types are:
  1) Intentional positive act
  2) Intentional forbearance
  3) Negligent positive act and
  4) Negligent forbearance.

To say these acts or forbearances are faults they have to fulfill what is given under article 2030.

Q. What is the standard of assessing or proofing faults?

- ✓ According to art 2030 (2) brings in what is referred to as the objective standard under the guise of a reasonable man. .

- Therefore, the subjective standard is expressly rejected under sub article (3) of the same article in assessing fault stating expressly" ***fault shall be assessed without regard to the age or mental condition of the person concerned***" The law here seems more concerned about the victim.

Q. Is objective standard is similarly applicable in case of assessing compensation?

- Thus in assessing the fault the law is very strict. However, when assessing the damages or the consequence the law takes into consideration the mental and the age of the defendant. See art 2091 cum 2099(3).

Professional Fault (2031)

Q. Who is professional?

- A profession is an activity for the proper exercise of which a special training, skill and knowledge is required. A professional is, therefore, some one who practices profession.
- Hence, a person practicing a profession shall observe the rules governing that practice. Therefore, if she fails to observe the rules of the said profession fault is committed. See art 2031(1).

Q. Which rules we are talking about? (the written rules or unwritten rules?)

- The rules for the profession could be written or it may not be written but is simply recognized by the professionals

- If the professional rules are not written, we should call in an expert witness. And the reasonable professional man standard shall be take in to consideration in line with art 2030.

Intent to Injure (2032)

- When personal rights are used mainly not for personal gains, but primarily “with intent to injure another” a fault is committed
- It is in case where;

a. Where a person either injures another intentionally without personal gain (see 2032(1) or

b. intentionally causes damage in seeking personal gain, which is less proportional to that of the damage, (see 2032(1) cum 2063).

- *However, a person does not abuse her rights where she injures another incidentally to a lawfully gainful activity as in e.g., fair business competition. Thus, she does abuse them where her main purpose is not gain to herself but harm to another.*

Diversion of power [2033]

- There are two types of power under art 2033.
  a. Power given in the interest of a private individual, and
  b. Power given to an individual in the interest of the public.

- Thus, if such person who is conferred with such power uses the power in his interest or to the benefit of a third party we say there is a diversion of power;

  provided that; the differences between the private power diversion and the public one is the purpose for which the powers are diverted.

- That power could emanate from a law (guardian or tutor for instance) or the decision of a court (liquidator appointed by the court)

Purpose of Rights (2034)

- If one exercises her rights under article 2032 and 2033, though they are within the economic or social purpose of the thing, one could be at fault.
- We referred to those two articles for *the phrase "Subject to the foregoing provisions" under article 2034 seems is referring to those two articles. (e.g. refuse to rent your house with the intention to injure persons in need of it)*

Infringement of Laws (2035)

Q. About which law we are talking about?

- the use of the word law, decree or administrative regulations in contemporary Ethiopia, laws issued as;
  a. Proclamation by the House of Peoples Representatives,
  b. Regulations enacted by the Council of Ministers and
  c. Directives to be issued by respective Ministries
- The same is true for state laws.

Q. Does it mean all provisions of the laws infringements are governed under art 2035?

- ✓ It has narrow application and the laws we mentioned should be;
  a. **Specific:** The means they should not be general and subject to interpretation.
  b. **Explicit provision;** We do not have to use analogy or other methods to understand the meaning of the legislation.
  c. **The fault should not be governed by tort law provisions:**
     - ❖ For instance, abuse of power is infringement of law as per article 407 of the Criminal Code. Since this infringement is governed under article 2033, we do not utilize article 2035.
     - ❖ a violation of contractual agreement is infringement of a law as well. W[illegible]d apply th[illegible] appropriate contract provisions.

Approaches to hierarchical order

Always obey the law(Britain approach)	Obeying order forgetting the law (blind obedience rule)	Obeying both the law and order
This is what the rule of law says and it is true where it is assumed everybody knows the law	it is up to the superior to give order as per the law. The presumption is that the superior knows the law.	

Art 2036 adopted the intermediate approach

Q. What are the essential elements that should be fulfilled to apply art 2036?

- ✓ The following essential requirements shall be met;

a. *a chain of command relation should exist between persons of whom one has the right to command and the other the duty to obey.*

b. *superiority should be in authority not in rank*. For instance, a foreign Minister is superior in rank to a police officer but not in authority.

c. *the authority should emanate from the public law and*

d. *the subordinate should have the obligation to accept the order, which emanates from that public law*

Q. When the subordinate is liable?

- ✓ According to art 74(1) of the criminal code the subordinate is liable:

a. If she is aware of the illegal nature of the order;

b. If she knew the order was given without authority

c. If she knew the criminal nature of the act ordered.

Q. Is there a possibility for the subordinate not to be at fault under the circumstances we have discussed so far?

- ✓ Yes! under article 2036(3) if in the circumstances of the case and particularly under disciplinary compulsion it was practically impossible for the subordinate to discuss the order or disobey, i.e. act otherwise than she did, she is not at fault.

Q. What circumstances of the case indicate that the subordinate was in such fear of imminent harm as to make it "practically" impossible for her to disobey to execute arson at the gunpoint?

- ✓ The following, depending on the circumstances, could be drastic impossibility forms to disobey:
  a. For fear of arrest
  b. dismissal from a civil office

Q. Does it mean under art 2036(3) the subordinate is free from liability?

- ✓ It does not mean she is not liable, for she will be liable under article 2066. However, it makes no sense to say that a person is not at fault while at the same time making that person liable. The law is taking this course, possibly, to compensate the victim.
- ✓ Therefore, the solution seems to make the superior answerable as per article 2035 of the CCE cum specific provision she has infringed.

Non – Performance of a contract (2037)

- ✓ The mere fact that a person does not perform an obligation (duty) in a contract, however, does not amount to non – contractual fault as it is given under article 2037(1). Under such circumstance, the plaintiff should apply the appropriate contracted provisions

Special Cases

- It further classified in to the following headings;

A. Trespass To Person

i. Physical Assault (2038)

In the common law context, this is referred to as battery. Battery is doing something which induces in another reasonable fear and apprehension of immediate violence.

Q. When Physical Assault Is Committed?

- to say a person has committed a physical assault the following element must be fulfilled;
  a. there has to be contact to the person of the victim;
  b. This contact could be made by having direct personal contact or by utilizing other objects, which could be a living thing or a non – living thing.
  c. The contact should, however, be done intentionally. In other words if the contact is made negligently or it is careless contact there is no physical assault.

Q. What is the difference between art 2038 sub 1 and 2?

- One difference we can observe from the reading of sub articles (1) and (2) of article 2038 is while a mere contact suffices to bring action under sub article (1), bodily harm is envisaged under sub article (2).
- So we may say physical assault is invoked whether the contact has caused bodily harm or not. So in case of sub article 1 causing damage is not a prerequisite to be liable. This is what has been referred to as ***injure sine damno in Latin***.

- sub article (3) provides that the mere threat of physical assault on someone shall not constitute an offence as a matter of rule. If, however, the law says so, it shall constitute an offence. See art 580 of FDRE criminal code.

Defenses for Physical Assault (Art 2039)

A. Unforeseen objection (2039)(1)

- This is where the defendant could not reasonably have foreseen the plaintiff's objection beforehand to the physical assault.

  E.g. Let us assume that Gamachis taps Mohammed's shoulder to attract his attention. And the defendant could not reasonably have foreseen that the plaintiff would object to her act, i.e. the patting, the shaking.

B. Self defense (2039) (2)

- Self defense exists where the act was done in "a reasonable manner in legitimate defense of one's person or of another in the safeguard of property of which the defendant is the lawful owner or possessor" as per article 2039.
- Here the law does not discriminate between defending oneself and someone else. E.g. if a young boy is using force against a girl, a passerby could interfere and use force against the boy to save the girl.
- The law, however, does not allow the use of force to protect someone else's property. (art 78 of FDRE criminal code). Hence the use of force is allowed only to safe – guard of property of which the defendant is the lawful owner or possessor. (see art 1148)

C. Corporeal Punishment (2039(3))

- This act consists in a reasonable corporeal punishment inflicted by the defendant on his child, wards, pupil or servant.
- This is what is called lawful chastisement which is an act used to punish someone for misbehaving. So, as per article 2039(3) if a child misbehaves, parents or a guardian may use reasonable force to discipline their child.
- School teacher acting in lue of parents was allowed to use reasonable force to punish the children in her care if they misbehaved . The same is true for a ward and servant.
- But this sub article is not in line with the constitutional provisions. Since the constitution does not expressly allows corporal punishments, rather it prohibits at all.

D. A dangerous Lunatic (2039[4])

- If a notoriously insane person is categorized as dangerous lunatic those people with whom he lives or his family would restrict his liberty of moving.
- Applying reasonable force to tie that person could be necessary and it is justifiable.

E. Any other justification (2039[5])

- This is where the act of the defendant is justified in the eyes of a reasonable person.

ii. Interference with the Liberty of another (2040)and Defenses

- This is referred to as false imprisonment in the common law legal system. It is a detention of one person by another against the will of the former and without just cause.

Q. What are the major elements of art 2040?

a) **"... without due legal authority...."** It is where one who restricts the free moving of another has done that without due legal authority, i.e. lawful justification or excuse.

b) **Period of detention:** the detention should not necessarily be for a long period to say there is interference

c) **Shall be absolute detention:** In other words, the deprivation must be complete, for "It is not false imprisonment if the plaintiff had any reasonable means of leaving, e.g. if his path was barred in one direction, but not in another."

d) **... as he is entitled to... :** This entitlement emanates from the Constitution (see art 32)

e) **material injury is not a pre – request for fault:** This is injuria sin damno and it is actionable without proof of damage and so it is actionable per se

f) **No need to physical restrain only:** the prevention from moving need not necessarily require the physical restrain. For instance a person could be physically free to leave, but had been deprived of his clothes, or the only means of escape was dangerous or in convenient,

Thus, it shall be sufficient for the plaintiff to have been compelled to behave in a certain manner by the threat of a danger of which he could not be unaware as per article 2040(3).

DEFENSES for False imprisonment (2040)

A. Lawful authority (2041).

- Is when the person has a legal authority to deprive the liberty of other, but only when;
  a) The constraint should be exercised in a reasonable manner.
  b) The one who interferes with the liberty of another should have a legal custody of the plaintiff.
  c) The law should confer that authority upon the defendant. (e.g hospitals, prisons and guardians)

B. Criminal offence (2042)

- This is when;
  a) the person who interfered with the liberty of another has to show that she has a good reason to believe that the plaintiff had committed a criminal offence.
  b) The offence has to be a criminal offence. In other words, for civil offences we cannot restrain the liberty of another.
  c) once we have constrained the liberty of another, we have to immediately hand over the person in our custody to the police. Otherwise, we are going to be liable as per article 2042 (2).

C. Bail (2043)

- This is when;
  a) the defendant was standing surety for a person who is to abscond.
  b) The other point is the defendant has given her assurance to the officials as to the whereabouts of the residence of the person whose liberty is obscured.
  c) Then, if the person who stood surety for a person has a good reason to believe that person is about to abscond and prohibits that person from leaving his residence.

iii. Defamation (2044 cum 2109)and Defenses

Q. When an offence constitutes defamation?

- ✓ Article 2044 defines defamation and the basic elements of the provision are;

1. **Means of defamation:** it could be words, writings or any other means (like Carvings, paintings or gestures.
2. **Towards a living person:** defamation is related to living person. Not to a deceased one. (See art 46(2) of civil code)
3. **Purpose of defamation:** defamation are to make a living person detestable, contemptible or ridiculous and jeopardize his credit, his reputation or his future.
4. **Communicated to the 3rd party:** Defamation exists when the defamatory words or statements are communicated to a third party.

Nevertheless, it seems that our law makes differences between defamation and insult. If the words or statements are limited to the victim herself, they are said to be insults not defamation. See art 2109.

Q. What is the consequence of defamation?

Consequences of defamation and insult , however, as you can see from article 2109 are all the same, i.e. awarding of fair compensation to the plaintiff or to a charity named by the plaintiff.

Q. Is there group or class defamation?

- There is no group defamation as per article 2045(2). The other name for group defamation is defamation of a class. In which defamation by generalization does not amounts to tortious liability’
- However, defamation of specific group of people or institution employees may constitute an offence. (E.g. all Gonder university college of law teachers are selfish and corrupt).

Q. What are the major defenses for defamation?

- Under the Ethiopian Non – Contractual Liability Law these defenses are laid down under article 2046 – 2049;

A. Public Concern [2046]

Q. When is an expression said to be a public concern or interest?

- As per article 2046, expressing an idea of public concern is not defamation and if;

a) The statement should be, on its face, statement of opinion, not a statement of fact.

b) The expression should be an opinion on matters of public interest, rather than private interests.

c) The holder of that opinion should hold that opinion honestly and should not act maliciously in expressing that opinion

Q. What is the difference between statement of fact and opinion?

1. He is a habitual liar and not fit to hold office. (statement of fact)
2. Everything he has said and done in office tends to indicate that he is a habitual liar and is unfit to hold office. (statement of opinion)

Q. If so, what is public interest?

- ✓ Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned, at what is going on, or what may happen to them or to other;
- ✓ then it is a matter of public interest on which everybody is entitled to make fair comment. (e.g. journalist comment on the football players)

B. **Honest and not malicious**

- ✓ This requires good faith and the non – existence of malicious distortion.
- ✓ Therefore, “The defendant must have made the comment in good faith believing in its truth and without malicious distortion. (acts done to revenge someone else)

C. Truth of the Alleged Fact (2047)

- ✓ In principle if what someone states is true, there is no defamation provided this is not done with intent to injure.
- ✓ However, this defense is a dangerous defense for if it fails heavier damages will probably be awarded. The burden of proof is that of the defendant.
- ✓ When the defendant proves she is not expected, however, to prove every word of what she said is correct. It suffices if she proves substantial amount of it. (e.g. if one defame the plaintiff in beating his wife 4 times, and if the truth proved is 3 times no liability on the defendant)

D. Immunity (2048)

- As per article 2048(1) no liability shall be incurred in respect of utterance made in parliamentary debates or in the course of legal proceedings both at the federal and state courts at all level. (see art 79(1) & 80 of FDRE.)
- These are Members of Parliament [MP] and those who engage in the judicial proceedings. This immunity seems is extended to members of the constitutionally established executive as per article 611 of the Criminal Code of the FDRE.
- Not only MPs and those who involve in judicial proceedings are immune. Those who reproduce the debate or the proceedings in the parliament or judicial proceedings respectively are also immune provided they reproduce it without intent to injure. See 2048 (2).

E. Publication (2049)

- as per article 2049 of the CCE the defendant may not be liable provided that:
  1) She has acted without intent to injure and without negligence.
  2) At the request of the plaintiff, she publishes immediately a withdrawal and an apology.

IV. Trespass to Goods

- Our Civil Code uses ***trespass*** to indicate trespass to land or a house while trespass to movables is referred to as ***assault to property***. Now we will discuss each at a time.

a) **Trespass [2053]**

Q. When trespass constitutes an offence?

- The elements of this article are:

a) **"...without due legal authority...."** This exists when a person enters a land or a house without having any justification.

b) ***.... he forces his way on the land or into the house of another...*** This could be done directly by personal entry or by procuring the entry of another person, object or animal.

c) ***.... against the clearly expressed will of....*** The expression could be oral, written or by conduct (like fence the piece of the land)

d) ***... a lawful owner or possessor of the land or a house...*** those who secured possessory right as per the relevant law shall have the possessory right over the land. Therefore, they are lawful possessors of the land.

b. Assault on property [2054]

- This is a trespass to movable property. Therefore, as per article 2054 a person commits an offence where,

a) without due legal authority,

b) she takes possession of property

c) against the clearly expressed will of the lawful owner or possessor of the property.

Interference Against Economic Interest

A. Pre contractual Negotiations [2055]

- ✓ Before they conclude a contract, parties make negotiations. This is done by expressing their intentions to enter into a contract.
- ✓ When one declares her intention, she may induce others to incur expenses and then decline from entering into the contract. This is an offence as per article 2055.

B. Inducement to breach of contracts [2056]

- ✓ The elements are:-

1/ Being aware of the existence of contracts between other persons.

2/ Entering into a contract with one of those persons

3/ Rendering impossible (induce to performance one of the parties at the same time) the performance of the first contract. (it does not include rendering the existing contract difficult. E.g. if a person induce one of the contracting party to perform obligation at different time, but which could reduce the quality of the performance of the work for the former contract)

C. Unfair competition [2057]

- ✓ a person commits an offence where, through unfair competition, he compromises the reputation of a product or the credit of a commercial establishment

D. Simulation (2058)

- Simulation is a deliberate making of certain conditions that could exist in reality. Article 2058 deals with simulation. which is the equivalent of ‘Kutch yebelu’ in Amharic.

E. False Information (2059)

- In the common law, this is referred to as the tort of deceit. Hence as per article 2059 a person who intentionally or by negligence, supplies false information to another commits an offence where
- He knows that the person to whom the information is supplied or another given person will act upon the information and thereby suffers damage.

E.g. An individual shouted ''Fire! Fire! “in a cinema hall. The author of this word should have known that the audience would react upon this information and suffer damage.

Exception 2060

- The provider of that information may not be liable where the false information is supplied orally with the intention of helping others.
- Thus the person supplying incorrect information shall not be liable where, the statement made by him relates to the qualification, conduct, solvency, competence, or under taking of another person and was made with the object of securing credit, money, or goods to that person i.e. with the intent of helping.

F. Witnesses [2061]

- Witnesses who testify to the occurrence or the non-occurrence of a given event or to the existence or the non-existence of a given fact shall guarantee the accuracy (exact or without error) of their statements. see art 2061 (1)
- If they could not do that they would be liable to those who acted on the faith of such statements.

G. Advice or recommendations (2062)

- Where a person comes to seek advice and one renders only that advice or makes recommendations the one who gives the advice or makes the recommendation may not be liable.
- If, however, a person conduct goes beyond giving advice or making recommendations and collaborate in execution of his advice s/he will be liable.

H. Seizer of another's property or Distrait (2063)

- Here we have a creditor-debtor relationship. The creditor, in order to force the debtor, to pay her debt, holds the property of the debtor. If the property that is held by the creditor is disproportionate to the value of the debt this act is a fault.
- If the debit is owed in extra contractual, the amount first has to be determined by a court. Otherwise, the victim cannot determine the amount by herself.
- If it is contractual, the creditor has recourse to judicial proceedings. Thus, she does not have to take the law into her hand.

- Provided that, art 2063 governed a situation covered under article 2076 though that article deals solely with animals.

I. Execution of a court order (2064)

- A court gives order for sale of judgment-debtor's property to execute its judgment by giving a valid execution order. thus, the execution officer, however, shall be liable where:

a) She executes the court order that is not made in a prescribed form, i.e. either where it does not have the signature of a judge, the seal of the court, or

b) the execution officer exceeds the instruction in the order, for instance while the order is to seize specific movable property the execution officer seizes another

c) The execution officer carries them out without due regard for the provision of the law. For instance, if she seizes those properties which are not subject to the attachment

J. Prescription 2065

- There is a prescription in which one is supposed to bring an action.
- By virtue of article 2030 the debtor's action of not paying the debt within this period, however, is a fault. Nevertheless, article 2065 is an exception.
- Thus, if the creditor invokes article 2030 (for not settling one's debt is a fault) the debtor can invoke article 2065 not to be liable.

Other Interests

- Other interests mainly includes;
  a) Where someone induces either of the spouses and
  b) where one fails her responsibility of educating or supervising others.

A. Injury to the Right of Spouses (2050)

- This is a condition where someone induces one of the spouses to leave the other against the will of the other spouse. The essential elements are;
  a) **… knowing her/him to be married…:** This knowledge could be direct or indirect. It is direct where, for instance, she has witnessed the marriage event. It is indirect where, for instance, she learnt that from someone who has been at the marriage event or from documents to that effect.
  b) **…he or she induces one of the spouses…:** This is where the actor persuades one of the spouses to leave the other. E.g. by giving DV lottery or by other means.
  c) **…against one of the spouses' opposition.:** if they agree to live separately one is not at fault.

Q. Can a person receive the wife/husband of other person in his home?

- It is worth making two points clear here.
  a) **The recipient knows there is an agreement to live separately** and one receives the wife, there is no offence, for the husband is willing to accept that act by conduct.
  b) ***Person can receive the wife if the husband is guilty of cruelty.*** Under such circumstances, the recipient is not at fault. Now the question is who is to determine the guilt of the husband. Moreover, if the recipient (defendant) had good reason to think so, she is not at fault.

N.B. Under article 2050(1) and (2) the one who induces one of the spouses is playing the active role and she is pro-active. The spouse is reacting to the situation. Under sub article 3 however, the third party is a recipient. Moreover, the one who she receives, harbors or detains is a married woman.

B. Duty to Educate and Supervise (2052)

- Article 2052 a fault by omission. Thus, where a person has responsibility to educate and supervise an individual who is under her control or entrusted to her fails to carry on this responsibility in "I –do-not- care style" it is said she has committed fault.
- As per article 2052 a person could be entrusted to the charge or supervision of another by law or in conformity with the law. ***(E.g. parents' legal guardians and schools)***
- In determining whether the custodian has carried out her responsibility, the custom as well as the financial position of that person should be taken in to account.
- ***Thus, if the one who is entrusted fails to take the necessary measures as her financial capacity or custom allows, she will be at fault because of her failure.***
- To make her liable, however, ***the damage should be suffered either by the person in her charge or by a third party*** as per article 2052(2) and (3).

Liability Irrespective of Fault

Strict Liability (2066-2089)

- Liability for the
  which the
- Strict liability
  harm or injury
- Liability for the
  instruments that
  - animals(2071-
  - buildings (277-
  - motor vehicles or machines
  - manufactured

A. Necessity (2066)

- When there is imminent danger against property, oneself or another person, one may cause harm to another person to avoid that danger.
- However, where a person acts of necessity as per article 75 of the Criminal Code of FDRE she may not be criminally liable she is, however, civilly liable as per article 2066 of the CCE.
- ***The reason to make a person who acts of necessity civilly liable and criminally free could be to strike a balance between the interest of the victim and the doer of the action***.

Q. If so, when the necessity of causing harm is justified?

- To that effect the interest that one saved should be greater than that which was damaged, for "The courts seem to take the view that where personal injury is threatened then any necessary damage to property will be justified. (e.g. throw properties to save the ship from sinking down in to water)

Q. If so, what is the extent of the necessity requirement?

- The doer of the action may incur liability where she saved not only herself or property but also a third party from the imminent danger.
- The reason could be the fact that the victim only knows the actor whom she can go against.
- Nonetheless, the savior can go against the other whose interest is saved by virtue of article 2162 of the CCE. Lastly, the damage is assessed not in accordance with article 2091.It is rather estimated equitably as per article 2103.

B. Bodily Harm and Defenses (2067)

- In the common law legal system bodily harm is referred to as battery. Thus, “a battery is the actual infliction of unlawful force on another person”

Q. What are the main defenses on bodily harm?

- The defenses are stated under sub-article 2 of article 2067. These are:

a) **Where the act causing the harm was ordered by law:** e.g. arrest with warrant…

b) **Where it was done in legitimate self-defense:** Where reasonable force is used to repulse an attack on a person, property or another person.

c) **Where the harm is due solely to the victim’s fault**: No contribution is made by the offender to cause that injury. In other words, the injury would not have been caused had the victim not committed fault. That seems the reason why the law uses the word solely.

C. Sport Activities [2068]

- Where the one who causes the damage in sporting activities observes the rules of the game she may not be liable. ***The rationale behind this is what is called voluntary assumption of the risk.***
- If there is, however, a deceit or gross infringement of the rules of the sport the person who causes the injury shall be liable.

D. Dangerous Activities [2069]

- Extra-contractual liability by Creation of abnormal risks through the use of or activities;

a) **Storing or using explosives or poisonous substances.** (e.g. a farmer could use pesticide in the farm land and washed in to the rivers and people and animals drink that water…)

b) **Establishing high-tension electric transmission lines**: (e.g. electric installation may be caused damage to the people when the wires are falls down in to the body of person)

c) **Modifying the natural lie of the land.** if dams burst and flooded a village killing people those who run the dams are liable.

d) **Engaging in exceptionally dangerous industrial activities:** Some of the industrial activities listed as dangerous by Ministry of Labor and Social Affairs are Chemical Industries, Cement and Asbestosis, Coal mining, etc.

Q. Why the law provide liability to the aforementioned problems?

- These activities are economic activities and they have advantages to the community. Thus we cannot prohibit them. At the same time we have to protect the public and individuals from hazardous activities that cause damage.
- Thus the owners are liable without the victim establishing fault for it would be"… unreasonable to expect the victim to establish fault, which is very difficult. But only when the damage materialize arise from dangerous activities.
- The law rather requires those who engage in those activities to establish fault from the side of the victim (partially of wholly) thereby shifting the burden of proof to those who engage in those kinds of activities.

Q. Why the burden of proof is changed to the corporations?

- The reasons are;

a) the giant corporations engaged in those activities are powerful in every aspect when compared with the victim.

b) Corporations are the beneficiaries of the activities.

c) they are in a position to distribute the loss among the community by adding the compensation they paid to the victim by adding it on the value of the products they produce.

Types of Instruments

A. Liability for Animals (2071_2076)

- ✓ Under the common law legal system, animals are classified into:

a) **Ferae naturae [fierce by nature]** the keeper of the ferae naturae is strictly liable for the damage caused by the animal, for knowledge of its dangerous propensity is being presumed. the law presumes and the owner has to disprove thatand

b) **Mansuetae naturae [tame by nature].** the keeper is liable for the damage caused by the animal if science or knowledge of its dangerous propensity could be proved. Thus, the victim is supposed to prove

- ✓ The purpose of this classification is to determine the circumstances under which the keeper of the animal would be liable. Thus,

Q. What is the position of Ethiopian law?

- ✓ Basically, our law does not classify animals for purposes of determining whether the liability is strict or not.
- ✓ per article 2071,*the owner of an animal shall be liable for any damage caused by the animal not withstanding that it has eluded his control accidentally or the damage caused was unforeseeable.*

Q. What are the essential elements of the provision?

a) **is … any damage caused by the animal.'** This could mean damage to property or person.

b) **'it has eluded his (its!!) control accidentally'…** by the ferae nafural are lions, tigers and gorillas could cause harm by eluding their control accidentally for the keeper may not let free these types of animals.

c) **'the damage caused was unforeseeable'.** This point could be related with *Mansuetae naturae*. For instant, most of the time dogs are trained to bark and simply scare intruders and frighten them away.

B. **Custodian (holder)(2072)**

- ✓ The holder is a person who uses the animal for her personal benefits. She is liable for any damage caused by that animal while it is under her holding.
- ✓ This holds true where a person hired the animal as well, for instance, where a farmer hired an animal to plough a field. A person could be in charge of the animal for any other reason. For instance, a dog could be trained by a trainer. If that dog harms someone while it is with the trainer the trainer could be liable as per article 2072(2).
- ✓ The case of an employee is different. The employee attending the animal is not liable unless the damage is caused due to fault committed by her. The same is true for a person making use of the animal for the owner's account or for the account of another person. See sub 3.

C. Transfer of Liability (2075)

- A person who suffers damage by an animal may bring action against the owner though the damage was caused while it has been in charge of someone else.
- The reason could be the fact that the victim may only know the owner or the victim may think that the owner has the capacity to pay damage. Similarly, the courts may order the owner to make the damage good.
- The owner who paid the victim may recover the amount from the person in whose charge the animal was when it caused the harm.
- The owner of the animal, after paying the compensation to the injured person may claim indemnification from a person under whose charge the animal was when it causes damage.
- And the claim to be indemnified is full, unless the damage is due to the fault of the owner of the animal or a person for whom he is liable.

D. Transferring the ownership (2074)

- Ethiopian Non- Contractual Liability Law classifies animals into domestic animals and animals other than domestic, unlike the common law classification into tame by nature and fierce by nature.
- Domestic animals are those animals, which it is customary to keep for purposes of pleasure or gain. Art 2074(3)
- The purpose of the classification is to determine whether the owner and the person in whose charge the animal is could relieve themselves of their liability by simply transferring the ownership of the animal in case of the owner and paying the value of the animal in case of the person who was in charge of the animal when it caused damage. See 2074 cum 2075

Q. What are the major classifications of damages?

The major classification of damages are;

a) **Nominal damages:** are those which are paid when the claimant proves the defendant has committed a tort but the claimant has suffered no loss. E.g., trespass to land.

b) **Contemptuous damages:** are those which are paid where the court considers that the claimant's action, although technically successful, was without merit and should not have been brought. E.g. damages paid for libel action

c) **Special damages:** Losses that are capable of being calculated with reasonable accuracy. (e.g. medical expenses for personal injury)

d) **General damages:** inexact or unliquidated losses… are compensation by an award of general damages (e.g. compensation for pain)

e) **Exemplary damages:** [sometimes called indicative or punitive damages] represent an addition to what is awarded as real damages, to compensate the plaintiff for what the court considers deplorable or outrageous conduct of the defendant and (in effect) by way of punishment for it".

Q. What is the position of Ethiopian tort law on the liability to animals?

- As per article 2074(2) and where the damage is the consequence of an offence committed by a person who is in charge of the animal, that person's liability may not be limited only to the value of the animal. Hence, those persons would be forced to pay additional compensation to the victim.
- *It seems, therefore, the law is utilizing exemplary damages against the owner and the person who was in charge of the animal where the cause for the damage is the fault they committed.*

E. Victim's guarantee (2076)

- Animals may cause damage to crops or grasses. The owner or holder of these interests may seize the animals as a guarantee until compensation for the damage is paid for her. Such kind of situation is envisaged by sub article (1) of 2076.
- Sub article (2) governs a situation where the animals brought damage disproportionate to their value. Such animals could be dogs or cats, which the holder of the interest could kill and notify the owner.

Liability for Buildings (2077 – 2080)

- For whatever reason the building is collapses or is demolished and brought damages, (either by human made or natural causes) the owner is liable as per article 2077(1).
- Where the reason for the damage is the fault committed by the person who built the building or occupier, the owner, after paying the compensation to the victim, may claim compensation from those persons as per article 2077 (2).

Q. Can the owner of the building relive himself from liability by surrendering the building only?

- ✓ Similar to the owner of an animal, the owner of a building may relieve himself of liability by surrendering the ownership of the building to the person who has suffered the damage as per article 2078 (1).
- ✓ On the other hand, the owner may not relieve himself simply by transferring ownership of the building where the damage is due to the fault committed by the owner or a person for whom he is liable. (exemplary damages)
- ✓ The compensation is therefore greater than the value of the building where the damage comes because of fault as per article 2078 (2).

N.B. *According to article 2079, a person endangered by another's building may require the owner thereof to take the necessary measures to avert the danger. Maintaining the building could be one of the necessary measures to avert that danger*.

Q. When the occupier of the building held liable?

- ✓ Under article 2077, the occupier is one among those who are liable for the damage due to the building.
- ✓ Her liability, however, is for any damage caused by the objects failing from the building as per article 2080.

F. Machines and motor vehicles

Q. What are machines and motor vehicles?

- The owner of machines and motor vehicles are liable for the employees in accordance with the labor proclamation 377/2000 while for others the owners of a machine or vehicle shall be liable for any damage caused by the machine or vehicle in accordance with extra contractual liability.
- They are liable even if the damage was caused by a person who was not authorized to operate, or handle the machine or drive the vehicle. see art 2081
- In other words, the fact that the machine is operated or the vehicles driven by a person who is not authorized cannot be a defense.

Q. If so, what is the defense of the owner of the machine?

- The only defense to relieve the owner from being liable is where the damage is due solely or partly to the fault of the victim. See art 2086(2)
- Moreover, the owner shall not be liable where she proves that, at the time when the damage was carried, the machine or vehicle had been stolen from her see 2081(2)

Q. When the agent and the poser of a machines held liable?

- a person who has taken possession of the machine or vehicles for purposes of personal gain shall be liable for any damage caused by the machine or vehicles while the machine or the vehicle is in her possession.

- An agent who has charge of the machine or vehicle for the owners account or for the account of another person shall be liable if the machines or vehicles caused damage due to her fault. See art 2082

Q. From who the victim shall claim?

- The victim may not know the keeper or the agent who caused the damage. Thus, they may go against the owner.
- In addition, the court may order the owner to make the damage good in accordance with article 2081(2).
- Nonetheless, the owner who paid compensation to the victim may recover fully from the person in whose keeping the machine or vehicle was, provided she has not committed an offence or a person for whom she is liable has not committed a fault. See art 2083

G. Liability for manufactured goods (2085)

Q. When the manufactures are liable for injuries caused due to their products?

- A person who manufactures goods and sells to the public for profit shall be liable for any damage to another person resulting from the normal use of goods.
- Thus the following essential elements shall be fulfiled;

a) **A person:** This person could be either physical or natural person.

b) **The products shall be manufactures goods**

c) **Sells to the public for profit:** this means the sale should be to the public and for profit. However, it does not include;

- **Sale for free or donation**: if someone gives a manufactured product for donation and the donee is injured this article may not be applicable
- **Barter trading:** if two individuals exchange different manufactured products, since barter is not sales under Ethiopian law

d) **There shall be a damage**: could mean damage to person or damage to property

e) **Resulting from the normal use of the goods:** if someone suffers is while using the defective chair like a ladder the manufacturer shall not be liable.

N.B. the manufacturer liable where the defect caused the damage could have been discovered by a customary examination of the goods. See art 2088(2)

Defenses or justifications for strict liability

Q. What are the available defenses in Ethiopian tort law other than art 2086?

A. **Victim fault:** regarding articles 2066 and 2067 the defenses are given under each sub article (2) as victims fault

B. **Legitimate self-defense and order by the law:** sub article (2) of 2067 presents order by the law and legitimate self-defenses as justifications.

C. **Stolen machine and vehicle:** As regards article 2081, if the vehicle or the machine is stolen and that can be proven by the owner that can serve as a defense.

D. **Contractual relation**: Article 2088 (2) states that if the harm is occurred to a person who connected with instruments due to the contractual relations there will not be liability based on tort.

Q. What is the scope of applicability of art 2088 and the defenses available for the defendant?

- ✓ Article 2088, is applicable under all situations as a defense.
- ✓ To start with, there seems to be a difference between the English and Amharic versions of sub article (1)of 2088. While the English version reads… "May relieve themselves…" Amharic version seems correct it reads may not relieve…
- ✓ Therefore, as per article 2086(2) *those persons declared legally liable shall be relieved of their liability, entirely or in part, only where the damage is due solely or partly to the fault of the victim*

Q. If so , what are the grounds of defenses prohibited to raise as a defense by legally declared liable?

a) Those persons cannot say we have not committed fault, for as we have already said strict liability is a liability without fault.

b) They cannot relieve themselves by stating that it was impossible to establish the cause of the damage.

c) They cannot exempt themselves from liability by establishing that it was not within their power to prevent the damage. This is what is known as force majeure or acts of God.

d) The fact that the damage was due to the fault of a third party as well cannot be a justification to relieve oneself from liability.

Provided that; these third parties, however, do not include an employee attending to an animal (2072(3)), thieves and agents (2081(2)) and 2082(2) respectively for if the damage was caused due to the fault of those third parties, the actors themselves will be liable and the fault could be invoked by the owner

Q. What is the basis of amounts of liability of the defendant?

- ✓ The amount of liability depends on how much is contributed by the victim for the damage to occur.
- ✓ Thus, if the damage is due solely to the fault of the victim the defendant will be relieved from liability entirely. If, however, the contribution of the victim is partly, the defendant will be relived in part.

Q. What about if the damage is caused by the objects other than those stated in the preceding articles?

- ✓ According to article 2087 the owner or the keeper of an object shall be liable for any damage caused by the object only where she has committed an offence.
- ✓ Thus, the victim is obliged to establish fault from the side of the owner or the keeper to claim damage. Otherwise, the owner or keeper may not be liable.

e.g. a tree falls and crushes a vehicle. As per article 2087, the owner of the tree shall be liable where the cause for the damage is her fault or an offence committed by a person for whom she is liable. Thus, she is not liable for the mere fact that she is the owner of the tree

VICARIOUS LIABILITY

- Some authors refer to vicarious liability as another instance of strict liability in the sense that one person is made liable for another without herself committing any fault.

Q. What is the rational behind for establishing vicarious liability?

- The possible rationales are:

A. The control test:

- This theory attributes to those who are made liable the ability to control the behavior and precise manner of the wrong doers.
- For instance, the employer has the ability to control the behavior and precise manner of his employees.
- This is expressed under article 4(1) of Labor Proclamation No 377\2003 which reads “A contract of employment shall be deemed formed where a person agrees directly or indirectly to perform work for and under the authority of the employer.
- Furthermore, one of the obligations of the workers is to follow instructions given by the employer as per article 13(1) of the same proclamation.
- Thus, the fact that the employee is working under the authority of the employer and follows instructions given by the same tells us the employer has the ability to control the behavior and precise manner of his employees.
- The same is true for parents, for they have the ability to control the behavior and precise manner of their minor children

B. Analogy with causation

- The state, the employers or the bodies corporate are those who…set the whole thing in motion and that, therefore, they should bear the consequences of a third party who suffers through their employees wrongful conduct.
- Setting in motion by the employer is expressed in the Labor Proclamation under article 12 for instance The employer provides work to the worker; provides the worker with implements and materials necessary for the performance of the work…

C. Deep pockets

- As per this theory, the father, the state, bodies corporate and the employers are richer. Hence they should pay.
- The weakness of this theory is that it justifies the employers being liable for all the torts committed by his employees, whether they were committed within or without the course of their employment.

D. Economic and moral consideration

- This theory is based on the fact that "…the person who drives a benefit from the activity of another should also bear the risk of the damage inflicted by those acts."

F. Loss Spreading

- this is another economic variant, which enables the employer to spread the loss through insurance or the price of the products.

Liability of parents and others

- As per article 2124, the father shall be liable under the law where his minor child incurs liability.
- The mother is only liable where she exercises the paternal authority over the child as per article 2125(a). This needs some further explanation.
- Article 2125(a) is, therefore, applicable where the father of the child is unknown.
- This is true where the child lives inside the family home. Where the child lives outside the family home, however, the person in whose charge the child is placed shall be liable. art 2125
- the employer shall be liable for an act committed by a child as per articles 2130 and 2131, which we will discuss in detail when we discuss the employers liability.

Liability of the state 2126

- state refers both to government at Federal and Regional levels. Accordingly, civil servant means a person employed permanently by either Federal or Regional Governmental offices.
- The state, as any other person, employs civil servants to provide services to the public.
- While giving these services the civil servant or government employee may commit fault. This fault could be personal or professional fault.
- Where the fault is personal, the state shall not be liable. Where the fault is professional, however, the victim may claim compensation from the state.

Liability of bodies corporate and employers [2129-2133]

- bodies corporate are those associations established in accordance with Memorandum of Associations and Statutes with a view to obtaining a result other than the securing or sharing of profits.
- Thus bodies corporate shall be liable for the acts and omissions of its directors and servants as well as their employees, whenever such acts and omissions have taken place in the execution of the functions which entail liability
- The employee committed the wrong in the course of her employment if either:
  a) A wrongful act was authorized by the employee's employer or
  b) The employee's employer authorized a wrongful and authorized mode of doing some act
- the employer may not escape from being liable for the fact that the wrongful act was ultra vires, or that its author was strictly forbidden to commit. This may not release the person who is legal from her liability.
- for the liability shall not be deemed to have been incurred in the discharge of the duties where such duties have merely provided their author with an opportunity of committing the wrongful act or abstention which caused the damage.2133
- if a person is an independent worker or contractor, though she is working for the employer, the latter is not liable for the faults or offences by an independent worker or contractor, 2134 for an independent worker or contractor undertakes to produce a given result, under her own responsibility. 2610

Defamation

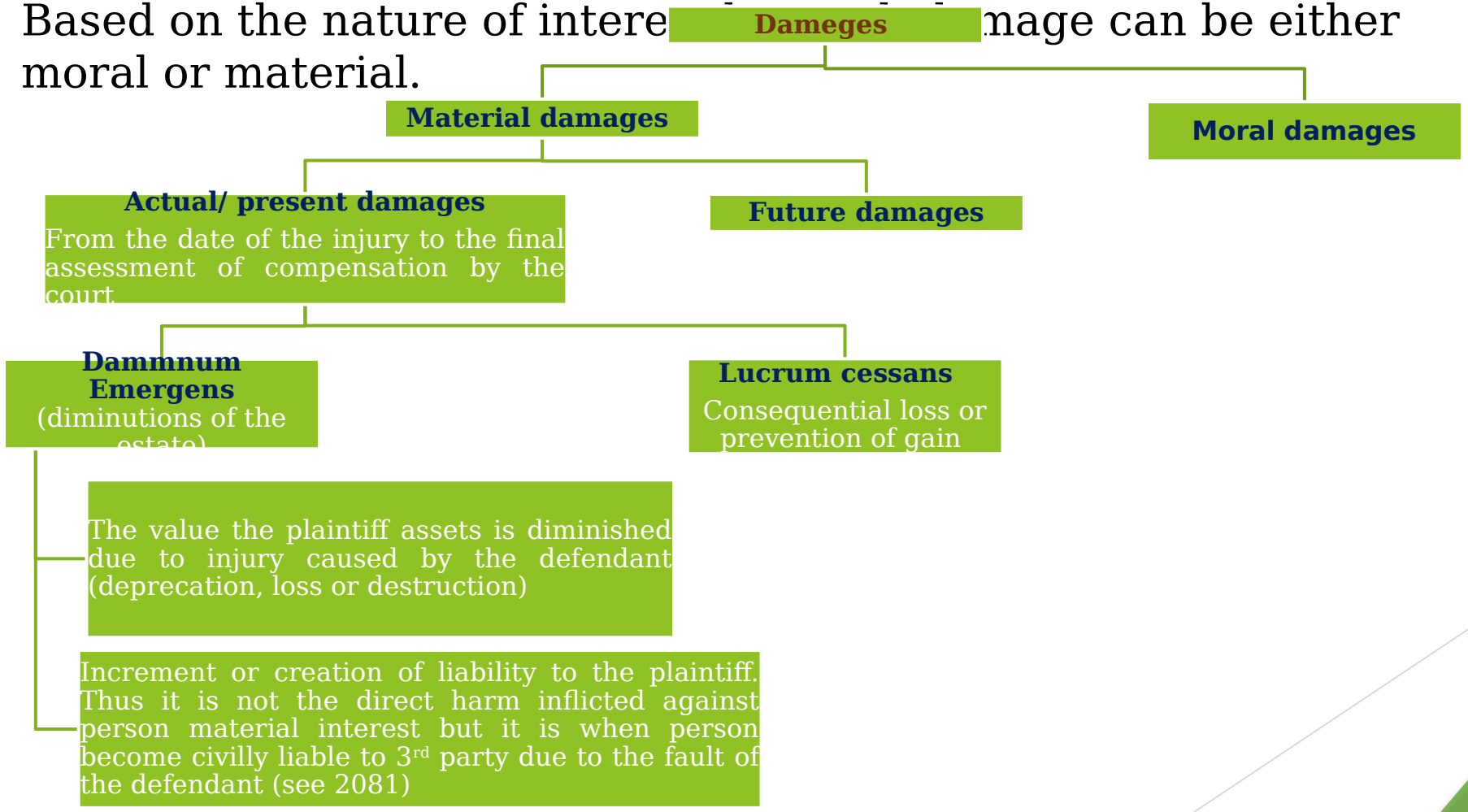
- Under article 2049 a person is liable for defamatory matter because of positive act, i.e. where she communicates words, pictures, or written materials to at least one person other than the person defamed
- Nevertheless “exceptionally one may also be liable for not taking positive steps to prevent the publication by someone else”. or, “because she approved it” Thus the managing editors of the newspaper, the printer of the pamphlet or publisher of the book shall be liable for defamation committed by the author of a printed text.
- Hence, the authors are liable for positive acts under article 2049 for they have primary responsibility for the defamatory matter.
- And the managing editor, the printer and the publisher may be liable for either approving the defamatory matter or as accomplices.

Remedies to Extra Contractual Wrong

- Proving the existence and the extent of liability are the cumulative requirement for action of compensation. See art 2141

Conceptual analysis of damage

- Based on the nature of interest damage can be either moral or material.



N.B. present and future damage is separated by the judgment day assessing the damage.

Modes of compensation for material damage

- For material damages the modes of compensation are two types; see art 2090
  a) Pecuniary
  b) Non-pecuniary

A. Pecuniary compensation 2090 (1)

- As a rule the normal and usual mode of compensation for material damage is sum of money. Thus, non pecuniary compensation is the exception (2090(2)

B. non-pecuniary (2090(2)

- It is ordered only when the following requirements are fulfilled;
  - Shall not deprive the liberty of the defendant
  - Shall not deprive the liberty of 3rd parties (applies only against the party in breach of tortuous obligation, but not on 3rd party in good faith.
  - In addition or alternatively on pecuniary compensation

N.B. see art 2118-2123 on partial non pecuniary measures examples. Since art 2090(2) incorporate other non pecuniary measures by interpretation as long as it does not deprive the liberty of the defendant and 3rd parties

Modes of compensation for moral damage

- As a rule compensation is non pecuniary (since moral damage cannot valued in monetary terms). See 2105 e.g. in case of authors publication of the falsehood of previous publications in news paper.
- Money is exceptionally applicable when provided by the law (see art 2106-2115)

N.B. Ethiopian law does not provide a guideline to the courts in assessment of moral damage. Therefore, Ethiopian courts has a discretionary power in two respect;

a. Awarding compensation
b. Fixing the amount of compensation

Quantum/extent of compensation

The rule of equivalence (art 2090(1) cum (2091)

- The compensation to be paid shall be equal to the damage suffered.
- Thhe purpose of rule of equivalence is not to restore the victim to his pre-injury creditworthiness, it rather to put him in a position he would have been now had not been the injury.

N.B. however, in case of the full destruction of property the plaintiff can not claim the value of the property destroyed plus the consequential loss due to the faultof the defendant. Thus he may only claim the value of the property destroyed.

Q. Is there any possibilities by which compensation is lowerd than the damage caused?

- The exception to the rule of equivalence under art 2091 are;

A. Compulsory mitigation (art 2098)

- Is exceptions provided by the law. Which mainly includes Fault of the victim and good faith

  i. Fault of the victim: (art 2098) it is fault of the victim (partial contribution) irrespective of the nature of liability; be it strict, fault based or vicarious and it may result form the intentional or negligent act of he victim. It is more relevant in case of fault based liability. in strict liability case we shall consider only the contribution of the victim faulty behavior in materializing and aggravating the damage.

  ii. Good faith: (art 2097) it is in case of full contribution of the victim for the damage suffered. Thus the defendant is free of any liability.

B. Discretionary mitigation: (art 2099-2103 and 2157)

- Art 2099 applicable in case of fault based liability only. Provided that in case of strict and vicarious liability this provision is not applicable.

C. Optional mitigation

- its application does not depend on the discretion of the court but on the discretion of the defendant himself.

- In optional mitigation cases there are alternatives other than paying money, therefore, the defendant can opt for an alternative to that of paying the damages otherwise due by him.
- Cases of optionally mitigating circumstances are covered in Articles 2074, 2075 & 2078. As stated in these Articles, the defendant may surrender the animal or building that caused the damage to another or pays an equivalent sum of money due.
- The defendant cannot exercise this options where the damage was caused by his fault or that of a person for whom he is answerable. (Article 2074(2) cum Article 2078(2))

D. Nominal damage

- As a rule, a claimant in extra contractual liability law has the burden to prove the nature and the extent of the harm he sustained and the circumstances that render the defendant liable to make it good.
- But this is not the case in an action for nominal damages. Without the need to proving any real or actual damage, a very small fraction of money can be awarded to the victim simply as a recognition or declaration of his rights violated or infracted by the defendant.
- The term “nominal” connotes the symbolic (unreal) and insignificant nature of the award that does not correspond to any real damage sustained by the claimant.
- Nominal damages are awarded when the claimant has established his case, particularly in relation to torts actionable per se, such as trespass, but has not shown there is any actual loss. The award marks his success.

Quantum of Compensation for Moral Damage

- The principle of equivalence between damage and compensation envisaged in Article 2090(1) cum 2091 is practically impossible in the case of moral damage.
- The quantum of the awards that may result from such arbitrariness in assessment, our civil code puts a ceiling amount, which is one thousand Ethiopian Birr (Article 2116(3)).
- So, the discrepancy in the Ethiopian case may fall between the smallest positive number and one thousand Ethiopian birr and possibly between denial of monetary compensation and awarding the highest figure, one thousand in comparable cases. This is also the case in many countries.

Compensation for personal injuries

General damages and pecuniary loss

general damages

- A synonym with moral damages and refers to the monetary award granted to the person who suffered loss of amenity (reduction in capacity to enjoy life), pain and suffering due to the damage.

Q. For who general damages shall be paid?

- The unconscious patient has not lost any amenity in the sense of subjective enjoyment the quality of life, but the practice is the award reduced on the basis that there is an objective diminishing of the quality of life actually enjoyed.

- ✓ Pain and suffering is subjective, so no award we shall give to a claimant who is wholly unconscious
- ✓ Provided that for large magnitude or not absolute physical damages the award shall be given (it is better to kill the victim rather than wounding him)

Q. What is the position of our civil code on this issue?

- It lacks clarity, but the close reading of art 2113, and 2067 provided that among other things the damage shall be awarded for person who at the large magnitude or not in absolute unconscious person based on the nature and gravity of the injurty to attain equity.

pecuniary loss

- Includes loss of earning, medical expenses and other outlays.
- While assessing future pecuniary loss the following variable should be considered;
  a. Future progress of injury
  b. The impact of other unrelated illnesses and
  c. Future employment prospects
- In Ethiopia (art 2092) certain future damage are subject of compensation even if they are not materialized.
- See also art 2102 and 2150(2)

Victims of personal injury

- It is based of their engagement;

A. Injury of an employee

- The above discussed general damages rule are similarly applicable.
- Regarding pecuniary losses according to art 99 of 377/03 labour proclamation the types of injury are;

i. Temporary disablement (partial or total disablement for temeporary period of time)

ii. Permanaent partial disablement: (= wage * degree of disablement* future capacity of work if the victim was not suffered the damage +/- inflation – interest)

iii. Permanenet total disablement: it is calculated

- For present material loss: loss of earning (from date of injury to judgment day) + interest (if any_
- For future damage = wage * expected years to work if the victim is not damaged +/- inflation – interest

iv. Death

Q. Is compensation is taxable or not?

- It is argumentative;

a) Mehari Reday: compensation shall be calculated without deducting the tax. Thus, we shall take the gross income rather than net of the victim (art 13 (f) of proc. 286/2002

b) The employee loss the income which is net income but not the gross income. Since the purpose of tort law is to restore a victim as he were not injured.

B. Injury of self-employed person

- Are all class of person who pursue their livelihood in any independent activity other than employment.
- It is difficult to assess the compensation. Since there are person who does not keep book of account or some other does not report the accurate income and also there is the fluctuation of their income due to the change of market.
- Thus, the calculation of their income shall be depends of the pre-injury income plus future damage.

C. Injury to non employed

- Are neither employed nor self employed. The causes of non employment are;

a) Lack of incentives: acquiring enough wealth
   - English courts: does not pay for person not employed but potentially able to work in the future
   - American courts: pays for person in choice of employment or future employment capacity even if not now in job.
   - Ethiopian courts followed the English approaches.

b) Lack of opportunity of employment

c) Where injury does not increase person pre existing physical and mental inability to work there is no loss

Compensation for fatal accident

- ✓ As a rule no action for compensation lay for the death of another exept by dependants nominated by the law (art 2095)
- ✓ In calculating the damages for fatal accidents the following essential elements shall be taken in to consideration;

a) Amount of annual dependency

b) Numbers of years purchase: no. years such support may continue

N.B. The above requirements can not be certainly determined. Since they are amenable to unavoidable intervening variables accurately foreseen.

- According o art 2095 (2) the court is at a liberty to order the damage to be made good in the form of periodical allowance.

finality of assessment and appeal

- Under art 2150(1) there are two types of judgments;

a) Final judgment (art 2151): this implies two essential points;

   a) Resjudicata: art 2151(2) and splitting of claims
   b) Non- appealable: on the amount of compensation to be paid (see art 2152) and the exception under art 2153

b. Provisional judgment: art 2150(2): for immediate needs.

Modes of payment of damages

- There are two types;

A. Lump sum payment (principle)

- See art 2154. the close reading of the provision provided that lump sum payment is the principle or ordinary rules of compensation

B. Periodical allowance (structural settlement) as exception

- It is only when;

a. Based on the nature of the damage

b. Circumstance of attending the case and

c. Security given for periodical payment

Action for compensation

Q. Who may claim compensation?

- The claimant are classified in to two;

A. Independent clamant: claims on their own behalf

B. Derivative: on behalf of the other based on legal or contractual subrogation

Q. Who are the independent claimants?

- ✓ Art 33 of Ethiopian civil procedure code provides vested interest requirement to claim as a plaintiff on their own behalf. Thus, the independent claimants are;

A. The victim himself (art 2146) (the case of non- mortal injury)

- Art 2146 provides the personal nature of claim for compensation.
- There are exceptional circumstances where a person institute independent action in his own behalf even if the victim is independent person.
- This is in cases of art 2114 & 2115 (independent compensation for such claimants separately from the victim

B. Next Kin (the case of mortal accident)

i. Dependent of the deceased (art 2095(1) (only for material damage)

- ✓ The support by the deceased shall be regular and the dependent shall be in state of necessity, thus dependent who have independent source of income can not claim
- ✓ Cassation bench decided that in case of the deceased is the minor below the age of 14, his ascendants cannot claim material damages. Since the deceased does not have nay legal obligation to do so. But it is not in the sprit of the law under the civil code.

ii. Family of the deceased: (only for moral damages) see art 2116 and 2117 cum 2116(3)

Derivative claimants

- The derivative claimants are;

a. Heirs of the victim (only to the material damage)

- They cannot claim moral damages, unless;
  i. The victim initiate the case/action during his life time (art 2144(2)
  ii. Provided by the law (e.g. see art 2113)

b. Creditors of the victim (art 2145(1)

- They can claim only on the damage against the financial interest of the victim, provided that they cannot claim on damage against the personal, moral or honor of the victim.
- Thus the following elements shall be fulfilled;
  a) There must be debtor and creditor relationship
  b) Damage must be on the pecuniary interest of the victim
  c) Damage must occur after debtor/creditor relationship is formed and
  d) Application to the court by the creditor (is not a mandatory requirement)

Q. When subrogation is possible?

- Subrogation in case of insurance and pension is possible when the instrument provides to such effect (see art 2093 & 2094 i.e. contractual subrogation)
- In case of insurance law art 683 of the commercial code provided that insurer can substitute the third party and it is mandatory. But only limited to insurance of object.

Q. Who may be sued?

- Both legal and judicial persons

a. Author of the damage

- ✓ The one who by his action or inaction cause damage. Eg. In case of simultaneous damage (see art 2084)

Q. What if the author the offence is not identified?

- When the author of the offence is not identified or the defendants are in group the court shall in to consideration the following essential points;

  a) The court is certain enough that the author of the damage is found in the group identified

  b) It must be absolutely impossible to determine who caused the damage from the group and

  c) In the interest of justice and desecration of the court

b. Vicarious defendant

- Victim can sue the author of the tort nd the vicarious defendant jointly and severally (art 2136(1)

c. Heirs of person liable

- Heirs succeeded not only the rights of the deceased but the obligations too.

D. Immunity (see art 2137-39)

Period of limitation

- Art 2143, provides two types of period of limitations for claiming damages;
  a) Art 2143(1): two years statutory limits of tort law
  b) Art 2143(2): penal code period of limitation, provided that if the penal code provides longer period of time the penal code will be applicable and the reverse is true under art 2143(1)

Q. Is the penal code period of limitation is applicable automatically if it provides longer period?

- No! the tortfeasor shall be convicted criminally for the same act that gives right to tort liability.

Unjust enrichment (UE)

- It is considered as the third remedies when the contract law and tort law fails to address some issues.

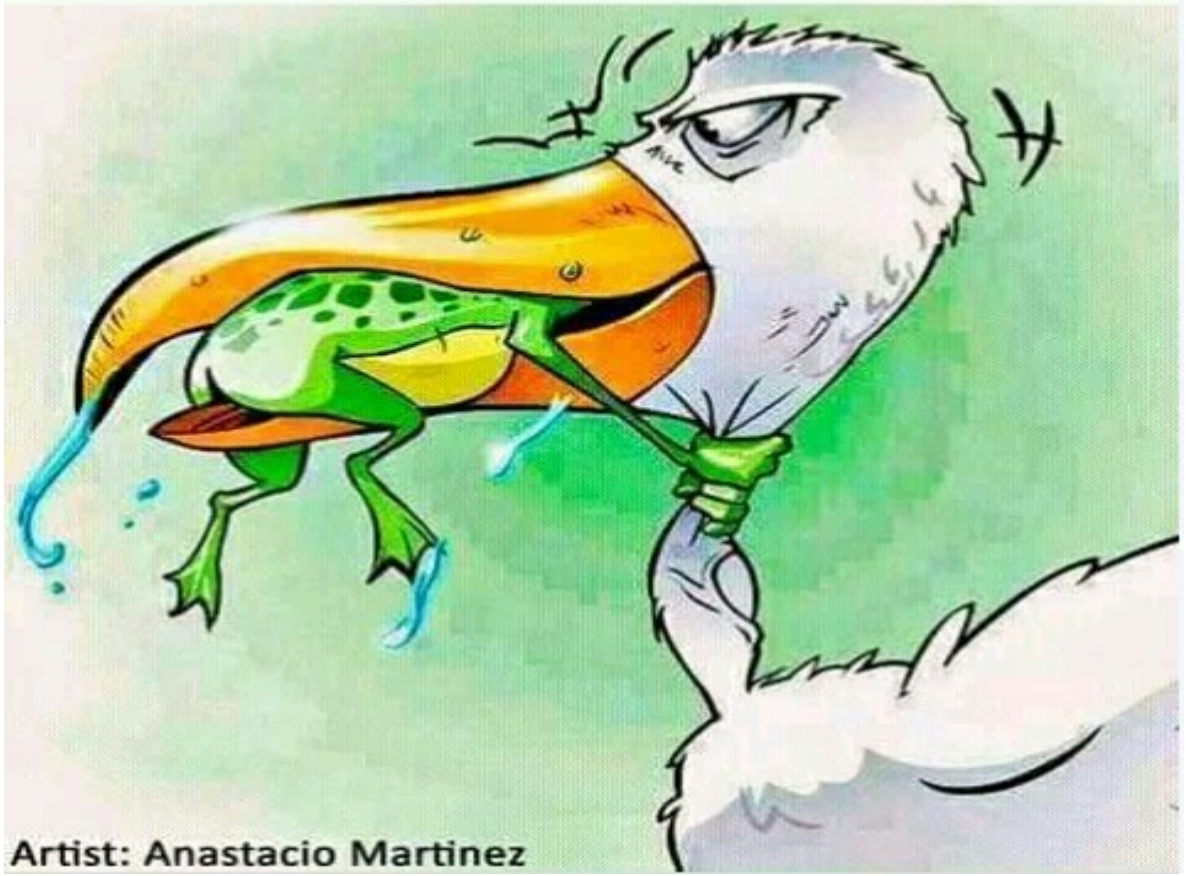
Q. What is the difference between unjust enrichment and restitution?

- UE is the ground or basis of the claim but restitution is the claim it self
- See art 2162, the law of UE compromise three basic elements;
  a. Benefit acquired by the defendant
  b. At the expense of the plaintiff and 'in unjust manner

Q. What are the grounds of UE?

i. Undue payment (art 2164) and
ii. expenses

Never Give Up!



Artist: Anastacio Martinez