UNIT-I

INTRODUCTION TO CRIMINAL LAW

"The criminal law represents the pathology of civilization."

-Morris R. Cohen, Reason and Law 70 (1961)

Introduction:

Criminal Law is the body of law defining crimes against the community at large, regulating how suspects are investigated, charged, and tried, and establishing punishments for convicted criminals.

Often the term 'criminal law' is used to 'the administration of criminal justice' in the broadest sense. The criminal law identifies, defines and declares the conducts that it seeks to prevent and prescribes the appropriate punishments for them too. In fact the law of crimes has been as old as the civilization itself.

Certain acts are forbidden under the pain of punishment. Where one person injured another and the injury could adequately be compensated by money value, the 'wrong-doer' was required to pay damages or compensation to the 'wronged' individual. But in certain cases in addition to the liability to pay compensation the state imposes certain penalties upon the wrongdoer with the object of preserving peace in the society and promoting good behavior towards each other and towards the community at large. To prevent a crime from happening, or to deal effectively with a crime once it has occurred, we have to know 'what the crime is' and 'what the related legal ramifications' are. The study of criminal law aims at having an understanding the concept crime.

Objectives:

- Explain the meaning of the character, function, purpose, and principles of criminal Law.
- Distinguish Criminal Law from Private Law and Morality.
- Have a basic understanding of the historical development and the Criminal law of Ethiopia.
- Note the Classification of Crimes under the Ethiopian Criminal Code.

General Considerations:

The Place of Criminal Law in Criminal Science:

The definition of a crime has always been regarded as a matter of great difficulty. Where the task of definition is difficult, to acquire some considerable knowledge of the subject matter to be defined is important. Therefore, before making an attempt to understand the definition of crime, having information relating to crime and criminal law essential.

"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. The main aims of Criminal Science are:

1. To discover the causes of criminality,
2. To devise the most effective methods of reducing the amount of criminality,
3. To perfect the machinery for dealing with criminals.

For this, three main branches have developed.

1. Criminology: is the study of crime and criminal punishment as social phenomena. It concerned with causes of crimes and comprises of two different branches.

a) Criminal Biology: investigates causes of criminality, which may be found in the mental or physical constitution of the delinquent himself such as hereditary tendencies and physical defects.

b) Criminal Sociology: deals with enquiries into the effects of environment as a cause of criminality. It focuses on the objective factors like social, political and economic conditions leading to criminality, also termed as criminal anthropology.

2. Criminal Policy or Penology: is concerned with limiting harmful conduct in society. It makes use of the information provided by Criminology. Therefore, the subjects of Criminal policy for investigation are:

a) The appropriate measures of social organization for preventing harmful activities,
b) The treatment to be given to those who have caused harm, whether the offenders are to be given warnings, supervised probation, medical

treatment, or more serious deprivations of life or liberty, such as imprisonment or capital punishment.

Penology' deals with treatment, prevention and control of crimes.

4. Criminal Law:

The Criminal Policies postulated Criminology and Penology, are implemented through the instrumentality of 'Criminal law'.

Criminal policies are implemented through the agency of criminal law. The criminal law decides the special sanctions appropriate in each case. These sanctions range from death penalty through various kinds of degrees of deprivation of liberty, down to such measures as medical treatment, supervision as in probation, fines and mere warnings (admonishment).

Branches of Criminal law: two branches.

a) Substantive Criminal Law,
b) Adjective/Procedural Criminal law.

'The Substantive Criminal law' lays down the principles of criminal liability, defines offences and prescribes punishments for the same. The Ethiopian Criminal Code does this business. However, the substantive criminal law by its very nature cannot be self-operative. It is for this reason that 'Procedural Criminal law' has been designed to look after the process of the administration and enforcement of the substantive criminal law. In the absence of procedural criminal Law, the substantive criminal Law would be almost worthless. Because without the enforcement mechanism the threat of punishment held out to the lawbreakers by the substantive criminal law would remain empty in practice. Thus, the procedural criminal law is to administer the substantive criminal law and give enforcement to it. The scope of our study is the branch of substantive criminal Law.

Nature and Scope of Criminal Law:

Laws can be classified into different branches. Like the Civil law spells out the duties that exist between persons or between citizens and their government, excluding the duty not to commit crimes.

Criminal law has to do with crimes, which are different from other wrongful acts such as torts and breaches of contract. The distinct nature of Criminal Law can be understood by defining some of its unique features.

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." It means the whole body of criminal law to be efficient must have four important elements:

- Politically:- only the violations of rules made by the state i.e. crime
- Specificity: - defines the act to be treated as crime strictly / the provisions should be stated in specific terms.
- Uniformity: - application to all alike without any discrimination/ imparting even-handed justice to all alike.

The idea is to eliminate judicial discretion in the field of administration of criminal justice. It may, however, be noted that the recent legislations provide scope for more and more judicial discretion through judicial equity to attain criminal's reformation which is the ultimate goal of criminal justice. Finally, it is through 'Penal sanctions' imposed under the criminal law that the members of society are deterred from committing crimes. It is, therefore, obvious that no law can be effective without adequate penal sanctions.

General Objectives of Criminal Law

The objectives of Criminal law are the protection of persons and property, the deterrence of criminal behavior, the punishment of criminal activity and rehabilitation of the criminal.

a. Protection of Persons and Property

Safety and a sense of security are the most important things for the survival of any society. Safety of a society includes personal safety i.e. safety of life and liberty and safety of property. To ensure safety there is the necessity of maintaining peace and order by an effective penal system.

Thus, the prime objective of criminal law is protection of the public by maintenance of law and order.

However, a branch of civil law also protects persons and property what makes different the criminal law is that tort law results in money damages than loss of freedom by sending a person to jail or prison. Private interests are served through the awarding of damages. The public interests are served by punishing criminal activity. If all persons respected everyone else's person or property, there would be very little reason for criminal law.

b. Deterrence of Criminal Behavior:

Our criminal laws present a sufficient deterrent to antisocial behavior. A "deterrent" is a danger, difficulty or other consideration that stops or prevents a person from acting. However, our Constitution states in Art. 18 that, there shall be no cruel and unusual punishment. The question is that how much punishment will deter criminal behavior without going too far.

c. Punishment of Criminal Activity:

If a criminal takes something without paying for it or injures other without a justification, the criminal law makes that individual pay for it through deprivation of liberty for a period of time.

d. Rehabilitation of the Criminal:

Although punishment is one objective, it is not our criminal justice system ends. Designing various programs to educate and train criminals in legitimate occupations during the period of incarceration. Upon release, therefore, there should be no reason to return to a life of crime.

Under Art. 1 of the Criminal Code of the Federal Democratic Republic of Ethiopia, 2004. Art. 1. Para 1 sets out the purpose of criminal law (Code).

What purpose means that the ultimate objective to be attained by the criminal law.

"The purpose of the Criminal Code of Federal Democratic Republic of Ethiopia is to ensure order, peace and the security of the state, its peoples, and its inhabitants for the public good".

Art. 1 Para 2 lays down that:

> "**It aims at the <u>prevention</u> of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective by providing for punishment of criminals in order to <u>deter</u> them from committing another**

crime and make them a lesson to others, or by providing for their reform and measures to prevent the commission of further crimes."

- Giving due notice of the crimes and penalties prescribed by the law.
- If such declaration of the punishable acts does not deter people from committing of crimes then the following methods are employed to deal with the criminals:
  a) Provide for punishment and reform of criminals, and
  b) Provide for measures to prevent the commission of further crimes.

The function of a thing is 'what it is meant to actually do' towards a certain purpose. Function is thus a special activity or task while purpose is the ultimate objective to be achieved. The purpose of "ensuring order, peace and security of the state and its inhabitants for the public good" through declaration of forbidden conduct, providing for suitable punishment, reform of criminals and preventive measures to control the commission of crimes.

Criminal Law, Private law and Morality-Distinguished:

A wrong is an act forbidden by the society. It is a violation of rules, which are accepted by the society. Society prohibits certain activities basing on the general conscience of the society, which is found in the values and norms of the society. The concept of morality explains the values of a particular society. Acts against can be described as moral wrongs. However, all moral wrongs are not wrongs in the legal sense. Since all violations of law cannot be characterized as crimes and identify the particular class of violations is necessary to understand the concept of crime.

A body of wrongs.

Classification of Wrongs:

Since all violations of law cannot be characterized as crimes, there is a necessity to identify the particular class of violations or forbidden acts or wrongs for the purpose of defining what 'crime' is.

Wrongs: Acts forbidden by the Society.

Moral wrongs: Interference of law is considered

Legal Wrongs: where the interference of law is necessary

- ✓ **Moral wrong**:

The evil tendencies of these anti-social acts widely differ in degree and scope.

- ✓ **Legal Wrong:**

The state may respond to any of such acts in two different ways: (1) Where the state takes action against the wrong-doer at the instance of the injured party, it is called the civil wrong, and (2) Where the state by itself proceeds against the wrong-doer, the wrong is referred to as criminal wrong.

- o **Civil Wrong:**

Where the magnitude of injury is supposed to be more concentrated on the individual, the state, at the instance of the injured individual or the group, directs the wrong doer to compensate the injured in terms of money as in the case of deceit, libel, nuisance, negligence, etc.

- o **Criminal Wrong**:

Where the gravity of the injury is more directed to the public at large (including the specific victim), the state by itself can take a direct action against the wrong-doer.. Therefore, the state stresses the necessity of punishing the wrong-doer rather than concerning itself with the question of payment of compensation to the injured party by the wrong-doer.

- ▪ **Relation between Morality and Criminal Law:**

Morality and law can be precisely distinguished but are not totally distinct phenomena rather they are related to each other by aiming at maintaining social order. Law and morals powerfully support and greatly intensify each other. Everything that is regarded as enhancing the moral guilt of a particular offence is recognized as a reason for increasing the severity of the punishment awarded to it.

When a member of the society does a wrong involving serious moral guilt, the moral sentiment of the society gets offended so seriously that the whole society waits in all its eagerness to see that the offender is punished severely.

The Concept of Crime:

Crime is a Deceiving Concept:

There are no easy explanations for the phenomena collectively called crime. Crime is deceiving concept because it covers an enormous range of human behavior.

The concept of crime has always been dependent on public opinion. In fact "law" itself reflects public opinion of the time. Obviously, every society formulates certain rules to regulate the behavior of its members, the violation of which is forbidden.

According to Terence Morris, "Crime is what society says is crime by establishing that an act is a violation of the criminal law. Without law there can be no crime at all, although there may be moral indignation which results in law being enacted." "Law", is the aggregate of rules set by men politically superior, or sovereign, to men as politically subject.

To common man crimes are those acts which people in society "consider worthy of serious condemnation". Therefore, crime is an act which both forbidden by law and the moral sentiments of the society. According to Wechsler, "the purpose of penal law is to express the social condemnation of forbidden conduct, buttressed by sanctions calculated to prevent it" by questioning the following:

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

- **Forbidden Conduct:**

The concept of forbidden conduct is not a static one; it changes with the change of social norms and time. The very definition and concept of crime is not only according to the values of a particular group and society, its ideals, faith, religious attitudes, customs, traditions and taboos but also according to the form of government, political and economic structure of society and a number of other factors. Therefore, social changes affect the criminal law in many ways, such as:

- Through changes in structure of society, especially in its transition from rural self-contained and relatively sparsely populated to a highly urbanized and industrial pattern.
- Through changes in the predominant moral and social philosophy.

- Through developments in science especially in Biology and Medicine.

Crime is A Multidimensional Problem:

Crime is not just the responsibility of the police, the courts, and the prisons. Crime cannot be controlled without the active support of individual private citizens, schools, businesses, and labour unions. This is so because crime has its effects on everyone-not just the criminal and his victim.

Clearly, then, crime has many dimensions. To the **student of crime**, it is a problem of explanation and interpretation. To the **legislator**, it is a problem in definition and articulation. To the **police**, it is a problem in detection and apprehension. To the **judge**, it is a problem of due process and of punishment. But, it is a problem too for more than these. It is a problem to the person who is engaged in breaking the law; it is a problem to the **victim** who may be deprived by it of life, possessions and even the pursuit of happiness.

Definition of Crime:

It very difficult to derive any precise definition of the term. In spite of the attempts made by various jurists, a satisfactory definition of crime has not been achieved.

- **Literal Meaning of Crime**

The word "Crime" was originally taken from a Latin term "Crimen" which means "to charge". The Greek expression "Krimos" which means "Social order". Therefore, in common parlance the word crime is applied to those acts that go against social order and are worthy of serious condemnation.

- **General Meaning of Crime**

The Oxford English Dictionary defines crime as "an act punishable by law as forbidden by statute or injurious to public welfare". It is a very wide definition including many things in the present day complex society.

It is too wide a definition and fails to precisely identify the thing it purports to define.

- **Crime is a "Public Wrong"—Blackstone**

Blackstone, (1968) has defined crime as **"**an act committed or omitted in violation of a public law either forbidding or commanding it". According to **Austin,** public law is identical with "Constitutional law".

Germans interpret public law to include both constitutional law and criminal law. . What is a crime? - Violation of criminal law. What is criminal law? -The law that deals with "Crimes".

Blackstone, (year) "A crime is a violation of the public rights and duties due to the whole community, considered as a community in its social aggregate capacity".

"A crime is a violation of a right, considered in reference to the evil tendency of such violation as regards the community at large."

Stephen (year) committed two errors in modifying Blackstone's second definition:

1. He dropped the word

2. Evil tendency of such violation as regards the community at large. It means that crimes are breaches of those laws, which injure the community.

- **CRIME is A "Moral wrong" – Stephen:**

According to Stephen (year) crime is "an act forbidden by law and which is at the same time revolting to the moral sentiments of the society

- **Crime is A "Procedural Wrong" –John Austin:**

Austin defined crime while making a distinction between civil and criminal wrongs. "A wrong which is pursued by the sovereign or his subordinates is a crime. A wrong which is pursued at the discretion of the injured party and his representatives is a civil injury".

- **Crime is a "Creation of Government Policy":**

It was a capital offence to harm them or even to climb over them to enter the city instead of coming through the gates in the proper way.

Different social forces and impulses affected the development of law everywhere.

Therefore, Kenny (year) opined that, so long as crimes continue to be created by the government policy, it was difficult to give a true definition of the nature of crime. According to him "Crime" has the following three characteristics:

1. A crime is a harm brought about by human conduct, which the sovereign power in the state desires to prevent,
2. Among the measures of prevention there is threat of punishment,

3. Legal proceedings of special kind (criminal proceedings) are employed to decide whether the person accused did in fact cause the harm and is according to law to be held legally punishable for doing so.

- **Crime Is A "Legal Wrong"**

Since no satisfactory definition of crime acceptable and applicable to all situations could be derived, penal statutes define, specifically, different criminal behaviors, which they purport to check. Even the Criminal Code of FDRE, 2005, which has codified the great bulk of the criminal law of the country, does not give any standard definition of crime. Art. 23(1) simply states that,

> "**A crime is an act which is prohibited and made punishable by law**.
> **In this Code, an act consists of the commission of what is prohibited or omission of what is prescribed by law."**

'Crime' Distinguished From 'Civil Wrongs'

"Crimes" are said to be harms against the society and are therefore, considered as graver wrongs. "Torts" (cases of non-contractual liability) are wrongs against individuals and are treated as lesser wrongs. "Breaches of contract" are also civil wrongs, which result from non-performance of contractual obligation.

"Tort" is a private wrong and the remedy available is reparation for the injury suffered and not punishment. Moreover, the remedies unlike criminal law do not involve punishment but performance of obligations and payment of damages.

Factors that distinguish torts from crimes

Torts also include certain harms or damages caused by fault that are designated as offences like:

1. Assault,
2. Defamation and negligence etc.

Non-contractual liability may arise

1. irrespective of fault i.e. strict liability
2. Harm caused by others for whom a person is answerable i.e. vicarious liability

Tortious liability is said to be "strict" (or irrespective of fault) in the following instances.

a) If it arises from acts that do not constitute fault, or
b) Due to harm caused by things owned or possessed by a person namely, animals, buildings, machines, and vehicles and manufactured goods.

Further, faults that result in tortious liability are wider in scope of application than offences, because it may include violations of private law that are considered to be faults on the basis of the "standard of a reasonable man's conduct

In short, criminal liability invariably requires moral guilt (intention or negligence) and personal act or omission while non-contractual liability doesn't.

Another important difference lies in the fact that "analogy" is forbidden in criminal cases since the legal provisions embody illustrative lists. In addition criminal cases require certainty beyond reasonable doubt.

However, it may be permissible in civil cases as civil provisions embody exhaustive lists. With regard to degree of evidence civil cases requires the preponderance of evidence in the balance of probability.

Generally, the following legal aspects distinguish these legal wrongs:

1. **Nature of wrong:**

   Crime is a public wrong i.e. a harm done against the society.

   A 'tort' is a private wrong committed against an individual generally or the public in a given locality.

2. **Nature of the Right Violated:**

   In a crime and a tort there is a breach of 'right in rem' whereas in a breach of contract there is breach of 'right in personum'.

3. **Origin and Nature of the Duty:**

   In a crime the duty not to cause harm is fixed by the state.

   In tort such Duty is fixed generally by the operation of law

   Under criminal law the duty is towards the whole world and it arises on account of the statutory enactments.

   In case of torts the duty is towards the public generally. The basis of general responsibility towards the society. Whereas, in case of breach of contract duty is as a result of party's agreement, the responsibility is specifically towards the contracting party.

4. **Consent of the Victim:**

   Consent of the victim to the injury caused is a qualified defence in criminal law. In torts, consent of the plaintiff to the alleged injury nullifies right to remedies. A contract it is founded upon consent. Therefore, if there is consent to the breach of any term or condition of the contract, the plaintiff forgoes his right to claim the remedies.

5. **The Element of Intention**

   Intention is an essential element of crime. Intention may form one of the ingredients of tort but not an essential precondition for the Tortious liability. In an action for breach of contract whether the breach was intentional, is an irrelevant question.

6. **The Element of Negligence**

   Negligence attended with criminal lack of foresight amounts to a crime. Mere negligence may amount to a tort. There is no question of negligence in an action for breach of the obligation arising out of a contract.

7. **Relevancy of Motive**

   Motive may be a factor for consideration in deciding the quantum of punishment in criminal liability. Motive is taken into consideration in deciding tortious liability. Motive is irrelevant in an action for breach of contract. A breach is a breach with whatever motive it was committed.

8. **Initiation of Legal Proceedings**

   Criminal proceedings are conducted in the name of the state. The state steps into the shoes of the victim as the protector of interests of its inhabitants. In case of the other two civil wrongs, it is the injured party that brings the action against the wrong-doer.

9. **Remedies Available**

   The criminal is punished by the state. The punishments may range from fine, compensation through imprisonment of different kinds to capital punishment. In torts the remedies available are damages, compensation, restitution and injunction. For breach of contract cancellation of contract, damages, specific performance and forced performance of contract are the available remedies.

The Development of Criminal Law of Ethiopia

Historical Background

The history of Ethiopian Criminal law reveals the following important legislations incorporating the Criminal law of the country before the enactment of the existing Criminal Code of FDRE, 2005.

A. The Fewuse Menfessawi,

B. The Fetha Negest,

C. The Ethiopian Penal Code, 1930.

D. The Penal Code of the Empire of Ethiopia, 1957.

E. The 1974 Revolution and Criminal Law

F. Special Penal Code of 1981

A. The Fewuse Menfessawi (The Canonical Penance):

The compilation had 62 articles mainly on criminal matters. Since this was far less than comprehensive, it was not able to resolve many of the legal problems that arose during that period.

B. The Fetha Negest (The Law of the Kings)

The failure of the Fewuse Menfessawi led to the next codification by the same Emperor Za'ra Ya'eqob . The Fetha Negest is a very interesting legal compilation.

As highlighted by Graven (year), Fetha Negest included the following important criminal law principles:

- those concerning "intention" and "negligence",
- relating to the proportion between the fault and sanction,
- the individualization of punishment,
- the forgiveness and redemption of offenders, and
- the sharing of guilt case of fighting etc.

These solutions in case of fighting etc. are most current, familiar and understandable situations for the people.

The criminal provisions of the Fetha Negest were applied in Ethiopia until they were replaced by the Penal Code.

C. The Ethiopian Penal Code of 1930:

The Penal Code of 1930 reflects the norms and values of the old absolutist monarchy of the generation of Emperor Menelik II and Emperor Zewditu (i.e. the era between 1889 and 1930). It was also drawn up in a less systematic and clear manner and did not follow the rules of a modern codification process.

The main attributes of the Code were as follows:

- The crimes and respective punishments were defined in exact fashion, and
- The penalties were considerably softened and improved by setting the fines in proportion to the then economic and monetary situations of Ethiopia.
- The Code under its Special Part protected the three great classic categories of interests. These were:
    1. The state and Community,
    2. Persons, and
    3. Property.

Provisions of "Petty Offences" were incorporated towards the end of …..? .The sources of the Penal Code of 1930 seem to have been the Fetha Negest and the Siamese Penal Code and the Penal Code of the French Indo-China of the time. The drafter of the Code is believed to have been a Frenchman. The Penal Code of 1930 was in force until it was repealed and replaced by the 1957 Penal Code of Ethiopia.

D. The Ethiopian Penal Code, 1957:

Criminal laws do indeed reflect the conditions generally prevailing in the country where they apply. Therefore, they necessarily change. If substantial changes occur in the society, substantial modifications also become necessary in the legal and other rules. The old codified laws used in Ethiopia, approximately between 1450 and 1931, did not follow the rules of modern codification process and thus eventually proved unsatisfactory. When the necessity was felt for transformation of legal system in the second half of the 20 century, the modern codification process was initiated.

The Sources and the Merits of the Penal Code of 1957:

Obviously, the Criminal Code that appears in present-day society should be able to provide solutions to the complexities of modern life. In view of this fact, the drafter looked into the most modern penal codes that embodied the latest thinking in the

sphere of criminal law. The primary source of the Code was the Swiss Penal Code of 1937 and the pre- 1957 Swiss Jurisprudence.

Some provisions of 'the Universal Declaration of Human Rights' and 'the Red Cross Geneva Convention' were also incorporated in the 1957 Penal Code of Ethiopia. The incorporation of the latest principles of law in present day jurisprudence made the penal code of Ethiopia one of the modern and sophisticated criminal codes of the time.

In addition to this, the drafter also included a wide range of provisions that covered legal institutions that might arise in the future. New concepts, not only juridical, also sociological and criminological were developed into a homogenous penal code, which aimed at the prevention of crimes and rehabilitation of criminals. The object of criminal law should not be retributive from the outset, despite the fact that punishment will serve as deterrent of prospective offenders.

It was the rationale of the penal code and the concepts embodied in some of its provisions that aroused bitter controversy among the members of the codification commission. The Fetha Negest, as well as the Penal Code of 1930, started from the presumption that criminals have to pay, i.e. have to be penalized for the injury they would cause to the individuals and to society at large. The objective of punishment was, according to these laws, in essence retributive. Now the draft penal code came up with new proposition with principal objective of that the prevention of crime and rehabilitation of criminals. It was this deviation from the traditional approach that took some members of the commission by surprise.

Some were the following:

- **Collective Punishment**:

According to customary law, where offences had been committed by one or several persons, it was found impossible to ascertain which of the persons involved was the criminal, the court could, where equity so required, order 'the damage' to be made good jointly by the group of persons who could have caused it and among whom the persons who caused the damage were certain to be found.

As this traditional practice seemed not be in line with rule of law and human rights, the compromise formula that was reached after a long debate between the foreign experts and the Ethiopian members of the codification commission was that, 'where an offence is committed by a group of persons, the persons who proved to have taken no part in the commission of the offence shall not be punished.'

- **Mutilation of Human Body As Punishment-Abolished**: According to the old practice, habitual offenders were punished by mutilating the human body so as to give it the maximum deterrent effect.
- **'Presumption of Innocence':**

In the past, the accused was required to prove his innocence. In modern penal legislation, however, the generally accepted principle is that the accused enjoys the presumption of innocence, according to which the burden of introducing evidence to prove the guilt of the accused is on the Prosecution. This is opposed to the previous principle of "presumption of guilt". In addition to this, accused has the right to produce defense witnesses**.**

- **Rules Applicable to Young Offenders:** In the past, all offenders who were thought to have the capacity to discriminate between what is good and what is bad were brought before the regular courts. In the modern penal law, on the other hand infants are completely exonerated from criminal provisions. Infants are not deemed to be responsible for their acts under the law. The measures to be taken against such offenders should have curative, educational or corrective measures as may be necessary for their own good. Thus, young persons were not subjected to the ordinary penalties applicable to adults nor should they be kept in custody with adult offenders.
- **Probation and Suspension of Sentences:** In the past all forms of sentences were executed. Present-day penal legislation provides that certain offenders may, under defined circumstances, be granted release on probation or the sentence may be suspended for a fixed time

Under rationale for modern principles of criminal law, the Ethiopian Penal Code aims at not punishing the offender, but at rehabilitating and educating him.

- **The Personal Nature of Criminal Punishments and Measures:**
- The principle is that, ‘crime is personal to the one who is found to have committed it’, it is thus an innovation made in the present criminal law.
    - Capital punishment and corporal punishment (flogging) were maintained but with all the necessary precautions as to the instance of application and the conditions of administration.
    - Pecuniary punishments particularly confiscation of property were made to be applicable in limited instances of serious crimes against the sovereign and the state
    - The principle of collective responsibility for certain crimes involving tribes or anonymous criminals were made to rest on customary practices which had their own justification.
    - The severe provisions on abduction and enslavement and the flexibility one sees with regard to adultery, concubine and illicit damage to property by stray animals of others are reflections of the changing modes of life of Ethiopia. In the words of the drafter while enacting the Penal Code :

Thus, the historical objective behind the enactment of the Penal Code of 1957 was to let it serve as a unifying force and as a machinery to enhance future development of the country the Penal Code of Ethiopia was promulgated on July 23, 1957 and came into force on May 5, 1958, and was in force until May 8th 2005.

E. The 1974 Revolution and Criminal Law

Following the 1974 revolution, a "revolutionary" system of neighborhood justice emerged. It was difficult to distinguish between criminal acts and political offenses according to the definitions adopted in post-1974 revisions of the Penal Code. The Proclamation applied the law retroactively to the old regime's officials.

In July 1976, the government amended the Penal Code of 1957 to institute the death penalty for "anti-revolutionary activities" and “economic crimes”.

Generally, the 1976 revision of the Penal Code empowered association tribunals to deal with criminal offenses. The judicial system was designed to be flexible.

Magistrates could decide not to hear a case if the defendant pleaded guilty to minor charges and made a public apology.

Nonetheless, torture was sometimes used to compel suspects and witnesses to testify. Penalties imposed at the local association level included fines of up to 300 birr. The tribunals could determine the amount of compensation to be paid to victims. The tribunals could impose imprisonment for up to three months and hard labor for up to fifteen days.

Association tribunals at the Awraja or Wereda level handled serious criminal cases. These tribunals were qualified to hand down higher sentences. Tribunal decisions were implemented through an association's public safety committee and were enforced by the local People's Protection Brigade. Without effective review of their actions, tribunals were known to order indefinite jailing.

The 1976 Special Penal Code, which was further elaborated in 1981, created new categories of so-called economic crimes. The list included hoarding, overcharging, and interfering with the distribution of consumer commodities. More serious offenses involved: engaging in sabotage at the work place or of agricultural production, conspiring to confuse work force members, and destroying vehicles and public property. Security sections of the Revolutionary Operations Coordinating Committee investigated economic crimes at the Awraja level and enforced land reform provisions through the peasant associations. These committees were empowered to charge suspects and held them for trial before local tribunals. Penalties could entail confiscation of property, a long prison term, or a death sentence.

F. Special Penal Code of 1981

In 1981, the Revised Special Penal Code replaced the Special Penal Code. This amended Code included offenses against the government and the head of state, such as crimes against the state's independence and territorial integrity, armed uprising, and commission of "counterrevolutionary" acts. The 1981 amendment also included breach of trust by public officials and economic offenses, grain hoarding, illegal currency transactions, and corruption; and abuse of authority, including "improper or brutal" treatment of a prisoner, unlawful detention of a prisoner, and creating or failing to control famine. The Amended Special Penal Code also abolished the

Special Military Courts. The Code created new Special Courts to try offenses under the Amended Special Penal Code. Special Courts consisted of three civilian judges and applied the existing Criminal and Civil Procedure Codes. Defendants had the right to legal representation and to appeal to a Special Appeal Court.

The Criminal Code of the Federal Democratic Republic of Ethiopia, 2005 Proclamation No. 414/ 2004

The 1957 Penal Code of Ethiopia, was on 9th May of 2005, and a new Criminal Code was brought into enforcement. The factors that necessitated the revision of the Penal Law of Ethiopia are as follows

1. **To Incorporate the Modern Legal Concepts:** During, nearly half a century? Since the 1957 Penal Code came into enforcement, several radical political, economic and social changes have taken place in Ethiopia. Among the factors that brought the changes, recognition of modern legal concepts by the Constitution and the international agreements ratified by Ethiopia were the major. The important phenomena that have been recognized in the Country in the recent past are:
   - The equality between religions, nations, nationalities and peoples,
   - The democratic rights and freedoms of citizens and residents,
   - The Human rights,
   - The rights of social groups like women and Children.

2. **To Fill in the Lacunae:** The 1957 Penal Code fails to properly address some of the criminal behavior arising out of advances in technology, the complexities of modern life as well as sufferings caused by reason of harmful traditional practices. Some such areas are:
   - The High Jacking of aircraft,
   - Money laundering,
   - Crimes related to corruption and drugs,
   - Grave injuries and sufferings caused to women and children by reason of harmful traditional practices.

It is true that the Constitution guarantees respect for the cultures of peoples, surely it does not intend to support those practices which are scientifically proved to be harmful. It is the responsibility of the legislature, by adopting progressive legislations, to educate and guide the public to discontinue such harmful traditional practices.

3. **To Adopt a Comprehensive Criminal Code:** It is desirable to adopt a comprehensive Criminal Code by putting together various Criminal provisions in the Negarit Gazeta in a disintegrated manner. Similarly, since the parallel application of the regular Penal Code, 1957 and the Revised Special Penal Code of the Provisional Military Administration Council 1982 (Proclamation No. 214/1982), in respect of similar matters disregards equality among citizens. The Comprehensive Criminal Code, 2005 is intended to put an end to such practice.
4. **Punishments for Certain Offences Increased:** On the basis of public opinion taken during discussions on the draft Criminal Code, punishments in respect of crimes like rape and aggravated theft have been increased.
5. **Matters Concerning the Determination of Sentence Revised:** Since it is essential to facilitate the method by which the courts can pass similar punishments on similar cases, some major changes have been made in the provisions of the Code. Provisions of the Penal Code that used to make sentencing complicated and difficult have been amended. Provisions have been inserted which enables the courts to pass the appropriate penalty for each case by carefully examining from the lightest to the severe most punishment. A provision (Art. 88/4) has been introduced requiring the Federal Supreme Court to issue sentencing manual to ensure and control the correctness and uniformity of sentencing.

5. Purpose of Criminal Law and Objectives of Punishment Redefined:

Another important point in respect of the determination of sentence is that, the purpose of Criminal Law is to preserve the peace and security by preventing the commission of crimes and a major means of preventing the commission of crime is punishment. Punishment can deter wrongdoers from committing other crimes; it can also serve as a warning to prospective wrongdoers. Although imprisonment and death are enforced in respect to certain crimes the main objective is to prevent wrongdoers

temporarily or permanently from committing further crimes against society. And in such cases with the exception of the death sentence even criminals sentenced to life imprisonment can be released on parole before serving the whole term. In certain instances, convicts can be released on probation without enforcement of the sentence pronounced. This helps wrongdoers to lead a peaceful life and it indicates the major place which the Criminal Law has allocated for their rehabilitation. The fact that wrongdoers, instead of being made to suffer while in prison, take vocational training and participate in academic education, which would benefit them upon their release, reaffirms the great concern envisaged by the Criminal Code about the reform of criminals. These express provisions in the new Code are included with intention that the Courts should, on passing sentence, take into account the purpose of the Criminal Law and the different aims of punishment.

It is hoped that the new Code will ensure respect for order, peace and security of the state and its peoples as well as respect for the rights and freedoms of its citizens and inhabitants. The Code is also expected to accelerate the economic progress of the State, strengthen a steady order of free market and above all contribute towards the promotion of a fair judicial system in the country.

Scheme of the Criminal Code of FDRE, 2005:

The Criminal Code of 2005 has incorporated the Ethiopian Criminal law systematically, coherently and comprehensively. The Code is organized into three main parts.

I. General Part:

Part I of the Criminal Code is entitled "General Principles of Criminal Liability", Part II Special Part and Part III is Petty Code.

II. The Special Part:

The "SPECIAL PART" of the code embodies '**Specific Crimes'** which are organized under different titles systematically.

Part III of the Criminal Code incorporates "**The Code of Petty Offences"**

The Criminal Code of FDRE, 2005, on the whole, consists of three parts, eight books, twenty eight Titles which include 865 Articles arranged in seventy two Chapters.

- **Relation between General and Special Parts of the Code:**

The **'General Part'** of the Criminal Code sets out the general principles of liability which are common to all serious crimes. This part explains what is meant by a criminal intention, negligence, imprisonment, probation and the like. The **'Special Part'** describes the various acts which are deemed to be 'criminal' and lays down the penalties applicable to them. It defines the essential elements of each crime and prescribes appropriate punishments for each of such crimes.

However, the said penalties cannot be ordered unless the conditions prescribed by the General Part with respect to liability to punishment are fulfilled. In other words, the Special Part does not operate by itself but has to be considered together with the General Part. This means, a person who behaves in a manner contrary to provisions of the Special Part is not automatically punishable. He shall be punishable only where his conduct is found guilty in accordance with the general principles of criminal liability laid down in the General Part of the Code.

Furthermore, even after the liability to punishment is established, mechanical imposition of sentence is not what is expected of a Judge, simply by referring to the punishment mentioned in the pertinent article of the Special Part. Those who administer justice are in fact dealing with 'criminals' rather than 'crimes' with 'human beings' rather than with 'cases'. They are expected to individualize their decisions. To this end, they must bear in mind the provisions of the General Part; since these provisions, more than those of Special Part, will enable them to arrive at a decision truly reflecting the circumstances of each individual case. For example, Art.665 of the Special Part prescribes 5 years imprisonment for a crime of Theft. It does not mean that whoever commits theft should be sentenced for 5 years imprisonment. Therefore, in order to decide whether, in a particular case, imprisonment should be ordered for 5 years or for six months, or less than that, the Court must of necessity, has to make reference to the General Part. Moreover, as any action taken under the law must serve the purposes of law, those who administer justice will have to satisfy themselves that their decisions are really capable of achieving these purposes as defined in the General Part. In other words **"punishments have to be tailor-made**" for each and every criminal having regard

to his personal circumstances and other relevant matters in order to bring him back to the society as a law abiding citizen.

Classification of Crimes under the Criminal Code

Generally, offences may be classified based on two criteria:

1. Classification based on the "Seriousness of the Crimes".
2. Classification based on the "Subject matter" of the Crime.

- **Classification based on the 'seriousness of the Crime':**

Crimes are generally classified into different categories according to varying degrees of seriousness.

Treasons are the most heinous, although the rarest species of felony. Anything done in the nature of an attempt to displace the governing body is classed as Treason. It is a breach of duty of allegiance to the sate. This crime finds its place in the penal codes of every country 'as a crime against the state'. **'Felony'** is a serious criminal offence punishable by at least one year imprisonment**. 'Misdemeanor'** is a criminal offence which is less serious than a felony, and is usually punishable by no more than a year in a country jail, and /or a fine, restitution or some other minor penalty. These include all offences which are not felonies and treasons.

The Criminal Code of FDRE has not adopted such a 'tripartite' distinction but simply classifies crimes into various titles **on the basis of content** rather than on the scale of punishment. Although an explicit distinction is not made between crimes, the range of punishment implies the gravity of crimes. "Crimes of very grave nature" are punishable with 'rigorous imprisonment' in Central Prisons for a period of one to twenty five years (Art.108) "A crime of not very serious nature" may subject to special provisions that may face 'simple imprisonment' for a term of ten days to three years (Art. 106), subject to Special provisions that may extend the period beyond three years. "Petty offences" on the other hand, are punishable with fine or arrest for a relatively shorter period of one day to three months (Art .747), subject to certain aggravating exceptions (Art.767-769).

The three variations in the deprivation of liberty , namely, 'rigorous imprisonment', 'simple imprisonment' and 'arrest' apparently denote a de facto classification into 'very serious crimes', 'not very serious crimes, and 'petty offences'.

- **Classification Based On the "Subject Matter" Of The Crime:**

A more clear cut and explicit kind of classification of crimes that is found in the Criminal Code is based on the content or subject matter of the crime. The object of the criminal law is to protect the "interests" of the state, the community and the interests of the individual in order to ensure peace and security .Therefore, crimes against such interests are kept under various Titles. The classification mainly makes distinction between "crimes" in Part II (special part) of the Code and 'Petty offences' embodied in Part III of the Code entitled 'The Code of Petty Offences. Further, the Special Part of the Code organizes the various interests to be protected in the following order:

- **Interests of the 'State'**: Crimes against state or against National or international interests, Arts. 237-374.
- **Interests of the 'Community':** Crimes against the Public Interests or the Community Arts.378 – 537.
- **Interests of the 'Individual'**: Crimes against the individuals and the Family Arts.538-733.

The individual interests of a person protected under the Code include his life, his person (body), his liberty, his honor, his morals, his family, his property etc.

- **The Petty Offences:**

A 'petty offence' is an infringement of a mandatory or prohibitory provision of a law or regulation issued by a competent authority or a minor offence which is not punishable under the Criminal Law. Such acts or omissions are made punishable under the Petty Code.

The policy underlying the classification of crimes under the Criminal Code of FDRE, 2005, can be better understood from the following observation made by the drafter of the 1957 Penal Code Prof. Jean Graven in this regard…

> "… abandoning the famous 'tripartite division' of the offences according to their supposedly different natures into felonies, misdemeanors and petty offences, the new Ethiopian law has deliberately enthroned the identity of the nature of the offences retained in the Penal Code, all of them simply called "offences", and the unity of all general principles, which are applicable to them. On the other hand, it has detached from them the minor, formal and petty offences, which form the subject matter of the Code of Petty Offences. Here the natural distinction between evidently different fields is instantly perceptible…"

Generally, criminal Law is the body of law defining crimes against the community at large, regulating how suspects are investigated, charged, and tried, and establishing punishments for convicted criminals. The criminal law identifies, defines and declares the conducts that it seeks to prevent and prescribes the appropriate punishments for them too. To prevent a crime from happening, or to deal effectively with a crime once it has occurred, we have to know 'what the crime is' and 'what the related legal ramifications' are. The study of criminal law aims at having an understanding of these concepts.

The study of crime i.e. Criminal Science" is a social study that has three important branches namely, criminology, criminal policy and criminal law. Criminal Law has two divisions' substantive criminal law and procedural criminal law. The law incorporated in the Criminal Code forms part of the substantive criminal law. Procedural criminal law provides for the procedure for enforcement of the rights and liabilities embodied in the substantive criminal law. Without procedural criminal law the substantive criminal law is totally ineffective.

The objectives of Criminal law are the protection of persons and property, the deterrence of criminal behavior, the punishment of criminal activity and rehabilitation of the criminal. The provisions of the Criminal Code are aimed at achieving these important objectives.

Criminal law, private law and morality may be distinguished on the basis of some of their legal aspects. For a proper appreciation of the distinction between criminal law, civil law and morality, it is necessary to understand the "concept of wrongs" and their classification. Moral wrongs are those which are detested by the general conscience

of the society but all such wrongs are not worthy of legal interference and remedies. The body of wrongs that calls for legal interference and appropriate legal remedies are called legal wrongs.

Crime is deceiving concept because it covers an enormous range of human behaviour. It is not even static. It keeps changing with the ideology of the society and the developments that take place in the advancement of knowledge. It changes from society to society and from time to time. This transient nature of crime makes it difficult to define crime. In spite of the several attempts made by various legal scholars the undeniable fact that remains is that 'crime is the creation of government policy'. History has lot of evidences to this truth.

The history of Ethiopian Criminal law reveals six important legislations incorporating the Criminal law of the country before the enactment of the existing Criminal Code of FDRE, 2005. They are, the Fewuse Menfessawi, the Fetha Negest, the Ethiopian Penal Code, 1930, the Penal Code of the Empire of Ethiopia, 1957, the 1974 Revolution and Criminal Law, Special Penal Code of 1981. The Penal Code of Ethiopia, 1957 has been repealed as from the 9th May of 2005, and a new Criminal Code has been brought into enforcement. Of many different reasons for the revision of the criminal law, the need to recognize the modern legal concepts adopted by the Constitution and the international agreements ratified by Ethiopia is the most important one. The other major features of the new Criminal Code are: redefining the objectives of punishment, including harmful traditional practices, hijacking of air crafts, cybercrimes etc., in the list of punishable conducts under the special part of the Criminal Code.

The classification of crimes under the Code may be identified on the basis of the punishments entailing them. The three variations in the deprivation of liberty , namely, 'rigorous imprisonment', 'simple imprisonment' and 'arrest' apparently denote a de facto classification into 'very serious crimes', 'not very serious crimes, and 'petty offences'.

UNIT -II

BASIC PRINCIPLES OF CRIMINAL LAW

Introduction:

The Criminal Law operates with fundamental principles.

A person accused of a crime is put under the peril of his life and liberty. Therefore, it becomes necessary that certain safeguards should be provided to the accused. These protections are almost common to all civilized legal systems of the world including that of ours. Most of these principles are enshrined in the Constitutions and International Conventions. The most important of such principles embodied in the Criminal law, specifically, are the following:

- The Principle of Legality
- The Principle of Equality
- The Principle of Individual Autonomy

The principle of legality requires that prosecutions and punishments for crimes should be strictly in accordance with a pre-existing legal provision. A person cannot be made criminally responsible for producing a harmful consequence if such harm is not declared as a prohibited one by legal classification. The principle also requires that wrong-doers should be punished strictly within the prescriptions of law. The principle of legality requires that prosecutions and punishments for crimes should be strictly in accordance with a pre-existing legal provision. A person cannot be made criminally responsible for producing a harmful consequence if such harm is not declared as a prohibited one by legal classification. The principle also requires that wrong-doers should be punished strictly within the prescriptions of law. There should not be any discrimination in the application of Criminal Laws. The other important principle that is discussed under this unit is the principle of equality which requires that all those who violate the law should be dealt with equally in terms of trial and punishment. There should not be any discrimination in the application of Criminal Laws.

Objectives:

- Grasp Know the essential skills to interpret Criminal Legislations
- Understand the scope and application of the provisions of the Criminal Code to different situations in which the crimes committed and to people committing crimes while being in different capacities.

The Principle of Legality

A Brief History of the Principle

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.

This maxim states that there can be no crime committed, and no punishment meted out, without a violation of penal law as it existed at the time. The penalties that had already been established for the offence in the time when it was committed can be imposed.

Then, as in Ethiopia today, the principle was viewed as one of political rights, as a protection of the citizen against his government, more than as a rule of criminal policy only. The principle of legality is that, 'there is no crime or punishment without a pre-existing law that prohibits that crime'. Thus, the conduct must be deemed a crime before the act is committed.

The policy behind the principle of legality is that "fair warning" should be provided to a criminal so that he does not inadvertently commit a crime that he has no reason to believe is illegal. There is no deterrence value in having unwritten crimes because people do not know what actions to avoid. Also, it is not morally culpable to do an act that a person reasonably believes is not illegal. Lastly, it would be unconstitutional under the ex post facto clause to do so. The rule of lenity is a corollary to the principle of legality - it follows naturally from it. The rule of lenity requires that all ambiguities in statutory language be resolved in the defendant's favor. The policy reasons are the same as the rule of legality. Also, the rule of lenity encourages the legislature to write more clear statutes.

"**nullum crimen sine lege, nulla poena sine lege**"

This Latin expression means that "there must be no crime or punishment except in accordance with fixed predetermined law".

Art. 2 of the Ethiopian Penal Code incorporate this principle. The principle, according to this provision, has three important ingredients:

- "**nullum crimen sine lege"** - No crime unless specified by law, (Art. 2/1)
- "**nulla poena sine lege"** - No penalties other than prescribed by law, (Art. 2/2)
- "**non bis in idem**" – Nobody shall be punished twice for the same act, (Art. 2/5)

'nullum crimen sine lege'

The first ingredient of the principle of legality is that "there are no offences other than those which are expressly provided by law". 'Criminal Law' within the meaning of Art.2 is not only the Penal Code, but any law duly passed and published, which contains penal Provisions. Thus, no person may be deemed to have been committed an offence if his act is not in violation of 'Criminal Law' in force at the time of its commission, at the place where the act is performed.

The principle "nullum crimen" conveys four different rules, namely:

- Certainty in Legislation,
- Accessibility of the law,
- Rule of strict Construction,
- Non-retroactivity of penal laws.

- **Certainty in legislation:**

'nullum crimen', is an injunction to the legislature not to draw its statutes in such broad general terms that almost anybody can be brought within them at the whim of the prosecuting authority and the judge.

People can then regulate their conduct and behavior in order to avoid the hazard of falling within the grips of the penal provisions of laws. Certainty in legislation does not only mean that crimes should be created by law but it also means that a prohibition must also be drafted in clear, certain and unambiguous language.

- **Accessibility of the Law:**

The Penal law must be accessible and intelligible because it is addressed to people in society who are bound to obey it on pain of punishment.

Natural justice requires that before a law can become operative it must be promulgated and published".

- **The Rule of Strict Construction:**

The rule is that, 'Penal statutes must be constructed strictly'. Since all penal laws affect the liberty of the subject, they have to be constructed strictly. The rule implies the following things:

i) That in the trial of an accused, the court must see that the act or omission charged as a crime is within the plain meaning of the words used in the provision making that act or omission a crime.

ii) The court must not strain the words used in defining a crime on any account; such as to provide for an omission (i.e., casus omissus) or a slip nor can the court extend the meaning of Criminal Statues by construction. Nothing can be regarded as being within the meaning of the statute which is not within the letter.

iii) Full effect is to be given to every word used in the statute. The degree of strictness applied in the construction of a penal statute depends to a great extent on the severity of the statute.

iv) Strict construction in relation to penal statutes requires that "no case shall fall within a penal statute which does not satisfy all the elements of the crime as defined by the statute."

v) The rule requires that where the ambiguous language of a statute leaves a reasonable doubt about its meaning and scope, the benefit must go in favor of the accused.

The rule of strict construction applies to penal statutes because the charge of crime endangers the life and liberty of the person charged.

- **'nullum Crimen' prohibits analogical extension of Penal statutes**:

According to 'nullum crimen,' as embodied in Art 2/1, primarily, courts cannot punish acts or omissions which are not prohibited by law. Hence, the conduct cannot be made punishable on the basis of its evil effect on the society.

"Prohibition of analogy" which states – "The court may not create crimes by analogy". Art 2/3. This means courts are not free to punish an act on the basis of similarity in its evil nature to that of a punishable act.

An omission of "a moral duty" may not be made liable under the criminal provision. Generally, the principle of legality requires 'a legal provision specifically forbidding the conduct' in question to attach criminal liability.

- **Principle of Strict Interpretation (Art. 2/4)**

The duty not to depart from what the law prescribes for the purpose of creating new crimes does not preclude courts from interpreting the law if this is found necessary as long as the courts take due precaution not to create crimes by analogy, they are empowered by Art 2/4 to interpret the law in cases of doubt under specific conditions for misusing such power;

However, for not every legal provision is open to construction, nor should construction take place in disregard of certain basic rules. Therefore, interpretation may be considered only in legitimate instances such as the following:

a) In cases of ambiguity (unclear) of the law, i.e. when the law contains inconsistent (contradictory) provisions, or,
b) The language used, a provision is of such an uncertain or obscure meaning that its true sense is doubtful.

Where a doubt arises as to the meaning or the scope of the legal provision, "the meaning intended by the legislature must have regard". (**Graven**) To this end, two methods of interpretation grammatical or logical interpretation (meaning is from within the text of the law), or interpretation, without the text of the law. However the general purposes of the law shall be bearing in mind.

Article by Prof. George Krzeczunowicz entitled "**Statutory Interpretation in Ethiopia**".

His article emphasizes on the principle of prohibition of analogy in Criminal law wherever the law is silent, and states the rules to be followed in the interpretation of such lacunae:

1. When the law is ambiguous "word meaning" should be interpreted through over all contexts.
2. The rule of positive interpretation lays down that 'provisions capable of two meanings' shall be given a meaning to render them effective rather than a meaning which would render them ineffective.

Philippe Graven states, "(W) hen the rules of construction have failed to remove the ambiguity, obscurity or uncertainty of the law … the doubt must be resolved in favor of the accused". In short, if a legal provision is so drawn as to make it really difficult to say what was intended and what facts come within it, the benefit of obscurity should be given to the accused person.

3. Where a provision is neither clear nor fully explained by the context, the judge should examine what the legislature had in mind. I.e. a statute is to be interpreted so as to put upon the language of the legislature honestly and faithfully, its plain and rational meaning and to promote the object of the statute.
4. Where two or more laws of different ranks are contradictory or inconsistent, a higher law prevails over the lower.
5. If laws of the same rank contradict.
    - Posterior law prevails over prior law,
    - Special law prevails over general law,
6. Inexplicable repugnance in the same law will require interpretation by overall context, reason and legislative intent. The Criminal Code, Art 2/4,

Non-retroactivity of Criminal law Arts. 6-10

The principle that people should be free from retroactive law has its roots in another principle: that there is no crime or punishment except in accordance with law.

The Latin maxim **nullum crimen sine lege, nulla poena sine lege**.

It is clear that the principle had wide acceptance in Europe by the end of the nineteenth century.

From the nullum crimen maxim, jurists have deduced the principle of prohibition of retrospective penal laws.

> "No law, made after a fact done, can make it a crime ... For before the law, there is no transgression of the law".

... Shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilized nations.

Article 15 of the International Covenant on Civil and Political Rights states, inter alia:

> "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed".

Article 15 includes a proviso identical to that contained in Article 7 of the European Convention on Human Rights, except that the phrase "civilised nations" is replaced by "the community of nations".

- **Ethiopian Constitution on the Principle: Art 22/2 of the Constitution**

The concept of non-retroactivity

A law promulgated subsequent to the commission of the offence shall apply if it is advantageous to the accused or convicted person."

'**nullum crimen'** :- 'no person shall be punished except in pursuance of a statute which fixes a penalty for a criminal conduct. It means there can be no ex-post facto Criminal law or in other words, the Criminal laws should not have retrospective operation. (Art 5 of Criminal Code**).** It would be unjust that:

- What was legal when done should be subsequently held criminal,
- What was punishable by a certain sanction when committed should later on be punished more severely,
- That procedure changes to the serious disadvantage of an accused and should be applied retrospectively.

Art 5 of the Criminal code lays down three rules relating to the applicability of old law for a crime committed before the new Code.

- **Application of the More Favorable Law Art. 6**

This rule is an exception to the second component of the principle of legality i.e. 'no penalties other than those prescribed by the law'. The Court shall decide in each case which law is more favorable to the criminal.

- **Application as to Measures. Art. 7**

In passing the sentence on the crimes committed under the repealed law, the Court shall apply the measures prescribed under this Code. This is to give effect to the new measures which are, obviously, adopted to be more effective to achieve the purpose of the Criminal Law.

Article 8 provides that the periods of limitation in relation to the crimes committed under the old law shall be determined according to the new Code. And the rules of enforcement of judgments in such cases are laid down in Art. 9.

Application of ex-post facto law in the criminal field is prohibited in French, German, American and many other Constitutions. Art. 11(2) of the Universal Declaration of Human Rights incorporate this principle. This was also inserted in Art. 7 of the European Convention on Human Rights, though with an important rider that punishment is allowed for acts that are criminal according to the general principles of law recognized by Civilized Nations.(Art.22 of the FDRE Constitution)

'nulla poena sine praevia lege poenali' (no punishment (can be imposed) without (having been prescribed by) a previous penal law)

Not only the existence of the crime depends on there being a previous legal provision declaring it to be a penal offense (nullum crimen sine praevia lege), but also, for a specific penalty to be imposed in a certain case, it is also necessary that the penal legislation in force at the time when the crime was committed ranked the penalty to be imposed as one of the possible sanctions to that crime (nulla poena sine praevia lege).

'Non bis in idem' (Nobody shall be punished twice for the same act) (Art 2/5):

By virtue of Art.2, sub-Article 5, a person cannot be "tried or punished twice for the same act" that forbids **double jeopardy**. Art 23 of our Constitution. The doctrine of double jeopardy means that **no person can be tried or punished more than once for the same crime**. This is an important principle of the administration of criminal justice. i.e. "the previous acquittal or previous conviction may be pleaded by the

accused as a bar to the subsequent trial". These rules or pleas are based on the principle that "a man may not be put twice in jeopardy for the same crime".

Elements to djp:

- **For the same crime (element/definition of act)**
- Tried or punished twice (frequency)
- a bar to the subsequent trial

In other words, where a criminal charge has been adjudicated for **a final as to the matter so adjudicated upon** and may be pleaded in bar to any subsequent prosecution for the same crime.

Double jeopardy allows for protection against three main legal abuses.

a. Against is a second prosecution for the same crime after acquittal.

b. Against a second prosecution for the same crime after conviction and

c. Protect from multiple punishments for the same crime.

It may not deny embody of a single sentence more than one items of punishment (e.g. Imprisonment and payment of fine). Because more than one penalty is inflicted for one crime, but this does not amount to punishing the criminal twice within the meaning of Art. 2.

If punishments are for different crimes then there is no double jeopardy protection.

The Double Jeopardy Clause speaks of the "same" crime, The principle, therefore, has to be understood clearly that, even though the crime in the second trial is not 'the same crime', still the second trial will be barred if it is based on the same facts for any other crime for which a different charge from the one made against him (such accused person) might have been made.

"Jeopardy" begins with framing of charges and ends with a suitably error-free judgment. However, the Double Jeopardy clause itself does not exhaust the scope of constitutional principle. Rather, the clean and simple rules of the Double Jeopardy Clause must be supplemented by several broader but more flexible commonsense principles protected by the Due Process Clause.

Double jeopardy is referred to as a legal technicality instead of a legal right. It allows the defendants not to address whether the crime was actually committed or if they are guilty or innocent.

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)

The principle of equality originated in the process of the development of Roman law. They based these laws on principles of justice they believed would applying to all people i.e. worthy of universal application. Such principles are known as 'natural laws'. The belief in natural law also led to the idea that non-Romans within the empire should have the same rights as citizens.

However, the principles of natural law set down in the 'jus gentium' remained part of Roman law. These principles were important to future generations because they led to the belief in equal rights for all citizens.

Meaning of the "Equality" Principle

All men are born equal and must be treated equally. Clauses directed against arbitrary discrimination and aiming to ensure equal rights are contained in almost all modern constitutions. These constitutional guarantees of equality take a great number of forms but two of the formulations are most often used. They are:

- That there should be "Equality before the law" and
- That "the equal protection of the laws" should not be denied.

Equality before the Law

A number of distinct meanings are normally given to the provision that there should be equality before the law. One meaning is that, equality before the law only connotes the equal subjection of all to a common system of law whatever it's content. The concept of equality principally means that there should be no lawlessness but that all should be within the some frame work of laws, whatever the generality or quality of the laws in question.

It also been explained as a procedural concept pertaining to the application and enforcement of laws and the operation of the legal system. The formulation gives rise to the following derivations:

- Equality means the denial of any special privilege or status in the sphere of the law's enforcement by reason of characteristics such as language, religion, political or other opinion, race, color, sex, and the like,
- That all are subject to the ordinary law of the land as administered by the ordinary law courts.
- That all enjoy equal access to society's legal tribunals and other dispute resolving agencies.
- That all are entitled to impartiality in the administration of justice.
- That there should be no special privileges in litigation in favor of a particular classes or individuals barring certain lawful and reasonable exceptions.
- That there should be independent tribunals to which all may resort.
- That state and individual before the law should be equal. (Marshall) Officials and others are not exempt from the general duty of obedience to the law resting upon others.
- That law should define any special public powers. Discretionary powers, so necessary today for carrying on modern government, must not be abused.
- That any excess or abuse of authority by the organs of the state and any other wrongful acts on the part of public officers should be under the supervision and subject to the eventual control of the courts or other appropriate law enforcing agencies. The task of superintending their employment falls upon an impartial independent and fearless judiciary.
- That the argument of state necessity can provide no defense to prosecutions for crime or civil actions in respect of legally wrongful acts.
- That among equals the laws should be equal and should be equally administered that is, "like should be treated alike".

Therefore, the privilege of 'equality before the law' is invariably used in a procedural sense, namely that as a rule the laws of the land should be enforced against all impartially and without distinction.

In the words of Jennings (year), 'equality before the law' is … "the right to sue and be sued, to prosecute and be prosecuted, for the same kind of action, should be the

same for all citizens of full age and understanding, and without distinction of race, religion, wealth, social status or political influence".

The Equal Protection of Laws:

"Equality consists in treating equals, equally and unequal unequally." ARISTOTLE.

"Equal protection of the law" is implying equality of treatment in equal circumstances. The guarantees of equal treatment normally applied not only to the procedural enforcement of laws but also to the substantive content of their provisions. The concept of 'Equal protection of laws' leads the following inferences:

- That all persons in similar circumstances shall be treated alike, both in the privileges conferred and liabilities imposed by the law.
- That equal law should be applied to all in the same situation. That there should be no discrimination between one person and another. As regards the subject matter of the legislation their position is the same.
- That the like should be treated alike and not that unlike should be treated alike.
- That law cannot be uniform and that almost all legislation must make numerous distinctions and classifications between persons, things and situations.
- That a modern state may adopt political and legal measures and policies in order to promote either a just and fair society, or more specifically, greater equality in advantages, burdens and protections for various classes and sections of its population.

To conclude, the essence of the principle of equality contained in the above two expressions, "Equality before the law and Equal Protection of the Laws" can be seen in one common dominant idea that is of "EQUAL JUSTICE".

Article 4 of the Criminal Code runs

It is a fundamental principle of law, that the law be applied equally and impartially to every one: rich and poor, black and white, the powerful and the helpless.

Under Art 25 of the constitution, **"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law"**.

The principle of equality before the law, which is also found in the Universal Declaration of Human Rights, means that the law, whatever its nature, applies to all individuals alike and governs the conduct of all inhabitants of a state, and not only of a certain classes among them. This principle is not relevant solely to Criminal law but Civil law as well.

Precisely, the principle, as applicable to criminal field, means two things:

a) that all individuals **may claim the same legal protection** if they have been injured by a crime, and
b) that all persons who have come into conflict with the law must **be treated equally and tried exclusively in accordance with the provisions of the law** they have infringed, regardless of their race, religion, social position or other circumstances of a similar nature which do not affect their degree of guilt.

Exceptions By Virtue Of Recognized Immunities

The principle of equality before the law does not prohibit making certain differences in the treatment of criminals. Art. 4 of the Criminal Code specifically mention three exceptions to the principle of equality:

- Immunities sanctioned by Public International law,
- Immunities sanctioned by Constitutional law, and
- Requirements of individualization of Criminal Justice.

Immunities Sanctioned by Public International Law

Art. 4 of the Criminal Code recognizes the existence of immunities as are enjoyed:

Foreign officials - who may commit a crime while in Ethiopia.

Diplomatic character" enjoy the same immunity as the Head of the State

However the immunity is not absolute rather from prosecution in Ethiopia only. They are naturally liable to prosecution and punishment in their own country under their national law.

The effect of diplomatic immunity is then merely to create an exception to the general principle of the territorial application of the law, as the criminal is not punishable at the place where he committed the crime under the law which he violated (Arts 11(2) of EPC and Art. 39(1) (c) of Criminal Procedure Code.)

Therefore, the diplomatic immunity only raises question of jurisdiction and in no way creates a situation contrary to the principle of equality before the law. The immunities under the principles of International Law extend to the following:

a. Persons Enjoying Diplomatic Immunities

Art.4 of the Criminal Code does not specify the persons who enjoy diplomatic immunity.

The followings are classes of persons:

b. Foreign Sovereigns

According to the well-established principles of International law foreign sovereigns, ambassadors, diplomatic agents, war-ships of foreign countries are exempted from the liability before municipal (domestic) courts of the state.

It is common understanding between the nations that one sovereign cannot be subjected to the law of the other. One sovereign is in no respect amenable to another. Sovereignty admits no superior; therefore, it would be incompatible with the concept of sovereignty to submit to the jurisdiction of some other sovereign. A sovereign if made subject to the jurisdiction of another it would amount to degrading of the dignity of his nation.

c. Ambassadors and Diplomats

Ambassadors, their families, secretaries, messengers and servants also enjoy the same immunity as the sovereign or the state which they represent. Their immunity is based on the principle that they, being the representatives of the sovereign or the state which sends them, are admitted up on the faith, to be clothed with same independence of and superiority to all adverse jurisdictions as the sovereign authority that they represent would be.

For certain purposes, the premises of the foreign missions are not considered as part of this country but as a part of the country which they represent. They enjoy this immunity on mutual basis. Therefore, crimes committed within the premises of the foreign mission cannot be tried by the local courts.

Remedies against the Harmful Conduct of the Diplomats

If a person enjoying diplomatic immunity grossly offends or misuses his office or does an act detrimental to the country, the remedy is to make a demand of his recall by the sending state, where appropriate action may be taken against him at the discretion of the sovereign whom he represents.

Such privileges and immunities are also available to the representatives of the United Nations Organization, as well as to the representatives of other International Organizations.

Whenever a doubt arises as to whether a person who has committed a crime in Ethiopia does or does not enjoy diplomatic immunity, the decision must be made according to:

a) Such laws or regulations as may have been enacted in the state of which the person concerned is a citizen or, by the international organization which he represents, or
b) According to international practice.

d. Alien Enemies

Alien enemies for their acts of war shall be dealt with Martial Law. If an alien enemy commits a crime unconnected with war as theft, cheating, etc., they would be tribal by the local criminal courts. Troops of foreign nations are also treated under the Martial Law.

e. Foreign Army

When armies of any state are stationed on the land of another state with the consent of the government of that State, they are immune from the jurisdiction of the local criminal courts. This is a well settled international law practice.

Immunities Sanctioned By the Ethiopian Constitution

As the Constitution is the Supreme law of the State, any provision it makes for immunities is binding upon the prosecutors and the courts as regards prosecution and punishment. However, immunities under Constitutional law exist only in the cases provided for by the Constitution. Therefore, when a doubt arises as to whether or not a person who has committed a crime does or does not enjoy immunity, the decision will be made exclusively in accordance with Constitutional law.

Articles, 54 (5) & (6) and 63, of the 1995 Constitution, declare immunities to the 'Members of the House of People's Representatives' and the 'Members of the House of the Federation' respectively. The Members of the Houses of the Federation cannot be arrested or prosecuted without the permission of the House concerned, except in the case of **flagrante delicto**. The effects of such immunities are specified in Arts 39(1) (c) and 130 (2) (e) of the Criminal Procedure Code. It is clear that the immunities granted to these members do not conflict with the principle of equality before the law. Thus, even here it becomes evident that these rules do not provide for any exception to the ordinary provisions of the Criminal Code but only result in creating a temporary immunity from prosecution, and in no case they create an absolute immunity from punishment. The fact that special formal conditions govern the institution or the continuance of the proceedings does not affect the fundamental rule according to which no discriminations may be made among criminals which are based on social conditions only.

Requirements of Individualization of Criminal Justice

In actual operation, Criminal justice is individualized, that is, choices are made in each case, within limits; laws are not automatically applied. Given the nature of the crime problem, the resources available for crime control, and the often conflicting purposes of criminal justice administration, **discretion** in the application of criminal law is inevitable.

Art. 88(2) of the Criminal Code, incorporates the fundamental principle that, '**the penalty shall be determined according to the degree of individual guilt**', having regard to all the circumstances of the case and not only to the material seriousness of the crime. The necessity of individualizing the penalty renders it inevitable that certain differences be made in the treatment of criminals, since the degree of guilt depends on circumstances which may be purely personal to the criminal, such as his age, mental condition or antecedents. These differences do not contradict the rule of equality before the law so long as they are based on considerations which affect the liability to punishment and criminal guilt of the person concerned. Art. 4 does not mean that all persons who violate the same legal provision are liable to a mathematically identical punishment.

Grounds for differential treatment in sentencing:

The Criminal Code provides for several considerations to give effect to the principle of individualization. They may relate to:

1) The conditions in which the crime was committed, for instance, at night, by violence etc.,
2) Certain differences may exist among the criminals themselves, even when they have acted in similar conditions. For example, it may not be justified to pass the same sentence on an adult as on a young person or on a first criminal as on a habitual criminal, or on a person who is fully responsible for his acts as on a lunatic.
3) Special situations might arise in which the court would have to deal with persons acting under special duties.

Special Treatment of Women, Young Persons and the Feeble Minded

Criminal law, in principle, does not make any distinctions in dealing with the criminals. However, it would amount to injustice if a different kind of treatment were not given to criminals in certain circumstances. The expressions 'special circumstances of the criminal' and 'age of the criminal' used in the second paragraph of Article.4 make room for differential treatment of women, children and the mentally abnormal criminals. In case of women, the biological factors sometimes pose a serious concern while applying the law uniformly. In case this is not possible the male and female prisoners shall be kept in different sections of the same prison and shall not be allowed to mix with the prisoners of the opposite sex.

Similarly, the juvenile delinquents and the young criminals are given a special treatment under the Criminal Code due to the fact that this group of criminals is immature in their understanding and that they fall an easy prey for the bad influence of others. It has been universally accepted that the young criminals have to be dealt with sensitivity so that they can be corrected of their bad ways rather than punishing them for their wrongful acts.

(Art. 52) and Art. 53. The Code suggests that appropriate steps to correct them may be taken by the family, school or guardianship authority.

The Criminal has Code devised special types of treatments that best suit the objectives of correction, reformation and rehabilitation. Thus, Articles 157-168 of the Code prescribe admission into curative institutions, supervised education, reprimand and censure, school or home arrest, admission into corrective institutions as modes of treating the young criminals.

The third group of young criminals, as per Art 56 falls between 15 and 18 years. In criminal law 15 years is the age of full responsibility and they can be tried under the ordinary provisions of the Code. However, preference shall be given to their treatment with the special measure designed for the young criminals unless they appear to be incorrigible or of dangerous disposition.

Feeble minded people are the other group of criminals who deserve special treatment. Articles 48 and 49 declare that they are irresponsible and thus they cannot be exposed to criminal liability. Once their irresponsibility is duly proved appropriate treatment, correction or protection as are provided by Articles 129-131 ordered. Directions are given in these provisions for the confinement and treatment of irresponsible criminals.

These special groups of criminals receive differential treatment obviously without violating the principle of equality since the circumstances in which they are given special treatment are sufficiently justified.

The Principle of Individual Autonomy:

Meaning of the Principle:

To criminalize a certain kind of conduct is to declare that it should not be done, to institute a threat of punishment in order to supply a pragmatic reason for not doing it, and to censure those who nevertheless do it. This use of state power calls for justification…justification by reference to democratic principles, and justification in terms of sufficient reasons for invoking this coercive and censuring machinery against the individual subjects.

One of the fundamental concepts in the justification of criminal laws is the principle of individual autonomy----that each individual should be treated as responsible for his or her own behavior. This principle has factual and normative elements that must be explored.

The Factual Element of Autonomy

The factual element in autonomy is that individuals in general have the capacity and sufficient free will to make meaningful choices. Whether this is true cannot be demonstrated conclusively. Over centuries the free will argument has been contradicted by the 'determinist' claim that all human behaviour is determined by causes that ultimately each individual cannot control. However, there is a reasonable amount of consensus on the opinion that behaviour is not so determined that blame is generally unfair and inappropriate, and yet to accept that, in certain circumstances, behavior may be so strongly determined that the normal presumption of free will may be displaced, for instance, where the individual is overpowered by the threats of another. Similar in many ways is the principle of alternative possibilities, according to which an individual may be held responsible for conduct only if he or she could have done otherwise.

In support of these approaches is the fact that most of everyday life is conducted on the basis of such beliefs in individual responsibility, and that in the absence of proof of determination we should not abandon those assumptions of free will that pervade so many of our social practices. However, as Hudson (year) has warned:

"the notion of free will that is assumed in ideas of culpability…is a much stronger notion than that usually experienced by the poor and the powerless. That individuals have choices is a basic legal assumption: that circumstances constrain choices is not. Legal reasoning seems unable to appreciate the existential view of the world as an arena for acting out free choices is a perspective of the privileged, and that potential for self-actualization is far from apparent those whose lives are constricted by material or ideological handicaps."

This point may be conceded without denying the fundamental assumption of freewill, so long as the possibility of qualifications is recognized. Thus, for example, the capacities assumed by the law may not be present in those who are too young or who are mentally disordered. These capacities relate to what are known as 'preconditions of criminal liability'. Preconditions refer to the ability to participate in a trial as a communicative enterprise. The general assumption is thus that sane adults may properly be held liable for their conduct and for matters within their control, except in

so far as they can point to some excuse for their …for example, duress, mistake, or even social deprivation.

The Normative Element of Autonomy

The second important element of the principle of Autonomy is normative: that the individuals should be respected and treated as agents capable of choosing their acts and omissions, and that without recognizing individuals as capable of independent agency they could hardly be recognized as moral persons. A major part the principle's emphasis is that the individuals should be protected from official censure, through the criminal law, unless they can be shown to have chosen the conduct for which they are being held liable.

On the other hand, considering the scope of criminalization, this emphasis on individual choice goes against creating offences based on paternalistic grounds. If autonomy is to be respected, the State should leave individuals to decide for themselves and should not take decisions 'in their best interests'.

Feinberg (year) states in this respect that: "the most basic autonomy-right is the right to decide how one is to live one's life, in particular how to make the critical life-decisions---what courses of study to take. What skills and virtues to cultivate, what career to enter, whom or whether to marry, which church if any to join, whether to have children, and so on."

The difficulty is to decide how far this is to be taken. While the principle of autonomy gives welcome strength to the protection of individual interests, it seems less convincing in other respects. The question 'whose autonomy?' must always be asked: the criminal law is often claimed to be neutral, and yet certain form of bias ---such as gender bias---may be evident in the law's assumptions and reasoning. In some of its formulations the principle of autonomy pays little or no attention to the social context of powerlessness in which many have to live. The idea that individuals should be free to choose what to do cannot be sustained without wide ranging qualifications. A developed autonomy-based theory should find a central place for certain collective goals, seen as creating the necessary conditions of maximum autonomy. Thus Joseph Raz argues that:

"Three main features characterize the autonomy-based doctrine of freedom. First, its primary concern is the promotion and protection of positive freedom which is understood as the capacity for autonomy, consisting of the availability if an adequate range of options, and of the mental abilities necessary for an autonomous life. Second, the state has the duty not merely to prevent the denial of freedom, but also to promote it by creating the conditions of autonomy. Third, one may not pursue any goal by means which infringe people's autonomy of the people or the others."
This third feature proposes a minimalist approach to the use of the criminal law.

Some Instances which can raise Dilemmas Relating to the Principle of Autonomy:

- **Euthanasia:**

- **Aids and the Law:**
- **Obligation of the personal income taxpayers to submit so-called proprietary declarations to tax offices:**

- **Principle of Respect for Autonomy:**

As commonly understood today, autonomy is the capacity for self-determination. Being autonomous, however, is not the same as being respected as an autonomous agent. To respect an autonomous agent is to acknowledge that person's right to take choices and take action based on that person's own values and belief system. On his account, respect involves not only refraining from interfering with others' choices, but sometimes entails providing them with the necessary conditions and opportunities for exercising autonomy. The principle of respect for autonomy implies that one should be free from coercion in deciding to act, and that others are obligated to protect confidentiality, respect privacy, and tell the truth. In the practice of health care, a person's autonomy is exercised through the process of obtaining informed consent.

The principle of respect for autonomy, however, does not imply that one must cooperate with another's actions in order to respect that individual's autonomy.

Autonomy is given a central place or primary status in the prevailing modern liberalism of contemporary society. However, the principle of respect for autonomy implies that autonomy has only a prima facie standing, that is, it can be overridden by competing moral considerations. For example, if an individual's choices endanger public health, potentially harm others, or require a scarce resource, that individual's autonomy may justifiably be restricted.

Respect for autonomy, then, should not be construed as an absolute and foundational value, but a "middle principle" that requires every individual to respect every other individual's self-determination to an appropriate extent within the context of community. A health care institution is a moral community that can be properly considered as an autonomous agent in its own right.

In a nutshell, it is necessary that certain safeguards should be provided to the accused as he is put under the peril of his life and liberty. The most important of such principles embodied in the Criminal law, specifically, are the Principle of Legality, the Principle of Equality and the Principle of Individual Autonomy. These principles are enshrined in the Constitutions and International Conventions.

The principle of legality requires that prosecutions and punishments for crimes should strictly be in accordance with a pre-existing legal provision. A person cannot be made criminally responsible for producing a harmful consequence if such harm is not declared as a prohibited one by legal classification. The principle also requires that wrong-doers should be punished strictly within the prescriptions of law. The principle of equality requires that all those who violate the law should be dealt with equally in terms of trial and punishment. There should not be any discrimination in the application of Criminal Laws. Principle of individual autonomy considers the

extent to which the criminal laws encroach upon the personal freedom of individuals in the name of ensuring law and order and the justifiability of such encroachment.

The principle of legality is that, 'there is no crime or punishment without a pre-existing law that prohibits that crime'. Thus, the conduct must be deemed a crime before the act is committed. The policy behind the principle of legality is that "fair warning" should be provided to a criminal so that he does not inadvertently commit a crime that he has no reason to believe is illegal. The principle as incorporated in our Criminal Code has three important ingredients namely, nullum crimen sine lege" - No crime unless specified by law, (Art. 2/1)' "nulla poena sine lege" - No penalties other than prescribed by law, (Art. 2/2), "non bis in idem" — Nobody shall be punished twice for the same act, (Art. 2/5). Another rule of 'nullum crimen' is that 'no person shall be punished except in pursuance of a statute which fixes a penalty for a criminal conduct. It means there can be no ex-post facto Criminal law or in other words, the Criminal laws should not have retrospective operation. (Art 5 of Criminal Code**).**

The cardinal principle of criminal law i.e. the principle of equality requires that, all men are born equal and must be treated equally. This principle has its roots in the Roman jurisprudence. Clauses directed against arbitrary discrimination and aiming to ensure equal rights are contained in almost all modern constitutions. These constitutional guarantees of equality take a great number of forms but two of the formulations are most often used namely, that there should be "Equality before the law" and that "the equal protection of the laws" should not be denied. However, the principle of equality before the law does not prohibit certain differences from being made in the treatment of criminals. Art. 4 of the Criminal Code specifically mention three exceptions to the principle of equality. They are in the form of immunities sanctioned either by Public International law or Constitutional law, and the requirements of individualization of Criminal Justice.

The purpose of discussing the philosophical principle of individual autonomy is to identify those interests that warrant the use of Criminal Law which sometimes gives the impression of interfering with an individual's freedom to a certain extent. The principle requires that each individual should be treated as responsible for his or her own behaviour. This principle has two elements, the factual and the normative. The factual element in autonomy is that individuals in general have the capacity and sufficient free will to make meaningful choices. The second element of the principle is normative which says that the individuals should be respected and treated as agents capable of choosing their acts and omissions, and that without recognizing individuals as capable of independent agency they could hardly be recognized as moral persons. There are certain areas of law which challenge the principle of autonomy and invoke serious debates such as euthanasia, AIDS and the law, conducts involving sexual behaviour, obligation of the personal income taxpayers to submit so-called proprietary declarations to tax offices, etc.

Unit three

UNIT-III

JURISDICTION OF THE ETHIOPIAN CRIMINAL CODE

(Arts 11-22 of the Criminal Code of FDRE, 2005)

INTRODUCTION

The unit deals about a comprehensive picture of the extent, scope and application of the Criminal Code of Ethiopia. It helps to understand the legal authority of the Criminal Courts of Ethiopia to try and punish crimes defined under the Code.

The term JU is the general expression on legal authority of state criminal court to apply the sovereign state criminal law.

'Jurisdiction' refers to particular aspects of the general competence of states often referred to as 'sovereignty'.

It is an aspect of sovereignty and refers to judicial, legislative, and administrative competence. The 'prescriptive or legislative jurisdiction' refers to the power to make decisions or rules. 'The enforcement or prerogative jurisdiction refers to the power to take executive action in pursuance of or consequent on the making of decision and rules.

'Jurisdiction', generally, means "the legal competence of a particular court to hear a certain type or class of cases". When it relates to the application of the law as to a place, jurisdiction implies "the geographical area covered by a particular court or legal system". The provisions of the Criminal Code relating to jurisdiction are intended to determine the scope of application of Ethiopian Criminal Law by Ethiopian Courts and to prevent conflicts of jurisdiction. 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.

There are two kinds' conflicts in jurisdiction

1. **'Negative' conflict of Jurisdiction**:

   It may arise when different courts deny the existence of jurisdiction, over the matter in question. In this case there is the possibility of a criminal escaping punishment.

2. **'Positive' conflict of Jurisdiction**:

   When different courts claim to have jurisdiction on the same crime, there is a risk that the criminal might be exposed to "double jeopardy".

The conflicts of jurisdiction might arise at different levels:

Conflicts of Jurisdiction at National level:

Such conflicts may arise as between Ethiopian Criminal courts, which shall be settled in accordance with Arts 99-107 of the Criminal Procedure Code.

Conflicts of Jurisdiction at International level: These conflicts arise between an Ethiopian court and a foreign court, which can be settled in accordance with Arts 11-22 of the Criminal Code. These provisions are new in Ethiopian legislation, inserted in view of the increase in exchanges and relations of all kinds between Ethiopia and other parts of the world.

Objectives:

- Understand the scope and application of the Jurisdiction of the Criminal Courts of Ethiopia.
- Identity the implications of a very important concept of International Law i.e. extradition relating to surrender of criminals.

Fundamental Principles of Application of Jurisdiction

- **The Principle of Territoriality**:

The principle that the courts of the place where the crime is committed may exercise jurisdiction has received universal recognition.

Advantages

- The convenience of the forum
- Presumed involvement of the interests of the state where the crime is committed.

According to this principle all crimes committed on Ethiopian territory fall within the jurisdiction of Ethiopian Courts (Art. 11);

- **The Principle of Quasi-Territoriality or the Protective or Security Principle:**

Nearly all states assume jurisdiction over aliens for acts done abroad which affect the security of the state, a concept which takes in a variety of political crimes, but is not necessarily confined to political acts.

The crime committed in relation to the following issues are mostly Punished by the states under this principle:

- Currency,
- Immigration, and
- Economic crimes

Art. 13 refers to certain specific crimes directed against Ethiopia to be tried in Ethiopia even though they have not been committed on Ethiopian territory

- **The Principle of Active Personality or the Nationality Principle:**

Nationality, as a mark of allegiance and aspect of sovereignty, is also generally recognized as a basis for jurisdiction over extra-territorial acts. According to this principle, crimes committed in foreign countries by Ethiopian citizens may be tried in Ethiopia [Arts. 14, 15, (2) and 18 (1)].

A person becomes amenable to the jurisdiction of the country by his nationality. The application may be extended by reliance on the residence and other connections as evidence of allegiance owed by aliens and also by ignoring changes of nationality. On the other hand, since the territorial and nationality principles and the incidence of dual nationality create parallel jurisdictions and the possible double jeopardy, many states place limitations on the nationality principle and are often confined to serious crimes.

In any event, nationality provides a necessary criterion in such cases as the commission of criminal acts in locations such as Antarctica, where 'territorial' criterion is inappropriate. Applying this principle is difficult.

- **The Principle of Passive Personality or the Passive Nationality Principle:**

The aliens may be punished for acts abroad harmful to the nationals of the forum. This is the least justifiable, as a general principle, of the various bases of the jurisdiction, and in any case certain of its applications fall under the principles of protection and universality considered above. Art. 17(1) of the Criminal Code incorporates this principle according to which some crimes committed in foreign countries against Ethiopian citizens may be tried in Ethiopia.

- **The Principle of Universality or the Principle of Universal Jurisdiction**:

A considerable number of states have adopted, however it is usually with limitations. The committed crime may be punished by any state which obtains the custody of persons suspected of responsibility.

A principle allowing jurisdiction over acts of non-nationals where the following circumstances are fulfilled: _

- the nature of crime,
- Justify the repression of some types of crimes as matter of international public policy.
- crimes where the state in which the crime occurred has refused extradition and is unwilling to try the case itself, Example murder
- Crimes by stateless persons in areas not subject to the jurisdiction of any state, i.e. nullius or res communis.
- Hijacking and crimes related to traffic in narcotics etc.
- **Crimes under International Law:**

Like breaches of the laws of war, especially of The Hague Convention of 1907 and the Geneva Convention of 1949 declares. War crimes and crime against humanity

are mostly identified international crime even though certainly universality in respect of war crimes finds expression in the Geneva Convention of 1949.

The Ethiopian Criminal Code incorporates this principle in relation to the following cases:

a) To try crimes committed against international law (Art. 17)
b) To try any other crime of extreme seriousness, whether or not carried out on an international scale (Art. 18(2)), irrespective of the following facts:
    i. That the crime was not committed on Ethiopian territory,
    ii. Nor was it done against Ethiopia,
    iii. Nor was it done by or against one of her citizens.

Application of the Criminal Code as to Place:

The jurisdiction of the Ethiopian Criminal Code may be studied under the following heads:

1. Principal Jurisdiction
    A. Territorial Jurisdiction
    B. Extra-Territorial Jurisdiction.
2. Subsidiary Jurisdiction

Principal Jurisdiction:

The Criminal Courts of Ethiopia are deemed to have principal jurisdiction within the meaning of the code in the cases provided for by Arts. 11, 12, 13, 14 and 15(2). The effect of these courts having principal jurisdiction is that they are entitled to try a criminal even though he may also be or has already been tried in a foreign country

for the same offence. The principal jurisdiction of the EPC is applicable both territorially and extra-territorially.

Territorial application of the Principal Jurisdiction

A. Crimes Committed on Ethiopian Territory: Art.11 'Normal Case'

Art. 11.

Crimes committed in a given country are triable by the courts and under the laws of such country which are known as 'territorial laws' of the country and the jurisdiction is territorial

When a crime is committed within the territory of Ethiopia, the code shall apply and the courts can try and punish irrespective of the fact that the person who had committed the crime is an Ethiopian national or a foreigner. This is known as "" because submission to the jurisdiction of the court is by virtue of the crime being committed within the Ethiopian territory. Here the jurisdiction attaches with territory. For the territorial application of jurisdiction three conditions have to be fulfilled:

1. Crime committed by **any person**,
2. The crime must be punishable under the Ethiopian law
3. The crime must have been **committed on the Ethiopian territory**

- **The Code Shall apply to "any person":**

Any person under Art. 11 mean

Person who is a citizen or non-citizen of Ethiopia. Any person irrespective of his nationality, rank or religion, is triable by the Ethiopian Criminal Courts provided, the crime with which he is charged has been committed on any part of the Ethiopian territory. Any foreigner who enters the Ethiopian territories accepts the protection of Ethiopian laws, and submits to the operation of the laws and to the jurisdiction of the Ethiopian courts. A foreigner cannot be allowed to plead that he did not know that the act he was doing was wrong because of the act not being a crime in his own country.

Exceptions to "any person" Art 11(2):

- ✓ **Ambassadors and Diplomats:**

There are some persons who may commit crimes in Ethiopia and nevertheless will not be subjected to the laws of Ethiopia nor be punished by the courts of Ethiopia. Because they enjoy diplomatic immunity that are protected from the jurisdiction of the courts. They enjoy the same immunity as the sovereign of the state which they represent. Their immunity is based on the principle that they, being representatives of the sovereign or the state which sends them, are admitted upon the faith to be clothed with the same independence of and superiority to all adverse jurisdictions as the sovereign authority that they represent would be. He does not owe even temporary allegiance to the sovereign to whom he is accredited.

- ✓ **Premises occupied by the Foreign Missions:**

An **Ambassador** or a **diplomat** is supposed to be still living in his own country. For certain purposes the premises of the foreign missions are not considered as part of this country but as a part of the country which they represent. This means, Ethiopian

Embassies abroad enjoy the same immunity as they are considered as parts of territory of Ethiopia **(**Art 104 of Criminal Procedure Code). Therefore, crime committed within the premises of the foreign mission stationed in Ethiopia cannot be tried by the local courts. Such privileges and immunities are also available as well to other international organizations and their representatives.

- **Crimes Punishable under Ethiopian Law:**

The principle of legality prohibits Ethiopian Courts from trying a person who does an act which is not declared unlawful by the territorial law of the country. It may so happen that the crime is committed by a 'foreigner' and is punishable by the national law of his country. Even then he cannot be punished by Ethiopian courts for having committed the crime on the Ethiopian territory, if the crime is not the one punishable by the Ethiopian national law. Therefore, it follows that for the applicability of Ethiopian territorial jurisdiction it is essential that the act committed must be the one which has been declared as 'unlawful' by the Criminal Code of Ethiopia or any other Ethiopian law containing penal provisions.

- **Crimes Committed on the Territory of Ethiopia:**

This essential condition may be understood in the light of Art. 25(1) of the Criminal Code. – "A crime is committed at the place where at the time when the criminal performed or failed to perform the act penalized by criminal law. Thus, the courts of Ethiopia have principal jurisdiction when an 'act' or 'omission' constituting an ingredient of the crime has occurred in Ethiopia, although the consequential harm might have been caused outside Ethiopia.

- ✓ **Meaning of Ethiopian 'National Territory'**:

The territorial jurisdiction applies by the fact that the crime was committed on the national territory of Ethiopia.

In terms of Art 11 **"The national territory" comprises land, air and bodies of water, the extent of which is determined by the Constitution".**

Within the meaning of this provision, the crime must have been committed in any one of the following places:

a) **On the "land**": The land part of Ethiopia can be identified by the provisions of Art. 2 of Constitution of Ethiopia, which states thus, **"The territorial jurisdiction of Ethiopia shall comprise the territory of the members of the Federation and its boundaries shall be determined by international agreements".**

The land comprises not only that portion of the earth within the boundaries of Ethiopia, but by virtue of Art 104 of Criminal Procedure Code. The following places are deemed to form part of the Ethiopian territory i.e.:

a) Ethiopian embassies abroad,
b) Ships, flying Ethiopian flag, and
c) Aircrafts flying Ethiopian flag.

"Ships" form the part of the national territory based upon the principle that "a ship on High seas is considered to be 'a floating island' belonging to the country whose national flag she is flying".

b) In the "air":

According to International Conventions of 1919 and 1944, "air" i.e., the atmosphere above the land area of a country forms part of the National Territory of that country.

c) Bodies of Water:

Crimes committed in the bodies of water in the territory of Ethiopia and the vessels sailing in such waters are triable by the criminal Courts of Ethiopia.

- **Warships or Men of War:**

Men of War of a state on foreign waters are exempted from the jurisdiction of the state within whose territorial jurisdiction they are. There are two theories relating to jurisdiction on ships in territorial waters.

1. A public ship of a nation for all purposes either is or is to be treated by the other nation as part of the territory of the nation to which she belongs.
2. A public ship in foreign waters neither is nor is to considered as territory of her own nation.

In accordance with the principles of International Law certain immunities are accorded to the ships, its crew and its contents by the domestic courts. The immunities can be waived by the country to which the public ship belongs. War ships of a foreign country can enter territorial waters of a state only with the permission of that state.

B. Crimes by Foreigners on the Ethiopian Territory Art. 12 "Special Case":

These cases relate to crimes committed by foreigners on Ethiopian Territory. In fact, by virtue of place of commission of the crime, the original jurisdiction lies with Ethiopian Criminal Courts. However, certain practical impossibilities might arise if the 'criminal-foreigner' flees and takes refuge in his country of origin. Art 12 deals with such problems:

- **Impossibility to "try" the accused-Foreigner in Ethiopia Sub-Art. (1) of Art 12:**

If his extradition cannot be obtained in accordance with Art 11(3), the Ethiopian authorities shall request that he be tried in the country of refuge.

- **Impossibility to 'retry' the accused- foreigner in Ethiopia Sub-Art. (2) of Art.12**

The rule **'non bis in idem'**.

- ✓ When the criminal has been tried and convicted or acquitted abroad by judgment which has become final, and

- ✓ When the sentence passed abroad has been remitted by pardon or amnesty, or
- ✓ If the prosecution or sentence has been barred by limitation

Anything done contrary to this would conflict with the doctrine of "double jeopardy".

- **"Enforcement" of Punishment in Ethiopia Sub-Art (3) of Art. 12:**

Article 12(3) applies to a case where the criminal has been sentenced in the country of refuge but has escaped serving of the sentence either fully or partly. If he comes to Ethiopia without so serving the sentence, the punishment may be enforced in Ethiopia unless barred by limitation on the following conditions:

1. If the punishment given in the Foreign Court and the one prescribed for the crime under the Criminal Code, differ in nature or form, such punishment as is closest to one that is imposed by the foreign courts shall be enforced.
2. The criminal cannot be made to serve in Ethiopia a penalty of a kind which does not exist in Ethiopian Law.

Extra-Territorial Application of the Principal Jurisdiction (Arts. 13-16):

The Ethiopian Criminal Code extends its principal jurisdiction to special kinds of crimes committed outside the territory of Ethiopia.

Therefore, Art 13 incorporates the so-called **principle of quasi-territoriality** which says that, "when a crime is committed which infringes upon the fundamental rights or interests of a given state, the aggrieved state is entitled to protect itself and to punish the criminal under its own laws even though the crime has been committed in a foreign country and the criminal might already have been tried and sentenced in the other country."

The Criminal Code envisages three specific instances that necessitate the extra-territorial application of its jurisdiction:

1. Crimes committed by any person in a foreign country against interests of Ethiopia, Art. 13,

2. Crimes committed by an Ethiopian enjoying immunity in a foreign country Art. 14,
3. Crimes committed by a member of Ethiopian Defence Forces in a foreign Country, Art 15 (2).

- **Crimes Committed Against Ethiopia Outside Its Territory: Art.13**

The principle of quasi-territoriality is applicable only to the specified by Art. 13., namely:

- ✓ Crimes against the state of Ethiopia, Arts, 238-260
- ✓ Crimes against Ethiopian currency, Arts, 355-374,

Art. 13 operates on the following essentials:

- ✓ **The criminal must be found in Ethiopia,**
- ✓ **If he is not found in Ethiopia, his extradition shall be requested in accordance with Art. 11(3)**
- ✓ **If the requisition for extradition is not granted**,

*****(Refusal of extradition is possible since many of the crimes referred to in Art. 13 are so-called political crimes which are not extraditable crimes according to international practice.)

- **"Crimes Committed in a Foreign Country by an Ethiopian Enjoying immunity" Art. 14**

The provision applies to the following classes of persons:

- ✓ members of the Ethiopian diplomatic and consular services,
- ✓ Ethiopian officials and agents,

who cannot be prosecuted at the place of commission of the crime by virtue of international principles of immunity. These persons can be brought under this Article, provided the following conditions are fulfilled:

1. The crime must not be the one covered by Art. 13
2. The crime must be the one which is punishable under the law of the country where it was committed,
3. The crime must also be the one punishable under the Ethiopian Criminal Code, and
4. If the crime falls under the 'category of crimes' which requires filing of 'formal complaint' for the institution of criminal proceedings, either under the foreign law or under the Criminal law of Ethiopia, such "complaint" should have been filed.

"**The Crime must be punishable" both under the foreign law and Ethiopian Law**:

a) **Crime punishable under Ethiopian law but not under foreign law**:
   An Ethiopian diplomat committing a crime contrary to Art 652 of the Criminal Code,
b) **Crime punishable under foreign law but not under Ethiopian law:**
   If an Ethiopian diplomat, being a bachelor has sexual intimacy with an adult unmarried female, with her consent, in a country where fornication is declared to be a crime, he may not be charged with the said crime on his return to Ethiopia.

- **"Crimes Committed in a Foreign Country by a member of Ethiopian Defence Forces" Art.15:**

Art 15 operates on two different rules:

1. Sub-Art. (1) does not operate on the extension of principal jurisdiction but only on deriving jurisdiction from the foreign court under certain circumstances that means, under this provision the Ethiopian Courts have **subsidiary jurisdiction only.**
2. Sub-Art. (2) operates on the principle of active personality like Art. 14 and here the courts have **Principal Jurisdiction.**

Essential Conditions for the application of Art. 15:

Only to the members of the Ethiopian Defence Forces. , for example a **military attaché**,

Ambassador

Diplomatic immunity. Thus, the diplomatic status of the criminal overrides his military status and Art, 14 is to be applied.

a) Acting in the capacity of soldier:

b) In a foreign Country

Application of Art. 15

1) Violations of "Ordinary law" of the Foreign Country:

Ethiopia will have subsidiary jurisdiction in these cases under the following circumstances:

- ✓ If the criminal was able to escape and take refuge in Ethiopia prior to being tried in the foreign country, and
- ✓ His extradition is not requested **or** the requisition for extradition is dismissed (Art 21(2).

It may be also be that criminal was prosecuted in the country where he committed the crime. If he was acquitted or discharged, no action may be taken against him on his return to Ethiopia (Art. 20(1)), except disciplinary action.

2) Violations of International law and Military Crimes: Art. 15(2)

Sub- Art. (2) Art. 15, extends the principal jurisdiction of the Criminal Code to cover crimes against International law and military crimes defined in Arts.

- **Effect of Foreign Sentences Art. 16:**

- **Effect of 'Discharge' or 'Acquittal' Art. 16(2):**
- **Effect of 'Conviction' in a Foreign Court Art. 16(3):**

The deduction prescribed by Art. 16(3) must be affected only in so far as the criminal is convicted in Ethiopia of the same crime as that with respect to which the foreign sentence was passed.

Subsidiary Jurisdiction:

It is referred to as **derivative jurisdiction** as the Ethiopian Courts derive the jurisdiction from the foreign courts.

"SJ relates to crimes that do not directly and chiefly concern Ethiopia. These crimes also are committed extra-territorially.

The subsidiary jurisdiction applies to the following categories of crimes:

1) Crimes committed by members of the Defence Forces against the 'ordinary law' of a foreign country (Art. 15(1)
2) Crimes committed in a foreign country "against international law or international crimes specified in Ethiopian legislation, or against an international treaty or convention to which Ethiopia has adhered (Art. 17/1/a.)
3) Crimes committed in a foreign country "against public health and morals specified in Art. 510, 567, 605, 606, 609 or 610 of EPC. (Art. 17/1/b)
4) Crimes committed abroad against an Ethiopian national or crimes committed by Ethiopians while abroad- if the crime is punishable under both the laws and is grave enough to justify extradition. (Art. 18(1))

- **Conditions for Application of subsidiary jurisdiction Art.19(1)**

The Subsidiary jurisdiction of the Criminal Code may be applied only on the fulfillment of these conditions:

1. When the lodging of the complaint by the victim or his dependants is necessary for prosecution under the law of place of commission or Ethiopian law, it has been so lodged.

2. The criminal is within the territory of the Ethiopia and has not been extradited, or that extradition was obtained because of the crime committed.
3. That, the crime was not legally pardoned in the country of commission of the crime, and

(b) That the prosecution is not barred either under the law of the country where the crime was committed or under the Ethiopian law.

Exemption of Conditions for application of the Subsidiary jurisdiction Art. (19) (2): The requirement under Art 19(1) (b) relating to the extradition has to be satisfied here too.

4) As per Sub. Art (3) Prosecution under subsidiary jurisdiction shall be instituted only after consultation with the Minister of Justice.
5) The punishment to be imposed shall be the one which is more favorable to the accused when there is a disparity between the punishment prescribed under this code and that of the country of commission of the crime-Sub. Art (4).

- **Effects of Foreign Sentences Under Subsidiary Jurisdiction**

1. Effect of "Discharge" and "Acquittal" Art 20:

In all cases where Ethiopian courts have **subsidiary jurisdiction only** (Arts. 15(1), 17 and 18), the criminal cannot be tried and sentenced in Ethiopia if he was regularly discharged or acquitted for the same act in a foreign country. The phrase 'subsidiary jurisdiction only' in this article too is impliedly saying that if the crime is one over which the Ethiopian Courts have principal jurisdiction, it can be tried again.

2. Effect of "Conviction":

If the criminal was tried and sentenced in a foreign country, but did not undergo punishment or served only part of the punishment in the other country, the same may be enforced in Ethiopia.

Place and Time of Crime: Art. 25

To decide questions relating to causation of crime and the applicability of the Criminal Code it is crucial to know exactly **when** i.e. the exact point of time the crime has been committed. For the application of the appropriate jurisdiction it is important to know **where** the crime has been committed. Article 25 lays down the principles relating to the time and place of commission of crime.

Art. 25 the commission of crime refers to both the performance of the act penalized by Criminal law (commission) or failure to perform an act required by the Criminal law (Omission).

"When the criminal performed the act penalized by criminal law or failed to perform act required by criminal law."

Any way our present concern is to find out the place and time of commission of crime as well as attempt to commit a crime.

1. Time and place of the crime in case of a completed crime:

Art. 25 lays down the relevant rules:

a. The General Rule: Sub- Art. (1)

- The **place**
- The **time**

b. With regard to Non-Instantaneous Crimes: Sub- Art. (2)

Where the act and the criminal result do not coincide in terms of time the crime is said to be a non-instantaneous crime.

In cases of combination or Repetition of Acts: Sub- Art. (3)

This provision refers to the following instances:

1. Where a crime is the result of several acts committed at different points of time, Or,
2. Where repetition of criminal acts may be an element of an ordinary or aggravated crime as defined in Art. 61,
   Or,
3. When the act is pursued over a period of time.

2. Time and place of crime in case of an attempted crime:

The place and time of an attempt are to be decided as per the following rules:

1. As a general rule, the place where and the time when the criminal performed or failed to perform the preliminary acts which constitute such an attempt.
2. In case of non-instantaneous crimes, an attempt is deemed to have been committed both at the place where the criminal attempted the crime and the place he intended the result to be produced.

Extradition:

'extradition' denotes the process whereby under a treaty or upon a basis of reciprocity one state surrenders to another state at its request a person accused or convicted of a crime committed against the laws of the requesting state, such requesting state being competent to try the alleged criminal. Normally, the alleged crime has been committed within the territory or aboard a ship flying the flag of the requesting state, and normally it is within the territory of the surrendering state that the alleged criminal has taken refuge. Requests for extradition are usually made and answered through the diplomatic channel.

Rational for extradition:

a. The general desire of all states to ensure that serious crimes do not go unpunished: i.e. the offender must be punished by the state of refuge or surrendered to the state which can and will punish him.
b. The state on whose **territory** the crime has been committed is best able to try the criminal because the evidence is more freely available there, and that state has

the greatest interest in the punishment of the criminal, and the greatest facilities for ascertaining the truth. It follows that it is only right and proper that to the territorial state should be surrendered such criminal as have taken refuge abroad.

('Territory' can cover, for this purpose, also ships and aircrafts registered with the requesting state; offences committed on board aircraft in flight to be treated for purposes of extradition as if committed also in country registration).

There was at international law neither a duty to surrender, nor a duty not to surrender so called by some writers a matter **'of imperfect obligation'** in the absence of treaty or statue as the grant of extradition depended purely on reciprocity or courtesy.

On the necessity of a treaty to confer a right on a state to request the surrender of a fugitive from justice and to impose a correlative duty on the requested state to hand the fugitive.

A bilateral extradition treaty should be liberally and pragmatically interpreted, e.g., as to the time –limit for adducing evidence to the local court.

International law concedes that the grant of and procedure as to extradition are most properly left to municipal law, and does not, for instance, preclude states from legislation so as to preclude the surrender by them of fugitives.

Divergence on the subject of extradition between the different state laws, particularly as to the following matters:

1. Extraditability of nationals of the state of asylum;
2. Evidence of guilt required by the state of asylum; and
3. Relative powers of the executive and judicial organs in the procedure of surrendering the fugitive criminal.

Before an application for extradition is made through the diplomatic channel, two conditions are as a rule required to be satisfies:

a. There must be an **extraditable person.**
b. There must be an **extradition crime.**

We shall now discuss each of these conditions.

Extraditable Persons:

There is uniformity of state practice to the effect that the requesting state may obtain the surrender of its own national or nationals of third state, but many states usually refuse the extradition of their own nationals who have taken refuge in their territory, although as between states who observe absolute reciprocity of treatment in this regard, requests for surrender are sometimes acceded to. (Art 21/2)

This does not necessarily mean that the fugitive from justice escapes prosecution by the country of his nationality.

Extradition Crimes:

The ordinary practice as to extradition crimes is to list these in each bilateral extradition treaty.

Generally, states extradite only for serious crimes, and there is an obvious advantage in thus limiting the list of extradition crimes since the procedure is so cumbrous and expensive. Certain states, for example France, extradite only for crimes which are subjects to a 'definite minimum penalty', both in the state requesting and in the state requested to grant extradition.

Non extraditable offences

i. Political crimes;

ii. Military crimes, for example, desertion;

iii. Religious crimes.

The principle of non-extradition of criminals crystalized in the nineteenth century, a period of internal convulsions, insisted on their right to shelter political refugees. At the same time, it is not easy to define a 'political crime' although a clear case would be that where it is evident that the fugitive is to be punished for his politics rather than for the crime itself.

- **War Crimes:**

Recent practice shows a general dispassion of states to treat alleged 'war crimes' extradition crimes, however, there are a number of decisions of, municipal courts treating war crimes as political crimes for the purpose of extradition so that extradition is refused.

Different criteria have been adopted to identify a political crime:

- the motive of the crime;
- the circumstances of its commission:
- It embraces specific crimes only, e g, treason or attempted treason;
- the act is directed against the political organization, as such, of the requesting state;
- there must be two parties striving for political control in the state where the crime is committed, the crime being committed in pursuance of that goal, there by excluding anarchist and terrorist acts from the category of 'political crimes'.

International law leaves to the state of asylum the sovereign right of deciding, according to its municipal law and practice, the question whether or not the crime which is the subject of a request for extradition is a political crime.

- **The Rule of Double Criminality:**

As regards the character of the crime, most states follow the rule of **double criminality**, i.e. that it is a condition of extradition that the crime is punishable according to the law both of the state of asylum and of the requesting state.

- **The Principle of Specialty:**

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 than that for which he was extradited.

This principle is frequently embodied in treaties of extradition and is approved by the supreme court of the United States.

Extradition under the Criminal Code of FDRE, 2004 Art.21:

Extradition of a "Foreigner" Art. 21(1):

Any foreigner who commits an ordinary crime (i.e. non-political) outside the territory of Ethiopia and takes refuge in Ethiopia may be extradited in accordance with the provisions of the law, treaties or international custom. However, it should be noted that if the crime

with which the foreigner is accused of, falls under the scope of Art. 13 he may not be extradited. Ethiopia retains its right to prosecute him under its principal jurisdiction as the crime directly and principally concerns her.

Extradition of "Ethiopians" Art. 21 (2):

An Ethiopian national cannot be extradited to a foreign country. No person having the status of Ethiopian national at the time of commission of the crime in a foreign territory may be handed over to that country. However when such denial to surrender is made, he shall be tried by Ethiopian courts and under Ethiopia law. This article endeavors to protect the Ethiopian nationals from foreign jurisdictions in the following ways:

- If the accused has the status of an Ethiopian national **at the time of commission of the crime**, even if he ceases to be an Ethiopian thereafter, he shall still fall within the scope of this provision.
- An accused shall be governed by this provision provided he becomes an Ethiopian **by the time of request for extradition,** though at the time of commission of the crime he was not an Ethiopian national.

Procedure to request for Extradition

Under Art. 21/1 and 3

However, if the crime complained is of a political nature, the criminal, instead of being surrendered, may be granted political asylum. Extradition of criminal is a well recognized rule of International law and is governed by the Extradition treaties.

Extradition is made, as to a legal right, in respect of only those countries with which there is an agreement for this purpose, although countries generally do not, as a matter of international practice, even in the absence of an Extradition treaty refuse extradition.

To sum up, jurisdiction means the 'legal competence of a particular court to hear a certain case or class of cases'. The power of the domestic criminal courts has to be clearly defined in order to avoid conflicts of jurisdictions. There may be negative conflicts of

jurisdiction that arise when different courts deny the existence of jurisdiction, over the matter in question. In this case there is the possibility of criminal escaping punishment and positive conflict of Jurisdiction where different courts claim to have jurisdiction on the same crime; there is a risk that the criminal might be exposed to double jeopardy. These conflicts may arise at national as well as at international levels. The former type of conflicts is taken care of by the Criminal Procedure Code and the later type is the concern of the Criminal Code.

There are five popularly accepted principle of jurisdiction. They are the principle of territoriality, the principle of quasi-territoriality or the protective or security principle, the principle of active personality or the nationality principle, the principle of passive personality or the passive nationality principle, the principle of universality or the principle of universal jurisdiction. The Ethiopian Criminal Code incorporates them in the provisions relating to jurisdiction.

The jurisdiction of the Ethiopian Criminal Code may be studied under the head of principal jurisdiction where the Ethiopian Criminal Courts have the primary right to try a case. In case of any difficulty in trying such a case the right may be delegated to a foreign court which then tries the case on behalf of Ethiopian Courts. Under subsidiary jurisdiction the Ethiopian Courts derive authority to try a case from a foreign court. Obviously these are the cases in which the Ethiopian Courts don't have any direct or primary interest to try.

Territorial application of the principal jurisdiction extends to the crimes committed by any one on the land area of Ethiopia, in the bodies of water found within the national territory of Ethiopia and in the air above the national territory of Ethiopia. Extra territorial application primarily includes the crimes committed by any person in a foreign country against interests of Ethiopia, crimes committed by an Ethiopian enjoying immunity in a foreign country, crimes committed by a member of Ethiopian Defence Forces in a foreign Country.

Subsidiary jurisdiction of the Criminal Code applies to crimes committed by members of the Defence Forces against the ordinary law of a foreign country, crimes committed in a foreign country against international law or international crimes specified in Ethiopian legislation, or against an international treaty or convention to which Ethiopia has adhered, crimes committed in a foreign country against public health and morals, crimes committed abroad against an Ethiopian national or crimes committed by Ethiopians while abroad provided that the crime is punishable under both the laws and is grave enough to justify extradition.

'Extradition' is a political act which is done in pursuance of a treaty or some **ad-hoc arrangement** in which one state surrenders a person belonging to another state who has committed a crime within its territory. Requisition for extradition is made upon the determination of the domestic courts of the state.

Any foreigner who commits an ordinary crime (i.e. non-political) outside the territory of Ethiopia and takes refuge in Ethiopia may be extradited in accordance with the provisions of the law, treaties or international custom. However, he may not be extradited where the crime directly and principally concerns Ethiopia; she retains her right to prosecute foreign-criminal under its principal jurisdiction. An Ethiopian national having that status at the time of commission of the crime in a foreign territory or at the time of request for the extradition cannot be handed over to the requesting state. However when such denial to surrender is made, he shall be tried by Ethiopian courts and under Ethiopia law.
Normally, a request for extradition may be acceded to only if the crime is an extraditable crime. It is a universally accepted international practice not to extradite in cases of political crimes. Whether or not a war crime is a political crime is a debatable question. The principle of double criminality and the principle of specificity are the other important rules governing extradition. The crime should be punishable according to the law both of the state of asylum and of the requesting state is the requirement of double criminality and as per rule 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 than that for which he was extradited.

UNIT-IV

CONDITIONS OF CRIMINAL LIABILITY

Introduction:

Basically deals with the basic requirements of criminal liability.

Objectives:

- Identify the essentials of the legal element.
- discuss the ingredients of the material element
- distinguish between the kinds and degrees of guilt for the mental element.
- analyze a given case so that they can label a person criminal or not.

Element of the crime

1. The legal element of the crime,
2. The material element of the crime that deals with the conduct which may be of positive or negative.
3. The mental element of the crime as requirement of guilt (intention or negligence) to constitute criminal liability.

Criminal law is concerned with blaming a conduct and imposing punishment on perpetrators of harmful actions. However, the law determines whether a certain act is punishable or not by considering the circumstances or conditions under which the act is committed or omitted. A person's act does not make him criminally liable for the mere fact that he committed a wrong.

The principles of modern criminal law require the establishment of certain essential elements to fix criminal liability to an accused person. All crimes, whatever their nature or seriousness, have some elements in common.

The Legal element consists of sub-principles that include: the principle of legality, non-retroactive effect of Penal Laws, jurisdiction and period of limitation. The material

element of the crime includes preparation, causation and attempted offences. Causation is required to establish a link between the act and the result and helps to identify the final stage of the material element of the crime.

The mental element of the crime covers the general principles regarding mental element: intention in the form of direct or indirect with its legal effects, negligence in the form of conscious or unconscious with its legal effects, and the standards of measuring negligence.

- **General Principles of Criminal Liability**

The Crime and Its Commission:

Crime is generally a breach of legal obligation or rule. If the breach of legal rule or the wrong has criminal consequences attached to it, it will be a criminal offence.it also has consequences attached to i.e. prosecution by the state in the criminal courts.

The Essential Elements of Crime:

'**Actus non facit reum nisi mens sit rea**' i.e.

"No man may be found guilty of crime and legally punishable unless having brought a harm which the law forbids, he had at the same time a legally reprehensible state of mind".

This principle recognized that there are two essential elements of crime:

- Physical element (actus reus)
- Mental element (mens rea)
- The legal and material elements can be jointly referred to as the actus reus i.e. the physical element of crime and the moral element refers to the mens rea i.e. the mental element of crime.

- **Ingredients of A Crime:**

These are: The legal element, the material and the moral element

The "Legal" and "Material" Ingredients of Crime: (Actus Reus) as the physical element of crime may be studied under two heads:

- Meaning of 'actus reus'
- Causation of crime

- **Meaning of actus reus:**

The result of an act which is forbidden by law and brought by human conduct. A harm brought about by evil conduct manifests the evil mind behind it. Moreover, simply having an evil intention does not make a man punishable unless it ends in a harmful result. Therefore, actus reus is such a result of human conduct as the law seeks to prevent. (Prof Kenny)

Art 23 criminal code of FDRE

The Legal Element of Crime:

A law must exist and this law must be violated so as to hold a person criminally liable unless an act is not a crime for the mere reason it is wrong.

Article 2 of the Criminal Code of Ethiopia provides that no act or failure to act may be regarded as an offence unless the law so prescribes. Therefore, a person who performs an act which is not penalized by any law, commits no offence. In addition to this, the law which prohibits the crime should be in force, not only when the act is committed, but when it is punished.

The Ethiopian Criminal Code also incorporates these essential elements in Art. 23, sub-Articles (1) & (2) in the following way:

(1) A crime is an act which is prohibited and made punishable by law.

In this Code, an act consists of the commission of what is prohibited or the omission of what is prescribed by law.

(2) A crime is only completed when all its "legal, material and moral ingredients are present".

The provision distinctly states the requirement of three elements of a crime:

- The legal element,
- The material element and
- The moral element

The Material Element:

It refers to the existence of some sort of conduct on the part of the perpetrator in order to make him/her liable criminally.

It may be defined as a physical or muscular movement towards a given object which may also include willful restraint from doing a given act. Accordingly, the material element of a crime may be classified as commission, omission, and commission by omission.

The material element (Actus reus) may consist of:

1. Deed of commission, or
2. Result of omission.

In the words of Art 23/ 1,

An act can be defined as "a willed muscular (bodily) movement". The phrase "material ingredients" means facts surrounding the act, such as, the type of weapon used, place and time of commission of the offence, range of shooting, the part of the body of the victim hit by the bullet, etc.

The second paragraph of the same provision clearly puts it in terms of acts (commission) and omissions:

> "In this Code, an act consists of the commission of what is prohibited or the omission of what is prescribed by law".

This means, a crime should consist of either of the following:

- Commission of an act prohibited by law, or
- Omission of what is prescribed by law

- **Deed of Commission:**

The word 'actus' connotes a deed i.e. a material result of human conduct. When criminal policy regards as sufficiently harmful, it prohibits such a deed and seeks to prevent its occurrence by imposing a penalty for its commission.

Thus, the voluntary movements of the human beings cannot be prohibited but producing certain harmful results by such activity is prohibited. However, every harmful event produced by human conduct is not actus reus, but only such event which is forbidden by the law is an actus reus forming the basis for criminal liability.

A 'deed' may cause harm such as destruction of property or even of life but it is not a crime unless it is legally prohibited. Infliction of harm is legally permitted, justified or even commanded under certain circumstances and these do not constitute actus reus.

Four categories of harmful events to be actus Reus:

Lawful Events:

- Events resulting from acts "Commanded" by law:
- **Events resulting from acts "Permitted by law":**
- **Events resulting from acts "Justified" by law:**

- **Unlawful Events: Commission of "Events" Prohibited by Law:**
  - **Result of Omission:**

The word 'omission' is generally used in the sense of intentional non-doing. The expression omission does not connote any obligation. Omission is a colorless word which merely refers to the not doing of something. Under the criminal law, only failures to perform legal duties can amount to criminal omissions.

A crime, according to Art 23/1, is also committed when a person fails to perform an act the performance of which is prescribed by law. This means, not all omissions are punishable but only those that are in breach of a legal duty. Therefore, omissions to be punishable crimes must involve breach of some specific duty either imposed or recognized by law. Basing on the said requirement of violation of a duty "omissions" are of two kinds:

1. Crimes of Omission: Where there is a Duty Imposed by Law:

The law often imposes the duty to do something, e.g. to report about the criminals, to register the birth of a child, etc. and penalizes the failure to carry out these duties. Crimes of this type are referred as "Crimes of Omission' and are characterized by the non-performance of a mandatory act. The following arts, of FDRE:

Art. 39, Art. 254-256, Art. 443, Art 308, Art. 284-285, Art, 448, and

Art 575.

- Failure to provide the maintenance allowances stipulated under Article 658.
- A parent's gross neglect in bringing up a child. Art 659
- Failure to report the possession of counterfeit money, Art. 779
- Failure to exercise proper supervision over dangerous persons or animals. Art. 824.
- .Failure to notify the competent authority and concealment of property. Art. 855

2. Crimes of Commission by Omission: Where there is a Duty Recognized by Law:

A crime is committed when a person fails to perform a duty recognized by law, such as, professional duty of a doctor. Refusal to provide professional service by a doctor, pharmacist, dentist etc., who contrary to his duty and without just cause refuses to provide his services in a case of serious need, is made punishable under Art 537 of the Criminal Code. If harm is caused by such refusal, it is a crime of commission by omission.

"**Actus reus**" or the physical element of Crime		
Deed of Commission	Results of Omission	
Crimes of Commission "Acts"	Crimes of Omission "Failure"	Crimes of Commission by Omission "Refusal"
These are characterized by positive behavior, i.e. by actively doing something to bring about the harmful 'result'.	It is impossible to bring about these results by positive behavior. These are the results of negative conduct omitting to act expected of him.	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 principle "Nulla poena, sine culpa"

Means there is no punishment without guilt. This implies that a person cannot be held criminally liable for those acts he/she commits without there being any fault what so ever on his or her part unless there exists some sort of blameworthiness.

Article 57 of the Criminal Code

No one can be convicted under Criminal Law for an act penalized by the law if it was performed or occurred without there being any guilt on his part, and was caused by force major, or occurred by accident. Nothing in this Article shall be a bar to Civil Proceedings.

The perpetrator should be held criminally liable and be punished if he or she acts in a blameworthy manner.

According to Art. 23 of the Criminal Code, any crime comprises legal, material and moral ingredients, all of which must be present so that the crime may be deemed to have been completed. Proofing of guilt before attaching criminal liability to a person is recognized by the Constitution under Art. 20(3)

That is the right to be presumed innocent until proved guilty". Refer Art. 58 or 59" criminal code.

- **Meaning of Mental Element:**

That is, while acting in a particular way one intended certain consequences or might foresaw the possibility of those consequences. Therefore, an act in order to be a crime must be committed with a guilty mind. Act alone does not make a man guilty unless his intentions were guilty. This is a well-known principle of natural justice even if there is a difficulty in its proof.

To this end, the Courts have tried different methods to find the mental element of crime.

Attempts to Determine the "Moral Ingredient" of Crime:

It refers to the 'state of mind' of an accused at the time of doing the act constituting a crime.

Tests applied in investigating doctrine of mens rea

Objective standard of morality,

1. Test of subjective standard,
2. Voluntariness of conduct, and
3. Foresight of consequences.

1. **Objective standard of Morality:**

The essence of the test of reasonable man is the principle. That means "The facts of each case were studied to see whether the accused's behavior did or did not reach the moral standard generally accepted and approved in the period". It called as true or real test as , 'it must be known to everyone including the accused and that if facts showed that the accused had not conducted himself as a man obedient to the moral code would have been expected to conduct himself,

2. The Test of Subjective Standard:

The adoption of the accepted rules of morality as a criterion of mens rea in practice.

If a man was honestly mistaken as to the facts upon which he took action, or

- He was so insane as not to understand what he was doing, or
- He was compelled by overpowering physical force to be helpless instrument in another person's misdeed.

The new doctrine of subjective mens rea gave the courts a new method of avoiding excessive hardship in reasonable cases of self-defence, accident, mistake of fact etc. All these came to be accepted as grounds of excuse from criminal liability.

3. Voluntariness of Conduct:

The courts felt that if the man's conduct could be proved to be voluntary i.e., "the movements of his body in producing the harmful result were willful movements then his mens rea was established". In cases where he could show that his conduct was involuntary i.e., his bodily movements were not operated by his will, he would have no responsibility. Thus, the first stage in the adoption of subjective mens rea was reached when it was recognized that a man should be held guiltless if he could show that his movements that led to the harm were involuntary.

Thus, according to the test of Voluntariness of conduct, it was essential that the conduct of accused should have been the result of the exercise of his will in all crimes. However, mens rea in this sense relates not to the harm which the man brought about but to the movements (physical acts) by which he brought about the harm.

NB, it indicates his mental attitude to his conduct and not to his mental attitude to the consequence of his conduct.

In cases in which a man is able to show that his conduct whether in the form of action (commission) or of inaction (omission) was involuntary, he must not be held liable for any harmful result produced by it. What has been done is an 'actus reus', but his defence is that he is not legally responsible for his actus reus. Therefore, in cases of persons acting under the influence of Somnambulism (sleepwalking), insanity, intoxication or automatism the defense of involuntary conduct was available.

4. Foresight of Consequences:

The cases of 'pure accident' where there is no foresight of consequences if the voluntary conduct of the person in driving the vehicle is taken to be his mens rea then he should be punished even for an accident. Thus, it is not enough to be satisfied that an accused person conduct was voluntary.

Criminal must have had foresight of consequences" of his conduct. A man cannot be held guilty if his voluntary actions result in harm but the harm was not contemplated. Accordingly, there has developed a principle that "a man should not be punished unless he had been aware that what he was doing might lead to mischievous results". The nature of the precise circumstances, the foresight of which attracts criminal guilt, is fixed by law

and varies from crime to crime. Now, foresight of consequences is the common requirement for all crimes and it is this subjective element of foresight which constitutes mens rea.

Analysis of Provisions Relating to Essential Ingredients of Crime under the Criminal Code of Ethiopia:

Criminal Code of 2004 under Article 23:

1. Criminal offence is an act or omission, which is prohibited by law.
2. The criminal offence is only completed when all its legal, material and moral ingredients are present.
3. A criminal offence is punishable where the court has found the offence proved and deserving of punishment.

Intention:

"To intend"

To have in mind a fixed purpose,

To reach a desired objective,

Foresees and will the possible consequences of conduct. Even in cases of omission, the desire and foresight are the same.

It will be noted that there cannot be intention unless there is foresight, since a man must decide to his own satisfaction and must accordingly foresee that to which his express purpose is directed.

Again, a man cannot intend to do a thing unless he desires to do it. In fact, it may be thing which he dislikes doing but he dislikes still more the consequences of not doing it i.e. to say he desires the lesser of the two evils and therefore, he has made up his mind to bring about the result or the consequence.

Recklessness (indirect intention)

Intention cannot exist without foresight, but foresight can exist without intention. A man may foresee the possible or even probable consequences of his conduct and yet not desire them to occur. The words "rash" and "rashness" have also been used to indicate the same attitude. A man who is reckless may prefer that –

- the event shall not happen, or
- he may not care whether it happens or not.

The like state of mind found mostly in the cases of dangerous driving of motor vehicles, adulteration of food materials, drugs and medical negligence etc.

- **Forms of "Moral ingredients" Under the Ethiopian Criminal Code. (Arts. 57-59)**

Art (1) of Art 57

Commits a crime either intentionally or by negligence". These states of guilty mind are defined in Arts. 58 and 59. It is a general and absolute condition of liability that the offender should have had a guilty mind for fixing criminal liability.

- **Criminal Intention: Art. 58**

'Criminal intention', constitutes the highest degree of criminal guilt and comprises of two elements in the words of Art. 58. According to Sub-Art. (1) a person intentionally commits an crime who infringes law:

  - with full knowledge (awareness)and
  - Intent i.e. Will or volition.

- **Full knowledge:**

"Awareness" the ability to foresee the nature, factual circumstances and consequence of one's act or omission. Thus, criminal intention firstly implies awareness. Therefore, it follows that:

  - where an act is penalized by law regardless of its consequences, the person who performs this act may not be deemed to perform it intentionally unless he is aware
  - of the circumstances which have the effect of rendering it criminal

Therefore, in every case, the object of the criminal's intent must be ascertained having regard to the ingredients of the crime as laid down in the Special Part of the Code.

- **Intent:**

Article 58/1 to mean 'will' or 'volition'. Every conscious act that we do is preceded by a certain state of mind. No physical act is possible without bodily motions.

'Will' desiring the result as an objective of the act or omission.

In this case, there are:

  - 'awareness' of the act, the circumstances and the probable result,
  - The 'desire' for the probable result.

Therefore, criminal intention is here even though the chances of achieving the desired result are small or none.

- **Volition, Intention and Motive**:

The desire that impels the motion is known as volition. When an act done is preceded by a desire for the act and if such a desire is not produced by fear or compulsion we say it is a voluntary act. Thus, all bodily motions, which constitute an act, are preceded by the desire for those motions. This desire is called volition.

The longing for the object desired which sets the volition in motion is motive. The expectation that the desired motions will lead to certain consequences is the intention.

Intention, under Article 58 is found in two different forms:

- **Direct Intention Art 58/1/Para (a)**

The existence of will accompanied by awareness proves criminal intention as per Art. 58/1, Para (a) as has been explained above, in detail. This category of intention is usually referred to as direct intention as there are these distinct characteristics of this form of state of mind:

  - a fixed object,
  - a clear foresight of consequences , and
  - a desire for consequences.

The state if mind of the person is unmistakably directed towards the object and the offender willingly and deliberately brings about the "harmful result".

- **Indirect Intention:**

Art. 58/1, Para (b),

The criminal does not desire the occurrence of the harm. In 'indirect intention', the offender does not foresee the harm as a certainty (or near certainty) but only as a possibility.

This kind of mental attitude is commonly referred to as "recklessness".

Criminal Negligence Art. 59:

"Criminal Negligence" constitutes criminal guilt of a lower degree.

Negligence:

Culpable negligence is a condition for criminal liability. The standard of care established by law is that of a reasonable man in identical circumstances.

Negligence means the failure to exercise care there by causing harm (undesired by the accused) that could or should have been normally expected. Article. 59/1

The essential elements of the provision are:

1. Acting by imprudence or (inadvertent)
2. Being aware that his act may cause illegal and punishable consequences acts in disregard of such consequences, or (Advertent)
3. Acting by a criminal lack of foresight, or (Advertent)
4. Acting without consideration of possible consequences while he should or could have been aware that his act may cause illegal and punishable consequences.(Inadvertent)

A careful consideration of these essential elements of negligence reveals two kinds of negligence:

1. Advertent (conscious) Negligence.
2. Inadvertent (unconscious) Negligence

It is the element of "consciousness" in bringing about the consequences that differentiates these two forms of negligence. In both cases criminal lack of foresight or imprudence must be proved.

- **Advertent Negligence** :

Acting in disregard of possible consequences defines conscious type of negligence. In this form of negligence the criminal, like in the case of in direct intention, foresees the possibility of some harm but disregards (or rejects) its occurrence. Under indirect intention the criminal accepts the occurrence of the possible harm whereas in the advertent negligence the person rejects the possibility of the harm which in fact materializes as a result of his negligence.

- **Inadvertent Negligence: Meaning and Distinction from Advertent Negligence:**

Acting without consideration represents the unconscious type of negligence. Under inadvertent negligence the accused is not aware of a possible harm. The offender does not foresee the result at all. For example, the accused believing that the gun is unloaded pulls the trigger and to his surprise finds some one injured. It cannot possibly be a case

of pure accident since he is handling a deadly weapon, which requires the exercise of care and caution on his part. His failure to take care makes him liable for negligently injuring the person.

Criminal Lack of Foresight:

This expression used by Art.59, denotes want of care with which people of reasonable prudence are expected to act and want of which is culpable. These acts are done in haste without due deliberation and caution. These acts produce a result the criminal never expected and which he may most regret. But he is punished not for the effect produced which he could not perhaps foresee, but for the manner of doing the act which was fraught with danger. It is his attitude towards his conduct that is blameworthy.

- **Standard of foresight and Prudence: Art.59/1/ (b)**

What amounts to negligence depends on the facts of each particular case. Foresight, to be reasonable, requires care and attention relating to the matter in question. The law does not expect the same degree of care and caution from all persons irrespective of the position they occupy. This means the objective standard cannot be purely ideal because as rightly put forward by Art59/1/(b) due consideration has to be given to subjective factors such as the "age, experience, education occupation and rank" of the accused. The care that is reasonably expected of an accused person as per the "reasonable man's standard", therefore, does not denote an abstract mythical model, but refers to the "prudent man" under the circumstances of the accused.

"Due care and attention" implies genuine effort to reach the truth and not the ready acceptance of an ill natured belief. The determination of lack of foresight may be said to have dependant on 3important factors:

- The nature of the act done by the accused,
- Magnitude and importance of the act done; and
- The facility a person has for the exercise of care and attention.

The degree of requisite care varies with the degree of danger which may result from want of care.

- **Liability to Punishment in Case of Negligence:**

Art. 59/2 provides that, "crimes committed by negligence are liable to punishment only if the law so expressly provides by reason of their nature, gravity or the danger they

constitute to society". Accordingly, negligence is not punishable unless a specific provision under consideration expressly embodies negligence as its component part.

Art. 58 Criminal Intention		Art. 59 Criminal Negligence	
Direct Intention	Indirect Intention	Advertent Negligence	In advertent Negligence
1. There is full knowledge i.e., awareness of consequences accompanied by with (intent).	There is awareness of consequences and unwillingness to renounce the course of conduct.	There is awareness of consequences but disregards the possibility	There should or could have been awareness of consequences but lack of consideration of the same

2. The foresight is certain or nearly certain as to the consequences.	The foresight is not certain but awareness of the possibility of the consequences is present.	There is awareness of possibility of consequences.	Failure to foresee the consequences.
3. There is desire for the consequences.	There is no desire for consequences but disregards and runs the risk of possible harm. i.e. accepts the occurrence of possible harm	Rejects the occurrence of the possible harm.	Lack of fore sight i.e. failure to exercise care. Does not foresee at all.
4. Clear foresight of consequences.	Uncertain foresight	Criminal lack of foresight.	Imprudence

- **Accident:**

- **Meaning of Accident:**

Art. 57 (2) of the Criminal Code of FDRE provides:

A person's act is not deemed to be a criminal act if he infringes the law under circumstances that amount to accident or force majeure.

This means, in order to make a person criminally liable, his act must have been committed or omitted by his guilty act.

Generally speaking, the essential conditions for pleading a case of accident are:

1. The act must be an accident or misfortune.
2. The act must have not been done with any criminal intention or knowledge.
3. The act must have been done with proper care and caution.

- **Misfortune or accident:**

Accident involves injury to another; misfortune implies as much injury to the author as to another unconnected with the act. An injury is said to be caused accidentally, when it is neither willfully nor negligently caused.

- **Absence of both intention and negligence:**

For the purpose of establishing the defiance of accident, the presence of both the forms of mental elements 'intention' and negligence should be negatived. Proof of mental element in any of the forms described in the Articles 58 and 59 while committing the act leading to injury to another cannot not be a case of accident.

- **Act Done with Proper Care and Caution:**

Section 2: Relationship of Cause and Effect:

Art. 24. of Criminal Code

The doctrine as to the connection of causes and effects is known as causation in law. A harm which has been suffered is an event and majority of such events are products of a plurality of factors.

Tests to Establish the Relationship of Cause and Effect:

Various tests have been suggested to enable the courts to decide whether alleged 'act' is the cause of the 'result' in question, of which the following are important ones:

- Sine qua non test
- Adequate or proximate cause test.

The Theory of Absolute Causation:

Means "without which not". "An act in the absence of which the result would not have been achieved is deemed to be the cause of such result". it clear that no person can be liable for harm unless he did something, which was necessary condition of this harm.

- **Adequate or Proximate Cause Test:**

The second paragraph Art. 24/1 states that an act or omission may not be deemed to have caused the harm in issue unless this act or omission "…would, in the normal course of things produce the result charged". Therefore, according to the "proximate cause rule", two things have to be fulfilled:

1. The criminal's behavior that brought about the result, and
2. A relevant condition of the harm resulted.

- **Circumstances not Capable of Bringing the Result in the Normal Course of Things:**

"Cause" of the harm produced, in the legal sense of the term. Only acts that are generally capable of producing the result in issue are deemed to have caused it. Any relationship that might exist between the result and an act not normally capable of producing it has no legal consequences since Art. 24(1) uses the words, "in the normal course of things produce the result charged". In the ordinary course of things, one cannot kill a person by pretending to shoot him,

- **Presumption in favour of the Prosecution:**

Here generally the presumption is probably meant to operate in favour of prosecution. This means that, it is sufficient for the prosecutor to prove that acts of the same kind as "the acts charged", when done in the same circumstances as those in which the accused acted, are ordinarily capable of brining about the harm done in the particular case. He need not prove that this causal relationship also existed in the present case. It would be

the burden of the defendant to rebut such a presumption by adducing sufficient evidence to the contrary.

Factors That Might Break the Chain of Causation:

Art. 24(2) provides for the circumstances in which the cause and effect must be excluded because a chain of causation does not exist or is broken. This may happen in the following occasions:

- Existence of preceding causes,
- Existence of concurrent causes,
- Intervention of extraneous causes

- **Preceding Causes:**

A preceding cause is the one that exists even before anything is done by the accused towards commission of the crime. The chain of causation would cease to exist if there exists a cause prior to the act or omission of the accused and makes a material difference in the consequences foreseen or ought to have been foreseen by the accused.

Therefore, the causal relationship is broken here by the existence of a preceding cause.

- **Concurrent Causes:**

The problem arises when, through or despite the application of the relevancy test, two or more persons are found to be eligible for liability. Here the problem arises when a given result may be attributed to two or more simultaneous causes.
This question cannot be answered unless one investigates which bullet brought about the death to establish which act.

Intervening Causes:

Here, the problem arises when a given result may be attributed to a multiplicity of causes. The difference between this case and the case of concurrent causes lies in the time element involved. The task is to know which of the two or more consecutive (not simultaneous) events has caused the harm in issue.

To put it in the words of Art. 24 (2), the extraneous cause was in itself sufficient to produce the result. Thus, the chain of causation might be broken either by preceding causes, concurrent causes or by intervening causes altering the liability of the accused.

Cumulative Effect of Different causes:

According to Art. 24(3), where the result achieved is the cumulative effect of different causes mentioned in Sub. Art. (2) the cause and effect relationship shall be presumed irrespective of the fact that none of these causes can independently produce the result in question.

Difficulties in the Assessment of "Physical Element" of Crime:

An analysis of the attempts which have been made by the courts to assess the physical element in criminal liability and the illustrative cases reveals the difficulties in establishing the causal relationship. It can be most conveniently examined under the following heads:

1. **Where there is no Physical Participation:**
2. **Where Participation is Indirect:**
3. **Where another Person has intervened:**
5. **Contributory Negligence of the Victim:**
6. **Where the Participation is Superfluous:**

Section 3 Concurrence of Crimes- Guilt In Case Of Concurrence Crimes Art. 60-67

'Concurrence' of crimes occurs in either of the following two ways:

1. When several unlawful acts are done in contravention of one or more articles of the law. This type of concurrence is known as concurrence of crimes or Material Concurrence, or
2. When one unlawful act is done in contravention of several articles of the law. This is called concurrence of criminal provisions or Notional Concurrence.

The provisions relating to 'Concurrence' deal with two important questions:

(a) Whether the commission of several acts or faults affects the doer's degree of guilt, if so, to what extent?

(b) Determination of punishment to which he is liable as a consequence concurrence.

Concurrence of Crimes: (Material concurrence)

Several Criminal acts may also constitute one or more crimes. Such concurrence is referred to as material concurrence in Art 85. Materially concurrent crimes may be 'independent' or 'related'. In concurrent related crimes, a criminal commits a crime with the intention of causing or facilitating the commission of another punishable crime (Art 65).

Concurrence of Criminal Provisions (Notional Concurrence):

A single criminal act or omission may give rise to concurrent crimes by violating two or more provisions. Such events are referred to as national concurrence in Article 85.'Notional concurrence' may also include a non- simultaneous combination of crimes as stated in Art. 66, where by causation and the particular state of mind must be proved independently for each of those crimes. There are three possibilities of combined notional concurrence, namely:

- Concurrence of intentional crimes, Art.66/1/a
- Concurrence of intentional and negligent crimes. Art. 66/1/b, and
- Concurrence of negligent crimes, implied in Art. 66/1/c.

Rules Regarding Determination of Punishment in Cases of Concurrence:

1. Cumulative of punishment is not allowed in all cases of concurrence because under certain circumstances the cumulated punishment may go beyond a person's lifetime. The only exception where cumulative punishment is permissible is in case of material concurrence of petty offences as stipulated in Art. 768.
2. Upon finding concurrence of crimes, the court, according to Arts. 184-187:
    - Imposes a penalty on the most severe crime, and

- Aggravates the penalty without exceeding the maximum limit allowed in Art. 184.

This mechanism of 'aggravation' has two specific advantages:

1. It discards an unseasonable cumulative of punishments,
2. It avoids the absorption of lesser penalties, which had been allowed under Art. 42 of the 1930 Criminal Code.

- **Unit of Guilt and Penalty**: **Art. 61:**

Certain acts constitute a single crime though they may seem concurrent at first glance. On the other hand, in case a criminal stabs a person with a knife intending to cause death, but fails to bring about the desired result, is he punishable for concurrent crimes of bodily injury and attempted homicide? Art. 61 states the following three instances of imperfect concurrence where by the seemingly concurrent crimes are merged (united) by the same criminal guilt and purpose.

i. Single Act or Combination of Criminal Acts:

By virtue of Article 61/1, a criminal cannot be charged and punished under two or more concurrent provisions of the same nature if the following 3 conditions are satisfied:

- If a single act or a combination of criminal acts are committed,
- Against the same protected right,
- Flowing from a single criminal intention or act of negligence.

Art. 82 (1) (a), unless this repetition is an ingredient of the offence committed, such as:

Art. 477, dangerous vagrancy,

Art. 535, unlawful exercise of the medical profession,

Art. 634, habitual exploitation of the immorality of others etc.

Thirdly, the offence under the consideration must "flow from a single criminal intention or act of negligence". In the example stated earlier, the offender who stabs (but fails) to kill is not charged for the concurrent offences by bodily injury and attempted homicide. He is charged only for attempted homicide because bodily injury is an inevitable ingredient of homicide and the injury flows from the single criminal intention" to kill. If instead, an offender causes miscarriage to Miss. B in such an unskillful manner that she is permanently disabled from bearing children, there is combined notional concurrence (Art. 65) of abortion under Art. 545 or 546 and injury under Art. 556 or 559.

ii. Successive non-concurrent acts Art. 61/2

According to Art.60/2, a person who commits a so-called successive offence is guilty of, and punishable for only one offence and not for each of the act which he repeatedly does. Under this sub-article the essentials are:

- → Successive or repeated acts done.
- → Against the same protected right.
- → Flowing from the same criminal intention or act of negligence, and
- → Aiming at achieving the same purpose.

The concept under Art. 60/2 is known as the "continuing offence" and is relatively clear in Article 288/2 whereby act "exercised on several separate occasions… and pursued over a period of time" are considered in 'continuum' for the purpose of calculating limitation periods.

iii. Ancillary (subordinate) Acts. Art. 60/3

Art. 60/3 deals with the problem of so-called non-punishable acts of execution preceding or following an offence. In the course of carrying out a given design, a person may do several unlawful acts of some of which, however, appear to be ancillary to the others in the sense that they must be performed if the design is to be brought about. The Sub-Article refers to 3 such instances – i.e. acts committed after the commission of the main offence in cases of offences resulting from injury to property,

1. The putting into circulation of counterfeit coins, or
2. The use of forged documents.

- **Renewal of Guilt and Penalty Art. 62.**

There can be 'cases of renewal of guilt' as mentioned under Art. 61. The offender becomes punishable where there is repetition of acts or omissions with renewed criminal intention or negligenceIn case an offender's five shots miss the target it is apparently a single (non-concurrent) attempt (Art. 60/2). But if the offender fires at the victim a week after he missed him, prosecution

may invoke renewal of criminal intention under Art. 61 and charge the offender for concurrent offences.

Jurisdiction and Periods of Limitation:

Persons subject to the Criminal Code of Ethiopia are subject to the jurisdiction of the Ethiopian courts.

Period of Limitation:

This refers to the cessation for the application of the Criminal Law for the purposes of conviction and punishment. This is to mean that the law itself may cease operation due to lapse of time provided by itself.

This, however, is subject to Article 28(1) of the FDRE Constitution which states that criminal liability of persons who commit crimes against humanity, so defined by international agreements ratified by Ethiopia and by other laws of Ethiopia, such as genocide, summary executions, forcible disappearances or torture shall not be barred by statue of limitation. Such crimes may not be commuted by amnesty or pardon of the legislature or any other state organ.

Section. 4. Corporate Criminal Liability

Criminal law had long developed a mechanism as to how to respond to individual wrong doing. Only natural persons used to be subjects of commission of crime. Individuals are regarded as autonomous having freedom to control their actions including the choice to do wrong. Such persons can be held responsible for their choices. They can be praised or blamed and punished for their acts. This concept of responsibility does not include artificial persons like companies.

Recently, developments have been made in criminal law with respect to wrong doings by legal persons. In law, personality is manifested not only in natural persons but also in legal persons. The application of the doctrine that companies are legal persons separate from the individual persons involved in its operations, is that a company can commit many crimes of strict liability. For instance it can cause pollution, provide products that are unsafe to the public etc.

The reaction to this corporate criminal phenomenon has been the creation of juridical regimes that could deter and punish corporate wrongdoing. Corporate misconduct has been addressed by civil, administrative, and criminal laws. At the present, most countries agree that corporations can be sanctioned under civil and administrative laws. However, the criminal liability of corporations has been more controversial. While several jurisdictions have accepted

and applied the concept of corporate criminal liability under various models, other law systems have not been able or willing to incorporate it. Critics have voiced strong arguments against its efficiency and consistency with the principles of criminal law. At the same time, a large pool of partisans has vigorously defended corporate criminal liability.

Goals of Corporate Criminal Liability:

The main goals of criminal liability of corporations are similar to those of criminal law in general as enumerated below:

- The first characteristic of corporate criminal punishment is deterrence—effective prevention of future crimes.
- The second consists in retribution and reflects the society's duty to punish those who inflict harm in order to "affirm the victim's real value."
- The third goal is the rehabilitation of corporate criminals.
- Corporate criminal liability should achieve the goals of clarity, predictability, and consistency with the criminal law principles in general.
- The fifth goal is efficiency, reflected by the first three goals mentioned above, but also by the costs of implementing the concept.
- Finally, it is the goal of general fairness.

The **aggregation theory** provides that corporations can be held criminally liable based on the act of one employee and on the culpability of one or more other employees who, cumulatively, but not individually, met the requirements of actus reus and mens rea of the crime.

The imposition of criminal liability is only one means of regulating corporations. A company has no physical existence, so it can only act vicariously through the agency of the human beings it employs.

Civil Liability:

- With the lower burden of proof and better case management tools, civil liability is easier to prove than criminal liability, and offers more flexible remedies which can be preventative as well as punitive.

- But there is little moral condemnation and no real deterrent effect so the general management response may be to see civil actions as a routine cost of business which is tax deductible.

Principles of Corporate Liability:

A company can be held liable for its wrongful acts by virtue of two legal principles:

1. **Vicarious liability:**

No in criminal law as principle of vicarious liability applies to hold one person liable for the actions of another when engaged in some form of joint or collective activity.

But exceptionally, as corporations are factitious persons the act of natural persons make liable the corporate i.e. the employee.

A company can be vicariously liable to many offences of strict liability and negligence for the acts of its employees in the course of their duties.

2. Direct liability:

The idea that a company is a legal person that could sue and be sued in its own name, has given way to the law maker superimpose its individualistic conception of criminal liability to legal persons. The acts of individuals who had committed the offence are identified with the company itself. In such circumstances the company as well as the individual could be criminally liable. This is known as the identification doctrine.

- **Meaning of 'Juridical Person/Corporation': Art 34/4 of the Criminal Code:**
  - governmental or non-governmental,
  - public or private structure and
  - includes any legally recognized institution or
  - Association set up for commercial, industrial, political, religious or any other purpose.

Principles relating to Criminal liability of Corporations under the Criminal Code of Ethiopia: Art 34

(Art.34/1):

1. Principal criminal,
2. An instigator or
3. An accomplice

Punishment in case of juridical persons:

1. Fine under sub-article (3) or sub-article (4) of Article 90 of this Code; and
2. Suspension or closure or winding up of the juridical person may be ordered where necessary
3. Individual liability on the officials or employees of the juridical person may be additionally imposed for their personal criminal guilt.

In general this chapter presented and discussed the elements that constitute Criminal Liability in general and under Ethiopian Law in particular. It has also identified the basic requirements of criminal liability. The principles of modern criminal law require the establishment of certain essential elements to fix criminal liability to an accused person. All crimes, whatever their nature or seriousness, have some elements in common.

The elements of criminal liability are the legal, material and mental elements of the crime. The Legal element consists of sub-principles that include: The principle of legality, non-retroactive effect of Penal Laws, jurisdiction and period of limitation. The general meaning of the term 'cause' is the 'act' or 'the agency' that has caused or produced an effect. The doctrine as to the connection of causes and effects is known as causation, in law. It is an investigation of act which caused effect. Preceding causes, concurrent causes and intervening causes are he circumstances that can break the chain of causation. There can be concurrence of crimes and concurrence of criminal provisions leading to aggravation of criminal punishment.

Recently, developments have been made in criminal law with respect to wrong doings by legal persons. In law, personality is manifested not only in natural persons but also in legal persons. The application of the doctrine that companies are legal persons separate from the individual persons involved in its operations, is that a company can commit many offences of strict liability.

Accident is a valid defence for criminal liability. In the absence of intention or negligence on the part of the accused while committing the act that resulted in the harmful consequences can be claimed as a defence for criminal liability.

UNIT-V
DEGREES IN THE COMMISSION OF CRIME

This chapter deals with degrees in certain cases at the time of the commission of an offence in which the law intervenes by reason of their gravity or the danger they entail. Other issues it discusses include preparatory acts, attempt, renunciation, active repentance, and impossible offence, special cases of attempt, and assessing sentence and causation. Arts. 26-30 lay down the principles relating to the liability of offenders in various stages of commission of the crime.

Objectives

- identify the different stages in the commission of crime
- determine the degree of and role played by every one in the commission of an offence.
- dispose cases by applying the relevant provisions of the Penal Code.

Section.1. Different Stages in the Commission of Crime:

The focus is on the material element of the crime in what extent the harm happened make the criminals liable and in what degree the person involves to committee such crime. The crime may result in a completed or incomplete offence. There are degrees in certain cases at the time of the commission of an offence in which the law intervenes by reason of their gravity or the danger they entail. No doubt that many acts may be done from the day when a criminal intent comes into being until the day it materializes. The burning issue, therefore, is what degree should be reached in the carrying out of the criminal design in order to regard a person as having fulfilled the material element of the crime.

These include Intention, preparatory acts, attempt, renunciation, active repentance, impossible offence and special cases of attempt.

Preparation:

Criminal law punishes "overt acts" and not mere intentions. A criminal intent, no matter how immoral it may be, is beyond the grip of criminal law until it is manifested by external conduct. The requirements of Art. 23 imply that a mere criminal intention does not in itself constitute a crime and is not punishable.

That means a crime, is not completed unless all its legal, material and moral ingredients are present. But preparing the commission of a crime within the meaning of Art. 26 have different view as various phases normally precede acts.

The phases of desire, decision and initial planning (in the thoughts of the criminal) are mental that do not involve exterior acts. From the moment these phases develop into "external conduct" that aims at the commission of a crime, the phase of preparatory act is said to have begun. However, not every preparatory act is punishable.

Such preparations apparently involve external conduct. Yet, it is difficult and unfair to punish such acts because we cannot be certain about a person's criminal intent unless the prospective criminal himself tells us. This uncertainty is inevitable because preparatory acts are "remote" from the ultimate harm and unequivocal design and the determination to carry it out.

Most Criminal Laws including Ethiopian Criminal Code do not in principle punish preparatory acts. Preparatory Acts are defined under Art. 26 of the Penal Code of Ethiopia as those acts which are merely designed to prepare or make possible an offence, by procuring the means or creating the conditions for its commission.

This definition encompasses all those situations where he/she from the moment that a person conceives the idea of committing a crime up to its consummation. This process includes formulation of intent to commit a crime. This intent may also be supported by external acts like collecting the means required to commit the offence and creating the conditions that may facilitate for the realization of the crime.

These preparatory acts are not punishable as a general principle for two main reasons. That is, it is difficult to safely conclude that a person manifests the material element of the crime due to the equivocal nature and remoteness of the preparatory acts towards the offences intended to be committed. In other words, behaviors cannot be considered to constitute the material element

of the crime unless they are proximate and definite that the offence is likely to be committed. This can be further explained by the following examples shown hereunder:

- **Legal Effects of Preparatory Acts:**

Article 26 of Criminal Code reads:

There are two situations where **preparatory acts** are punishable.

1. **Where the Preparatory Acts Constitute a Crime in Themselves (Art 26/a):**

A person who buys a gun as a preparatory step towards homicide is punished for the completed "petty offence" of retaining a gun without license (Arts. 808, 809) even though he is not punishable for his preparatory act; the act of keeping a gun without a license itself is a petty offence.

2. **Where the Preparatory Acts Constitute a "Special Crime" by Owing to Their Gravity (Art 26/b):**

Certain preparatory acts are expressly constituted a special crime by law owing to their gravity or the general danger they necessarily bring upon the society. For example, material preparation of offences against the state (Art. 256, 257), preparing a mutiny or seditious movement (Art. 300) and preparing machinery and means of counterfeiting currency (Art. 371) are expressly stated to constitute special crimes.

Preparation is punishable only when it has reached such an advanced stage and is close to an attempt that there is no doubt as to the purpose of the arrangements made and as to the willingness of the person who made them, to carry them further if he is given the chance of doing so.

Attempt:

Attempt is the second degree in the material element of the crime. It is a substantial but unsuccessful effort to commit a particular offence. It is a willful effort but without success. The effort must be unsuccessful because a person cannot be prosecuted for both an attempt and

completed crimes as the attempt can be considered to have been merged with the completed offence, thereby abrogating itself.

Overt Act:

A person, therefore, can be held liable criminally if he/she manifests his/her intent by some open deed tending to the execution of his/her intent. There is of course an act or movement towards the commission of an offence in both attempt and preparation. Attempt requires an act more than preparation.

Intent: An act to constitute an attempted offence shall be preceded by purely internal mental process, which begins with the thought of executing an offence and ends with the decision to commit it, but which does not manifest itself by any overt act. The convictions of attempt rests upon the doctrine that "Voluntas reputabitur pro facto- the intention is to be taken for the deed. Attempt, therefore, requires a purposeful behavior. A person can be said to have attempted an offence when he purposefully acts to accomplish what he has originally intended to commit. Accordingly, negligent attempt is inconceivable as the person in such case does not desire the consequences. One thing must be mentioned here that a person can be liable for attempted offence when such offence is punishable upon intentional state of mind.

Kinds of Attempt:

Basing on the 'reason' for the failure to achieve the intended result attempts can be classified into three categories:

a. "Incomplete Attempt":

If the accused chooses not to do or is prevented from doing the last act of the crime, the attempt is said to be incomplete. The words "… do not pursue … his criminal activity to its end" in Article 27 define "incomplete attempts" because of voluntary withdrawal. The part of the provision that reads, "… or is unable to pursue his criminal activity to its end", on the other hand, indicates an incomplete attempt because of external interventions, that is outside the volition or

will of the accused. For example, an accused aims at a person, touches the trigger and then changes his mind is said to have voluntarily withdrawn.

"Complete Attempt"

An attempt is said to be complete when the wrongdoer has performed everything on his/her part, which is considered to be necessary without, however, result having occurred. In other words the perpetrator has done all that he/she intended to bring about the result, but the desired result has not followed. The reasons for the failure to achieve the result may be of two types: one, it may happen that the offender did every thing that was necessary to bring about the result but the achievement has not occurred due to situations beyond his/her control. This point has the idea that the attempter would in all probability have achieved in causing the desired result had it not been for the existence of unexpected events. This category of attempt includes impossible offence. Attempt could also felt to achieve the result due to the active involvement of the perpetrator him/herself. This is known as active repentance.

Where the accused has done the last act, which he expects to carry out, and which he thinks causes the harm intended, the attempt is said to be complete. Complete attempts may take the forms of voluntary undoing or involuntary failure to achieve the result.

b. "Impossible Attempt" Art. 29:

Certain attempts are incapable of achieving the desired result. Such attempts involve situations where a criminal attempts "to commit a crime by means or against an object of such a nature that the commission of the crime was absolutely impossible".

Article 29 covers the cases of absolute impossibility and not relative impossibility where the circumstances in which the criminal acted are unable to cause the criminal's intended harm due to the means used or because of the object against which the act is committed. Failure to achieve result because of an unloaded gun is an absolute impossibility due to the means used. Poisoning a person with an insufficiently fatal poison is a case of relative impossibility due to insufficient means.

Such a distinction between absolute and relative impossibility is significant because free mitigation (Art. 180) may be allowed under cases of absolute impossibility. Further more, no punishment shall be imposed if a person "from superstition or owing to the simplicity of his mind acted by using means of processes in themselves innocuous which could in no case have a harmful effect." Such a consideration of objective harm rather than subjective criminal intention is apparently inconsistent with the overall subjective inspiration of the Criminal Code. Yet, it is indeed difficult to interpret Article 29 otherwise.

Mens rea in Attempts:

The mental element assumes paramount importance in attempts, because sometimes actus reus may be a perfectly innocent and harmless act. As long as the consequence is intended, erroneous appreciation of the material circumstances may not alter the liability for attempt.

Section 2. Importance of Distinction between Preparation and Attempt:

The fact that all attempts are punishable (Art. 27(2)) where as all preparatory acts are not punishable (Art. 26), makes it essential to clearly distinguish between these two stages of crime. The relative proximity between the 'act' done and the 'evil consequences' contemplated largely determines the distinction. Firstly, preparation consists in devising or arranging the means or measures necessary for the commission of the crime; while an attempt is the direct movement towards the commission of the crime after preparations have been made.

An attempt is manifested by the acts, which would end in the consummation of the crime, but for the intervention of certain circumstances independent of the will of the party. Secondly, preparations are generally not punishable, whereas attempts are always punishable. The reasons why preparations are not punished are fourfold, namely:

a) A preparation apart from its motive is generally an harmless act;
b) It would be impossible in most cases to show that preparation was directly to wards a wrongful end or was done with an evil motive or intent. Therefore, if mere preparations were punishable it would cause unnecessary harassment to innocent persons as there is a locus poenitentiae, and the doer may have changed his mind;
c) It is not the policy of law to create and multiply crimes. If preparations were to be punished, innumerable crimes will have to be created;

d) A mere preparation does not and cannot ordinarily affect the sense of security of the individual to the wronged, nor would the Society be disturbed or alarmed as to rouse it sense of vengeance.

Identification of the Stage of Attempt:

One is said the have attempted a crime when he begins to commit the crime. Preparing to commit a crime does not amount to beginning the execution of the crime. Nevertheless, the demarcation point between preparation and the beginning of executing the crime is indeed difficult to draw. Criminal law does not give a clear-cut formula in this regard because the subjective conditions of the particular situation may lead to varying conclusions. Every case is to be judged according to the facts and circumstances of its own. However, some tests have been evolved by the courts to determine at what stage an act or a series of acts done towards the commission of the intended crime would become an attempt. These tests are:

- **Reasonable Inference test or Unequivocality Test:**

In this test, the nature and circumstances of the act must give a reasonable inference of the attempter's criminal intent. According to this test, "…. an act done with intent to commit a crime is not a criminal attempt unless it is of such a nature as to be in itself sufficient evidence of the criminal intent with which it is done". Overt acts emanate from intention and in turn verify criminal intent and determination.

To constitute an attempt, the act must be such as to clearly and unequivocally indicate the intention to commit the crime. If what is done indicates beyond reasonable doubt that the end is towards which it is directed, it is an attempt, otherwise it is a mere preparation. The act must refer to the commission of the crime and it must be evident and clear on examination. The acts must speak for themselves.

- **The Commencement of Execution Test:**

According to this test, there is an attempt as of the moment the accused begins to commit the crime. "An act amounts to the beginning of execution when the intention behind it is irrevocable. The doer should, therefore, go beyond what might be called the point of no return. The execution of the crime includes the doing of an act, which in the criminal's plan amounts to a decisive step

towards the achievement of the result, after the taking of which there is normally no possibility of drawing back…"

The Ethiopian Criminal Code defines attempt in Art. 27/1

From this, two questions would possibly arise:

1. When does an act clearly aim at the commission of a crime?
2. When do the acts performed would aim at the commission of the crime by way of direct consequences?

The term "clearly" is intended to mean an unequivocal manner. An act unequivocally aims at a desired harm where the doer's criminal intent and determination clearly or unequivocally aim at the completion of crime.

A given act normally manifests two things namely:

a. Intent (the doer's subjective state of mind)
b. The acts' material (objective) proximity or remoteness to the intended consequence.

If the term "… clearly" refers to the doer's subjective state, of mind the term "direct" can logically be presumed to apply to the objective location of an act in the path towards the desired result. The former is a typical act of preparation and the latter is a punishable attempt.

- **Proximity test:**

An act of attempt must be sufficiently proximate to the crime intended, it should not be remotely leading towards the commission of a crime. The act of the accused is proximate if, though it is not the last act that he intended to do, it is the last act that was legally necessary for him to do, if the contemplated result is afterwards brought about without further conduct on his part.

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'. 'A', gives some pills to a pregnant woman to procure abortion, but it had no effect because the drug turned out to be innocuous. 'A', would be guilty of attempt to cause miscarriage since the acts of such kind would cause an alarm to society and will have social repercussions.

Accomplishment or Completion of Crime:

When the intended consequences are achieved by the conduct of the accused, the crime is said to have been completed and thus making the accused liable to punishment for full fledged crime.

Renunciation and Active Repentance:

- **Renunciation:**

Renunciation is provided under Article 28 of the Penal Code as "if an offender of his own free will renounce the pursuit of his criminal activity the court shall reduce the punishment within the limits. No punishment shall be imposed if the renunciation was prompted by reasons of honesty or high motives." It refers to situations where a person abandons the pursuit of his or her criminal activity by his or her own free will without completing the act required producing the result. Renunciation exists when the criminal activity is abandoned absolutely. As it is in an attempted crime, it must be accompanied by guilty state of mind in the form of intent. There is also no doubt that the act should not achieve the result.

The court shall not be bound by the kind of penalty provided in the special part of this Code for the offence to be tried, nor by the minimum which the provision enacts; it may without restriction impose a sentence for a term shorter than the minimum period prescribed or substitute a less severe sentence for the sentence provided;

- The court shall be bound solely by the general minimum provided in the general part, (Art 82, 86) as regards the penalty it imposes, whatever its nature may be.

The person may also be exempted from punishment when the abandonment is grounded on honesty and high motive.

- **Active repentance:**

The failure to achieve the result after the completion of the act may also occur when, after having performed all the acts to bring about the desired result, the perpetrator himself either prevents or contributes for the prevention of the result.

To sum

These include preparatory acts, attempt, renunciation, active repentance, and impossible offence. We have also discussed the distinctions between each stages of committing crime and the legal effects at each stage. The material element of the crime may result in a completed or incomplete crime.

Criminal law punishes "overt acts" and not mere intentions. A criminal intent, no matter how immoral it may be, is beyond the grip of criminal law until it is manifested by external conduct. Most Criminal Laws including Ethiopian Criminal Code do not in principle punish preparatory acts. Punishing preparatory acts is therefore an exception than a rule under Ethiopian criminal law. The Criminal Code has a mechanism of precaution against preparatory acts where a person behaves or is likely to behave in a manner which threatens peace or security of the public or citizen.

An attempt is always punishable under the Criminal Code. Attempt obviously implies more than preparation. However, the difference between the two is not always apparent since there is in both cases a movement towards the commission of a crime. There are three different kinds of attempt namely, incomplete attempt, complete attempt and impossible attempt. Proof of the mental element of the accused is crucial for the punishment at the stage of an attempt. Renunciation exists when the criminal activity is abandoned absolutely. As it is in an attempted crime, it must be accompanied by guilty state of mind in the form of intent. The failure to achieve the result after the completion of the act may also occur when, after having performed all the acts to bring about the desired result, the perpetrator himself either prevents or contributes for the prevention of the result.

UNIT- VI

PARTICIPATION IN THE COMMISSION OF CRIME

It is obvious that a crime should not always be committed by single persons. A crime can be committed by several persons who participate in the commission of a crime at different or same capacities. It is therefore important to determine the degree of involvement and the role played by such persons in the commission of the crime.

The degrees and roles played by different persons in the commission of the crime. It may also include the supply of information, advice; keep a look out or even instigating the crime. This is what is called participation.

There are different views on the criminal liability of persons who participate in the commission of an offence. Some hold the view that both principal offenders and accessories shall be liable to be tried, convicted and punished as if they had committed the crime themselves. This view is argument is based on the principle of eligibility for equal treatment that liability of secondary parties is dependent upon the principal offenders and the theory of participation that participation serves as potent evidence of an accomplice for instance associating himself or herself with the principal's criminal venture. Participation, which presupposes plurality of parties, is generally categorized into principal participation and secondary participation.

Objectives:

At the end of this chapter students will be able to:

- identify the degrees of participation.
- determine the role played by each person in the commission of an offence.
- distinguish between who takes part in the commission of an offence and who comes after the commission.
- determine the persons who require more severe treatment than others.

Section.1. Participation in Principal Capacity:

A person, therefore, is considered to be a principal offender if and only if he/she participates in the commission of the offence materially. In other word, principal participation exists where those persons who do the act or acts constituting the offence or abstain from acting when they are bound to act. If the persons who involve themselves in the commission of the crime are more than two, they are still called principal criminals.

In Ethiopia, under Article 32 of the Criminal Code, clearly defined.

Participation in a crime is defined differently in different legal systems. Some legal systems define it narrowly so as to only include those persons who involve themselves in the commission of the crime physically or personally. A person, therefore, is considered to be a principal offender if and only if he/she participates in the commission of the offence materially.

1.1 Material Criminal:

This form of participation is dealt with under Article 32(1) (a) of the Criminal Code. It exists when the one, who, with the requisite mental state, personally engages in the act or omission concurring with mental state which causes the criminal state. Such form of principal criminal can commit the offence either directly or indirectly.

It is direct when every person directly, physically or personally commits the offence.

It could also be indirect when the perpetrator commits the crime by using instruments like animals or natural force.

There can be more than one principal party as a material criminal when more than one actor participates in the actual commission of the crime. Thus, when one man beats a victim and another stabs him with a knife, both are material criminals in the murder. It is also the same when two persons forge separate parts of the same instrument. They can be considered as material offenders in the offence of forgery.

It is also possible for a person to be regarded as a material criminal if he or she negligently performs an act and produces a forbidden harm. This is to mean that a person should not always commit the crime intentionally in order to be regarded as a principal party in the form of material criminal. Negligent performance of an act can constitute for material criminal.

1.2 Moral Criminal:

Moral Criminal is a person who fully associates himself/herself with the commission of the crime and takes the crime as his or her own even though he or she is not present at the time when and the place where the crime was committed. Moral criminal is a person who plays no part physically in the commission or omission of the offence or facilitating everything necessary for the commission of the offence, under Article 32(1) (b) of the Criminal Code.

Indirect Criminal:

Under Article 32(1) (c) of the Criminal Code

There is an intermediary to commit a crime but it is a mere instrument and the originating actor is the principal participant in the form of indirect criminal.

Indirect criminal refers to a person to the persons listed below:

1. Compel another to commit a crime.
2. Employ mentally deficient persons in the course of the execution of a crime.
3. Use an irresponsible person that can come under Articles 48-50.
4. Use infants who are immature persons as provided under Article 52.
5. Use another person by taking the advantage of his or her mistake or ignorance as per Articles 80 and 81 of the Criminal code.

The same is also true for indirect criminal that they could be two or more towards the commission of a given crime or crimes.

What does the law provide for persons who participated in the commission of a crime?

- **Legal Effects of Participation:**

A person who involves himself or herself in the commission of a crime in different forms of participation as material, moral or indirect criminal is liable for the crime committed being considered as a criminal in the first degree even if degree of punishment is not the same as personal circumstances and degree of individual guilt may be taken into account. Articles 35 and 41 of the Criminal Code.

Special circumstances or personal incidents or relationships, which have the effect of excluding punishment or justify its reduction or increase, are not transmissible to another person. They operate to the benefit or the detriment solely of the person to whom they attach.

It must be mentioned here that the principal criminal or criminals may not be liable for what goes beyond their intention unless it is possible to prove negligence on their part as per Article 58(3) of the Criminal Code.

Co-criminals:

What happens if several persons involve in the commission of a crime together?

Co-criminals are defined differently in different legal systems either including only of the material criminals or as to include all principal parties who involve in the commission of the crime either as a material criminal, moral criminal or indirect criminal. the Ethiopian Criminal Code, define it broadly under Article 32 and 33 of the Criminal Code of Ethiopia as "where several co-criminal are involved, they shall be liable to the same punishment as provided by law (32/3)".

From these Articles, co-criminals are those persons who participate in a crime in their principal capacity either as a material or moral or indirect parties and with or without conspiracy. Co-criminals with conspiracy are those actors who involve themselves in a crime in their primary degree based on prior agreement as between themselves to realize the intended crime. Co-criminal without conspiracy is those principal parties in a crime without there being any agreement.

The special co-criminals should fully participate in the commission of the crime. This is to mean that the participation of the special co-criminal must be indispensable without which the commission of the crime would not have been accomplished. The special co-criminal must participate in the crime intentionally or purposely.

Section.2. Participation in the Secondary Capacity:

The involvement of persons in the commission of a crime in the second degree either before or during the commission of the crime. This relates to incitement or complicity, which are also called accessories. Accessory after the fact does not come under participation for one cannot take part in the commission of the crime after it is consummated. (Article 40 of the Criminal Code)

Secondary participation refers to incitement and complicity.

2.1. Incitement:

Article 36 of the Criminal Code as:

The actual criminal shall alone be answerable for the more serious crime which he committed.

Elements:

- Incitement requires at least two persons (inciter/instigator and the incited/instigated). The incited is the one who actually commits the crime either in the form of material, moral or indirect criminal. The instigator is the person who initiates the idea of committing the crime by the principal by using different means.
- The instigator or instigators should convince the principal criminal to determining or deciding to commit the crime based on the intentional inducement/instigation/incitement. I.e. stimulation. Pre-existing intention of the principal criminal is irrelevant.
- There shall be causal relationship between what the instigator does and the act of the principal criminal.

Causation in incitement involves the following three chains of events:

a. That there shall be an act of incitement by the instigator to induce or convince the other person
b. That the principal criminal takes his or her decision as a result of the inducement
c. That the principal criminal should commit the crime

- Finally, the crime should be committed or at least attempted.

➢ **The legal effect of being an instigator:**

The instigator will be liable to punishment under the law for the intended crime. This is the case for instance that a person who incited the commission of the crime of robbery will be liable under Article 36/670.

What if the incited goes beyond the intention of the instigator?

Art 36/4

The principal offender is punished alone for what goes beyond the intention of the instigator. This is the case that the incitee /principal/ criminal is alone liable for the rape he committed while he was persuaded to commit robbery.

There is, however, a possibility that courts may reduce the punishment to be imposed upon the instigator within the limits of the law as per Article 179 of the Criminal Code.

Complicity:

It is also a secondary participation which may exist either before or during the commission of the offence. Article 37 of the Criminal Code

From this provision, the word accomplice is used to describe all persons who are accountable for crimes committed by another without considering whether they were or were not actually present at the time when and the place where the crime is committed.

Giving assistance to the principal criminal either before or during the commission of the crime with the intent thereby to promote or facilitate the commission of a crime.

Elements

One, it requires at least two persons i.e. the accomplice and the principal criminal.

Two, assistance must be given to the principal criminal. The assistance may be given either accessory before the fact or at the time accessory during the fact of the commission of the crime. The assistance should, however, be given before the result is achieved.

Three assistance may be material or non-material. It is non-material when it relates to advice, command, counsel, encourage, and so on.

Four, the assistance given to the principal criminal should always be intentional

No negligence assistance under Article 36.

Generally, it may be said that accomplices liability exists when he or she intentionally encourages or assists in the sense that his or her purpose is to encourage or assist another in the commission of a crime as to which the he or she has the requisite mental state. It should, however, be known that the principal criminal is not necessarily required to know the assistance given to him or her by the accomplice. Rather what is required is that the accomplice should intentionally assist the principal criminal in the commission of the crime.

Five, the assistance should relate to the crime for which it was rendered. If the accomplice agrees with the principal criminal to give the latter assistance for a crime. The crime should be completed or at least attempted. This is to mean that the crime intended must be at least begun so as to hold a person liable as an accomplice.

- **What are the legal effects of complicity?**

The following are the legal effects of complicity:

1. The accomplice is liable for the punishment under the law regulating the intended crime.
2. The accomplice will not be liable for what goes beyond his intention.
3. Punishment may, however, be reduced within the limits of the law as per Article 179 of the criminal code.

Criminal Conspiracy:

It is an agreement between two or more persons to effect something unlawful. That is necessarily an overt agreement beyond independent intentions. The crime of conspiracy is completed at the moment when two or more persons have agreed that they will do at once or at some future time an act which is unlawful. Therefore, the crime of conspiracy is said to be completed even if there is no further act to put the agreement into effect. Agreement in conspiracy refers to the meeting of two or more minds. It is the understanding of the parties each other to perform an act which is forbidden.

In the Ethiopian law, conspiracy, as a rule, is not considered to be an independent crime. Rather, it is a ground for aggravating punishment when persons participate in the commission of a crime based on prior agreement as per Article 38(1) of the Criminal Code of Ethiopia which provides as.

Though our law disregards the act of conspiracy as an independent crime, Article 38(2) provides exceptions that it is taken as an independent crime.

- **The Rationale for Holding a Person Criminally Liable For conspiracy:**

It is clear that a person may not be punished for what he or she intends to do or for what he or she has planned in his or her mind only. Rather, a person is punished when three basic elements under Article 23 are established. Accordingly, one cannot be punished for his or her intention because the other two elements. I.e. material and legal are missing in accordance with Article 23 of the Criminal Code.

Conspirators, however, commit a crime for their intentional agreement. The reason to hold conspirators criminally liable is that collective action towards antisocial behavior involves a greater risk to the society. The more parties there are the larger the probability for the commission of the crime, the greater the threat to the community for conspirators

- 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.

2.4. Participation of Juridical Persons in a Crime:

Juridical person is defined under Art. 34(4) of the Criminal Code of FDRE. As it has been discussed earlier, corporate are held liable for the acts of persons acting in their names. With this regard, Art. 23(3) of the Revised Criminal Code of Ethiopia read:

Accordingly, juridical persons who participate in the commission of a criminal activity are punished. Article 34 of the Revised Criminal Code of FDRE states briefly. The official or employee who in connection with the activity of the juridical person, remains free of criminal liability. Such person shall be punished for the criminal act he committed personally. Art. 34(4) the criminal code of FDRE.

One can see that the Ethiopian criminal law makes both the juridical person and its officials or employees who commit a crime criminally liable.

2.5. Accessories After The Fact: Art.40

Accessory refers to a person who gives assistance to the principal criminal after the realization of the crime. The form of assistance may be, hiding and aiding the criminal as per Article 445 of the Criminal Code.

Receiving or hiding a property, which is obtained by a crime committed by the criminal as per Art. 682.

Helping a person to escape from prosecution as per Article 460.

- **What are the legal effects of being accessory after the fact?**

Such a person cannot be considered as an accomplice, which is one form of participation and hence cannot be treated under Article 36 because there is no participation in the commission of a crime once it has been completed. So an assistance given to the criminal after the commission of the crime is independent crime.

- **Failure to Report:**

It is dealt with under Article 39 of the Penal Code.

Failure to report refers to situations where a person fails to inform the concerned authority about the preparation, attempt or commission of a crime. Such a person cannot be said to have participated in the commission of the crime. He is, rather, treated as an independent criminal when the law expressly provides so as in the cases provided here under. Such failure constitutes an independent crime with the view of safeguarding public interest. These situations include:

Art. 254 Indirect Aid and Encouragement:

Art. 335. - Failure to report Crimes against the Armed Forces and Breaches of Military Obligations:

Art. 443. - Failure to report a crime.

Is punishable with fine not exceeding one thousand Birr, or with simple imprisonment not exceeding six months.

In a nutshell, participation deals with the involvement of two or more persons in the commission of the offence. These persons may take part either in their principal capacity as a material, moral or indirect offenders. They may also take part in the commission of the crime in their secondary capacity as an instigator or accomplice.

The unit also discusses learned that persons may take part in the commission of a crime either based on a pre-existing agreement which is known as conspiracy or without it. Conspiracy, therefore, is a ground of aggravation of punishment even though it may constitute an independent offence when the law provides otherwise.

Accessories after the fact are those persons who do not participate in the crime but give help for the principal offender after the realization of the offence. Being an accessory after the fact gives rise to an independent crime.

Finally, it has discussed in this unit the cases where failure to report constitutes an independent crime by law when the law provides so even though it may not amount to participation.