Addis Ababa University

School of Graduate Studies

College of law and governance studies

Strict criminal liability in Ethiopia: Normative and practical perspectives

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A Thesis Submitted to the School of Graduate Studies of Addis Ababa University in Partial Fulfillment of the Requirements for the master's Degree in constitutional and public law.

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APPROVAL OF BOARD OF EXAMINERS

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Chapter one: Introduction

1.1 Background of the study

Normally the prosecution has the burden of proving that an accused possesses the two traditional ingredients of criminal liability: the *actus reus* and *mens rea.* Strict criminal liability in criminal law is an exception to this rule since a defendant can be found guilty upon proof that the prohibited criminal conduct (*actus reus)* alone has taken place. The mind of the accused may be guilty or entirely or partially innocent but this is irrelevant in establishing criminal liability (although it may affect the sentence). This goes against the notion that a person is punished because he deserves to be in terms of his guilty mind[1].

Most scholars agree that strict liability offence should play no part in any criminal code[2]. They believe that the abandonment of *mens rea* cannot be justified for philosophical reasons but it is the requirement of moral blameworthiness that provides the justification for penal sanctions promoting both deterrence and retribution[3]. Professor Herbert Packer pointed out that it is both inefficacious and unjust to punish without reference to the actor's state of mind[4].

On the contrary, some argues that a construction of strict criminal liability offences would promote observance of the law by the person who possesses the means to take action to prevent the prohibited criminal conduct[5]. Criminal liability without fault is justified largely on the instrumental grounds, that is, prevention of harm and on proof of a causal relationship between the action and the risk that the offence targets[6]. There is a long standing rational for a broad range of public welfare offences that requires no fault –no proof of *mens rea.* The rationale for strict criminal liability is public safety, that is, its primary goal is public safety. To put in other words, its aim is protecting the public from criminal offences, i.e., it is a primary government interest and that the privacy interest of the persons adjudicated guilty of criminal offences is less

[1].Rollins M. Perkins, criminal liability without fault: A disquieting trend,60 IWOA Law Review(1983)pp.1065
[2].Joshua Dressler, understanding criminal law $11.02 {A} (4th edn.,2006)pp.10
[3].Herbert L.Packer , Mens rea and the supreme court, SUP.CT .REV.(1962)pp.109
[4] .Ibid, and see also Kennth.V. Simons, RETHINKING MENTAL STATES,72 B.U.L.REV.463,507(1992)pp.507
[5] .[1998] 1 CLAS NEWS 357 at Para.12
[6] .Yeo, Morgan, Chan, criminal law in Malaysia and Singapore(lexis Nexis,2007)pp.453-4600;see also staples v. united states,511U.S.600,607n.(1994)(reiterating the public welfare statutes may dispense with a mental element)

important than the government's interest in public safety[7]. What are the values or justifications of strict criminal liability? Then how far this solution ensures the purposes of Criminal law of Ethiopia?

With respect to the Ethiopian position, Ethiopian lawyers have been divided as to whether there is the notion of strict criminal liability of any sort in Ethiopia. On the one hand, Dr.Elias argues that the concept of strict criminal liability offences is not envisaged under the Ethiopian criminal legislations[8]. However, he stipulates that the notion of strict liability offences is expected to develop in the realm of regulatory offences in Ethiopia, and mentioned its value of making easier the enforcement of criminal law in Ethiopia[9]. On the other hand, Dr.Dejene argues that the Ethiopian criminal code of 2004 under Articles 525 and the following provisions seemingly reflects cases of strict liability in criminal legislation[10]. Does Ethiopia have envisaged the concept of strict criminal liability of any sort? One may say that there is no strict criminal liability having regard Article 50(4), 57(3), and 58 (3) of the 2004 criminal code. Others may have taken the position that there is the notion of strict criminal liability having regard of both the general and special parts of the 2004 criminal code.

This study is, therefore, designed to investigate whether the Federal criminal legislations envisaged strict criminal liability offences of any sort and then, to explore and examine the values (or roles or justifications) of strict criminal liability offences in Ethiopia. In addition to these, this research aspires to assess the extent to which the strict criminal liability offences in Ethiopia serves for the common good and the constitutionality of strict criminal liability in light of the Federal Democratic Republic of Ethiopia Constitution.

1.2 Statement of the problem

The criminal justice administration in Ethiopia faces a number of challenges including, but not limited to, to appreciate the notion strict criminal liability offences in Ethiopian criminal legislations. Dr.Elias argues that the concepts of strict criminal liability offences are not

[7]. Kenneth W. Simons, mistake, and impossibility, law and fact, and culpability :A speculative essay,81J.CRIM.L&Criminology447(1990)504-507

[8]. ELIAS N.STEBEK(Dr.),PRINCIPLES OF ETHIOPIAN CRIMINAL LAW,(A TEXT BOOK)(2003)PP.133 and 200

[9].ibid

[10] .DEJENE GIRMA JANKA(Dr.),A HANDBOOK ON THE CRIMINAL CODE OF ETHIOPIA(2003)pp.32

envisaged under the Ethiopian criminal legislations[11]. However, he stipulates that the notion of strict liability offences is expected to develop realm of regulatory offences in Ethiopia, and mentioned its value of making easier of criminal law enforcement in Ethiopia[12]. On the other hand, Dr.Dejene argues that the Ethiopian criminal code of 2004 under Articles 525 and the following provisions seemingly reflects cases of strict liability in criminal legislation[13]. This research is, therefore, designed to investigate whether the Federal criminal legislations envisaged strict criminal liability offences.

Criminal law scholars disagree over where the blame should lie. One of the puzzling phenomena of contemporary criminal law is the endurance of strict criminal liability offences. Strict criminal liability has been relentlessly condemned as unjust and unfair, unconstitutional, doctrinally wrong, undermining the moral power of criminal law, and an ineffective deterrent[14]. Strict criminal liability's defenders argue that it is necessary to use the criminal justice system to enforce regulatory programs and to have the strict criminal liability doctrine available for that purpose[15]. Dr. Elias stipulates that the notion of strict liability offences is expected to develop in the realm of regulatory offences in Ethiopia, and mentioned its value of making easier of criminal) strict criminal liability offences in the law enforcement in Ethiopia. This study is, therefore, designed to examine the values (or roles) of strict criminal liability offences in Ethiopia.

In sum, this research will aspire to articulate and examine these and other related challenges to the Ethiopian model of administration of criminal justice.

1.3 objectives of the study

The overall objective of this study is intended as a contribution to the debate on whether the Ethiopian criminal justice system recognizes strict criminal liability offences and to explore the values of such liability in Ethiopia.

Specific objectives of this research:-In line with the overall objective of this study, this research aims to:

[11] .Supra note 8, ibid.
[12].ibid
[13].Supra note 10, ibid.
[14].Supra note 4, ibid.
[15].James B. Brady, Strict Liability Offences: A Justification(8 CRIM.L.BULL.217)(1972) PP.231

(1)Explore and examine the existence of strict criminal liability criminal offences under Ethiopian penal legislations

(2)Examine the values of strict criminal liability criminal offences under Ethiopian penal legislations

(3)Examine the constitutionality of strict criminal liability criminal offences in light of the Federal Democratic Republic of Ethiopia Constitution.

(4)To suggest some possible reform

1.4 Research questions

Based on specific objectives, this research study aims to answer the following questions:

(1)Whether there is /are strict criminal liability criminal offence(s) of any sort in Ethiopia federal penal laws?

(2)Whether of strict criminal liability criminal offence(s) of any sort in Ethiopia ensures order, peace and the security of the state, its peoples and, inhabitants for the public good?

(3) Whether the notion of strict criminal liability criminal offences in Ethiopia conforms to the percepts of the Federal Democratic Republic of Ethiopia Constitution?

(4) What tests have been applied by the federal courts? How have strict liability in criminal law been designated?

These and other related questions are hoped to be raised and answered based on the analysis of the texts of the Federal Democratic Republic of Ethiopia Constitution and other relevant legislations.

1.5 Methodology and sources of information

The information in this thesis is gathered from interviews with concerned officials, books, laws, cases, and periodicals. Moreover, the researcher made personal observation throughout the study and attend court proceedings.

The interpretive nature of this research study is grounded in the field of qualitative research since it is basically concerned in identifying key issues as to the challenges of the notion of strict

criminal liability in relation to administration of criminal justice in Ethiopia. Data collected is continuously interpreted since qualitative research study is inherently reflective. The researcher is committed to pondering the impressions and deliberating recollections. Legal as well as socio-legal method will be applied in analyzing the information collected. The author basically makes use of the Federal penal legislations to examine the question whether there is strict liability in Ethiopian criminal law.

1.6 Significance of the study

The purported research study attempts to clarify some of the key issues revolving around administration of criminal justice in Ethiopia. The study will first provide some additional insight into definitions and conceptualizations of strict criminal liability offences. Secondly, it will examine whether the Ethiopian criminal justice acknowledges strict criminal liabilities. Thirdly, the findings will provide a means for examining the feasibility of strict liability criminal offences in Ethiopia to achieve the basic objectives of the Ethiopian criminal justice administration. Fourthly, this study examines the constitutionality of strict criminal liability criminal offences in light of the Federal Democratic Republic of Ethiopia Constitution. Fifthly, assist the government in reforming the Ethiopian criminal justice administration. In addition, it contributes in the debate concerning the study and in its being a reference for those who are interested in the study of administration of criminal justice in general and particularly in the Ethiopian context.

1.7 Ethical considerations

During data collection which requires permission of individuals or authority, the researcher will take due care to get the permission and to properly preserve and to take appropriate measures to any possible harmful information during the data collection process. The researcher will also guarantee to handle data properly so that it does not fall into the hands of other researchers who might appropriate it for other purposes. Further, in the interpretation of data, the researcher will provide an accurate account of the information and will not use language or words that are biased against persons because of racial or ethnic group or other grounds.

1.8 Rule of citation

The Addis Ababa University College of law and good governance rule of citation is pursued throughout the research.

1.9 organization of the study

The thesis contains a total of three chapters. The first chapter is an introductory part. The second chapter deals mainly with the concepts, purposes (justifications) of strict criminal liability and arguments against strict criminal liability as well as classifications of strict criminal liability in general. In chapter three, a thorough study is made on the normative and practical perspectives of strict criminal liability in Ethiopia. The conclusion and recommendations part provide a holistic overview, it draws together the questions that have been raised and the conclusions that have been reached. It indicates whether strict criminal liability is an appropriate means of criminal justice administration in Ethiopia and wind up by providing some recommendations.

1.10 Limitations of the study

There were some limitations from the outset and during the study that made the road difficult to accomplish the task but the researcher exerted utmost effort to produce this thesis. The major challenging limitation, among others, are jurisprudential dearth in Ethiopia related to the area of study, the low level of awareness about the notion and the role of strict criminal liability offences among the federal law enforcement agencies personnel. Of course, time shortage and financial constraints were also obvious limitations as well.

1.11 The scope of the study

This research study is limited to exploration of the notions and the roles of strict criminal liability offences in the Federal criminal laws. In addition to this, it examines its constitutionality via Federal Democratic Republic of Ethiopia Constitution.

CHAPTER TWO

Strict Criminal Liability: Theoretical perspectives

2.1 Some preliminaries about criminal law in general

Criminal law is one of the oldest of the major branches of public law. It spells out rules of conduct for society to follow and provides penalties when those rules are broken. Every criminal offence is made up of essential ingredients called elements. Normally, the onus of proof rests on the prosecution to prove each element of the criminal offence beyond reasonable doubt before an accused can be convicted of a crime. It is a general principle of criminal responsibility that the crimes are divided in to what can be referred to as objective elements and subjective elements, traditionally known as *actus reus* and *mens rea* respectively. Objective ingredients refer to external events, the acts or omissions that are prohibited. Subjective elements refer to the state of mind that must present at the time of the commission of the physical element(s). Depending on the criminal offence and the policy of the criminal law of a particular state; fault may be established by proving knowledge, intention or negligence about the facts of the case, and/or the law governing the facts of the case.

There is a general understanding that *mens rea*, an evil intention, or a knowledge of the wrongful nature of the act, is an essential ingredient in every criminal offence; but that general understanding is liable to be displaced either by words of the statute creating the criminal offence or by the subject matter with which it deals, and both must be considered. The general principle that fault is required can be rebutted by clear words in the statute or by necessary implication. It is commonly observed that there are different types of strict liability offences and different meanings of strict criminal liability offences[16]. In this chapter I generally discuss and examine different types of strict liability offences and different meanings of strict criminal liability offences in general as well as other relevant matters of this research.

The literature review of this study revolves around the following issues; criminal liability, strict criminal liability, moral blameworthiness, criminal wrongdoing, and other relevant variables

[16] .Douglas N. Husak, Varieties of Strict liability (8 Canadian journal of law and jurisprudence 189, 1995) pp189. ;Stuart P. Green, six senses of strict liability: A plea for formalism in AP semester ed., Appraising strict liability(oxford university press)(2005)pp.100

which affect the traditional notion of criminal liability. The purpose of reviewing scholarly studies is to show the different types of strict criminal liability, the different meanings of strict criminal liability and to examine the inter face between fault based criminal liability offences and strict criminal liability offences.

Over the last century, many scholars have dealt with the above issues from different perspectives. However, there has never been somehow an agreement on the definition, the legitimacy, fairness and effectiveness of strict criminal offences. Indeed, the concept of strict criminal liability as used in contemporary studies is so illusive and often enigmatic. The following analysis aims to provide some direction through the jungle of conceptual and definitional imprecision that is prevalent in the fields of criminal law. At best the description suggests one possible and hence tentative interpretation of what may be regarded strict criminal offences and the operational definitions of key terms used in this study as well.

Before exploring the theoretical issues about strict criminal liability, it is import to clarify some relevant concepts relating to law in general and criminal law in particular. It is provided hereinafter. Law is the pillar of any society, an instrument of stability and above all, the machinery for regulating the conduct and activities of the individuals and institutions of the society[17]. Every society, therefore, creates law in order to regulate the conducts of the citizenry. Hence, law is better understood in terms of its role in the society.

The criminal law is the principal law of the crimes. It is also the substantive law which prescribes what crime is, the type of acts or omissions which the law prescribes or proscribes; as well as the sanctions for violations or none compliance. The criminal law imposes restrictions on human activities or omissions. This is suggestive that law generally and criminal law in particular is anti thesis freedom. In this context, freedom would mean, not liberty to do whatever pleases as but liberty to do whatever we want within the limits imposed by the criminal law. Viewed from the opposite perspective, criminal law expands than contrasts our freedom. The reason is that man is not just an individual, living alone in an unrestrained state of nature. Rather, he is a human being living in a community with other humans and the criminal law merely exists, in the

[17] .Andrew Ashworth, principles of criminal law, 4th.ed.(oxford, oxford university press,1998)pp.432-436;Douglas N. Husak, Varieties of Strict liability,(8 Canadian journal of law189,1995)pp.543

circumstance, to limit our freedom with the objective and reality of expanding of our freedom as a whole.

There no single law on crimes. Criminal law is written, and forms part of criminal statute laws. There are special regulations and laws, such as proclamations applicable to corruption offences, tax offences, environmental offences and terrorism that include penal provisions and thus fall within the domain of Ethiopia criminal law, but that are not included in the criminal code. In pre Ethiopian occupational times, criminal law was contained in various ordinances. Few laws are as vital to human beings as that of Criminal law, and we may expect any system of law, however primitive, to provide rules for preserving and maintaining peace and order in the community. Human life and human society, as we know them, would be impossible without law and order. Criminal law is the most basic part of public law which regulates the relationship between the state and the people, and as between the community. Criminal law then is essential to life, property and liberty of human beings. A society lacking all respect for law and order would quite clearly be unviable. Obviously life, liberty and property in society would be completely impracticable in the absence of law and order. For this reason, criminal law must provide for the safeguarding of life, liberty and property of the people.

Section 1.02(1) of the model penal code of the US uses the title purposes and principles of construction[18]. However, it stipulates the object of the criminal law in general includes the followings:

1. To forbid and prevent conduct that unjustifiably and in excusably inflicts or threatens substantial harm to individual or public interests.
2. To subject to public persons whose conducts indicates that they are disposed to commit crimes.
3. To safeguard conduct that is without fault from condemnation as the criminal.
4. To give fair warning of the nature of the conduct declared to be a criminal offence.
5. To differentiate on reasonable grounds between serious and minor criminal offences.

[18] .US Model penal code(American law institute 1962)

These stated objectives are by no means exhaustive, neither are they adequate. For instance, criminal law punishes strict criminal liability offences and these offences are without fault to enhance public safety and welfare. There are four aims of the criminal law. These are:

1. Retribution
2. Deterrence (General or specific)
3. Incapacitation
4. Rehabilitation and reformation.

But punishment is a method by which criminal law seeks to achieve its larger objectives. The objectives of criminal law should, therefore, not be confused with the objectives of a dispositional method, which may differ from one convict to another or from one occasion to another. Punishment looked largely from two different perspectives. One, we can regard punishment as a method of protecting society by reducing the occurrence of criminal behavior. Secondly, we can consider it as an end itself. Punishment can protect society by deterring potential offenders, by preventing the actual offenders from committing further offences and by reforming and turning him into law-abiding citizen. The problem of punishment consists largely of the competing claims of the deterrent theory, reformative theory, and retribution theory. Deterrence acts on the motives of the offender, actual or potential; disablement consists primarily in physical restraint. Reformation, by contrast, aimed at therapy of the criminal character in order to make him law-abiding member of society.

Criminal law has the general function briefly stated above and the particular function stipulated under Article 1 of the criminal code of 2004. It states that *the purpose (object)* of the criminal code of the Federal Democratic Republic of Ethiopia is to ensure order, peace and the security of the state, its peoples, and inhabitants *for the public good*[19]. The term peoples have been supplemented in the 2004 criminal code of Ethiopia in recognition of the Ethiopian nations, nationalities and peoples. The order, peace and security of the state, its peoples and individuals are interdependent.

[19].The Criminal Code was enacted as Proclamation No.414/2004 and came into force as of 9 may 2005.It is referred to as the 2004 Criminal Code in this paper because of the designation of the proclamation, i.e., proclamation No.414/2004.

Yet it may, at times, be difficult to strike a balance between the interest of the state and individuals where both interests seem to be legitimate but in conflict. The terms for the public good under Article 1 of the 2004 Criminal Code can serve as a tool of interpretation during such ambiguities. However, diverse political, philosophical, religious and cultural views inevitably influence our conception of public good. The libertarian, for instance, tends to emphasizes individual autonomy and self-interest while the Utilitarian considers the interest of individuals within the context of the larger community[20]. Yet utilitarian's do not perceive community in the abstract, but as a body composed of individual persons who are considered as its members, and they consider the interest of the community as the sum of the interests of the several members who compose it. The word public good under the 2004 criminal code tends to imply the utilitarian conception of good namely, the greatest good for the greatest number of people. According to Graven's commentary on Article 1 of the 1957 penal code of Ethiopia (nowadays under article 1 of the 2004 criminal code), whichever angle one looks them, penal prescriptions aim at protecting society and, are in this sense, purely utilitarian[21]. In other words, the interest of society (and by implication, the state) prevails whenever legitimate interest of the state and an individual are in conflict[22].

Unless the conflicting interests are both lawful and legitimate, however, the issue of preference cannot arise because the validity of interests does not merely depend on the number of people on either side. The Criminal Code of 2004 further stipulates that *it aims (goal) at the prevention of crimes* by giving due notice of the crimes and *penalties prescribed by law* and *should this be ineffective* by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson to others, *or* by providing for *their reform and measures* to prevent the commission of further crimes (emphasis mine). Thus, by stating that criminal prescriptions are intended to ensure order and peace *for the public good*, article 1 of the 2004 Criminal code indicates that the Criminal code is not primarily concerned with the protection of private rights but also with the protection of society at large.

[20] .Jeremy Bentham, *An Introduction to the principles of morals and legislation,* Ch. I. Iv(1789)pp.100
[21] .Graven Philip Graven ;*An Introduction to Ethiopian penal law:Arts.1-84 penal code*(ADDIS ABABA :HAILE SELLASIE UNVERSITY AND OXFORD UNVERSITY PRESS)PP.57
[22].ibid

It is the criminal law that defined what a crime is. I will introduce the various definition of the crime hereinafter. There are many answers to the question what is a crime? To a practicing lawyer, a crime is anything under the criminal law-the criminal law being that breaches of the law dealing with state punishment[23]. Yet, as many legal commentators point out, not all state punishments are part of the criminal law-civil penalties and civil contempt of court are just two examples. Another answer to what is a crime? It is provided by criminologists. They emphasize the need for a broader, social context[24]. Crimes are not simply artificial creations of the law, like a *cestui que* trust, or a negative covenant. Instead, criminal law has a crucial dimension. A successful prosecutor does not simply result in a defendant being held liable for breach of a legal prohibition-instead he is convicted of committing a crime-he is found guilty of the charge against him. These are socially expresses terms. The criminal law serves an important condemnatory function in social life-it makes out some behavior as especially reprehensible, so that the machinery of the state needs to be mobilized against it. The two preceding answers are not of course in conflict. They are simply addressing different concerns.

A philosophical understanding of the nature of crime, i.e.an account of the basic features of criminal liability that explains its normative status and a philosophical analysis seeks to explain what makes them special-what makes it appropriate for the law to treat them specially, and what types of things merit this special sort of treatment[25]. A substantive criminal law is considered as the category of public law that prohibits crimes, that is acts that are capable of being followed by criminal proceedings and punishments[26]. According to this instrumental definitional perspective, a crime may be understood to mean an act or omission or a state of affairs which infringes the substantive criminal law which may be followed by prosecution in criminal proceedings, conviction and punishment[27]. As Allen noted, such instrumental definition of a crime does not reveal the characteristics of acts which are defined as criminal[28] because it does not enable us to classify an act as a crime on the basis of its intrinsic content and essence. He further states that

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[23] .Grant Lamond, *what is a Crime*?,(oxford Journal of Legal Studies,Vol.27,No.4,2007) pp.609-612;G.Williams,*The definition of crime, current legal problems* 107(1995)pp.130-134;A.Simester and G. Sullivan, *Criminal law: Theory and Doctrine*(Oxford: oxford University press,3rd edn,2007)pp.2-5

[24]. Supra note 22,ibid

[25].ibid

[26] .A.P. Simester and G.R. Sullivan, Criminal law: theory and doctrine(oxford Hart publishing,2nd ed.,2003)pp.1

[27] .Michael J. Allen, Textbook on criminal law,8th ed.(oxford: oxford university press,2005)pp.1-2

[28].ibid

such definition of the crime is limited usefulness since it only indicates which acts are criminal by reference to consequences which may ensue from there commission; it tells us nothing about the purpose of substantive criminal law or why a particular act as regarded as a criminal act and therefore, the definition is essentially concerned with the legal consequences of the conduct[29].

Carrara's defined a crime as "an offence consists of the violation of a legal prescription, resulting from human behavior, whether positive or negative, which is prohibited under pain a criminal sanction[30]. The three ingredients of Carrara's definition of crime are the followings: the violation of a legal prescription (which is regarded as the legal element of a crime), resulting from human behavior, whether positive or negative (which is regarded as both the material and moral elements of a crime), and the criminal penalty. As Graven observes, Carrara's definition has mainly shaped article 23 the 1957 penal code[31] and this definition now a days has been incorporated under the present the Ethiopian Criminal Code of 2004.

Sub article 1, first paragraph, of article 23 of both the 1957 Penal code and the 2004 Criminal Code of Ethiopia stipulates that a crime is an act which is prohibited and made punishable by law. Further sub article 2 of article 23 of the same codes states that a crime is only completed when all its legal, material, and moral ingredients are present. This statutory definition of a crime does not expressly or impliedly address the intrinsic nature of the conduct that is prohibited under the substantive criminal law. The framers of both codes do not define a crime in terms of its intrinsic content and essence.

Smith and Hogan does not attempting to define the term offence or crime but rather they discuss the characteristics of a criminal offence. They argued that it is difficult to define a term offence or a crime based on the intrinsic ingredients of a conduct "a particular act shall become a crime or an act which is now criminal shall cease to be so depending upon the legislature enactment[32]" since it has the power to enact acts that are wrongs.

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[29] .ibid

[30] Carrara,in Philip Graven ;An Introduction to Ethiopian penal law:Arts.1-84 penal code(ADDIS ABABA :HAILE SELLASIE UNVERSITY AND OXFORD UNVERSITY PRESS)PP.57

[31] .ibid

[32]. John smith, Smith and Hogan criminal law(10th ed.,2002,London:lexis nexis butter works)pp.15

The first step in understanding of the nature of criminal liability is to distinguish fault-based crimes (*mens rea* crimes) from crimes of strict liability. The criminal law may encompass both categories of criminal liability depending upon the policy of the particular state. Strict criminal liability has a narrower and a broader use. In its narrower sense, it refers to a crime that lacks any *mens rea* element. In its broader sense, it refers to crimes where some element of the *actus reus* of the crime lacks a corresponding requirement for *mens rea*, i.e.to cases of constructive liability. Fault-based liability refers to crimes where each element of the *actus reus* has a corresponding element in *mens rea*. It is virtually undisputed that the criminal law should not touch innocent conduct, but rather it should punish only culpable action[33]. That means, there is remarkable agreement in general, the legal system must not impose punishment unless the defendant is blameworthy or bears moral responsibility for his act. Both historically and currently, the criminal law initially situates that culpability in the element of *mens rea*[34]. Smith argues that *mens rea* is meant to demonstrate at least "modicum of moral blameworthiness as a precondition to punishment.[35]" Stuart Green defines culpability as "the moral value attributed to a defendant's state of mind during to which an individual offender is blameworthy or responsible or can be held accountable.[36]" It is the state of mind that the prosecution, to secure a conviction, must proof that a defendant had when committing a crime[37].

It is generally believed that *mens rea* and *actus reus* in combination expresses culpability. What is required for culpability in every crime is that the offender must either intentionally or negligently perform some bodily movement that is sufficient to accomplish the prohibited act. Unless such a sufficient act is performed, no criminal liability for completed crime – the ultimately undesirable state of affairs the law seeks to avoid- is possible. Properly understood, then, the law prohibits culpably engaging in conduct sufficient to produce the prohibited, harm

[33] .R.George Wright, The progressive logic of criminal Responsibility and the circumstances of the most deprived,43 CATH.U.L.REV.(1994)pp.459-460

[34] .Stepen F.smith, proportional mens rea,46 AM.CRIM.L.REV.127,(2009)pp.127

[35] .ibid

[36] .Stuart p. Green, why it's a crime to tear the tag off a mattress: over criminalization and the moral content of regulatory offences,46EMORY LJ.(1997)PP.1547-1548

[37] .Black's law Dictionary 429(9th ed.,2009)pp.1075

full state of affairs in the ordinary course of events. However, it is generally believed that *mens rea* and *actus reus*, separately and in combination, expresses culpability[38].

The voluntary act principle argues that there can be no criminal liability in the absence of a voluntary act[39], i.e. no person is guilty of a crime unless he commits a voluntary act[40]. Though a general rule is that the prosecution has the burden of proving that an accused possesses the two tradition ingredients criminal liability (the objective and subjective element of a crime), there is an exception to this rule. The exception to this general rule is strict criminal liability. Under the exceptional rule, the mind of the accused, whether in respect of one or more or any objective elements, is irrelevant in establishing criminal liability.

For criminal law purposes, an act is any intentional or negligent bodily movement accompanied by a culpable mental state of the accused Persons[41]. Action has been defined as intentional or negligent bodily movements rationalized by reasons[42]. Intentionally uttering words- so called speech acts- is surely included in the definition of action. For instance, the act required by the definition of solicitation and conspiracy is accomplished primarily by words. In other words, an act involves volitional or willed physical activity (behavior) and is usually defined as willed muscular (bodily) movement. Having said these, I will then goes, hereinafter, to elucidate and inquire the conceptions of strict liability in criminal law as presented by text writers.

2.2 The concept of strict criminal liability

The conceptions of strict liability in criminal law as presented by text writers heretofore referred to will be observed and discussed. The conceptions of strict liability in criminal law as presented by text writers furnishes us the better and more serviceable one for solving the research questions(problems).As I have stated earlier, it is generally observed that there are different types of strict criminal liability offences and different meanings of strict criminal liability offences.

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[38] .Simon, infra note 62,pp.188

[39]. Larry Alexander, Social philosophy and policy,vol.7 issue 2,ISSN 0265-0525(2001)pp.85

[40] . JOSHUSA Dressler, understanding criminal law(Newyork, Oakland, and Albany: Matthew bender,1st.ed.1987)pp.65

[41] .Catherine Elliott and Frances Quinn, Criminal law,5th ed.(Harlow: Pearson Education ltd)pp.8-10;Glanville Williams, Textbook of Criminal law,2nd ed.(London: Stevens & sons) pp.166

[42] .W. Robert Thomas, on strict liability crimes-preserving a moral framework for criminal intent in an intent-free moral world(2014)pp.100

Black's law dictionary has defined a strict criminal liability offence as "a crime that does not require *mens rea* element.[43]" As per this definition the defendant need not have intended about that conduct or consequence. Criminal liability is said to be strict with regard to that element. Therefore, a strict liability crime is one in which the mental state of the accused with respect of the corresponding act is irrelevant: the state need only show that the defendant engaged in a voluntary act or an omission to perform an act or duty which the accused was capable of performing. This definition refers to strict criminal liability which no mental state is required at all and, it does not encompasses other types of strict criminal liability. For instance, it does not denote strict liability offences which do not require mental state as to one or more elements of the crime.

Strict criminal liability is conventionally understood as criminal liability that does not require the defendant to possess a culpable state of mind[44]. Based on this conventional understanding, strict criminal liability does not requires neither intention nor negligence. Modern criminal codes typically includes as possible states of mind the defendants intention to bring about a prohibited circumstance, his belief that such a result will follow or that a prohibited circumstance will exist, his recklessness to such a result or circumstances[45]. Imposing criminal liability in the absence of such possible culpable state of mind, then strict criminal liability is simply criminal in the absence of intention, belief, recklessness or negligence. Strict criminal liability can be defined as a form of genuine fault in the sense of a requirement of extra- ordinary care.

Dressler defined strict criminal liability as "crimes, by definition, do not contain a *mens rea* requirement regarding one or more elements of the *actus reus*.[46]" According to Dressler, the term strict liability encompasses both crimes which no mental state of the accused with respect to the *actus reus* is required generally and crimes for which no *mens rea* of the accused is required as to a particular element of the *actus reus* of the crime. However, Husak asserts that the criminal law employees a wide variety of conceptions of strict criminal liability.[47] He, further, offered a very

[43] .Supra note 36,pp.1058
[44] .Philip E. Johnson, strict liability: The prevalent view ,in Encyclopedia of crime and Just(Sanford kadished ed.1983)pp.1518
[45] .Modern penal code $2.02(1985)
[46] . JOSHUSA Dressler, understanding criminal law(Newyork ,Oakland, and Albany: Matthew bender,2nd.ed.1995)pp.355-356;wayne R.Lavave,1 substantive criminal law$5.5(2nd.ed.,2003)pp.67
[47].Husak, supra note 16,pp.189

different classifications and analysis of strict criminal liability and argues that no single concept of strict criminal liability exists; rather strict criminal liability describes the conclusions, in any of a number of quite dissimilar contexts, that the accused is substantially less culpable that the paradigm perpetrator of the crime[48]. He claims that the different types of strict criminal liability are incommensurable; that the strictness of criminal liability is a matter of degree; and that no actual imposition of strict criminal liability has to the maximal extent.

In addition to this, Hussak mentioned examples of different types of strict criminal liability such as liability without *mens rea* (no fault at all, liability for non voluntary conduct that includes a voluntary act, liability for innocent activity, vicarious criminal liability, liability that is not fully defeasible by justifications, and strict procedural liability. Thus, according to Hussak, strict criminal liability properly understood encompasses more doctrinal issues that it is ordinarily understood to cover.

While there are numerous varieties of strict criminal liability definitions, for the purpose of this paper, the definition of strict liability will be those criminal offences that lack a *mens rea* requirement for one or more material elements (*actus rus*) of the crime. Of course, the paper also used the definition of strict liability in criminal law to include the absence of the requirement of the legal element as a pre condition of penal sanction.

We need to differentiate strict criminal liability with respect to results, circumstances, and conduct element of an offence; to distinguish strict criminal liability from absolute criminal liability; to distinguish formal from substantive strict criminal liability; to distinguish pure from impure strict criminal liability; to distinguish strict criminal liability in criminalization from strict criminal liability in grading; and distinguish factual strict criminal liability from strict criminal liability with respect of governing law. Thus, I will explore such various classifications of strict criminal liability as follows.

[48] .ibid

2.3 Classifications of strict criminal liability

2.3.1 Strict criminal liability and Absolute criminal liability: A note on terminology.

Strict criminal liability and absolute criminal liability are generally of a regulatory nature and where it is particularly important to maximize compliance (e.g. public safety or protection of the environment)[49].However, they are nowadays expanding to incorporate real offences. Regulatory offences are often used in contrast to real offences; which intimates that offences classed as regulatory are not really criminal. Regulatory offences are often referred to as crimes that, without the provisions criminalizing them, are not wrong in themselves(malum prohibita)[50].In comparison, real offences are morally wrong and are seen as such even without legislative prohibition(mala in se)[51].It is based on the assumption that the imposition of strict criminal liability and absolute criminal liability promotes the objects of the criminal legislation and deterrence, that is, it will be effective to promote the objects of the law by encouraging greater vigilance to prevent the commission of the prohibited act[52].

It is commonly observed that there are different types of strict criminal offences and different meanings of strict criminal liabilities. Strict criminal liability refers to criminal liability where the offender's mental state is irrelevant, in respect of one or more of an offence's objective elements of the offence[53].Accordingly, an offence is one featuring strict criminal liability: A Strict disability offence- if for at least one aspect of its *actus reus* no corresponding fault element is required to be proved and there is no defense of mistake of fact available in respect of that objective element. It also refers to criminal liability despite the absence of any fault on the part of the accused in respect of the elements of a criminal offence.

According to Elliot, however, strict criminal liability refers to cases where there are no fault elements for any of the physical elements of the offence and there defense of mistake of fact is

[49].Richard G. Singer, The resurgence of mens rea: The Rise and Fall of strict criminal liability,3Ob.c.l.rev.337(1989)pp.339-345

[50] .W. Robert Thomas, On strict liability crimes: Preserving A Moral Framework For criminal intent in an intent-free moral world,110MICH.L.REV.647(2012)PP.647-655

[51]. ibid

[52] .Noam Sher, New Difference between Negligence and strict liability and Their implications on medical malpractice Reform(southern California interdisciplinary law Journal,vol.16:335,2007)pp.335-345

[53] Ra Duff, Answering for crime(Hart publishing,2007)pp.560;Mark coen, whither strict liability 25ILT 77(2007)pp.654

available[54]. He further purported that strict criminal liability also refers to cases where there are no fault elements to a particular physical elements of the offence and the defense of mistake of fact are available with respect to that objective element[55]. That means, a strict liability criminal offence refers to a crime which does not require proof of fault; however a defense of mistake of fact is available, in addition to other recognized defenses, to those charged with a strict liability criminal offence. This protects people who have committed the physical elements of a crime from conviction if they honestly and reasonably believe in certain facts that, if true, would make their actions innocent. The prosecution need only prove that the accused performed the physical elements of the crime and, once that is proved beyond reasonable doubt, the crime is made out. In R v TOLSON, Cave J observed that:

> At common law an honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a prisoner is indicted an innocent act has always been held to be a good defense. This doctrine is embodied in the somewhat uncouthmaxim,'actus non facit reum,nisi mens sit rea.' Honest and reasonable mistake stands in fact on the same footing as absence of the reasoning faculty, as in infancy, or perversion of that faculty, as in lunacy…[56]

In this paper I generally use the term strict liability criminal offence to refers to a crime which does not require proof of fault in general. To put in other words, offences of strict liability require proof that the defendant performed the prohibited conduct, but do not require proof that the defendant was blameworthy. The prosecution need only prove that the accused performed the physical elements of the crime and, once that is proved beyond reasonable doubt, the crime is made out. Strict liability offences should be distinguished from negligence based offences where the prosecution must demonstrate that the defendant acted unreasonably. However, the line between a strict liability offence and a negligent based offence is somewhat blurred where a statute does not require proof that defendants acted unreasonably, but the defendants will have a defense if they can prove they acted with due diligence in avoiding the prohibited harm[57].

[54] .Ian leader-Elliot, The common wealth criminal code, A guide for practitioners(2002)pp.116
[55] .ibid
[56] .ibid
[57].A.Brudner, The Unity of The Common Law,(Berkeley: University of California Press,1995)pp.454-456

Absolute criminal liability refers to cases where there are no fault elements for any of the objective elements of the crime and the defense of mistake of fact is unavailable[58]. It also understood to mean criminal liability in the absence of fault with respect to particular objective elements of the criminal offence and the defense of mistake of fact is unavailable in relation to that physical element of the offence[59]. The prosecution need only prove that the accused performed the physical elements of the crime and, once that is proved beyond reasonable doubt, the crime is made out. However, the existence of absolute criminal liability does not make any other defense unavailable that is recognized under the criminal code of any country.

Hence, liability is strict to the extent that the prosecution is absolved from the obligation to prove neither intention nor negligence with respect to one or more elements of the offence. To put in other words, liability is strict with respect to a particular objective element of a crime if it is unnecessary to prove fault, but a defense of reasonable mistake of fact with respect to that element bars liability of the offence. With respect to absolute liability, liability is absolute with respect to that element when the prosecution is not required to prove fault and reasonable mistake of fact is no excuse.

Therefore, the sole difference between strict and absolute modes of criminal liability is that the later mode of criminal liability does not even permit a defense of due diligence or a reasonable mistake of fact. However, some argues that strict criminal liability refers to cases where there are no fault elements for any of the physical elements of the offence and there defense of mistake of fact is available. Strict criminal offences and absolute criminal offences, however, are alike in the absence of any requirement that the prosecution prove intention or negligence or any other variety of faults.

In short, the defining features of strict criminal liability are the absence of any requirement of fault, whether for all or some of the objective elements of a criminal offence coupled with the provision of the defense of reasonable mistake of fact, in addition to the general criminal defenses, while the defining features of absolute criminal liability is one which does not include a fault element, that is, that the defendant knew, intended, was negligent to the fact that he/she

[58] .Supra note 53, ibid.
[59] .ibid

might be committing the crime and the defense of mistake of fact is unavailable in relation to that physical element of the offence in respect of which his *mens rea* is irrelevant.

2.3.2 Formal and substantive strict criminal liability

The term formal strict criminal liability refers to case where the governing law expressly does not requires *mens rea* of the *actus reus* of the crime[60]. On the other hand, substantive strict criminal liability meant to mean criminal liability that fails to require, in substance while formally it requires, a degree or type of culpability sufficient to justify punishment on a retributive theory[61]. For example, non-consummate offenses are not ordinarily considered to raise a strict criminal liability issue, but, in substance they do.

Just to show by way of examples, let me begin with two examples to set the stage[62]. First, suppose that a rash of forest fires prompts a law making body to consider enacting a law prohibiting any person from causing a fault fire, with a penalty of six years of rigorous imprisonment. So the legislature responds by enacting a law prohibiting any person from knowingly carrying a matter in or near to forest, with a penalty of six years of rigorous imprisonment if any person who knowingly carries a match thereby causes a forest fire. Should the law professors be appeased they should not be, since the modified proposal expresses a formal rather than substantive kind of fault? In substance, that is, the proposal imposes strict criminal liability, by failing to require a degree on type of culpability sufficient to justify punishment on a retributive theory.

In most legal systems, the legislatures apply the strategy of prohibiting possession of particular item that could contribute to the ultimate harm, rather than simply regulating the ultimate harm. Schulhofer has distinguished between statutory and ultimate harm[63]. The criminal law, in variety of ways, regulates conduct, non consummate harms, or increases the penalty over what it would otherwise be, precisely because of the risk that these might contribute to an ultimate harm. Thus, we criminalize attempt and various inchoate conducts such as conspiracy, preparatory acts, thought, accomplice, and accessory after the act, possession of burglars' tools, driving

[60] Infra note 61,pp.1086-1087

[61] .infra note 63,pp.223-225

[62] .Kenneth W. Simons, When Strict Criminal Liability Just(Journal of criminal law and criminology,vol.87,Issue 4 summer,1997)pp.185-186

[63] .Stepen J. Schulofer, Harm and punishment: A critique of emphasis on the results of conduct in the criminal law,122U.PA.REV.1497(1974)pp.1505-1506

negligently, driving under the influence of alcohol and reckless endangerment[64]. We also punish burglary, (breaking and entering in to a home with the intent to commit a crime) more seriously than simple breaking and entering in to a home[65].

The criminal penalty for each of these offences reflects the risk that the criminal conduct might lead to an ultimate harm. If we were certain that the conduct could not lead to an ultimate harm. If we were certain that the conduct could not lead to an ultimate harm, and if the offender were similarly confident, then the criminal penalty could not be justified on retributive grounds. Of course, a more modest penalty for the underlying conduct might be justified in light of other harms that it causes, such as apprehension to by standers. However, offences such as negligent driving or driving under the influence of alcohol do not ordinarily require apprehension to others as an element of the offence.

These non consummate offences are not formally (ordinarily) considered to raise a strict criminal liability issue, but, in substance, they do. Husak argues that non consummate offences are substantive strict criminal liability[66].

Second, consider the crime of aggravated robbery. The crime of aggravated robbery treat very harshly defendants who commit robbery those cause a death, even if the defendant displays little or no culpability as to the death itself.

2.3.3 Pure and impure strict criminal liability

In "pure" strict criminal liability, no culpability is required as to any of the material elements of the crime[67]. In "impure" strict criminal liability, culpability is required as to at least one material elements of a crime. The limitation of culpability to the objective or physical elements of a crime underscores the point that strict criminal liability is problematic on a retributive theory only when the actor is liable despite lack of culpability as to the substantive harm that the legislature may justifiably punish.

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[64] .For a much fuller discussion of non-consummate offences, see Douglas N. Husak, Nature and Justification of non-consummate offences, 37 ARIZ .L.REV.151 (1995) pp.

[65] .ibid

[66] .Husak, supra note 16,ibid

[67] .Larry Alexander, Reconsidering the relationship among voluntary acts, strict liability, and negligence in criminal law, soc. phil. and policy(1990)pp.84

Thus, statutory rape is typically understood to involve "impure" strict criminal liability, in as much as the offender must intentionally have intercourse, even if he need not be culpable as to the age of the victim of the crime of statutory rape. By contrast, there are certain criminal offences that exemplify "pure" strict criminal liability, in as much as the criminal, need only cause defined forms of risks or harms and it is irrelevant that he/she lacked knowledge, negligence, or any other culpability in causing those risks or harms, The existence of strict criminal liability reveals that strict criminal liability can be worry even when the crime contains explicit culpability requirements (for instance, aggravated robbery or statutory rape).

2.3.4 Strict criminal liability in criminalization and strict criminal liability in grading

Strict criminal liability can be distinguished in terms of criminalization and grading, that is, strict criminal liability in criminalization is different from strict criminal liability in grading[68]. Strict criminal liability in criminalization refers to a criminal liability in the absence of culpability that criminalizes conduct that is otherwise not subject to any criminal sanction[69]. Paradoxically, strict criminal liability in grading is criminal liability in the absence of culpability that increases the criminal penalty that the offender would, otherwise, suffer[70]. Strict criminal liability in grading occurs where a defendant engages in criminal conduct that causes consequences other than those defendant engages in criminal conduct that causes consequences other than those the defendant intended or contemplated, and the defendant is held liable for the further consequences automatically and without proof of the usual *mens rea* required for conviction of further consequences.

A crime of disturbances resulting from acts committed in a state of culpable irresponsibility, as provided under article 491 of the Ethiopian Criminal Code of 2004, is an instance of strict criminal liability in criminalizing: the one who commits an act normally punishable with imprisonment for at least one year, while he/she is in a state of culpable irresponsibility, criminally liable in the absence of culpable conduct. By contrast, aggravated robbery is an instance of strict criminal liability in grading because the underlying robbery is already a crime, and the causation of death increases the penalty.

[68] .supra note 43,pp.1519
[69]. ibid
[70] .ibid

Peter Low asserts that there is no instance (apart from the distinct category of public welfare offences) when the criminal law uses strict criminal liability for one element of a crime without any inquiry in to fault on other elements[71]. Thus the culpability required for a given offence should be considered as a whole. Low, therefore, supports some strict criminal liability in grading[72]. In chapter three, I endorse and elaborate the views that the culpability for a particular offence should be considered as a whole.

2.3.5 Strict criminal liability as to facts and governing law.

The conventional analysis of strict criminal liability typically is concerned with strict criminal liability as to facts, but not such as to the governing law[73]. As per this conception, the culpability requirements apply only to the material elements of criminal offences[74]. Section 1.13 (10) of the model penal code provides that a material element is one "that does not relate exclusively to the statute of limitations, jurisdiction, venue, or to any other matter similarly unconnected with (i) the harm or evil, incident to conduct, sought to be prevented by the law defining the offence, or (ii) existence of a justification or excuse for such conduct.[75]"

The limitation of culpability requirements to material elements of an offence underscores, the point that the conventional understanding of a strict criminal liability focuses on strict criminal liability as to factual elements of a crime. However, Low argues that a substantive conception of a strict criminal liability also considers strict criminal liability as to law, but not just strict criminal liability as to factual circumstances alone[76]. Thus strict criminal liability refers to both to the material and legal elements of a criminal offence

There are two schools to thought propounding contrasting views on mistake or ignorance of the governing criminal law. The first one is utilitarian school of thought, which advocates for the adoption of the maxim of ignorance or mistake of law is non defense or excuse[77]. The other is pragmatic school of thought, which argues that mistake or ignorance of the substantive criminal

[71] .Peter W. Low, The Model Penal Code, The common law and mistakes of fact: Recklessness, negligence, or strict liability?19RUTC C.L.J(1988)pp.539-551
[72] .ibid
[73] .Supra note 43,ibid
[74] .Model Penal code,1.13(1998)(explanatory note)
[75] .The model penal code of united States; See also Jeremy Horder, A Critique of the correspondence principle in criminal law,CRIM.L.REV.759(1995)pp.767-768
[76] .supra note 69,pp.550-551
[77] .Supra note 8,pp.273

law affects a person's volition (no/ less than mistake or ignorance of a factual circumstance) and thus moral guilty, in the absence of which punishment or treatment becomes unfair[78].

In the next chapter, I will explore whether the Ethiopian criminal justice system adopts the utilitarian or pragmatic school of thoughts.

2.3.6 Strict criminal liability as to a circumstance, result, and conduct

The right understanding of the theory strict criminal responsibility requires, among other things, the need to differentiate strict criminal liability with respect to results, circumstances, and conduct of an offence[79].

There is a division between strict liability with respect to result element of an offence and strict liability with respect to a circumstance[80]. Aggravated robbery, in its most reverse form, is examples of strict liability with respect to a result- specifically, a death or permanent injury resulting from commission of the basic offense. That is the robber will be liable from the resulting death or permanent injury as if he had intended it, even if here is no proof of intent or negligence, or (perhaps) of any culpability, as to that results.

Statutory rape is a common example of strict liability with respect to circumstance- specifically. The circumstance of whether the female victim is below the statutory age. A defendant can be guilty of statutory rape even if there is no proof that he believed, or reasonably should have believed that she was below the statutory age. Thus, strict liability encompasses both liability for fault less accident (in bringing about the prohibited circumstance exists) and for faultless mistakes (in assessing whether a prohibited circumstance exists)[81].

I can also refer, not to lack of culpability with respect to a result or a circumstance, but to lack of culpable conduct[82]. Generally speaking, there can be no crime in the absence of culpable conduct. But, only on a certain types of conduct qualifies, namely, conduct that includes a voluntary act. In rare circumstances, a person may be presumed because of what he did not do-an

[78] .ibid
[79] .supra note 4,pp.535-538
[80] ibid
[81] .See Kenneth W. Simons, Mistake and Responsibility, law and fact, and culpability: A speculative essay,81J.CRIM.L.&criminology447(1990)pp.504-507
[82] .Supra note 4,ibid

absence of conduct. Proof of the act alone is insufficient to prove the defendant had the required state of mind.

2.4 Arguments for and against strict criminal liability offences

2.4.1 Arguments against strict criminal liability offences

Legal commentators have consistently denounced strict criminal liability on a variety of grounds[83]. Critics maintain that holding someone liable who did not flout the substantive criminal law cannot be justified on retributive, deterrent, incapacitation, or rehabilitative grounds. "By dispensing with any proof that someone acted with an evil intent, strict criminally ensnares otherwise law abiding, morally blameless parties and subjects them to conviction, public obloquy, and punishment, that is, it brands as a criminal someone whom the community would not label as blameworthy[84]". "By imposing criminal liability for conduct that no reasonable person would have thought to be a crime, strict criminal liability also denies an average person notice of what the substantive criminal law requires[85]". The result is to violate a principal universally thought to be a necessary predicate before someone can be convicted of a crime and to rob people of the belief, necessary for the law to earn respect that they can avoid criminal punishment if they choose to comply with the law[86]. People ought, in general, to be able to plan their conduct with some assurance that they can avoid entanglement with the criminal law. By the same token, the enforcers and appliers of the criminal law should not waste their time lurking in the bushes ready to trap precisely the fact that in its normal and characteristic operation.

The criminal law provides this opportunity and this protection to people in their everyday lives that make it a tolerable institution in a free society. Take this away, and the criminal law ceases to be a guide to the well, intentioned and a restriction on the restraining power of the state. Take it away is precisely what you do, however, when you abandon culpability as the basis for imposing punishment.

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[83] .Larry Alexander and Kimberly Kessler ferzan , crime and culpability: A theory of criminal law(2009)pp.71

[84].Laurie L. Levenson, Good faith defenses: Reshaping strict liability crimes,78 Cornell L.REV.401(1993) pp.404

[85].Herbert L. Packer, The limits of the criminal sanction 123(1968);Sanford H.Kadish, excusing crime,75 CALIFORNIA LAW REVIEW 527(1987)pp.267-268

[86] .H.L.A. Hart, legal responsibility and excuses,(1987)pp.28-53

By making in to criminal people who had no knowledge that their conduct was unlawful, strict criminal liability violates the utilitarian justification for punishment, since a person who does not know that he is committing a crime will not change his behavior[87]. Lastly, strict criminal liability flips on its head the criminal law tent that "it is better that ten guilty persons escape than that one innocent suffers[88]". Strict criminal liability accomplishes that result because it scarifies a morally blameless party for the sake of protecting society[89].

In sum, by punishing someone for unwittingly breaking the law, strict criminal liability statutes mistake early use a legal doctrine fit only for the civil tort purpose of providing compensation also mechanism for imposing criminal punishment. By so doing, they unjustifiably impose unnecessary evil[90], strict liability for a criminal offense is, in a phrase, fundamentally unjust.

2.4.2 Arguments for strict criminal liability

Strict criminal liability defenders argue that it is necessary to use the criminal justice system to enforce regulatory programs and to have the strict criminal liability doctrine available for that purpose[91]. In a modern industrial society, business will engage in various enterprises that are legitimate but inherently dangerous or potentially hazardous. Those corporations are in a far better position than the public to prevent the harm that can result from, for example, the improper manufacture of drugs or disposal of hazardous waste, so it is reasonable to place on those businesses the burden of preventing injury to the public[92].

Criminal prosecution is a necessary weapon because society needs the additional deterrent effect of criminal sanctions in order to protect the citizenry. The risk of strict criminal liability will have that effect in two ways. It will dissuade a party who is not committed to scrupulous compliance with safety protocols from entering potentially dangerous lines of work, and it will ensure that anyone line dividing lawful from unlawful conduct[93]. Moreover, anyone engaged in a highly regulated field or endeavor or in an inherently dangerous activity is likely to know that

[87] .Supra note 82
[88] .Alexander volokh, *Guilty men*,146U.PA.L.REV(1997)pp.173-174
[89] .Catherine L.Carpenter, *on statutory rape, strict liability and the public welfare offense model*,53AM.U.L.REV(2003)pp.313-324
[90] .packer note7at69
[91] .Supra note 15,pp.217;Steven S. Nemerson, *Note, criminal liability without fault: A philosophical perspective*,75COLUM.L.REV.1517(1975)pp.1570-1577
[92] .Supra note 82 pp.419-420
[93] .Richard A Wasserstrom, *strict liability in the criminal law*,12 STAN.L.REV.73(1960)pp.736-40

there are legal requirements defining safe and unsafe conduct that line of work has knowledge of the law or to demand that they acquire it[94].

In addition, the number of violations is so great that requiring the government to prove some *mens rea* element, including mere negligence, would tax the criminal justice system as to make it impossible for the criminal law to have the necessary deterrent effect, In a few instances, the public welfare has made it necessary to declare a crime, irrespective of the actor's intent. Finally, strict criminal liability powerfully signals society's intolerance for certain conduct by making irrelevant any issue other than whether the defendant committed it[95].

In sum, strict criminal liability is a legitimate and reasonable regulatory tool. While strict criminal liability imposes costs on society, it also has benefits, and in a democracy we permit legislatures to balance the costs and benefits that legislation imposes on the public[96].

The author of this paper view that debate over the philosophical question of whether the criminal justice system should use strict criminal liability will not come to rest any time soon, it ever. With these concepts in mind, I will explore some examples of strict criminal liability in Ethiopia in the following categories, results; circumstances; and conduct as well as strict criminal liability as to governing law.

[94] .Mark Kelman, interpretive *construction in the substantive criminal law*,35STAN.L.REV.591(1981)PP.605-6
[95] .Supra note 82,pp.420
[96] .supra note 91,pp.610-611

Chapter Three

Strict Criminal Liability in Ethiopia: Normative and practical perspectives

3.1. Strict Criminal Liability as to Facts.

One of the ingredients of a punishable criminal offence is the material element (*actus reus*) of an offence It involves the act or omission, the attendant circumstances in which the act or omission occurred, the cause and effect relationship between act or omission and the resultant. Strict Criminal liability as to facts refers to the material elements (*actus reus*) of a criminal offence. Factual awareness involves full knowledge of the nature, factual circumstances and consequences of one's action. The straight analysis of strict criminal liability typically is concerned only with strict criminal liability as to fact, not strict criminal liability as to governing law[97]. However, a substantive conception of strict criminal liability also considers strict criminal liability as to governing law, not just only strict criminal liability as to facts[98]. The fact-law distinction is difficult to draw, in any event. With these concepts in mind, hereinafter, I will talk about and scrutinize strict criminal liability as to facts and as to governing law in Ethiopia separately as well as the practices and views over the doctrine of strict criminal liability in Federal Courts.

Strict criminal liability as to facts refers to mean criminal liability that does not require the defendant to possess a culpable state of mind with respect to factual elements (objective elements) of a criminal offence. Just as I have stated hereinbefore, there is a distinction among strict criminal liability in criminalization and strict criminal liability in grading. Strict criminal liability in criminalizing is criminal liability in the absence of formal culpability that criminalizes conduct that is otherwise not subject to any criminal sanction. On the other hand, strict criminal liability in grading is criminal liability in the absence of (formal) culpability that increases the criminal punishment that the criminal would otherwise suffer. Strict criminal liability in

[97] .Supra note 69,pp.1518
[98] .ibid

criminalization is often pure strict criminal liability and strict criminal liability in grading tends to be impure strict criminal liability form, but this correlation is only approximate[99].

It might simplify our discussion to consider two classes of strict criminal liability to which mine inquires with respect to strict liability in criminal law may be directed. The first class of strict liability in criminal law can be represented by the cases of strict liability as to factual elements of a crime. The second one case is in the fields of strict criminal liability with respect to the governing criminal law.

Having said these, I will, in the next section, go on to discover and look at strict criminal liability as to facts in Ethiopian federal penal legislations, especially under 2004 Criminal Code of Ethiopia, in the subsequent categories: results, circumstances and conducts elements of a criminal offence. Then, the author of this paper will explore and examine strict criminal liability as to the governing law.

3.1.1-Strict Criminal Liability as to results

The physical (material) element(*actus reus*) is one of the three ingredients of a crime, and involves (1) the act or the omission (2) the material or concomitant circumstances in which the act or omission occurred (3) the cause and effect relationship between act/omission and the resultant harm or damage. From the perspectives of resultant harm, criminal offences can be divided in to criminal offences of result and criminal offences of conduct. Criminal offences of result requires resultant harm the crime to be completed and involves the issue of causal relationship between act and harm, while the criminal offences of conduct case mere commission, omission in infringement of substantive criminal law constitutes a criminal offence. Results can be understood as circumstances that the actor changes or has the power to change. The concept of strict liability in criminal law refers, among others, to the resultant harm element in the definition of a crime. I will see such liabilities in Ethiopia hereinafter.

To begin with, the Ethiopian Criminal Code of 2004(herein after Criminal Code of 2004) under article 671(2) states that the court may order rigorous imprisonment for life or in more serious cases, the death penalty *where* the acts of violence committed have resulted in permanent

[99] .Generally speaking, strict liability in grading is an impure form of strict liability, because the other less serious crime of which the criminal would be guilty will usually require culpability.

disability or death (of the victim)[100](emphasis added). The *actus reus* of the crime of robbery, as stated under article 670 the 2004 Criminal Code, involves abstraction of a movable object in a thing detached from an immovable and the use of violence, grave intimidation or other means that renders incapable of resisting. Where the criminal uses the act of violence towards a person with a view to facilitate the abstraction of a movable object or to render useless any resistance offered during or after the act of abstraction, it may end up with permanent disability or death of the victim. In such cases, Art.671 (2) of the 2004 Criminal Code, which states about grading element, comes to sight. However, it may not be intended by the offender who uses the violence. The offender may or may not uses the violence assuming that the level of violence in such magnitude and degree that does not risk the life or body of the person towards whom violence used. That is to say, the material circumstances or results that aggravated the robbery may or may not intended or known by the offender. Even if it is not known or intended by the offender, the causation of permanent disability or death increases (aggravated) the criminal penalty that the offender would not suffer if such results does not happen. The increment of criminal penalty for each of these grading elements reflects the risk that the underlying criminal conduct might lead to such results. The Criminal Code of 2004 in general and Article 671(2) of the Criminal Code of 2004 in particular does not require guilty mind (*mens rea)* as to the aggravating or grading element (result).

For example, the robber is strictly liable for a death or permanent injury which results from his act irrespective of intention or negligence on his part with respect of those results. However, the underlying robbery that triggers the causation of permanent disability or death of the victim itself requires culpability (*mens rea).* Aggravated robbery, as is provided under article 671(2) of the 2004 Criminal Code, in its most severe form, is an example of strict criminal liability in grading as to a result. Specifically, a death or permanent disability, resulting from the commission of violence, that is, the *actus reus* of the offence of robbery, that makes a liability strict. Whether the offender had the intention or negligence as to the result (a death or permanent disability) is irrelevant to obtain a conviction and he will be held guilty of the aggravated robbery by mere fact that his acts of violence have resulted in permanent disability or death of the victim. That is, the robber will be liable for the resulting permanent disability or death as if he had intended it,

[100] .The Criminal Code of The Ethiopian Federal Democratic Republic proclamation No.414/2004

even if there is no proof of intent or (perhaps) of any culpability as to the result of the act of violence.

Likewise, article 627(5) of the Criminal Code of 2004 stipulates that the punishment shall be rigorous imprisonment for life where the sexual outrage has caused grave bodily or mental injury or a death of the victim of the sexual outrage. For example, the rapist is strictly liable for a death or grave bodily or mental injury which results from his act irrespective of intention or negligence on his part with respect of those results. The offender may use the act of violence or any other means assuming that the level of violence or the means in such magnitude and degree that does not risk the life, body or mentality of the person towards whom violence or the means used. Even if it is not known or intended by the offender, the causation of permanent disability or death increases (aggravated) the criminal penalty that the offender would not suffer if such consequences do not occur. The rise of criminal penalty for each of these grading elements reflects the risk that the underlying criminal conduct (the sexual outrage) might lead to such results. However, the fundamental crime of statutory rape that triggers the causation of grave bodily or mental injury or death of the victim itself requires culpability (*mens rea).* The original crime of such grading element is, as provided under Art.627 (1) of the same Code, sexual conduct with a minor below the age of statutory limits. It (the underlying crime in respect of the age ingredient element of a crime) is strict because that the safeguard of minors from sexual exploitation by adults demands strict ruling of sexual activity, and with this goal, the notion that strict liability best serves this rationale. The sexual conduct element of this underlying statutory offence attaches blameworthiness, while it does not require as to a circumstance under which the underlying crime is made out.

On the same token, article 620(3) of the same Code states that where the rape has caused grave physical or mental injury or death, the punishment shall be life imprisonment. That means, the penalty for a criminal offence of rape shall be aggravated further where the rape has caused grave physical or mental injury or death, the punishment shall be life imprisonment. Even if it is not known or intended by the offender, the causation of permanent disability or death increases (aggravated) the criminal penalty that the offender would not suffer if such outcome does not take place. The increase of criminal punishment for each of these grading elements reflects the risk that the underlying criminal conduct (rape) might lead to such consequences. The underlying

crime of rape defined in article 620(1) of the same Code, which states that whoever compels a woman to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance, is punishable with rigorous imprisonment from five years to fifteen years. The offence of rape has two objective elements; the conduct of sexual intercourse and the use of violence or grave intimidation, or rendering unconscious or incapable. In respect of the sexual intercourse and the use of violence or grave intimidation, or rendering unconscious or incapable objective elements of the offence, there is a need of proof of intent culpability. It is because article 58 and 620(1) of the same Code requires so. There is an express fault requirement in respect of the conduct of sexual intercourse the use of violence or grave intimidation, or rendering unconscious or incapable objective elements of the offence as are provided articles 58 and 620(1) of the 2004 Criminal Code.

Too article 631(5) of the 2004 Criminal Code, on the same way, mentioned that where the sexual outrage has caused death or grave physical or mental injury upon the victim or where the victim is driven to suicide by distress, shame or despair, the punishment shall be rigorous imprisonment for life. That is to say, a penalty for a criminal offence of homosexual and other indecent acts performed on minors further graded rigorous life imprisonment where the sexual outrage has caused death or grave physical or mental injury upon the victim or where the victim is driven to suicide by distress, shame or despair where the sexual outrage has caused death or grave physical or mental injury upon the victim or where the victim is driven to suicide by distress, shame or despair .These grading elements do not require *mens rea* on the part of the offender with respect of such results of sexual outrage.

Moreover, article 628 of the 2004 Criminal Code states that the punishment shall be rigorous imprisonment from five years to twenty five years, where the relevant provision does not prescribe a more severe penalty, where the victim becomes pregnant; or where the victim is driven to suicide by distress, anxiety, shame or despair. Similarly, this provision further aggravated the crime of rape or sexual outrage, where the relevant provision does not prescribe a more severe penalty, where the victim becomes pregnant; or where the victim is driven to suicide by distress, anxiety, shame or despair. Similarly, these grading elements do not require *mens rea* on the part of the offender with respect of such results of sexual outrage.

There are arguments (basically emanating from the 2004 Criminal Code) that support the strict criminal liability nature of these aggravating results. The first argument lies upon the language or wording of the provisions creating the aggravating circumstances or results. In any criminal statute, the very source of interpretation of criminal statute is the wording and the structure of the law. Graven notes that the meaning intended by the legislature may be sought from within the language of a provision (i.e., grammatical or logical interpretation) or from without (i.e., historical interpretation) in light of the purposes of the law as defined in article 1 of the 2004 Criminal Code and the particular purposes of the provision calling for construction[101]. Strauss notes that it is proper to examine the relationship of provisions as applied to particular offences and discusses the issue of cross references within the code[102].

These provisions expressly or at least impliedly indicates that , on closer examination, such grading elements do not require corresponding fault in terms of aggravating, but instead they raise separate issues with implications for the punishment that to be incurred by the defendant. Such provisions do not criminalizing of acts, but rather grading of the underlying crimes. Just as I have stated hereinbefore**,** there is a difference among strict criminal liability in criminalization and strict criminal liability in grading. Strict criminal liability in criminalizing is criminal liability in the absence of formal culpability that criminalizes conduct that is otherwise not subject to any criminal sanction. On the other hand, strict criminal liability in grading is criminal liability in the absence of (formal) culpability that increases the criminal punishment that the criminal would otherwise suffer. The concept of aggravated offences is reflected in Ethiopian criminal law of 2004 through the aggravation of punishment where certain grading elements specified in a special provision exist.

Further, Art.2 (4) of the 2004 Criminal Code forwarded that the above provisions (sub-articles 1-3 of article 2 of the same code) cannot prevent the court from interpreting the law; in case of doubt the court shall interpret the law according to its spirit, in accordance with the meaning intended by the legislature so as to achieve the purpose it has in view. The power of the court to interpret the law is only allowed in cases of doubt. A court may be in doubt under various circumstances. Of course, ambiguity is susceptible of subjective perception, i.e., it is subjective.

[101] . Philip Graven, An Introduction to Ethiopian penal laws:Arts1-84 penal code(Addis Ababa: Haileselassie I University and oxford university press),pp.10

[102].Peter Strauss ,on Interpreting the Ethiopian penal law, Journal of Ethiopian law,vol.5,No.2,(1968)pp.395

There are four possible justifications of (the first line of argument) that support apparent strict criminal liability in grading (or Bump-up strict liability) of the above grading elements under Criminal Code of 2004.

One justification is the claim that formal strict criminal liability with respect to some offence elements is sometimes acceptable on a more holistic view of the culpability of offences[103]. The culpability of the wrongdoer for a given offence should be considered as a whole[104]. I endorse the culpability for an offence should be considered as a whole. A second justification is in line with the principle of comparable culpability; for instance, the actor intends to cause greater bodily injury, and who causes death, can be punished as harshly as an actor who intends to, and does, cause death[105].

A third justification is that in line with the principle of moral luck, which is the principle that an offender is justly to blame if his conduct causes harm, even if the occurrence of that harm is fortuitous[106]. The assumption here is the wrongdoer assumes the risk, and cannot justifiably complain if his wrong happens to bring about an even greater harm than he expected or culpably risked. It is an important sense; of course, it is hardly fortuitous when a harmful result occurs as a result of a culpable act. The act is culpable in significant part precisely because it creates an unjustifiable ex ante risk of causing the harm. But in any given case, the actor's own effort or culpable conduct has ended, it is outside of his control whether the harm occurs or not. That is in the sense in which moral luck gives effect to a fortuity. Fortuity plays a role in increasing criminal punishment. The legal effect of the fortuitous harm not only increases punishment based on a causal chain over which the actor has no control, but treats as having a more culpability as to the result than he in fact has. In its classic exposition, at least, the principle of moral luck asserts equally culpable individuals can deserve different punishments in light of the difference they actually make in the world. It is a principle of responsibility for actual outcomes. For example, a negligent driver happens to kill a pedestrian rather than injury him; it might be fortuitous whether the death occurs. One might well conclude that the offender normally displays some culpability, at least negligence, as to the risk of death, whenever he engages in a serious

[103].Supra note 61, 1106
[104].Supra note 69,pp.ibid
[105]. Yoram Shacher, *The Fortuitous Gap in Law and morality*,6CRIM.JUST.ETHICS12(1987)pp.14-15
[106] .Michael Moore, *The Independent Moral significance of wrongdoing*,pp.264-280;Gregory C.Keating, *Strict liability and The Mitigation of Moral luck*,(Journal of Ethics and Social philosophy,vol.2,No.1,2006)pp.1-8

criminal acts, for a reasonable person should know that serious acts create unreasonable risks of death. Professor wasserstrom argues that participating in activities in which there is a high risk of danger to the public generally is sufficient *mens rea* for criminal responsibility[107]. Lastly, it is consistent with the deterrence, prevention, and rehabilitation purposes of punishment[108].

Criminal punishment can have different goals, and choosing among them is within a legislature's discretion. The FDRE Constitution has mandated the house of peoples' representatives' to make any penal legislation it deems necessary. Based on this understanding of the provisions, grading factors does not require any culpability as to the grading circumstances. If the legislature has intended to require any culpability as to these grading circumstances, it would require so as it has done under article 683(c) of the Criminal Code of 2004.

The second line of argument is based on articles 58 and 59 of the 2004 Criminal Code, which do not apply as to grading circumstance, and they only apply as to the underlying offenses. For aggravating (grading) element, no fault requirement in respect of death or serious injury or harm needs to be established. This argument basically comes from articles 48,49,50,58 -59 and special provisions of the same Code which defines grading elements (as to results of) an offence. In fact, on closer examination, such grading element (with respect of results of the underlying crimes) do not require corresponding fault, but instead they raise separate issues with implications for the punishment incurred by the defendant. The concept of aggravated offences is reflected in Ethiopian criminal law of 2004 through the aggravation of penalty where certain grading (aggravating) elements specified in a provision exist.

Of course, Art.57(3) of the same code states that 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 fault on his part, or was caused by force majeure, or occurred by accident. Art.58(3) of the same Code also stipulates that no person shall be convicted for what he neither knew of or intended ,nor for what goes beyond what he intended either directly or as a possibility, subject to the provisions governing negligence. These provisions exempt an accused from conviction if one of the grounds embodied in Articles 57 and 58 of the 2004 Criminal Code exists. One may argue that Articles 57-59 of the same Code in the first place, do not require fault with respect to grading elements

[107] .Brett, *strict responsibility: possible solutions*,37 MOD.L.REV.417,(1974)pp.418-420
[108].Supra note 103,ibid

rather they refers to the basic act that is stated in an underlying crime. It is because Articles 58-59 of the same Code refers to the basic act of the underlying offence. For example, though a person who was intended to inflict common injury, but he had caused grave injury. In such cases, such provisions exempt a person in respect of what goes beyond his intention. This case is different from those of aggravating ones. However, if such Articles(Arts.58 and 59 of the same Code) encompass such aggravating factors, it is possible to argue that Articles 626,627, 671 and other aggravated offences under 2004 Criminal Code are exceptions of them.

Thirdly, the foreign experience shows us that there is a longstanding recognition of strict liability offences in Anglo-Saxon and continental legal systems[109]. These aggravating or grading material (attendant) circumstances (grounds) of the offence do not require any sort of culpability on the actor's state of mind. If these material circumstances had not occurred, the delinquent would not have received a greater punishment.

In general, the case here is the commission of the most minor crime that happens to cause any other punishable circumstance or result, or that happens to occur in the context of any other punishable circumstance could trigger greater punishment but not greater culpability. To put it in other words, it is based on the assumption that the wrongdoer assumes risk and cannot justifiably complain if his wrong happens to bring about an even greater harm that he expected or culpably risked. The assumption here is that defendants who are major participants in the underlying crime, such as statutory rape and robbery, and who shows reckless indifference to human life satisfy both the retributive and deterrence purposes of the state. The 2004 criminal code accepts the possibility that retributive theory countenances moral luck, i.e., that an actor deserves greater blame if his culpable conduct fortuitously results in harm than if it does not. It simply expresses the principle of moral luck. Such liability exemplifies moral luck-namely, the principle that an offender is justly blame if his conduct causes harm, even if the occurrence of that is fortuitous. The actor is liable despite lack of *mens rea* with respect to the fortuitous results.

Further, the existence of strict liability as to grading reveals the distinction between statutory harm and ultimate harm[110]. Statutory harm refers to undesirable state of affairs that the criminal prohibition meant to ultimately addresses, i.e., the underlying crimes. Ultimate harm is an

[109] .Report on strict liability, cycle law(Scotland,18 December 2012)pp.6-10
[110] .Supra note 62,pp.1505-06

additional harm that is goes beyond statutory harm. Thus, when a defendant culpably engages in criminal conduct that causes consequences other than those the defendant intended or contemplated, and the defendant is held liable for the further consequences automatically and without proof of the usual *mens rea* required for conviction for the further consequences. Such liability is known as bump-up strict criminal liability.

The above aggravated offences, strict criminal liability as to results, are instances of offences of strict criminal liability in grading as well as impure strict criminal liability. The existence of impure strict liability and strict liability as to grading element reveals that strict liability can be a worry even when the offence contains an explicit culpability requirements(for example, such offences as statutory rape and aggravated robbery). Keating believes that strict criminal liability enhances both liberty and security[111].The author of this paper support such kind of criminal liability since by so doing strict liability materially advances the purpose of criminal punishment –retribution, deterrence, incapacitation, education, and rehabilitation and the like.

In short, it is an increase in the defendant's punishment for the results the defendant caused without considering the defendant's culpability for those harmful results. The mind of the defendant may be guilty or entirely or partially innocent as to grading ingredients, but it is irrelevant in aggravating the punishment of such offences. The law is often willing to punish the defendant for results that flow from his actions regardless of his culpability for those actions. The Criminal Code of 2004 is filled with strict criminal liability as to grading elements of results that punish defendants on the basis of the amount of harm caused. Once it has been established that a defendant was criminally culpable for some crime, the prosecution frequently does not have to demonstrate that he was criminally culpable for the initial wrongdoing. If the defendant is in for penny, he is in for a pound[112].

3.1.2-Strict Criminal Liability as to Circumstance

There are acts or omissions which exist independently of the accused acts or omissions. However, there are criminal acts or omissions that become crimes only under particular material or surrounding circumstances. Circumstances are conditions other than the actor's own conduct,

[111] .Keating, supra note 103,pp.43

[112] . Wesley M. Oliver, *Limiting criminal law's" In for a penny, In for a pound" Doctrine* (2010) pp.8-9; David Crump, *Reconsidering the felony murder rule in light of modern criticism: Doesn't the conclusion depend upon the particular rule at Issue*? , 32 HARV. J.L. and PUB.pol.y1155(2009)pp.1158-1161

i.e., a circumstance is the material or attendant condition (concomitant circumstance) in which the act or omission occurred. It is different from the act itself, but related to it in the definition of an offence. Having said this, I will explore strict criminal liability as to a circumstance in Ethiopia hereinafter.

One of the crimes against morals and the family, under part II (special part), book III, title IV of 2004 Criminal Code, is usually, in literature, called as statutory rape. Of course, the 2004 Criminal Code called it a crime of sexual outrage. It is referred in this thesis as statutory rape. Statutory rape is anomaly. At its essence, statutory rape generally involves sexual intercourse with a person under a specified age, where the victim's age precludes the ability to consent to the sexual activity. Of course, statutory rape signals that consensual sex with a teenager is not really rape. It is only deemed equivalent to rape by operation of statute (state legislation). Key in statutory rape is the acknowledgement that while the sexual activity may be voluntary, it is nonetheless criminalized because the state maintains a strong interest in protecting its minors from sexual exploitations by older individuals, unwanted pregnancies, and physical and emotional trauma due to early sexual activity[113], that is, the purpose of underlying the crime of statutory rape is to protect the morals of children from the consequences of acts that they are not able to comprehend. The crime of statutory rape is provided under Arts.626 and 627 of the Criminal Code of 2004. These provisions naming such offenses as sexual outrage committed on infants and sexual outrage on minors between the ages of thirteen and eighteen years.

Art. 626(1) of the 2004 of Criminal Code states that whoever performs sexual intercourse with a minor of opposite sex, who is between the ages of thirteen and eighteen years, or causes her to perform such an act with her, is punishable with rigorous imprisonment from three years to fifteen years. The offence of statutory rape has two objective elements; the conduct of sexual intercourse and the circumstance that the girl or the boy is under the age of consent. In respect of the conduct of sexual intercourse objective element of the offence, there is a need of proof of intent culpability. The offence of statutory rape is not completely devoid of fault element. There is an express fault requirement in respect of the conduct of sexual intercourse as are provided under articles 626 and 58 of the Criminal Code of 2004.

[113] .Tsehai Wada, *Rethinking the Ethiopian Rape law*,(Journal of Ethiopian law, vol.xxv No.2 ,2012) pp.56

The question here is that whether the law (the Criminal Code of 2004) required the mental element in the statutory crime so far as the age ingredient is concerned? The response to this question depends upon the proper interpretation of the relevant provisions of the code according to its sprit, in accordance with the meaning intended by the legislature so as to achieve the purpose it has in view as per Art.2(4) of the Criminal Code of 2004. There are, broadly, two possibilities. The first probable respond is that it requires *mens rea* in respect of the age ingredient of the Crime, that is, the prosecution has a duty to prove that the accused has made the sexual conduct knowing the age of the victim's is under the age of consent[114]. It is based on the assumption that the necessary element of this offence is the absence of a belief, held honestly and on reasonable grounds by the accused that the person with whom he was conducted sexual intercourse was over the age of the statutory limits. This line of understanding says that Art.58 of the 2004 Criminal Code requires the proof of intention in respect of the age element of the crime.

The second answer is that it does not require *mens rea* with respect to the circumstance ingredient of the offence[115]. This answer depends upon the proper construction or interpretation of the relevant provisions of the code according to its sprit, in accordance with the meaning intended by the legislature so as to achieve the purpose it has in view as per Art.2(4) of the 2004 Criminal Code. The courts can interpret the crime to be one of strict liability where the parliament has made it quite clear that there is no *mens rea* requirement for the offence or by necessary implication[116]. Necessary implication connotes an implication which is compellingly clear. Such an implication may be found in the language used in the provision(s), the nature of the offence, the mischief sought to be prevented and any other circumstances which may assist in determining what intention is properly to be attributed to parliament when creating the offence. Thus, where there is some reason can be found for holding that it is not necessary, *mens rea* is excluded. The offence of statutory rape contain another an objective element, which is the age of the victim, in respect of which ,according to one line of understanding, the defendant's belief or culpability of any sort is irrelevant and in respect of which the prosecution does not have required to proof a corresponding fault.

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[114] . Interview with Judge Tsehai menker at Federal first instance court lideta bench; Interview with Judge metselale Haile at Federal High court

[115] .Interview with Judge mulusew at Federal first instance court lideta bench

[116].Alison Byrne, *The Application of strict liability To NSW funding and disclosure offences*, working paper No.24(2014)pp.1-3

The policy underlying such a crime is a presumption that, because of the innocence of children and their immaturity, juveniles are prevented from appreciating the full magnitude and consequences of their action. The underlying activity in a statutory rape is not simply sexual intercourse, but sex with a girl or boy who is under the age of consent. Statutory rape laws wishes to prevent adults from having even consensual sexual contact with vulnerable minors who have not reached the age consent ,i.e., the concern of the law is to prevent sexual abuse of children by adults. Statutory rape sounds like a crime of negligence.

The endorsement of Statutory rape as strict criminal liability with respect to the age of the victim stems from various distinct sources. The first one is based on the proper construction of the relevant provisions of the 2004 Criminal Code. The first argument lies upon the language or wording of the provision creating the offence. In any criminal statute, the very source of interpretation of criminal statute is the wording and the structure of the law. Graven notes that the meaning intended by the legislature may be sought from within the language of a provision (i.e., grammatical or logical interpretation) or from without (i.e., historical interpretation) in light of the purposes of the law as defined in article 1 of the 2004 Criminal Code and the particular purposes of the provision calling for construction[117]. The general principle that fault is required can be rebutted by clear words in the statute or by necessary implication. Necessary implication connotes an implication which is compellingly clear. Such an implication may be found in the language used in the provision(s), the nature of the offence, the mischief sought to be prevented and any other circumstances which may assist in determining what intention is properly to be attributed to parliament when creating the offence. The plain meaning of Arts.58 and 626 as well as 627 of the 2004 Criminal Code indicates that there is no need of proving *mens rea* in respect of the age of the victim. Art. Sub-Art.1 (a) and (b) of Art.58 of the 2004 Criminal Code states that a person is deemed to have committed a crime intentionally where:

(a) He performs an unlawful and punishable ***act*** with full knowledge and intent to achieve a given result.; or
(b) He being aware that ***his act*** may cause illegal and punishable consequences commits the ***act*** regardless that such consequences may follow.

[117].Supra note 98, ibid

Criminal intention is composed of two component ingredients. It has a cognitive ingredient and a connative element. Art.58 (1) (a) of the 2004 Criminal Code defines direct intention (intended result) as the performance of an unlawful and punishable *act* with full knowledge and will. Full knowledge (awareness) refers to the ability to foresee *the nature of the act itself*. Art.58 (1) (b) of the 2004 Criminal Code defines indirect intention, in which the probable harm is foreseen and the defendant accepts the probable event of resultant harm. Art. 626(1) of the 2004 of Criminal Code states that *whoever performs sexual intercourse with a minor of opposite sex*, who is between the ages of thirteen and eighteen years, or causes her to perform *such an act* with her, is punishable with rigorous imprisonment from three years to fifteen years. Thus, the plain meaning of Arts.58 and 626 of the 2004 Criminal Code indicates that there is no need of proving *mens rea* in respect of the age of the victim.

Secondly, Art.2 (4) of the 2004 Criminal Code forwarded that the above provisions cannot prevent the court from interpreting the law; in case of doubt the court shall interpret the law according to its spirit, in accordance with the meaning intended by the legislature so as to achieve the purpose it has in view. The power of the court to interpret the law is only allowed in cases of doubt. A court may be in doubt under various circumstances. If it is regarded that it is doubtful whether Art.58 of the 2004 Criminal Code require or not about knowledge or age, it is possible to interpret in light of the spirit of and legislative intent of such provisions. Statutory rape laws wishes to prevent adults from having even consensual sexual contact with vulnerable minors who have not reached the age consent ,i.e., the concern of the law is to prevent sexual abuse of children by adults. Statutory rape sounds like a crime of negligence. Every adult knows or should know that relatively costless steps must be taken to assure oneself about the potential partner's age. It is argued that the imposition of strict criminal liability as to the age of the victim of the statutory rape goes to ensuring that persons does everything possible to assure that they are not committing a statutory offence.

Thus, it enhances compliance and deterrence. It is clear that strict liability regarding the age ingredient of the offence would further the purpose of the law more effectively than would be the case if a mental element were read in to this element[118]. There is general agreement that strict liability is necessary to the enforcement of the law protecting children in sexual matters. There is

[118] .Interview with Judge mulusaw at Federal first instance court.

a compellingly clear implication that parliament should be taken to have intended that the ordinary requirement of *mens rea* should be excluded in respect of the age ingredient of the offence. As habitually happens in other countries with statutory offence, when enacting this offence parliament defined the prohibited conduce (or act) in terms of the proscribed physical acts. Arts.57-59 of the 2004 Criminal Code says nothing about the mental element (*mens rea*) with respect to the circumstance ingredient of the offence.

In the same way, Art.627(1) of 2004 Criminal Code stipulates that whoever performs sexual intercourse with a minor of the opposite sex, who is under the age of thirteen years, or causes her to perform such an act with her, is punishable with rigorous imprisonment from thirteen years to twenty-five years.. The offence of statutory rape has two objective elements; the conduct of sexual intercourse and the circumstance that the girl or the boy is under the age of consent. In respect of the conduct of sexual intercourse objective element of the offence, there is a need of proof of intent culpability. It is because article 58 of the same code requires so. The offence of statutory rape is not completely devoid of fault element. There is an express fault requirement in respect of the conduct of sexual intercourse as are provided under articles 627 and 58 of the Criminal Code of 2004. As Baroness Hall explained, in RVG in describing a statutory rape crime and speaking about the sexual intercourse element of the offence,

> There is no strict liability in relation to the conduct involved. The perpetrator has to intend to penetrate. Every male has a choice about where he puts his penis. It may be difficult for him to restrain himself where aroused but he has a choice[119].

Thus, the defendant have *mens rea* as to some element i.e., the actor must intentionally engaged in to sexual conduct element of a statutory offence.

The offence of statutory rape contains another objective element, which is the age of the victim. The matter here is that whether the regulation (the Criminal Code of 2004) required the mental element in the statutory crime with respect to the age ingredient is concerned? The answer to this inquiry depends upon the accurate construction of the relevant provisions of the code according

[119] .David Prendergast, *The Constitutionality of strict liability in criminal law*(Dublin university of journal of law,vol.33)(2011) pp.292

to its sprit, in accordance with the meaning intended by the legislature so as to achieve the purpose it has in view as per Art.2(4) of the Criminal Code. There are, broadly, two possibilities.

The first possible answer is that it requires *mens rea* in respect of the age ingredient of the Crime, that is, the prosecution has a duty to prove that the accused has made the sex knowing the age of the victim's is under the age of consent. It is based on the assumption that the necessary element of this offence is the absence of a belief, held honestly and on reasonable grounds by the accused that the person with whom he was conducted sexual intercourse was over the age of the statutory limits. This line of understanding says that Art.58 of the 2004 Criminal Code requires the proof of intention in respect of the age element of the crime.

The other line of argument is that the prosecution has a duty to prove that the accused has made the sex knowing the age of the victim's is under the age of consent. Judge Abeba[120] said that, in three cases, she faced the issue that whether the prosecution, at the outset, has an obligation to prove that a defendant consummate the sex with a minor understanding the fact that she is under the age of consent. In these three cases, the defendants were to face trial for having sex with thirteen years of old girl on several occasions. They admitted this but said they believed the girls were aged eighteen and the so called victims' told them so. They were charged with an offence under Art.626 of the 2004 Criminal Code called sexual outrages on minors between the ages of thirteen and eighteen years and also known as statutory rape: Whoever performs sexual intercourse with a minor of the opposite sex, who is between the age of thirteen and eighteen years, or causes her to perform such an act with her, is punishable with rigorous imprisonment from three to fifteen years.

The defendants sought a ruling that the government has a duty to prove that they had performed the sexual intercourse with the minors knowing the prohibited circumstance. But the prosecution opposed their line of argument and he argues in line with the first line of argument, as it is stated above, i e., it is strict.

She, residing alone, accepted the defendants' line of position and set them free stating that the prosecution does not prove the fact that the defendants conducted the sexual conduct understanding the circumstance prohibited. Thus, according to her, the government has a

[120] .Interview with Judge Abeba Alemu, A federal first instance court Judge at lideta bench

firsthand duty to prove that and the defendants have a right to defend using mistake of fact as to victims' age according to Art.80 of the 2004 Criminal Code. Tsehai states that as far as sexual criminal offences are concerned, that of crimes stated under articles 620 -628 as well as 629-633 of the 2004 Criminal Code, they are intentional offences since none of these provisions provides negligence expressly as a requisite criminal mentality. This position is highly relies on Articles 50(4), 57, 58, and 627 of the 2004 Criminal Code.

The second answer is that it does not require *mens rea* with respect to the circumstance ingredient of the offence[121]. This answer depends upon the proper construction or interpretation of the offence in issue and other relevant provisions. There are two supporting argument to this position. The first one is based on the proper construction of the relevant provisions of the 2004 criminal code. The first argument lies upon the language or wording of the provision creating the offence. In any criminal statute, the very source of interpretation of criminal statute is the wording and the structure of the law. Graven notes that the meaning intended by the legislature may be sought from within the language of a provision (i.e., grammatical or logical interpretation) or from without (i.e., historical interpretation) in light of the purposes of the law as defined in article 1 of the 2004 Criminal Code and the particular purposes of the provision calling for construction. The general principle that fault is required can be rebutted by clear words in the statute or by necessary implication. Necessary implication connotes an implication which is compellingly clear. Such an implication may be found in the language used in the provision(s), the nature of the offence, the mischief sought to be prevented and any other circumstances which may assist in determining what intention is properly to be attributed to parliament when creating the offence.

The plain meaning of Arts.58 and 627 of the 2004 Criminal Code indicates that there is no need of proving *mens rea* in respect of the age of the victim. Art. Sub-Art.1 (a) and (b) of Art.58 of the 2004 Criminal Code states that a person is deemed to have committed a crime intentionally where:

(a) He performs an unlawful and punishable ***act*** with full knowledge and intent to achieve a given result.; or

[121] .Interview with Judge Mulusew ,A Federal first instance court Judge at lideta bench(he specifically working on Rape and related crimes)

(b) He being aware that ***his act*** may cause illegal and punishable consequences commits the ***act*** regardless that such consequences may follow.

Criminal intention is composed of two component ingredients. It has a cognitive ingredient and a connative element. Art.58 (1) (a) of the 2004 Criminal Code defines direct intention (intended result) as the performance of an unlawful and punishable *act* with full knowledge and will. Full knowledge (awareness) refers to the ability to foresee *the nature of the act itself*. Art.58 (1) (b) of the 2004 Criminal Code defines indirect intention, in which the probable harm is foreseen and the defendant accepts the probable event of resultant harm. Art.627(1) of 2004 Criminal Code stipulates that whoever performs sexual intercourse with a minor of the opposite sex, who is under the age of thirteen years, or causes her to perform such an act with her, is punishable with rigorous imprisonment from thirteen years to twenty-five years.. Thus, the plain meaning of Arts.58 and 627 of the 2004 Criminal Code indicates that there is no need of proving *mens rea* in respect of the age of the victim.

Secondly, Art.2 (4) of the 2004 Criminal Code forwarded that the above provisions (sub articles 1-3 of article 2 of the Criminal Code of 2004) cannot prevent the court from interpreting the law; in case of doubt the court shall interpret the law according to its spirit, in accordance with the meaning intended by the legislature so as to achieve the purpose it has in view. The power of the court to interpret the law is only allowed in cases of doubt. A court may be in doubt under various circumstances. The offence of statutory rape contain another an objective element, which is the age of the victim, in respect of which, according to one line of understanding, the defendant's belief or culpability of any sort is irrelevant and in respect of which the prosecution does not have required to proof a corresponding fault. The rational for strict liability of statutory rape has been clearly articulated: public safety is the primary goal. That is to say, protecting the public from sex offenders is a primary government interest and that the privacy interest of the persons adjudicated guilty of sex offences is less important than the government's interest in public safety. Courts acknowledged the legislature intent of strict liability with respect of the age ingredient of statutory rape crimes. The intrusion suffered by the offender is outweighed by the community's need to protect itself from those sex offenders. This is in line with the argument with respect of Art.626 of the 2004 Criminal Code.

The raison d'être at the back of the crime of statutory rape, as are provided under articles 626 and 627 of the 2004 Criminal Code, is the need to prevent: teenage pregnancy, consent to sex in an informed manner, in so doing exposing minors to physical and emotional harm and deterring men from preying on young females and coercing them in to sexual affairs[122],i.e., the guiding principle underlying such a crime is a belief that, because of the innocence of children and their immaturity, juveniles are prevented from appreciating the full magnitude and consequences of their action. Statutory rape laws desires to stop adults from having even consensual sexual contact with vulnerable minors who have not reached the age consent ,i.e., the anxiety of the regulation is to put a stop to sexual exploitation of kids by adults. Statutory rape sounds like a crime of negligence. Every adult knows or should know that relatively costless steps must be taken to assure oneself about the potential partner's age.

The underlying activity in a statutory rape is not simply sexual intercourse, but sex with a girl or boy who is under the age of consent. The endorsement of Statutory rape as strict criminal liability with respect to the age of the victim stems from various distinct sources. Statutory rape is an archetypal strict liability crime that requires a showing of some mental state as to the sex act itself, but treats as irrelevant the perpetrator knew or should have known about the minority of the victim of the crime. Once the *actus reus* of intercourse with a someone under a specified age has been proved, a conviction is secured. Statutory rape is classically understood to involve impure strict criminal liability in as much as the criminal must intentionally have intercourse, even if he need not be guilty as to the age of the victim. Statutory rape, as stated under article 627 of the Criminal Code of 2004, is a strict criminal responsibility with respect to a circumstance – specifically, the circumstance of the female or male victim of the crime being under the statutory age. The defendant can be guilty of statutory rape even if there is no proof that he believed, or reasonably should have believed, that the victim was below the statutory age of consent. The existence of impure strict criminal liability reveals that strict criminal liability can be a worry even the offence contains explicit formal culpability (fault) requirement[123].

The actor is at substantive fault in risking intercourse with the victim despite his lack of intent or negligence as to the victim's age. An actor who is not negligent as to a circumstance ingredient

[122] .Supra note107,ibid
[123].Supra note 79,ibid

such as the age of the injured party might nonetheless be negligent or otherwise at fault for engaging in conduct that creates a risk of violating the criminal norm (including the prohibited circumstances).That means, the actor is not entirely blameless since blameworthiness arises from the actor's supposition of the risk in engaging in sexual contact with someone who might be underage.

A human being who fears strict criminal liability may basically refrain completely from engaging in the action that may generate it. To sum up, statutory rape crime: no culpability is required as to the girl's or boy's being under the age of consent – if the female or male is not under the age of consent, the conduct is not a crime. The substantive strict criminal liability support statutory rape as follows. Even if the criminal logically believes that the victim is above the statutory age, he displays substantial fault, as divergent to formal fault, merely by risking that the victim might be under the statutory age[124].

In sum, there are quite a lot of point of view at the bottom of the strict liability of statutory offences that are stated in Arts.626 and 627 of the 2004 Criminal Code. The foremost argument lies upon the language of the provision creating the offence and the organization of the rules at hand. In any criminal statute, the very source of interpretation of criminal statute is the wording, title and the structure of the law. Graven notes that the meaning intended by the legislature may be sought from within the language of a provision (i.e., grammatical or logical interpretation) or from without (i.e., historical interpretation) in light of the purposes of the law as defined in article 1 of the 2004 Criminal Code and the particular purposes of the provision calling for construction. The general principle that fault is required can be rebutted by clear words in the statute or by necessary implication. Thus, the pure meaning of Arts.58 and 626 as well as 627 of the 2004 Criminal Code indicates that there is no need of proving *mens rea* in respect of the age of the victim.

Further, Art.2(4) of the 2004 Criminal Code forwarded that the above provisions cannot prevent the court from interpreting the law; in case of doubt the court shall interpret the law according to its spirit, in accordance with the meaning intended by the legislature so as to achieve the purpose it has in view. The power of the court to interpret the law is only allowed in cases of doubt. A

[124].Supra note 79,pp.56

court may be in doubt under various circumstances. If it is regarded that it is doubtful whether Art.58 of the 2004 Criminal Code require or not about knowledge or age, it is possible to interpret in light of the spirit of and legislative intent of such provisions. Statutory rape laws wishes to prevent adults from having even consensual sexual contact with weak minors who have not reached the age consent ,i.e., the concern of the law is to prevent sexual misuse of children by adults. Statutory rape sounds resembling an offense of negligence. Of course, statutory rape may be described as rule based negligence, as opposed to standard based negligence that is stipulated in article 59 of the Criminal Code of 2004. All adult knows or should know that relatively costless steps must be taken to guarantee oneself about the prospective partner's age. It is argued that the imposition of strict criminal liability as to the age of the injured party of the statutory rape goes to ensuring that persons does everything feasible to assure that they are not committing a statutory offence.

Thus, it enhances obedience and deterrence. To put in other words, strict liability, it is argued, will advance the objects of the crime of statutory rape and at the same time promote deterrence by strengthen the prosecution office's enforcement capabilities. Firstly, the threat of prosecution in and of itself will be a significant general deterrence once prosecution is a viable option. Secondly, a successful prosecution will have significant specific and general deterrence across the nation.

Based on this understanding of the purposes of the provisions in issue, Arts.626 and 627 of 2004 Criminal Code in line with article 1 and 2(4) of the 2004 Criminal Code are regarded as strict liability offences. The words for public good as stipulated in Article 1 of the 2004 Criminal Code can serve as a tool of interpretation whenever legitimate interests of the state and an individual are in conflict. As per Article1 and 2(4) of the 2004 Criminal Code, the interest of the society (and by implication, the state) prevails whenever legitimate interests of the state and an individual are in conflict. Secondly, it was originally engrafted onto the common law by statute. It is a strict liability offence in United States, England, and other common law legal systems[125]. A comparative review reveals that the modern reforms of statutory rape crime liability included modifications intended to make it easier, rather than harder, to prosecute statutory offence offenders criminally with a view of promoting the protection of minors from sexual abuses.

[125] .Supra note 106,ibid

Thirdly, articles 58 and 59 of 2004 Criminal Code do not apply as to circumstance, and they only apply as to the criminal conduct elements of offenses. The material or attendant circumstances, meaning facts surrounding the act, such as the type of weapon, age, bullets, place, and time of the commission and so on, should be distinguished from the act. The same act under different circumstances may render an act lawful. Criminal mentality relates to a criminal act or conduct of a crime. Material act, as a prerequisite to criminal liability, takes on two forms, i.e., a positive behavior (physical act) or negative behavior, omission. Statutory rape falls under positive behavior or physical act. It is implicit under articles 626 and 627 of the2004 Criminal Code that a rapist has to do a sexual conduct or an act of sexual intercourse. Throughout the 2004 Criminal Code, the term an act refers to positive acts or doing. An act means a bodily movement whether voluntary or involuntary. Most uncontroversially, an action is an intentional bodily movement, that is, a bodily movement done for some reason or at least rationalizable or guidable by a reason.

Conduct is understood as a basic act. The criminal law directly regulates basic acts. Since article 58 of the 2004 Criminal Code require intention with respect of the sexual conduct element of a crime, statutory rape offences are strict offences as to the circumstance in which the sexual conduct had been done, which is the age of the victim. Thus, if a person is accused of statutory rape, the act, as it is stated under article 58 of 2004 Criminal Code, which should be proved at trial, is sexual intercourse, and its accompanying state of mind as well as the material attendant circumstance required is being below the statutory age. The defendant need not have intended or known or any form of culpability about the age of the victim of the crime of statutory rape since criminal liability is said strict with respect to that circumstance. Commission of the Crime requires only an act-basic act of the crime. The Circumstance need not have been intentional or even negligent. It is irrelevant what the defendant known or should have known about that circumstance of the crime. Of course, sexual act become a criminal offence only when the victim is a minor according to the law. Such liability might be acceptable even under retributive theory because it is likely to reach more culpable offenders than the standard like negligence prohibition[126]. What makes the criminal liability strict is that the defendant's culpability need not be proven at trial.

[126].Herbert L. Packer, The limits of the criminal sanction(1968)pp.64-70;Supra note 79,pp.78

Another subject matter that needs here a discussion is *whether a defense of mistake of fact as to the complainant's age* would be available in Ethiopia? There are two contrasting argument as to the question at hand. The first line of argument is that even a reasonable mistake by the actor that the victim is above the age of minority is no defense; strict liability is imposed as to that element, i.e., a good faith mistaken belief of the victim's age is irrelevant because the defendant assumes the risk that the victim may be young enough to fall within statute's protection[127]. The substantive approach (the substantive conception of fault) might support this result as follows[128]. Even if the actor reasonably believes that the victim is above a statutory age, he displays substantial fault merely by risking that the victim might be under a statutory age. At least, this is so if he believes or should believe that the victim is not much older than a statutory, for he then should know that he is at least committing a lesser legal wrong and that he is therefore creating a significant risk of committing the greater legal wrong. Low defends this strict liability provision on both deterrence and retributive grounds[129]. Thus, in the statutory rape example, the offender does ordinarily display substantive, even if that fault is not an explicit formal culpability element of the offence. Moreover, the principle of comparable culpability justifies an equally harsh

The substantive approach also explains why the actor is at fault in risking intercourse with the victim despite his lack of negligence as to the victim's age[130]. An actor who is not negligent as to a circumstance element such as the age of a victim might nonetheless be negligent or otherwise at fault for engaging in conduct that creates a risk of violating the criminal norm (including the prohibited circumstance). Even though a nine year old reasonably appeared to be above the legal age of consent, it is still grossly unreasonable for him to take the risk of intercourse with her.

The more holistic substantive approach asks whether the actor is justified even in creating a risk that the prohibited circumstance might exist, in light of the wrong inherent in the rest of his conduct[131]. It thus properly emphasizes that the actor's wrong consists not simply in his mistake as to her age, but in his choosing to engage in intercourse notwithstanding the risks of making such a mistake.

[127].ibid
[128].ibid
[129] .Simon, supra note 62,pp.564-567
[130] .ibid
[131] .ibid

Judge Mulusew[132] argues that even a reasonable mistake as to the age is not a defense as it is provided under Arts.626 and 627 of the Criminal Code of 2004 and taking in to account the legislative intention strictly regulating such offences. He further believe that Art.80 of the same code, that deals with mistake of fact, does not meant to cover such cases.

The second line of argument is that a reasonable mistake as to the victim's age is or should be a defense to a statutory rape prosecution[133]. This line of argument question: why not permit a defense of non-negligent in all cases, even if it would be gratuitous in many? Tsehai argues that a reasonable mistake is a defense when a victim of sexual outrage is a higher age setting the very upper limits of the crime, but is not a defense when the age in question is a lower age[134]. He further states that a person who is mistaken negligently cannot be convicted since all sexual offences under the 2004 criminal code are required to be committed intentionally. This line of understanding is highly relies up on Article 80 of the 2004 Criminal Code. Art.80 of the 2004 Criminal Code states that:

(1)Whoever commits a crime under an erroneous appreciation of the true facts of the situation shall be tried according to such appreciation. Where there is no criminal intention the doer shall not be punishable. Where he could have avoided the mistake by taking such precautions as were commanded by his personal position and the circumstances of the case (Art.59 of the 2004 Criminal Code), he shall be punishable for negligence in cases where such negligence is penalized by law.

(2)Mistake as to a fact which constitutes a specified crime shall not exclude the punishment of the doer for another crime constituted by the act he performed.

(3)The crime is committed where there is a mistake as to the identity of the victim or the object of a crime.

Thus, in order to fully avail this defense, a person has to show that, though he had done the act under a mistaken impression, he did not do it intentionally. The availability of a defense of mistake of fact means that there is, in effect, a corresponding specific fault requirement in

[132].Interview with Judge mulusew at Federal first instance court situated at lideta (working on rape and related crimes).
[133].Interview with Judge metselale Hailu at Federal high court situated at lideta (working on appeal criminal cases).
[134] .Supra note 112,pp.56-60

respect of the apparently strict objective element. Of course, having a fault requirement as part of the positive description of a criminal offence and having a fault standard become relevant via an affirmative defense are different. The author of this paper is of the opinion that the second position carries water, having regard to the whole text of the code.

Furthermore, a Proclamation For Prevention and Suppression of Money Laundering and Financing of Terrorism under Article 29(2) (d) stipulates that the penalties imposed in Article of the same proclamation may be imposed rigorous imprisonment from fifteen to twenty five years and with fine not exceeding birr 150,000 if the amount of fund or property laundered is more than birr 10,000,000.00[135]. According to this Article, no *mens rea* is required as to the risk that the laundering of funds or property will exceed the above specified amount (more than birr 10,000,000.00).This provision permits a differential in punishment for money laundering offences depending on the amount of funds or property laundered, without regard to the offender's state of mind in respect of the amount of funds or property laundered. That means, it does not require guilty state of mind on the part of the defendant with respect of the amount of funds or property laundered. In other words, the difference of penalty for petty money laundering and grand money laundering depends on the amount of the fund or property laundered, but not on differential guilty state of mind of the defendant.

Similarly, Article 669(1)(a) of the 2004 Criminal Code states that simple imprisonment shall be of not less than one year, or rigorous imprisonment, if to be ordered, shall not exceed fifteen years, according to the gravity of the crime, in the following cases where the act is aggravated by the object, the personal status of the criminal or the circumstances surrounding the theft, where the crime of theft relates to sacred or religious objects, or objects of scientific, artistic or historical value ,in places of worship[p or museums or other public building open to the public. According to this grading provision, the punishment shall increases, irrespective of the actor's state respect of such circumstances, where the crime of theft relates to sacred or religious objects, or objects of scientific, artistic or historical value.

In sum, the author of this paper believe that such liability signals the Ethiopian societies' intolerance for certain conduct by making irrelevant any issue other than whether the defendant

[135]. A proclamation for prevention and suppression of money laundering and financing of terrorism No.780/2010

committed it. While strict liability imposes costs on individuals(or society), it also has benefits, and in a democracy we permit legislatures to balance the costs and benefits that legislation imposes on the individuals(or the public).The author of this paper is of the opinion that such kind of strict liability is a legitimate and reasonable means of ensuring public good.

3.1.3-Strict Criminal liability as to Conduct Element

Strict criminal liability does not only refers to lack of culpability with respect to a result or a circumstance element of a crime, but it also refers to lack of culpable conduct, that is, the *actus reus* of the offence might specify and prohibit certain conduct (whether action or omission) by the offender. Criminal liability, in principle, envisages a criminal act or omission based on free will (voluntarily).In other words, normally a person cannot be said blameworthy and held criminally responsible when he was unable to conform his conduct to the requirement of the law due to mental disease or defect. As Dr. Elias noted, "an offender is said to have performed a criminal act or omission only when his conduct is willed[136]." A willed act apparently requires the capacity to understand the nature or the consequence of the act, or of regulating conduct according to such understanding at the time of the commission of the act. Criminal responsibility and criminal guilt are the cumulative moral conditions of criminal liability.

Nonetheless, according to articles 50(3) and 491 of the Criminal Code of 2004, a person who puts voluntarily himself in to a condition of absolute irresponsibility due to drunkenness, intoxication or any other cause and commits, while in such a state, an act normally punishable with imprisonment for at least one year shall be liable with fine or with simple imprisonment not exceeding one year, according to the degree of danger or gravity of the act committed. Article 491 of the Criminal Code of 2004 does not have its own objective as well as subjective elements, which are dual elements of the traditional definitions of crimes. That means it's application is subsidiary, i.e. , persons who commits an act normally punishable with at least one year imprisonment, while they are in the state of absolute irresponsibility by their own fault could not be indicted by the crime they have actually committed, but under a special offence, which is crime against public safety. The raison d'être such persons are not held criminally liable under the crime they had actually committed is for the reason that they had committed the crime, which neither contemplated nor intended and they are incapable of understanding the nature or the

[136]Supra note 8, pp.215

consequence of their act, or of regulating their conduct according to such understandings at the time of commission of the act.

In Holloway v. United States, the court ruled that "A man cannot reason cannot be subject to blame. Our conscience does not allow punishment where it cannot impose blame.[137]" As per articles 50(3) and 491 of the 2004 Criminal Code, a person is available to be held criminally liable without regard to his capability to be aware of the nature of his action or the consequence of his action, or of regulating his conduct according to his understanding of his act as the commission of the *actus reus* of the crime. The incapacity of understanding the nature of the action or the consequence of his action, or of regulating one's conduct according to such understandings means inability to know what one is doing (acting) and the incapacity to foresee the possible consequence of one's action at the time of acting. In such cases, according to articles 57(1), 58(3) and 50(4) of the Criminal Code of 2004, no one could be held criminally liable since the condition of absolute irresponsibility totally deprived of understanding of the nature or the consequence of one's action, or of regulating one's conduct according to such understandings at the time of the commission of the wrong doing. Pursuant to the general provisions of the Criminal Code of 2004[138], such persons must not be held criminally liable in crimes since they have been totally deprived of their mental faculties at the commission of the wrong doing. A person who is totally deprived of his mental faculties is not capable of acting in guilty manner, neither intentionally nor negligently.

Graven states that the provisions of article 50 of the 1957 Penal Code of Ethiopia(currently under Article 50 of the Ethiopian Criminal Code) mainly meant for persons who infringes the criminal law while they are under the influence of alcohol, drugs or by any other means which have the capacity of depriving, totally or partially, the mental faculties[139]. He further mentioned that the very purpose of articles 50(3) and 491of the 2004 Criminal Code is to insure the tranquility of the general public, which justify that those who commits crimes while they are under the condition of absolute irresponsibility by their own wishes should be punished and should not be

[137] .Holloway v.united States,80 U.S.APP.D.C.3,5,148F,2d665-667(1945)
[138] . See, Articles 48-50 and 57-59 of the 2004 criminal code.
[139] .Supra note 98,pp.140

allowed to exculpate themselves on the ground that they did not meant to do any harm prior to getting drank[140], or prior to drinking alcohol or consuming or taking any drugs.

The subsidiary application of Article 491 of the 2004 Criminal Code is based on the assumption that anyone who totally deprived of understanding of his action or the consequences of his conduct or of regulating according to such understandings by his own fault is always a latent menace for others (the public at large) and therefore, such person should be punished as soon as when he commits a criminal act[141]. The criminal is not considered to be guilty of the actual crime he has committed while he was in the state of absolute irresponsibility but rather he is deemed to be guilty of the special offence which is a crime against public safety[142]. The criminal is not guilty merely because he killed or raped or because he rendered drunk himself, but rather because of his action against public safety after he puts himself in to a condition of absolute irresponsibility at the commission of the wrong doing[143].

It seems proper here to question what is the meaning of fault as stated under articles 50(3) and 491 of the Ethiopian Criminal Code of 2004. Fault refers to moral failing or blameworthiness in an extra-legal sense, moral sense and it refers to *mens rea* in a legal sense. Stuart Green defines fault as "the moral value attributed to a defendant's state of mind during the commission of a crime" or something which "reflects the degree to which an individual offender is blameworthy or responsible or can be held accountable.[144]"Black's Law Dictionary defines *mens rea* as "the state of mind that the prosecution, to secure conviction, must prove that a defendant had when committing a crime[145]. It has been defined as "a determination based on intention a conscious awareness of the wrongful conduct, its consequences, and the significant circumstances in which it occurs[146].

The Ethiopian Criminal Code of 2004 provides a definition of fault under its articles 57, 58 and 59. These provisions normally recognized two forms of fault: intention and negligence. The

[140]. ibid
[141] .ibid
[142].ibid
[143] ibid
[144]*Stuart P. Green, why it's a crime to tear the tag off a mattress: over criminalization and the moral content of regulatory offence*,46 EMOR4L.J.1553(1997)pp.1547-48
[145] .Black's law dictionary 429(9th edn.,2009)pp.1075
[146].Morissette v. united states,342U.S.246,251(1952)(stating that crime is generally constituted only from concurrence of an evil-meaning mind with an evildoing hand)

notion fault as it is envisages under the general parts of the 2004 Criminal Code requires the *actus reus* must be attributable to the *mens rea*. The actual requirement is that these two elements must be brought together. The principle of concurrence requires that the mental state of the defendant coalesce with the additional manifested effort (*actus reus*). That is why article 61 of the 2004 Criminal Code states that" the same criminal act or a combination of criminal acts against the same legally protected right flowing from a single criminal intention or negligence…"

Nevertheless, the term fault, which is envisaged under the general provisions of the Ethiopian Criminal Code of 2004 does not the same meaning with the term fault, mentioned under articles 50(3) and 491 of the same code. If so, what is the meaning of fault under 50(3) and 491 of the 2004 Criminal Code? The answer solely depends upon whether the state of complete irresponsibility occurs due to a person's free will and awareness or not. To put in on other words, the answer depends upon the fact that whether a person voluntarily puts himself under such a state by way of alcohol or drugs or any other means capable of depriving mental faculties. If a person knowing the fact that the substances he consumes or drinks could render in a state of absolute irresponsibility and he rendered himself by things in to a condition of absolute responsibility without coercion, it is by his own fault he puts himself into such state. Otherwise, it is not happened by his own fault. That is why the Ethiopian Criminal Code of 2004 under article 54(4) envisaged no person shall be liable to punishment when he commits a crime while in state of absolute irresponsibility, in to which he has been coerced or for which he has no fault on his part. According to Graven, article 491 of the 2004 Criminal Code is inspired by article 263 of the Swiss Penal Code[147].

Coming back to the theme of the paper, does Article 491 of the 2004 Criminal Code envisage the notion of strict criminal liability? For an adequate for this inquiry, we have to see both the general and special parts of the 2004 Criminal Code. The 2004 Criminal Code had systematically and coherently embodied Ethiopian criminal law and the code is organized in two parts, i.e., general part and special part. The special part normally does not stand by itself for the purpose of defining specific offences and its provisions need to be interpreted and applied in synchrony with the relevant provisions of the general part. In order to look for a specific offence, comprehension

[147].Supra note 98,pp. 140

about the principles stipulated in general part of the Code. Art.23 (1), first paragraph, of the Criminal Code of 2004 has defined a crime as an act which is prohibited made punishable by law. The same article in second paragraph states that in this Code, an act consists of the commission of what is prohibited or the commission of what is prescribed by law. This Article states the two manifestations of criminal conduct, i.e., the commission of what is prohibited or the omission of what is prescribed by law.

Article 23(2) of the same Code also stipulates that a crime is only completed when all its legal, material and moral ingredients are present. This provision embodies three elements: legal, material, and moral. These three constituent elements of a punishable criminal offence are recognized by the Ethiopian 2004 Criminal Code. The legal element relates to the express prohibition of an act, omission or possession by the criminal law and the penalties or measures are prescribed thereof. Acts or omissions not prohibited by law are not considered offences. It embodies the definition and elements of an offence in a specific criminal law provision. The material element embraces the act or the omission of the wrongdoer (Article 23(1) of the 2004 Criminal Code) and its causal relation to the consequences in offences of result (Article 24 of the 2004 Criminal Code) and the material circumstance in which the act or omission is committed. There are also criminal offences that do not require result, in which case mere act omission suffices without reference to resultant harm and causation. Preparatory acts, attempts, possession and so on are included in the definition of the material element of a crime. The moral element (*mens rea*) refers to the moral blameworthiness of the offender, i.e., the presence of the guilt as an element of an offence. The material element of an offence without *mens rea* does not constitute a punishable criminal offence.

Further, Art.57 (1) of the 2004 of Criminal Code stipulates that no person can be punished for a crime unless he has found guilty thereof under the law. This same provision, under second paragraph, defines guilt: a person is guilty if, being responsible for his acts; he commits an offence either intentionally or by negligence. In the nonexistence of neither intention nor negligence on the part of wrong doer, harm is regarded to have been caused by accident or force majeure.

Furthermore, Arts.58, 59 and 50(4) of 2004 Criminal Code also states that no one should be held liable to punishment for the criminal act which neither contemplated nor intended. These provisions do not stipulate any form of fault other than intention and negligence. Though the general provision of the Criminal Code of 2004 does not envisage fault other than intent or negligence, article 491 of the 2004 Criminal Code obviously reflects the notion strict criminal liability as to conduct ingredient of the crime. Of course, Art.50(3) of the 2004 Criminal Code states that in the case of a crime neither contemplated nor intended and was committed in a state of absolute irresponsibility in to which the criminal put himself by his own fault, the provision of Art.491 of the special part of this Code relating to crimes against public safety shall apply.

The person, who is in a state of absolute irresponsibility, cannot culpably commit the *actus reus* of an offence since he has totally deprived of his mental faculties during the commission of the act due to alcohol or drugs or any other means culpable of rendering a person in to such a state. Since culpability (*mens rea*) applies only to the material elements of the criminal offences, a person who is under absolute irresponsibility could not perform a voluntary act. The principle of the general part of the 2004 Criminal Code is that there should not be criminal responsibility without fault. Under certain circumstances, however, a person might commit a criminal act or a criminal omission without his free will.

In the cases of complete irresponsibility, normally, the court must not punish the defendant, but shall, pronounce the appropriate measures either compulsory medical treatment or require compulsory confinement according to Article 48(3) of the 2004 Criminal Code. The appropriate measures to be applied in such cases are provided in Articles 129-132 of the same Code. Despite the fact that art.57 (1) of the 2004 Criminal Code states that in the absence of criminal intention or criminal negligence on the part of the wrongdoer, harm is regarded to have been caused by force majeure, the special part under Art.491 of the same Code adopts strict liability with respect to lack of culpable conduct .Strauss holds that in case of conflicts, the provision of the special part prevails over that of the general part. The general part sets out rules common to all serious offences and explains what is meant by a criminal offence, irresponsibility, criminal intention or negligence, imprisonment, probation, limitation and the like. The special part describes the various acts which are deemed to be criminal and lays down the penalties applicable thereto; it defines the elements of criminal offences such as rape and homicide, as well as a fate awaiting a

rapist or killer. Article 491 of 2004 Criminal Code wholly removes the mental ingredient and expressly criminalizes the mentally innocent one.

Therefore, the writer of this paper of the opinion that article 50(3) and 491of the 2004 Criminal Code adopts a strict criminal liability with respect to conduct, that is, it accepts criminal liability in the absence of culpable criminal conduct. We may call it strict criminal liability as to conduct element of the crime.

In *melaku* **v.***federal prosecutor*[148], the court ruled out the existence of strict liability with respect to lack of culpable conduct. In this case, the prosecutor charged with an aggravated crime of larceny under 669(3) (b) of the 2004 Criminal Code. He, both at trial and investigation, admitted the act of abstraction of the property of someone at night breaking the mirror of the building on foot hand but said that he was under influence of alcohol at the commission of the act. Then the prosecutor sought plea of guilty to be entered and thereby convicted up on the defendant's plea. The court convicted under Art.491 of the same Code stating that he was completely irresponsible at the time and sentenced for two months' imprisonment.

The mere fact that the defendant was under influence of alcohol does not mean he has been absolutely irresponsible at the time of wrongdoing. Absolute irresponsibility exists where the defendant resulting from one of the biological (physiological) grounds embodied in Article 48 of the 2004 Criminal Code deprived awareness or deprived will at the time of the act and then he is not responsible for his acts. According to the fact of the case, the defendant did not completely irresponsible since he memorized when, how and where he acted with which he had been charged before the court. Thus the court erroneously considered that the defendant has been completely irresponsible at the commission of the alleged act. However, the court appreciates the existence of the concept of strict liability in Ethiopia. If not, there is no need of changing from Art.669 (3) (b) to Art.491 of the same code.

The second kind of strict criminal liability as to lack of culpable conduct in Ethiopia is the one that is provided under Art.543 (3) of the Criminal Code of 2004. Art.543 (2) of same Code stipulates that a person who has a professional or other duty to protect the life, health or safety of another negligently causes the death of another shall be liable to simple imprisonment from one

[148] .Federal First Instance Court Criminal File No.43475

year to five years and fine from three thousand to six thousand birr. Further, Art.543 (3) of the same Code states that the punishment shall be rigorous imprisonment from five year to fifteen and fine from ten thousand to fifteen thousand birr where the criminal has negligently caused the death of two or more persons or where he has deliberately infringed express rules and regulations disregarding that such consequences may follow or even where he has put himself in a state of irresponsibility by taking drugs or alcohol. As per the last clause of the provision, even if a person is absolutely irresponsible by taking drugs or alcohol at the time of causing death of another, he will not be exonerated.

Negligent driving is driving that the actor knows or should know creates a substantial ex ante risk of producing an unjustified injury. But according to this article says that a person who kills someone even where he has put himself in a state of irresponsibility by taking drugs or alcohol will be liable. To clarify this, I will illustrate by way of example. Someone who reasonably assuming that he will not drive a car at the time of beginning drinking ,but after he drank a situation arises that requires his driving a vehicle ,i.e., his child reasonably appears to be deathly and he has to take his child to the hospital. And he drives and killed a person. He is not normally culpable as per the general part of the code, in particular as per Art.59 of the same Code because he reasonably believes that he will not drive a car at the time of beginning of drinking alcohol. The culpability must be with respect to wrongdoing. Wrongdoing means the violation of a deontological norm, which is conduct that makes the world worse in non consequentialist sense. A person who kills someone, while he was absolutely irresponsible should not be liable as per Arts.48-49 and 57 and 59 of 2004 Criminal Code. But he will be held liable as per special part provision, Article 543(3) of 2004 Criminal Code.

Thus, a person who causes an accidental homicide, which occurs even where he has put himself in a state of irresponsibility by taking drugs or alcohol, will be liable. The 2004 Criminal Code seems to argue that the driver should feel regret, reflecting an outcome that is very unfortunate, and they may, ex post, seem unjustifiable. It considers a non negligent killing as an instance of wrongdoing, i.e., a non negligent killer is a wrongdoer if he causes harm. Liability for an outcome, on the basis of moral luck principle, i.e., that lie outside the control of those who may be held liable on moral luck doctrine. Luck is endemic to negligence liability. Husak

characterizes his kind of liability as example of purely innocent conduct[149]. An innocent person includes any person who is not guilty of the offence in question, despite his behavior, because of duress, legal incapacity or exemption, unawareness of the criminal nature of the conduct in question or of the defendant criminal purpose, or any other factor precluding the mental state required for the offence in question.

The criminal liability of such persons under Articles 491 and 543(3) of the 2004 Criminal Code may deter the general public as well as the criminal person himself from engaging (involving) in activities that may render in to a condition of absolute irresponsibility. In addition to this aim, such measures may incapacitate such persons from harming society or persons living with such persons. In addition to preventing society from such absolutely irresponsible persons through the measures of confinement or treatment, broader preventive measures shall be utilized through various social and educational schemes and policies. Disabling certain criminals does not, by its own, eliminate criminal offences from community unless the larger context is taken into account, that is, reformation (or correction or rehabilitation).Incarceration has not only a deterrent and possibly reformative value, but it serves also as a temporary preventive measure. Reformation seeks to bring about a change in the offender's character itself so as to reclaim him as a useful member of society. Reformation aims at the actual offender before the bench.

The Criminal Code of 2004 under the preface of it indicates the major place which the criminal law has allocated for the aim of reformation (or correction or rehabilitation).For this reason, the law made liable, in a restrictive manner, those who are committed crime, while they are in the state of complete irresponsibility. The Criminal Code of 2004 use prison as a training rather than a pure punishment, and the greater employment of probation, parole and suspended sentences are evidence of this general trend. Criminals are sent to prison in order to be there transformed into good citizens by physical, intellectual and moral training.

[149] .Supra note 16,ibid

3.1.4-COMPULSORY TREATMENT OR confinement

Traditionally, a person can perform a criminal act or omission only where he acts willingly. Culpability presupposes voluntary criminal act. It is virtually undisputed that the law should not touch innocent conduct, but rather should punish only blameworthy action. Guilt requires the capacity to comprehend one's action nature or the consequences of one's action or of regulating one's conduct according to such understandings during the commission of the criminal act. There are certain cases where persons do not have such capacities. The Criminal Code of 2004 and (the 1957 Penal Code of Ethiopia) imply that every person is presumed to be criminally responsible, and to possess a sufficient degree of reason to be responsible for his acts so long as the contrary be proved to the courts satisfaction. Thus, in principle, the government does not have to prove that the defendant is criminally responsible. The existence of criminal responsibility is, in fact, the normal case. It is presumed.

The legal and moral traditions of the western world require that those who, of their own free will and with evil intent (*mens rea*), commit criminal acts which violate the substantive criminal law, shall be criminally answerable for those criminal acts[150].The western world traditions also require that where such criminal acts stem from and are the product of a mental disease or defect, moral blame shall not attach on the offender, and hence there will not be criminal accountability. Similarly, the Criminal Code of 2004 under article 48(2) stipulates that a person is not responsible for his acts under the law where he was in a state of absolute irresponsibility due to biological defects in addition the resultant psychological defects. The biological defects that constitute foundation of absolute criminal irresponsibility are: age, illness, abnormal delay in development, deterioration of mental faculties or understanding, a derangement or an abnormal or deficient condition or any other similar biological cause. In addition to any one of these biological defects, a person, in order to be free from criminal irresponsibility, should also suffer from the psychological effects of the pathological deficiency, that is, deprivation of awareness(knowledge)or deprivation of volition(will).Not only these biological defects and psychological effects requirements be present together, but they must linked by causal relation.

[150] .Steven Lowenstein, Materials For The study of The Penal Code of Ethiopia,(Faculty of Law Haile Sellasie I university, Addis Ababa,1965)pp.174

The legal effects of absolute criminal irresponsibility are of two kinds. If a person deprived of his knowledge or volition at the time of the wrongdoing and if one of these conditions comes from one of the biological state of affairs, the person is not held criminally responsible for his act. Since the wrongdoing is not concurrent with an evil mind (*mens rea*), the defendant is not criminally responsible. Even if a person who is absolutely irresponsible, and set free, the court shall order compulsory appropriate measures of treatment or require confinement in a suitable institution as per Art.48 (3) of the Criminal Code of 2004. The term "may order" in Art.48 (3) of the English version of the 2004 of the Criminal Code should have read as "shall order" as in the Amharic version of the 2004 of the Criminal Code and (1957 of the Penal Code of Ethiopia). That is because criminal liability requires a combination of wrongdoing (the ultimate harm) and culpability (the actor's state of mind).However, even if a person who is absolutely irresponsible, and set free, the court shall order compulsory appropriate measures of treatment or require 48(3) of the English version of the Criminal Code of 2004 should have read as "shall order" as in the Amharic counterpart and the counterpart of the 1957 penal code of Ethiopia. Moreover, the court shall apply the following provisions (Arts.130-144 of the 2004 Criminal Code) having regard to the circumstances and requirements of the case where the criminal is completely irresponsible or he is of a limited irresponsibility according to Art.129 of the same Code. Since the word "shall "is used under Arts.130-133 of the same Code, the court is under a duty to order a compulsory confinement or treatment.

It is difficult to reconcile this imposition of compulsory treatment or confinement up on those completely irresponsible with the general provisions of the Criminal Code of 2004, in particular, with Arts.23(2) and 57-59 of the same Code. Professor Hart argues that, it is only after the proof of intent or negligence, the harm doer should be held liable to compulsory treatment whether punitive or medical[151]. It is not feasible to proof the meaningful *mens rea* on the part of the wrongdoing where his personality has been integrated by mental disease. In such cases, neither intent nor negligence can be proved because the harm doer lacked the capability for example, to understand and appreciate his actions, that is, he is so blind that he is no longer knows what he does. The critical question here is shall we set him free or convict him anyway? Hart suggests that the court should be given broader powers in the case of such physically harmful offences to

[151].H. L. A. Hart, The Morality of the criminal law(London,1965)pp.24

order notwithstanding an acquittal of any kind of medical treatment or supervision that seemed appropriate[152]. Obviously the Ethiopian criminal justice system accepts the Hart's position as it is provided under Arts.48 (3) and 49(2) of the Criminal Code of 2004. But this solution is simply re-establishing the very same criminal responsibility which the author (the harm doer) is opposing from the outset[153].

On the one hand, Art.48 (2) of the same Code states that a person is not responsible for his acts under the law when, owing to age, illness, abnormal delay in his development, deterioration of his mental faculties, one of the causes specified under article 49 sub-article 1 or any other similar biological cause, he was incapable at the time of his act, of understanding the nature or consequences, or of regulating his conduct according to such understanding. On the other hand, however,Art.48 (3) of the same Code stipulates that the court shall order in respect of an irresponsible person such suitable measures of treatment or protection as are provided by law (Arts.129-131).The court *shall* order the criminal confinement in a suitable institution if the criminal, by reason of his condition, is a threat to the public safety or order, or if he proves to be dangerous to the persons living with him according to Article 130(1) of this Code. If he is in need of treatment, he shall either be treated in the institution in which he is confined or be transferred to an appropriate institution in accordance with Article 132 of the same Code as per Article 130(2) of the same Code. He will be confined until the reason for such confinement has disappeared i.e. the confinement shall be of indefinite as it is stated in Article 132 of the same code. Article 130(3) of this Code stipulates that the court shall release the criminal from confinement to the supervision of a selected protector for not less than one year and shall in addition impose such conditions as may be necessary(Art.125 of this Code).According to Art.131 of this Code, the court shall order the criminal treatment in a suitable institution or department of an institution where the criminal is suffering from a mental disease or deficiency, deafness and dumbness, epilepsy, chronic alcoholism, narcotic and psychotropic substances, intoxication due to the abuse of narcotics or any other pathological deficiency and requires to be treated or placed in a hospital or asylum.

[152] .ibid
[153] .ibid

The duration of the treatment shall be of indefinite duration, i.e.it lasts until the reason for the treatment or confinement disappeared according to Article 132 of the 2004 Criminal Code. Specifically Article 132(3) of this Code states that any order made for confinement or treatment may at anytime be revoked where public safety or the condition of the released person so requires. The provisions of Articles 129 – 132 of the 2004 Criminal Code called such irresponsible person as a criminal. Therefore, this way out is basically re-establishing the very same criminal liability which the harm doer is opposing from the start

Obligatory treatment or confinement ordered by the court in connection with or for the reason that of a criminal act (even if after a formal acquittal) will, for the offender as well as the general public carry the pain and stigma of a punishment[154]. So long as the harm doer and the community views the order of the court for compulsory treatment or confinement as punitive rather than therapeutic, treatment or confinement is synonymous with punishment. The theory of strict criminal liability imposes confinement or treatment, which is synonymous with punishment and which therefore connotes fault and blame, even in cases where no fault of any sort can be shown on the part of the offender.

Coming back to the theme of this paper, thus, the author of this thesis argues that Art.48 (2) of the Criminal Code of 2004 imposes pure strict criminal liability with respect to compulsory confinement or treatment. This was so owing to the commission of offences since the compulsory detention or treatment as per Arts.129-132 of the Criminal Code of 2004 is ordered with or in connection with the commission of the crime (with respect of which the offender had charged). This detention or treatment is ordered based on the criminal law and imposed by judicial decisions. Of course, compulsory confinement or treatment ordered based on the belief that irresponsible person has committed the crime with which he had been charged and may be in need of medical care or be latent for others. The justification of state intervention in any criminal event is the involvement of the public welfare. Criminal law, both in theory and practice, has been regarded as one more method used by society to achieve social control and crime reduction. For that end, the court must order the treatment or confinement of the offender for the safety of the community, or the offender himself or both since such measures aim at preventing the commission of further criminal offences by eliminating the cause of the offence (compulsory

[154] .ibid

medical treatment) and/or by restraining the defendant so long as he is menace for others(compulsory confinement),and both or either of these preventive measures apply until their purpose is fulfilled, or even though it appears that the purpose cannot be fulfilled because the criminal offender is incurable.

In sum, compulsory confinement or treatment, no matter how benevolent, does not denote the waiver of punishment. The fact that the irresponsible person's freedom of action or movement is restricted suffices to prove the punitive as part of the confinement or treatment as are provided under Arts.129-131 of the Criminal Code of 2004. Judicial preventive detention (judicial physical restraint) has been provided under articles 129-132 of the 2004 Criminal Code. Such method of prevention of the commission of crimes mainly meant to serve to prevent the actual offender from committing further offences and to bring about a change in the offender's character itself so as to reclaim him as a useful member of society. Thus, the Ethiopian criminal justice system regard punishment (criminal measures with or in connection of the commission of the crime) as a method of protecting society by reducing the occurrence of criminal behavior. The necessity of the administration of criminal justice is, as stated under Art.1 and the preamble of the 2004 Criminal Code, that protecting the society by deterring actual and potential offenders, by preventing the actual offenders from committing further crimes and by reforming and turning the actual offenders into a law-abiding citizen. Such measures may deter the general public as well as the irresponsible person himself from engaging (involving) in activities that may render in to a condition of absolute irresponsibility. In addition to this aim, such measures may incapacitate such persons from harming society or persons living with such irresponsible persons. In addition to preventing society from such absolutely irresponsible persons through the measures of confinement or treatment, broader preventive measures shall be utilized through various social and educational schemes and policies. Disabling certain criminals does not on its own eliminate criminal offences from community unless the larger context is taken into account. That is reformation (or correction or rehabilitation).Of course; preventive considerations are manifest in preventive physical restraint.

The Criminal Code of 2004 under the preface of it indicates the major place which the criminal law has allocated for the aim of reformation (or correction or rehabilitation). Sentence has not only a deterrent and possibly reformative value, but it serves also as a temporary preventive

measure. Reformation seeks to bring about a change in the criminal's personality itself so as to get back her as a positive member of the public. Reformation aims at the actual offender before the bench. The Criminal Code of 2004 under the preface of it indicates the major place which the criminal law has allocated for the endeavor of reformation (or correction or rehabilitation).For this *raison d'être*, the Criminal law made liable, in a restrictive manner, those who are committed offense, while they are in the condition of full irresponsibility. The Criminal Code of 2004 use detention center as a reformatory rather than a pure incapacitation, and the greater employment of probation, parole and suspended sentences are evidence of this general trend. Criminals are sent to prison in order to be there transformed into excellent citizens by physical, intellectual and moral schooling. Therefore, compulsory treatment or confinement can be regarded as strict criminal liability having regarded the springs of the application of such methods and the purpose of criminal justice.

3.1.5-Juridical person's criminal liability

Corporate criminal liability is special from and is independent of the human being criminal liability of human resources of a juridical organization in any capacity such as that of director, manager, accountant, or any other employees. The notion of corporate criminal liability does not confer any personal criminal liability immunity for crimes committed by the workers in any capacity in the course of employment and within the scope employment; it rather addresses the issue that an artificial person can be held straightforwardly liable for a transgression committed by its workforce, in addition to the criminal liability of the workers of the entity who are involved in the commission of a criminal offence in question.

Can the government convict a juridical person of a crime without its having any knowledge or involvement in the crime? There are two point of view propounding different views on the matter of the nature and criminal liability of corporations and any other juridical persons. One group of commentators argues that juridical persons are fictional entities, which have no existence a part from the various individuals who act on behalf of the fictitious entity[155]. This premise can lead quickly to the conclusion that corporate criminal liability is unjust because it effectively punishes innocent third parties (shareholders, employees, and so forth) for the acts of

[155] .Sara Sun Bale, A Response To The Critics Of Corporate Criminal Liability, American Criminal Law Review vol.46:1481(2009)pp.1482

individuals who commit offences while in the employment of these fictional entities. Thus, a corporate entity'' has no mind, let alone a guilty one and it considers the notion of vicarious corporate criminal liability, one type of strict criminal liability, as illegitimate. What this account misses is that the reality that juridical persons are not fictitious. The entire point of the corporate form is to create a legal entity that is separate from its shareholders (as well as employees, creditors, and others).Each juridical person has its own assets as well as its own liabilities.

Other group of scholars paradoxically argues that juridical persons are enormously powerful, and very real actors whose conduct often causes very significant harm both to individuals and to society[156]. These scholars mentioned that the law, in a variety of contexts, recognizes this reality by allowing to own property, makes contracts, commit torts and to sue and be sued.

With respect to the Ethiopian criminal justice system, Can the government convict a juridical person of a crime without its having any knowledge or involvement in the crime? The answer is yes, as it is provided in Article 23(3) and 34 of the 2004 Criminal Code. This provision makes juridical persons vicariously liable for the crimes of others. The theory of corporate criminal liability pursued by the criminal code of 2004 seems to have been that juridical persons have real existence apart from employees of it. Art.34(1),first paragraph, of the 2004 Criminal Code states that a juridical person other than the administrative bodies of the state is punishable as a principal criminal, an instigator, or an accomplice where it is expressly provided by law, that is, under special part of the Criminal Code of 2004 or any special criminal legislations.Further,Art.34(1) of the 2004 Criminal Code under its second paragraph stipulates that a juridical person shall be deemed to have committed a crime and punished as such where one of its officials or employees commits a crime as a principal criminal, an instigator or an accomplice in connection with the activity of the juridical person with the intent of promoting its interest by an unlawful means by violating its legal duty or by unduly using the juridical person as a means.

Furthermore, article 23(3) of the 2004 Criminal Code states that notwithstanding to the provision of sub-article 2 of this Article, a juridical person shall be criminally liable to punishment under the conditions laid down in Article 34 of this Code. Thus, Art.23(3)stipulates that a juridical person shall be criminally liable to punishment under the conditions laid down in Article 34 of

[156] .ibid

the Criminal Code of 2004 without regarding to the requirement of the presence of the legal, material and moral ingredients. This stipulation seems to indicate that juridical persons are not capable of thoughts, feelings and physical acts, and they have no corporeal (physical) existence other than the artificial recognition accorded to them by the law for the purpose of legal interactions. To put in other way, the criminal liability of corporate entities shall not be considered in accordance with Arts.23 (2) of the Criminal Code of 2004, but rather its liability shall be construed in light of Art.34 of the same Code. All these provisions indicate the vicarious strict criminal liability of entities, that is, the transferability of individuals' employees' criminal liability of the entity to the juridical persons. The requirement of juridical person's criminal liability, which is vicarious, arises from the acts of workforce in any capacity whatever.

These indicate that corporate criminal liability imposed where there has been no true fault on the part of the juridical body. The Current Federal Criminal law of Ethiopia imposed criminal liability when there is not, by some the fault definition of the 2004 criminal law measures, corporate blameworthiness. Under the Ethiopian criminal law, the courts, without assessing whether the juridical bodies policies and procedures on the matter or management supervision met with the required standards to prevent the criminal conduct by its employees. The paradigm case is the misconduct of a single rogue employee, which can be attributed to the juridical person by the doctrine of respondeat superior[157]. The law does not require for criminal liability whether the juridical body has effective policies and procedure to deter and detect criminal actions by its workers. The current hornbook rule is that the juridical organization shall be held criminally liable for the unlawful acts of staff no matter their place in the juridical body hierarchy and regardless of the efforts in place on the part of juridical persons to deter the unlawful acts of workers. The doctrine that is incorporated under Art.34 and 23(3) of the Criminal Code of 2004 is simple: a juridical body, being merely a person in law alone, and not a real one, can act only through its employees for whom it should be held criminally liable. Thus, if corporate criminal liability is to exist at all, then the juridical person must be responsible for the criminal conducts of its personnel through which it acts.

[157] .ibid,pp.14940;Sayre,criminal responsibility for the acts of another(43 Harvard law review,689-723,1930)pp.689-694

Hence, the Ethiopian criminal justice system imposes corporate criminal liability when there is no, by Articles 23, 57-59 of the 2004 Criminal Code measure, corporate blameworthiness. This is what we call it strict vicarious criminal liability. It is strict criminal liability in two aspects: one, it is strict because there is no requirement of any form of fault regarding the criminal act for its liability, i.e., there is no requirement neither intent nor negligence. It imposes criminal responsibility when there is no, by Articles 23, 57-59 of the 2004 Criminal Code measure, corporate culpability. Secondly, it held criminally liable even in the absence of proof of wrongdoing on its part, let alone the proof of guilty mind. The juridical person held liable under the 2004 criminal code without having personally participated in the act being punished or having been accessory to it.

The juridical person is criminally liable when one of its employees of any level has the required *mens rea* in cases where the underlying crime in which its employee charged with require a fault of any sort whatsoever and involvement in any capacity in the conduct constituting the crimes. This is called as strict liability with respect to lack of culpable conduct. This kind of strict liability imposes on persons who have not engaged in any wrongdoing by themselves, let alone to be culpable wrongdoer.

The 2004 criminal code does not require for criminal liability whether the juridical body has effective policies and procedure to deter and detect criminal actions by its worker. Even it does not allow the juridical bodies to defend raising it has already employed all reasonable measures to thwart the criminal activity of its officials and employees. Such criminal liability neither specific nor general deterrence are furthered in such a situation since the body has already taken all the actions that the law, and the government, should or likely would impose upon conviction. In short, there is nothing to deter since the body is already doing exactly what the society wants the body to do.

The wholesale adoption of vicarious criminal liability agency principles flies in the face of precepts that govern criminal liability in principle. Such strict liability in criminal law is antithetical to the goals of criminal law. Where the juridical body has already employed all reasonable measures to thwart the criminal activity of its officials and employees, the goals of the criminal law with respect to a juridical organ, as opposed to an individual natural person, have been met. This thesis contends that where the government seeks to charge a juridical body

as a criminal defendant, the prosecution should bear the burden of establishing as an additional element that a juridical organ failed to have reasonably effective policies and procedures to prevent the criminal conduct. Locating the burden of proof on the government is consonant with the general criminal law percepts that place the burden of proof of each essential elements of a crime squarely on the government. Such reform redounds to the benefit of both the public (and the government) and juridical bodies. Limiting juridical bodies criminal liabilities to those juridical bodies that have not taken all reasonable measures to prevent criminality by their employees will spur juridical bodies' action in precisely the area that is of most interest of the government and public.

3.2-Strict criminal liability as to the Law

One of the elements of a punishable criminal offence is its legal elements, i.e., its embodiment and prohibition by a specific criminal law provision. The legal ingredients of criminal offences under 2004 criminal law refers to the requirement that an act or omission which constitutes a criminal offence and its punishment be expressly stated by state legislation. The 2004 criminal code this requirement with other codes of the continental legal system. According to Jhonson, the usual understanding of strict criminal liability is normally worried with respect to factual (material) elements of a crime, not as to the governing law[158]. This ordinary analysis attaches moral element of a crime only to the material element of a crime, without regarding to the legal element of a crime. Low, however, argues that the substantive idea of strict criminal liability also considers strict criminal liability as to law, not as to fact alone[159]. This latter conception of strict liability incorporates strict criminal liability with respect to legal elements of a crime, in addition to material elements. I generally use strict liability offences as to law to refer to infractions, violations, or crimes that can be committed without any intent to break the law, any knowledge of what the law is, or even any negligence in learning what the law prohibits.

There are two schools of thought propounding divergent views on mistake or ignorance of the governing law. The utilitarian school of thought proposes that taking unawareness of the governing criminal law in to consideration would promote mistake or ignorance of the law and thus, it gives primacy to the community interest over persons. This doctrine seems to hold

[158] .Supra note 43,ibid
[159] .Supra note 69,ibid

morally innocent persons criminally liable. Supporter of this line of argument claim that unavoidable error *juris* is not necessary as a defense because every sane man knows the criminal law. This discipline proposes for the adoption of objective standard as to mistake or ignorance of the substantive criminal law. The legislature has the power to define or enact the wrong; it has the duty to promulgate the criminal law; and citizens are properly expected to learn what the legislature has proscribed. This school of thought focuses only strict liability as to factual elements of an offence. Paradoxically, the pragmatic school of thought claim that mistake or ignorance of the substantive criminal law affects a person's volition (no less than mistake or ignorance of fact) and hence moral guilt, in the absence of knowledge of the governing law punishment becomes excessive. Thus, knowledge of normative rule should be an integral part of the *mens rea* element, or at least, accepting unavoidable error *juris* as an excuse is proper.

The question whether knowledge of normative rules is a constituent of the intent element of a crime or whether it is a separate matter bearing on culpability under the mistake of law defense is hotly debated. Mistake of law is not a new, marginal, and isolated defense. Instead, it is inseparable from a properly understood *mens rea* requirement. The rationale behind mistake of fact and mistake of law is basically the same. That is why the intent theory treats the two types of mistakes the same. The theory of intent proposes to treat knowledge of unlawfulness and knowledge of other elements (e.g., factual elements) of a crime; in that sense one could refer to it as the equal treatment doctrine.

Coming back to nucleus issue of this thesis, I will investigate and scrutinize whether the Ethiopian criminal justice system requires any sort of blameworthiness as to law i.e.an intention to break the law, in addition to awareness as to facts. According to Art.57 (1) of the Criminal code of 2004,"No one can be punished for a crime unless he has been found guilty thereof under the law." The same provision defines **guilt**: A person is **guilty** if, being responsible for his acts; he commits either intentionally or by negligence. The meanings of intention and negligence have been defined under Arts.58 and59 of the criminal code of 2004. As per Art.58 (1) of the criminal code of 2004, a person is deemed to have committed a crime *intentionally* where (a) he performs an unlawful and punishable **act** with full knowledge and intent in order to achieve a given result; or (b) he being aware that **this act** may cause illegal and punishable consequences, commits **the act** regardless that such consequences may follow. In Art.58(1)(a) ,quoted above, the criminal

code uses the words " full knowledge" and " intent" as elements of direct intention to respectively express awareness and will. By means of the word intent as an element (to define direct intention) in the English version of Art.58 of the Ethiopian Penal Code of 1957 was a tautology. This same term has again found its way into the present Ethiopian criminal code of 2004. The term full knowledge (or awareness) refers to the capacity to foresee the nature, factual circumstances and consequences one's conduct and intent (volition) destined to mean desiring the result as an objective of the act. Art.59 of the same Code specifically states about imprudence or lack of foresight of the action consequences.

Further, Arts.48 and 49 of the 2004 Criminal Code requires only understanding the nature of consequences thereof or regulating the action according to such understanding. These provisions are quite specific with respect to the factual elements of a crime which make an act unlawful. Thus, the law requires *mens rea* no more than as to the objective (material) element of an offence. In other words, it does not requiring consciousness about the unlawful nature of the act, i.e. intent to infringe the criminal law. As Graven noted, the drafter of the Ethiopian penal code expressed the concept of criminal fault to refer to include both awareness of the unlawful as well as of the reprehensible nature of the act, but the codification commission amended the notion of guilt as to just stand for understanding the nature or consequences of the act as a replacement for the unlawful nature of the act[160].

What's more is Art.81 of the 2004 Criminal Code stipulates that ignorance or mistake of law is no excuse for breaking it. This clearly point out that, in principle, ignorance or mistake regarding to the governing law is no excuse and thus, it gives precedence to the public interest at large than individual's. It has been defended, by Austin and others, on the ground of difficulty of proof[161]. The difficulty, such as it is, would be met by throwing the burden of proving ignorance of the law on the suspected law-breaker. Accordingly, Art.81 of the same Code stipulates that the prosecution does not have the obligation to prove that the defendant aware of the unlawful nature of his act, but it has only the obligation to prove that an accused has an awareness of the nature of his act at the commission of the act. It does not make knowledge of a law as an integral part of moral element of a crime, i.e., it centers on error juris nocet(or an error of law does not excuse).

[160] .Supra note 98,pp.155

[161] .Oliver Wendell Holmes, The criminal law 47-48; Ryu, The New Korean criminal law of October 3,1953,48 J. crim. L. crim. and pol.soc.(1957)pp.280-281

A mistake of law occurs when a defendant has factual knowledge plus a minimum understanding of the normative significance (i.e., the reason behind criminal law prohibitions), but mistakenly believes that no sanction in the criminal code applies to the act. One must carefully distinguish between a factual mistake and a mistake of law. It goes without saying that a mistake of law can have a factual basis. It also goes without saying that this kind of factual error cannot turn a mistake of law in to a mistake of fact. On a theoretical level, fact and law become indistinguishable because all facts are normative for the very reason that the law refers to them, and meaningful knowledge of facts is possible only if the offender perceives the normative significance of facts correctly. The growing importance of social welfare offences, mala prohibita crimes, and administrative offences has forced us to acknowledge that the insane are not the only persons who might not recognize a violation of the law. No plausible theory of criminal sanctions can explain why a person who does not know and cannot know that he is breaking the law should be punished. Since mistake of law and mistake of fact are closely related, it should prevent adherence to the error juris criminalis nocet maxim. Even in a system of detailed legislation, mistake of law is a matter of mens rea if the perpetrator's factual knowledge lacks the normative associations relied by the legislators. Punishable behavior is not described in factual detail; rather, it is described as violations of legal rules-rules which are usually not in the criminal code itself because they are too intricate or apt to change frequently. Anglo-American and continental criminal law (the generalization is permissible here) require *mens rea*, because, as the perpetrator's state of mind, implies knowledge of a violation of the law (or in negligent crimes the possibility of such knowledge).Full factual knowledge without proper understanding of the normative context can be so empty that it negates *mens rea*. That is why the theory of intent proposes that mistake of law does exclude intent, i.e., mistake of law is thought to negate an element of the definition. But the Ethiopian Criminal Code of 2004 does not make knowledge of a law as an integral part of moral element of a crime.

However, there are two exceptions upon this principle, i.e., the Ethiopian Criminal Code of 2004 recognizes exceptionally that mistake of law does excuse. The initial one is mitigation of penalty according to Art.81 (2) of the 2004 Criminal Code. The condition for penalty mitigation without restriction is a definite and adequate reason for holding the erroneous belief. The accused is not criminally culpable and will be deemed to have definite and adequate reason if a law-abiding or reasonable person under his circumstances would have held the same erroneous belief. Upon the

fulfillment of these dual circumstances, the act (though not justifiable) is excusable and the court shall, without restriction, reduce the punishment. Excuse refers to diminish the actor's culpability. The second exception is exemption from punishment as it is provided under Art.81 (3) of the 2004 Criminal Code. It deals with justification for the act and justification means a modification of the primary norm of wrongdoing or eliminates the actor's culpability.

For justification, there are four cumulative requirements that need to be fulfilled.

(1) The accused is absolutely ignorant of the governing law.
(2) Such ignorance or mistake is justifiable.
(3) The wrongdoer's act was committed in good faith, and;
(4) The criminal intention of the wrongdoing is not apparent.

Further, Art.744 (1) of the 2004 Criminal Code states that he who committed a petty offence may not plead as justification ignorance of the law or a mistake as to right. But Art.744(2) of the same Code states that if he acted under a proven mistake of fact which excluded knowledge or intention to commit an offence he shall not be liable to punishment according to Art.80 of the same Code.

These all provisions meant to, as quoted above, shows that Ethiopia does not require the government to prove that a defendant culpably violates a penal proscription for obtaining a conviction. Rather it exceptionally provides a defense for penalty mitigation or exemption punishment, that is, the strict ignorance of law is no excuse norm is so relaxed as such to accommodate reasonable ignorance or mistake of the law. Since strict criminal liability with respect to law is simply mean criminal liability in the absence of awareness of the governing law which enacts criminality of the act, it is possible to say all criminal offences in Ethiopia are strict criminal liability with respect to criminal law.

Therefore, the Criminal Code of 2004 adopts the presumption of general awareness about the law and thus, all offences, at least in principle, are strict criminal liability as the law. The purported justifications for such rule are certainty of the law, concern for fraud and promoting knowledge of law[162].The public policy sacrifices the individual to *the general public good*. It is

[162] .Joshua Dressler, Criminal Law (2nd.ed.,2010)pp.20

desirable that the burden of all should be equal, but it is still more desirable to put an end to robbery and murder. It is no doubt true that there are many cases in which the criminal offender could not have known that he was breaking the criminal law, but to admit the excuse at all would be to encourage ignorance where the law-maker has determined to make persons know and obey, justice to the individual is rightly outweighed by the larger interests on the other side of the scales. However, perhaps retributive theory permits lesser culpability to suffice for a legal issue than a factual issue. But it should still require some such culpability. Of course, in fact, arguments of harm based retribution and deterrence often plays a major role in shaping criminal legislation.

In sum, the Criminal Code of 2004 has not required the government to prove that a person acted with what every day language would term the intent to break the law, but rather it required the prosecution to prove that a person acted with knowledge of wrongdoing. If you commit a forbidden act, you are guilty, even if you intended to walk the straight and narrow and even if what you did was harmless and you are not likely to repeat that infraction. All that matters is that you crossed a line; now you must pay. Go directly to jail. Do not pass go.

3.3 Strict criminal liability and its constitutionality in Ethiopia

Here in before, I found the existence of different kinds of strict liability criminal offences. Then the issue here is whether there is any provision in Federal Democratic Republic of Ethiopia Constitution restricting a legislature's authority over the use of criminal punishment in the criminal law. It turns out that there is.

3.3.1- Liberty

Criminal offences, by definition, restrict liberty. The difficulty is to distinguish justifiable from unjustifiable limitations on liberty. There have been theories of the moral limits of criminal law providing accounts of what can be criminalized compatible with due respect for liberty.[163] John Stuart Mill's well known harm principle is central to one such thing: "The only purpose for which power can be rightfully exercised over any member of civilized community, against his

[163].John Stanton-Ife, The limits of law in Eduard Nzaltaed, the Stanford encyclopedia of philosophy(2008) pp.101

will is to prevent harm to other. His own good either physical or moral is not sufficient warrant.[164]„

The principle can help orientate legislator to liberty respecting positions but it clearly does not provide a judicially manageable standard with which to review legislation. This constitutional provision has been used chiefly as a procedural protection from unlawful detention. And while it has been developed to become what can be called of substantive protection[165] because it involves judicial inquiry not just into whether a specific instance of deprivation of liberty is in accordance with law but also whether it is justifiably prescribed by law, thus liberty protection has not been developed to include restraint on the legislative choices to what conduct or actions to prohibit.

3.3.2 Prohibition against inhuman treatment

The 1995 of the Federal Democratic Republic of Ethiopia Constitution under Article 18(1) stipulates that everyone has the right to protection against cruel, inhuman, or degrading treatment or punishment. This constitutional provision expressly addresses the issue of punishment, forbidding ones that are cruel, inhuman, degrading treatment. The question here is: does strict liability can be regarded as cruel, inhuman or degrading treatment? The constitution does not have any definition of the words cruel, inhuman or degrading nor under any proclamations. However, the history of the clause is helpful because it speaks to the type of punishments that gave birth to the clause. The framers of the Federal Democratic Republic of Ethiopia Constitution seemingly took the phrase cruel, inhuman, or degrading from the international convention on civil and political rights. The formulators of the international convention on civil and political rights likely took such words from the English bill of rights of 1689.Historically disagree over the precise events that gave rise to the English version, but they occur that is was

[164] .JSmill, On liberty and other essays (oxford university press,1991)pp.14
[165].Oran doyle, Constitutional Law: Text, cases and materials(clarus press,2008)pp.169-172

directed against hideously painful punishments, sanctions not authorized by parliament, or penalties that were grossly disproportionate to the crime[166].

The point here is whether a term of incarceration for strict liability offences would be regarded as cruel, inhuman, or degrading treatment? One may argue that incarceration should be disallowed as a treatment for a crime without some proof of evil intent or blameworthiness. Finding a person guilty and punishing him for a criminal offence which he did not commit quite obviously offends, among other things, dignity, liberty, the right to a good name, and the presumption of innocence. The unconstitutionality of punishing in this sense may be readily acceptable. It is a different matter when the definitional elements of a specific a criminal offence are satisfied but the argument is that the defendant is morally innocent because the criminal offence of which he is apparently is guilty should not be a criminal offence in the first place. . Harsh language will not have the necessary effect. So imprisonment of someone who did not intend to flout the law is a horse of a different color. It should be forbidden. Given the controversial nature of questions about what can be legitimately punished, concern of democracy and judicial power will lead to demand sound constitutional doctrine to justify court intervention in substantive criminal law. The 1995 of the Federal Democratic Republic of Ethiopia Constitution under Article 18(1) stipulates that everyone has the right to protection against cruel, inhuman, or degrading treatment or punishment. This constitutional provision expressly addresses the issue of punishment, forbidding ones that are cruel, inhuman, degrading treatment. Thus, it does not prohibit making a criminal liability strict, that is, the government has an authority to make liability strict. But this constitutional provision may provide a better vehicle for the constitutional analysis of punishment of strict liability criminal offences. Defendants incarcerated for strict liability criminal offences can argue that their punishment is cruel, inhuman, or degrading. In order to examine whether their punishment is cruel, inhuman, or degrading, we have to examine whether penalties are grossly disproportionate to the crime. It is clear that imprisonment ordinarily is a legitimate punishment for crime. This provision does not restrict the legislature the use of confinement as a sanction for strict liability offenses, i.e., it is not possible to argue that incarceration is prohibited at all for strict liability offences. The government may confine for strict liability offences, but for how long? A term of imprisonment for strict liability offences

[166] .Anthony F.Granucci, Nor cruel and unusual punishments inflicted: The original meaning,57 CALIFL.REV.(1969)pp.839

can be cruel, inhuman, or degrading in an extreme case. One may argue that death or life imprisonment could be regarded as cruel, inhuman, or degrading for strict liability offences. It is because such punishments may be considered as disproportionate for strict liability offences. Thus, Art.18 of the Federal Democratic Republic of Ethiopia Constitution does not deals with criminalization rather deals with the punishment, that is, this provision seemingly restricts the parliament over the use of death or life incarceration in the strict criminal liability offences.

Conclusion and Recommendation

Conclusion

Ethiopia is recognized a two track system of criminal law. One track consisting the 2004 Criminal Code and other special criminal legislations subject to the 2004 criminal code and requiring fault for criminal liability. The second track, comprising the 2004 Criminal Code and other special criminal legislations subject to the 2004 criminal code, involves strict criminal liability. Of course, the Ethiopian federal criminal legislations have recognized, in principle, a presumption against criminal liability. The principle of the Ethiopian criminal justice is, as stated in 57-59 of the 2004 Criminal Code, that there should be no criminal liability without culpability. It is because that presumption in terms of moral intuitions about the role of intention and the unique stigmatic nature of criminal punishment.

Yet the Ethiopian federal criminal legislations have exceptionally created strict criminal liabilities that are unwarranted under the naïve moral framework that justifies the presumption. The Criminal Code of 2004, under its special parts and general parts, provided strict criminal liabilities. Of course, strict liability has traditionally had limited application in criminal law because it removes the requirement of a criminal mind for criminal liability to attach.

It is a strict criminal liability if any material element of an offence lacks a *mens rea* requirement. It is usually known as strict criminal liability as to factual elements of a crime. Further, the notion of strict liability in criminal law covers lack of *mens rea* with respect of the governing substantive criminal law. Based on this understanding, there are numerous or a handful instances of strict criminal liability as to facts and strict criminal liability as to governing law under the Ethiopian federal criminal legislations, i.e., there has been no fault on the part of the defendant with respect to one or more ingredients of a criminal offence. But it is sometimes difficult for a court to infer that the legislature had intended to exclude the application of *mens rea* in the creation of some of the criminal offences.

Ethiopia having a codified criminal law generally has provisions in the criminal code and separate criminal laws which serves as reference points for the question whether strict criminal

liability exists in this country. Thus, the drawing of the particular liability requires the considerations of the systematic unity of the 2004 Criminal Code.

The wordings of each provision and the subject matter with which it deals would, it seems, determine the nature of the crime created. Of course, its existence highly relies upon whether the courts have paid sufficient attention to these provisions. However, they have chosen to continue without abstracting any coherence principle (tests) on when strict liability arises and when it does not. Several strict criminal liabilities exists in Ethiopia today both within and outside the 2004 criminal code, which by general provisions of the code should have a guilty mind, but are treated purely as strict liability not by any known and discernible pattern or principle but rather by an ad hoc abstraction from case to case.

At the outset it should be observed that if some test or distinguishing mark (factor) can be found whereby a strict liability in criminal law can be readily ascertained, criminal justice can be readily administered under rule of law. Search should be made for some rule of thumb or formula which can be mechanically applied. If it will be found impossible to find any such formula capable of mechanical application, it will still be desirable to make the test as simple and as definite as possible, capable of being properly used under the situations confronted by the courts. Vague and indefinite so that it could be shaped and formed to meet the needs of the particular case. argue that there is no doubt, as a question of policy for effective administration of criminal justice, it would be better to have the concept of strict liability in criminal law. The federal courts in Addis Ababa place no or scant regard for the systematic unity of the 2004 Criminal Code.

Strict liability offence signals the Ethiopian societies' intolerance for certain conduct by making irrelevant any issue other than whether the defendant committed it. While strict liability imposes costs on individuals (or society), it also has benefits, and in a democracy we permit legislatures to balance the costs and benefits that legislation imposes on the individuals (or the public). Strict liability is a legitimate and reasonable means of ensuring public good. At a substance matter, eliminating proof of *mens rea* may be as effective at expanding the reach of the criminal law as adding to the stock of offences already on the books. It may even be more effective if strict

liability attaches to conduct that would not be considered inherently harmful, dangerous, or immoral. As procedural matter, strict liability offences make charger remarkably easy to prosecute. The advantage of strict liability is that (as compared to a negligence standard) it simplifies litigation and may lead to more efficient activity levels. The strict liability doctrine affords both an effective and nearly guaranteed way to convict defendants. Strict criminal liability will raise standards of care. It is a way of imposing higher standards on people. After all, if a person is going to be liable regardless of whether he meant to harm or not, he is going to make more care to avoid it, i.e.by imposing strict liability it will lead to greater vigilance and prevent the prohibited outcome. Strict criminal liability offences are problematic, but necessary if the criminal law is to regulate business and protect citizens successfully. The philosophy underpinning strict criminal liability is a desire to see the interests of the public given priority over individual interests. It is an effective way to solve social problem or change behavior.

Criminal punishment (penalties and measures) can have different goals, and choosing among them is within a legislature's discretion. The Federal Democratic Republic of Ethiopia Constitution has mandated the house of peoples' representatives' to make any penal legislation it deems necessary with a view of ensuring peace, order and security of the state, its peoples and its inhabitants. A sentence can have a variety of justifications, such as incapacitation, deterrence, retribution, or rehabilitation and some or all of these justifications may play a role in a states sentencing scheme. Selecting the sentencing scheme rationales is generally a policy choice to be made by the law making organ. The Federal Democratic Republic of Ethiopia Constitution does not require that penal sanctions be designed solely to achieve therapeutic or rehabilitative effects. The government can use strict liability instrument to influence the behavior of the people. The House of peoples representatives of Ethiopia has a legitimacy to make criminal sanctions, including strict liability, and the effectiveness of strict liabilities are ones best left to the House of peoples representatives of Ethiopia initially and the public ultimately to resolve through the democratic process. The legislature may, in the interests of public welfare, create strict criminal responsibility.

However, it may be possible to argue that death or life imprisonment could be regarded as cruel, inhuman, or degrading for strict liability offences. It is because such punishments may be considered as disproportionate for strict liability offences. Art.18 of the Federal Democratic

Republic of Ethiopia Constitution does not deals with criminalization rather it deals with the punishment, that is, this provision restricts the parliament over the use of death or life incarceration in the strict criminal liability offences. Of course, Ethiopian does not use such kinds of punishment with respect of strict criminal liability offences

Recommendation

The challenges of the administration of criminal justice of Ethiopia are all-round, as a way to one of such challenges and to create a sound system of criminal justice I recommend the following.

- Though I endorse the notion corporate criminal liability, it must be limited. The law must create an affirmative defense to limit the criminal liability of juridical persons that make good faith efforts to comply with the requirement of the law that could be demonstrated through corporate compliance programs. Where the juridical body has already employed all reasonable measures to thwart the criminal activity of its officials and employees, the goals of the criminal law with respect to a juridical organ, as opposed to an individual natural person, have been met. This thesis contends that where the government seeks to charge a juridical body as a criminal defendant, the prosecution should bear the burden of establishing as an additional element that a juridical organ failed to have reasonably effective policies and procedures to prevent the criminal conduct. Locating the burden of proof on the government is consonant with the general criminal law percepts that place the burden of proof of each essential elements of a crime squarely on the government. Such reform redounds to the benefit of both the public (and the government) and juridical bodies.
- Since law is inherently politics, it is susceptible to misuse (over criminalization). Thus, the Federal Democratic Republic of Ethiopian Constitution should have express provision that restricts upon the legislature criminalization authority. It may help to control over criminalization in Ethiopia.
- The criminal law must be proclaimed and distributed in various Ethiopian nations, nationalities and people's languages. Since it has adopted the doctrine of ignorance of law is no excuse, the government should proclaim and distribute laws in various Ethiopians' nations, nationalities and peoples languages. The Criminal Code of 2004, as stated in article 1, aimed at the prevention of crimes at first by way of notification .Such

notification, in order to meet the purpose it meant to ensure, should be made out in the languages understandable by the peoples governed by the law. It is in line with the principle of legality as provided in article 2 of the Criminal Code of 2004. It is in line with Article 1 of the 2004 criminal code and Ethnic federalism that is adopted by the Federal Democratic Republic of Ethiopian.

- The criminal justice system of Ethiopia must be in conformity with the principle of proportionality.
- The courts (especially the federal cassation division) have to pay sufficient attention to provisions of both the general and special parts of the law. They should have abstract any coherence principle or pattern on when strict liability arises and when it does not. . At the outset it should be observed that if some test or distinguishing mark (factor) can be found whereby a strict liability in criminal law can be readily ascertained, criminal justice can be readily administered under rule of law. Search should be made for some rule of thumb or formula which can be mechanically applied. If it will be found impossible to find any such formula capable of mechanical application, it will still be desirable to make the test as simple and as definite as possible, capable of being properly used under the situations confronted by the courts.
- If criminals are sent to detention center in order to be there transformed in to good citizens by physical, intellectual and moral training, prisons must be turned into dwelling-houses far comfortable to serve as any effectual deterrent to those classes from which criminals are chiefly drawn. Of course difficulty may arise with the incorrigible criminals. Some persons appear to be beyond the reach of any correctional influences and yet they cannot just be abandoned as totally unfit for punitive treatment of some sort. The protection of community demands at least a measure of disablement to restrain such persons from further harmful activity. The problem ultimately is that suitable methods of reformation might well act not to deter but positively to encourage the commission of crime. The society's desire for reformation cannot of course be wholly disregarded since such desire is necessary for the health of the community and the effectiveness of the criminal law. The reformative element of punishment must not be overlooked, but neither must it be allowed to assume undue prominence. How much prominence it may be

allowed is a question of time, place and circumstance. Thus, the methods of rehabilitation must be employed in a well studied manner.

- I recommend that in the future Ethiopian legislature should specify whether or not an offense is one of strict criminal liability.
- So long as Ethiopia has recognized the principle of strict criminal liability, our legislature should make effort in applying some of the general principle available from other jurisdictions in minimizing its harsh effects in Ethiopia and thereby minimize its uncertainty.
- In the meantime, the courts, prosecutors, and lawyers should make effort in applying some of the general principle available from other jurisdictions in minimizing its harsh effects in Ethiopia and thereby minimize its uncertainty and place thorough regard the systematic unity of the 2004 Criminal Code.

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Interviewees

1. Judge Mulusew Derese,Judge at Federal first instance court
2. Judge Abeba Alemu, Judge at Federal first instance court
3. Judge Metselale Haile, Judge at Federal first instance court
4. Judge Tsehai Menker, Judge at Federal first instance court
5. Judge Leuel Gebermariam, Judge at Federal High court

Declaration

I, the undersigned declare that this is my original work and has not been presented in any one university and all the sources of materials used in the thesis are duly acknowledged.

Declared by:

Name

Signature

Date

Confirmed by:

Name

Signature

Date