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LIABILITY FOR THE ACTS OF MINORS UNDER ETHIOPIAN LAW*

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General

According to Article 2027 of the Ethiopian Civil Code, a person incurs three types of liability. First, a person is liable if he causes damage to others by his fault. Second, a person is liable, where the law so provides, for damage caused to others by his "activity"[2] or by a "thing"[3] he owns or he holds. Finally, a person is liable where another person, for whom the law makes him answerable, incurs a liability based on fault or provided by law.

The first type of liability (i.e. liability for one's own fault) represents the ordinary law of non-contractual liability of all countries. This is because making fault (or guilt) a necessary condition of civil liability accords well with the sense of justice of any society. On the other hand, some writers consider the second type of liability (i.e. liability without fault) as a social injustice. They criticize it on the ground that "it would be the equivalent in civil law to the condemnation of an innocent person in cirminal law."[4] The difference between those who are in favour of imposition of liability without fault in exceptional cases and those who reject it altogether seems to lie in their approach to the law of non-contractual liability. According to the views of those who completely reject liability without fault, the primary function of non-contractual liability is repression, i.e. prevention of wrongs and punishing fault. For them, compensation of victims of harm is its secondary function.[5] On the other hand, those who are in favour of imposition of liability in certain exceptional cases say that the primary social functions of non-contractual liability is that of securing individuals against harm, i.e. securing compensation for victims of harm. According to this view, it is not the purpose of non-contractual liability to punish wrongdoers. This is taken care of by the penal law. The effect of civil liability is payment of compensation to victims of harm. It would thus be erroneous to consider non-

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contractual liability as one devised for the repression of wrong-doing.[6]

However, it should be noted that when it is said that the primary social function of non-contractual liability is that of securing compensation for victims of harm, it does not mean that liability will be imposed on persons without good reasons. Neither does it mean that, particularly in case of liability based on fault, the wrongdoer will not be "punished", *stricto sensu*, for his fault. There is a financial sanction. Although he may not be deprived of his liberty as in the case of criminal liability, he shall pay compensation to the person injured by his fault. This reduces the value of his assets. In this sense one may say that he is "punished". This discourages individuals from performing wrongs against others. This, however, is a secondary function of the law of non-contractual liability.

The third type of liability (i.e. liability for the acts of others) arises only in certain specific instances. Generally, there are three cases in which one is made answerable under the civil law for the acts of another. First, the parent or other persons who are in *loco parentis*[7] are responsible for damages caused by minors.[8] Second, an employer is liable for the damage caused by his employee.[9] In addition to these, there is also a third case that makes one answerable for the act of another. This is the case of defamation committed by the author of a text. In such a case the managing editor of the newspaper, the printer of the pamphlet or the publisher of the book is made liable for defamation committed by the author of the text printed therein.[10] The latter two cases will not be discussed in this paper. It is only liability for the acts of minors that we shall focus on.

What are the bases of liability for the acts of minors? Which classes of persons are made answerable and why is the liability imposed on them?

The Different Approaches

Broadly speaking, there are two different approaches to establish answerability for the acts of minors. These are based on (1) presumption of fault, and (2) proof of fault. We shall briefly discuss them in turn.

(1) Liability based on presumption of fault

According to this approach, answerability for the acts of minors is based on

the presumed fault of the persons charged with the care of a minor child. This approach is generally applied in countries whose laws are influenced by the civil law systems. However, there are slight differences. In countries where the French and German Civil Codes have strong influence, the parents and other guardians of the child have primary responsibility.[11]

In several European socialist countries and the Soviet Union, these persons have primary responsibility only until the child attains a specific age,usually thirteen or fifteen years. According to the laws of these countries, the minor does not incur liability if he is under thirteen or fifteen years of age.[12] However, after the child attains these full specified ages, he becomes liable for the damage he caused. Thus, the liability of his parents becomes secondary at this stage, i.e. they will be held liable only if the child's assets are not sufficient to satisfy the debt he incurred.[13] But in many countries which follow the continental legal systems, the minor is not exempt for liability and the parents' answerability exists irrespective of whether the minor's assets are sufficient to pay the debt he incurred.

Apart from these slight differences, in both cases, if the parents prove that they could not have prevented the minor's act which gave rise to the liability, they will be relieved of their answerability. This means that the presumption is not one which is irrebuttable.[14]

(2) Liability based on proof of fault

At common law and in the Scandinavian countries the parents of the minor child will not be liable for the damage caused by their child merely because of the parent-child relationship. They will be answerable only if it is established that the damage was the result of their negligent supervision. The burden of proof rests with the victim to establish the existence of negligent supervision on their part. No presumption exists to assist him[15]

The Ethiopian Approach

Under our law, the class of persons charged with supervision of minors are, alternatively, the father, [16] mother, the person in whose charge the child has been placed if the child lives outside the family home, the teacher, and the master.[17] The employer is also mentioned with these persons. However, since the conditions of the employer's liability for the acts of his (or its) employees is the same,[18] whether the employee is a minor or an adult, we shall not discuss it here.

It should be noted from the outset that, under Ethiopian law, the minor is not exempted from liability merely because someone is made answerable for the liability incurred by him. He is liable to make good the damage he caused together with the person answerable for him.[19]

It is provided in Article 2124 of the Civil Code that the father shall be answerable if his minor child *incurs a liability* A minor child incurs non-contractual liability in two ways. He may commit fault and cause damage to another. He then incurs the liability by his own fault. He may also engage in a certain activity or own or use a certain thing, and damage may be caused to another by his activity or by the thing he owns or uses. Here, he incurs the liability not because he has committed fault, but because the damage was caused by his activity or by the thing he owns or uses [20] for his personal benefit, and because the law provides that there is a liability without fault in such cases.[21]

What does then the law mean when it provides that the father is answerable if his minor child *incurs a liability*? Does it mean that he is liable for *all* non-contractual liabilities of the child, and not merely for those *based on fault*? Or, to put it differently, does it mean that the father is liable without his fault whenever his child incurs a liability, irrespective of whether the liability is incurred due to the fault or without the fault of the minor child?

According to Professor Krzeczunowicz, who wrote an excellent book on the Ethiopian law of extra-contractual liability, responsibility for minors "covers all extra-contractual liabilities of the child and not merely those based on fault."[22] This means that if, for instance, the minor child owns a motor vehicle, the father shall be answerable if the motor vehicle which is owned by the child causes damage to another person. This is so because the minor, as an owner of the motor vehicle, will incur a liability without his fault if his motor vehicle causes damage to another person.[23] Professor Krzeczunowicz gives the following example in a footnote to illustrate that this is the case: "The child may own an animal and incur a 'strict' liability under Article 2071. This suffices to make the father (Article 2124) or other 'guardian' (Article 2125) liable for the child." [24] One may arrive at such a conclusion, as Professor Krzeczunowicz did, by interpreting Article 2124 cum Article 2027(3). Article 2027(3), which is the last source of non-contractual liability, provides that "A person shall be liable where another person, for whom the law makes him answerable, *incurs a liability based on fault or provided by law*" (emphasis added). Thus, pursuant to this provision, a person will be held liable if another person, for whom the law makes him answerable, incurs a liability in accordance with the provisions of Articles 2028-2065, or Articles 2066-2089, i.e. if he causes damage to

another by his fault or by his non faulty activity (e.g. Articles 2066 and 2067), or if a thing he owns (Articles 2071, 2077, 2081), or uses for his personal benefit (Articles 2072 and 2082), causes damage to another without his fault. However, although this provision seems to mean what it says, there is no vicarious liability if an employee or an author incurs a liability in accordance with the provisions of Articles 2066-2089. In fact, as regards employees, the employer will be answerable only if the employee commits fault in the discharge of his functions (Articles 2129, 2130 cum Article 2131) or while carrying out his official duties (Article 2162(2) cum Article 2127 (1). There is no liability for other faults of the employee. As regards authors, the vicarious defendant will be liable only for the fault of defamation (Article 2135). Thus, the only "exception" seems to be the case of the minor child. Pursuant to Article 2124, where a minor child incurs a liability whether by his fault or without his fault (e.g. under Articles 2066-2089), it seems that his father shall be answerable under the civil law. Moreover, if this is the interpretation that one can give to Article 2124 cum Article 2027(3), then not only the father but also the other "guardians" of the minor child enumerated under Article 2125 will be answerable under the civil law whenever the child incurs non-contractual liability, depending on whoever was custodian of the child at the time when he incurred the liability. This will be so because these "other guardians" of the child are answerable in lieu of the father.

On the other hand, a contextual interpretation of the law seems to restrict the vicarious liability of the father and the other guardians only to such cases where the minor child acts positively and incurs a liability. This seems to be so when one considers the heading of section 4, which reads as "liability for the *actions*[25] of others" (emphasis added). The Amharic version of Article 2124, which is consistent with this, requires a positive act, i.e. an act of commission, on the part of the child in order to make the father and the other guardians liable. It provides "*Akalemeten Yaladerese lij alafinet yemiyasketil Sira Yaseraa endehon* ..." (emphasis added). Moreover, article 2136, which is placed under this section, restricts the vicarious liability of these persons only to such cases where the minor child by *his act* causes damage to another person.[26]

Be it as it may, what is the rationale for declaring parents, and other persons who may have power of control over a minor child, answerable? Let us see what Treilhard, one of the draftsmen of the French Civil Code of 1804, which influenced the civil laws of many countries, had to say on this point.

He wrote:

"Those upon whom liability is imposed may, at least, be charged:

> Some with weakness, some with bad choice and all with negligence. Happy are those who may not blame themselves for teaching baneful principles and setting a bad example. *Let this liability cause fathers of families to be more prudent and careful...and to pay more attention to the extent and sanctity of their obligations.* The life we give to our children is not a blessing uless we teach them virtue and prepare them as good citizens"[27] (emphasis added).

It was and is for these reasons[28] that persons who are charged with the duty of supervision of minor children were declared answerable under the civil law for the acts of minors. Such persons have the duty to inculcate respect for the interests of others, "which, if damaged, reflected *prima facie* a failure to instil due discipline. Such failure is tantamount to fault." [29]

In conformity with the above rationale, at civil law, as we have seen earlier, liability for the acts of minors is based on presumption of fault. Whenever the minor child causes damage to another person, the parent or other guardian of the child is presumed to be at fault in exercising supervision over him or her. However, he can rebut the presumption and relieve himself of liability by showing that he could *not have prevente*[30] the occurrence of the damage.

In the Soviet Union and East European socialist countries, the parent bears responsibility for harms caused by the minor only if he is at fault in supervising the child.

In common law and in the Scandinavian countries the parent is not responsible for the damage caused by his minor child merely because of parent-child relationship. There, the basis of liability of the parent is his own negligent conduct, i.e. improper supervision. If the parent was not negligent in exercising supervision over the child, he will not be liable for his child's faulty conduct.

The foregoing shows that in all legal systems the answerability of the parent or other guardian is not unconditional. The liability arises not by virtue of the sole fact of harm having been caused, or parent-child or guardian-child relationship having been established, but only in the event it is established (or presumed) that the person concerned was at fault in exercising supervision over the minor child.

Is our law different from the foregoing legal systems? Particularly considering the fact that our Civil Code was influenced by the continental legal systems, can one say

that it is different in this respect from those legal systems where the liability is based on rebuttable presumption of fault? Would not it be absurd to say that our law is entirely different from the legal systems of the whole world in this respect, and to hold that the father or other guardian of the minor child will be answerable whenever the minor child incurs non-contractual liability whether based on fault or not? Cannot one interpret our law to mean that answerability for the acts of minors is based on presumption of negligent supervision?

This author thinks that there is room to interpret the provisions of the Civil Code, which governs responsibility for the acts of minors, to mean that such responsibility is based on *presumption of negligent supervision* as in the civil law systems, and not on the mere fact of liability having been *incurred* by the minor child nor on the mere fact of parent-child or guardian-child relationship having been established. The selection of the persons who may be answerable for the acts of minors gives a hint that this, in fact, is the case.

To begin with, the liability is alternative and presupposes possession and exercise of paternal authority or power of control over the minor child. The first person liable is the father. This seems to have connection with the authority of the father as the head [31] of the family as in the case of the Roman *patria potestas*. As the head of the family the father has the authority to supervise not only the activities and behaviour of his minor children but also of his wife.[32] It seems that it is in recognition of this factual as well as legal authority that children in our society usually give more respect to their fathers than to their mothers. It is also in consideration of this paternal authority that the law made the father answerable for damage caused by his minor child.

The mother is made answerable only in lieu[33] of the father and only if she was exercising paternal authority over the child at the time he incurred the liability. The mother usually exercises paternal authority where the father is dead, disabled, absent or condemned for abandoning his family.[34] She may also exercise this authority where the spouses cease to cohabit in consequence of divorce and if the family arbitrators entrust guardianship to her.[35] Moreover, she has an exclusive authority over any child whom she had before the marriage.[36] It is in these instances that the mother will be liable for the acts of her minor child.

Other guardians of the child are also made liable in lieu of the father, but only if they had power of control over the child when he incurred the liability. If the child lives outside the family home, it is up to the person in whose charge the child has been placed to oversee what activities the child may or may not do. Accordingly,

if the minor incurs liability while in his charge, it is this person who will be liable and not the natural parents of the child.[37] Since the child was not under their control, it cannot be said that he or she incurred the liability due to their improper supervision.

Where the minor incurs a liability while at school, the teacher will be answerable.[38] It is obvious that minor children spend a substantial part of their time at schools where the risks of accidents are usually great. As a result the liability of the teacher raises problems which merit special examination. There are many teachers who teach in the same school, for the present system of education requires the assignment of at least one instructor for each subject. Gone are the days where the teacher and the head of the school was one person. Such a system of education was possible at the ecclesiastical schools. Thus, it is not difficult to observe that it is not easy to pinpoint the particular teacher who failed in his duty of supervision. Should all the teachers of the school be jointly liable? Or should the director or administrator of the school alone be liable? How can he supervise many thousands of pupils at one time?

Students usually quarrel and cause injuries to one another not when the teacher is giving a lesson in the classroom but when he leaves the classroom or when they are playing in the school compound during breaks, or before classes begin. Do we expect the teachers to stay with them during these hours in the playgrounds and supervise their activities? Is it proper that this category of private and state employees should be burdened with such an exceptional and onerous liability simply because they happen to teach minor children? Would it not be fair to charge the employer of the teacher with the burden of compensation?

In Germany teachers are considered as state officials, and negligent supervision on the part of the teacher is considered as breach of official duty. As a result the liability of teachers for damage caused by pupils at school shall be borne by the State.[39] Moreover, the presumption of fault against teachers does not operate in Germany. France too has done away with the presumption of fault in respect of all teachers. As a result a person whose interest is injured by a pupil's wrongful act must adduce proof that the teacher was at fault in his supervision.[40]

Should we follow, at least in the future, this approach and make the school liable instead of the teacher? If the school is to be held liable, would there be a fear that teachers may not properly discharge their duty of supervision? If this is a genuine fear, we may continue to make the teacher liable but only when his or her fault is of exceptional gravity and by putting the burden of proof on the side of the

plaintiff or the school to adduce proof that the teacher was faulty in his supervision. However, under our present law, not only is the teacher liable for damage caused by a pupil, but also he has no possibility of rebutting the presumption of fault of improper supervision.

If a minor child causes damage while serving an apprenticeship, the master will be liable in the same way as the teacher will be. However, the position of the master does not seem to be as precarious as that of the teacher, for it is only those who are above fourteen years of age who will be employed as apprentices.[41] Such persons are nearing maturity and seem to be ready to shoulder responsibility and refrain from reprehensible behaviour.

The heading of Section 4 of Chapter 1 of Title XIII, Article 2136, and the Amharic version of Article 2124, indicate that the liability of the father or any other guardian is limited to the cases where the minor child causes damage to others by his act. When one considers all these factors together, he will necessarily arrive at the conclusion that under our law, as in the civil law systems, liability for the acts of minors is based on presumption of negligent (i.e. faulty) supervision, and is restricted to such cases where the minor child incurs the liability by his fault. The only difference is that, under our law, the presumption is not rebuttable, except in the case of force majeure.[42]

It is to be noted that this liability of the person charged with the duty of supervision of minor children ensures the victims of harm compensation for damage. However, equity and justice demand that such assurances be confined within reasonable limits. If it is to be held that responsibility for children covers all non-contractual liabilities of the minor child and not merely those based on fault, it would mean that the parents as well as the other guardians enumerated in Article 2125 would be liable if, for example, an animal, or a motor vehicle owned[43] by the minor child, causes damage to another, depending under whose control the minor was at the time he incurred this "strict" liability. This is precisely what Professor Krzeczunowicz said in a footnote.[44] What justification can one give to such a liability? Should the teacher be liable simply because the child incurred such liability while at school? Should the master be liable merely because the minor child incurred this liability while serving an apprenticeship? Should the parents, for that matter, be liable simply because these things are owned by their child? This author does not see any justifiable reason to make these persons liable in such cases. To hold these persons answerable for the liability incurred by the minor without his fault would be committing a social injustice against them. It would indeed be " the equivalent in civil law to the condemnation of an innocent person in criminal law."

In such cases it is only the owner or holder of the thing that must be held liable. It has to be borne in mind that harm from certain activities or use of certain types of things often occurs, to use Professor Krzeczunowicz's words, "without defendant's fault even by the severest standard of care, or without evidence of fault even by the mildest standard of proof." [45] However, in such cases, since it is the defendant who benefits by engaging in certain activities or by using certain things, there is no reason why he should benefit at the expense of the innocent victim. Equity demands that in such cases the burden of the loss be shifted on to the owner or user of such things, or the beneficiary of such activities.

Therefore, unless we examine Articles 2124-25 cum Article 2027(3) very closely and very carefully and interpret them contextually (by including the heading of the Section and Article 2136), they apparently seem to mean that parents and other guardians of the child are liable for all non-contractual liabilities of the minor. This is particularly true when one considers the English version. However, the controlling Amharic version seems to restrict the liability only to such cases where the minor child causes damage by acting positively. According to the Amharic version, if a minor child commits an act and incurs liability, the father, and in lieu of him, the other guardians of the child, will be liable irrespective of whether the act was faulty or not faulty. But if the child incurs the liability without committing an act as in the cases where his animal or taxi causes damage to another, no one will be liable except the owner child himself.

On the other hand, if one considers the English version without having regard to the heading of Section 4 of Chapter 1 of Title XIII and to Article 2136, he will conclude by saying that these persons will be held answerable even for such types of liability incurred by the child, which conclusion, if applied, will lead to absurdity.

CONCLUSIONS

From the foregoing analysis one may draw the following conclusions:

1. That the liability of the persons mentioned under Articles 2124-25 of the Civil Code is based on presumption of fault of improper supervision. Had the basis of answerability not been fault of improper supervision, the persons enumerated under Article 2125, particularly the teacher, master, and the person to whose care the child has been entrusted, would not have been made answerable. Moreover, the

liability of the mother would not have been in lieu of the father. Instead, her liability would have been joint. Furthermore, there would have been answerability for the acts of insane persons. All these confirm the fact that the liability of the father and the other guardians is not based on the mere fact of parent-child or guardian-child relationship or damage having been caused to the victim, but on failure to properly discharge the duty of supervision.

2. That since the liability is based on presumption of fault of improper supervision, there is no answerability if the minor incurs "strict" liability.

3. That, under our law, the vicarious defendant cannot adduce proof to rebut the presumption.

Suggestions de lege ferenda

Liability for the acts of minors is based on presumption of fault of improper supervision. This is the case in all countries which have adopted the civil law approach. This presumption is necessary because, "generally, faulty supervision would be difficult of proof, since the injured party will usually have little acquaintance with the child or his parents before the accident, so as to be able to show a circumstantial lapse in duty. An injured person would thus be at a disadvantage with regard to the burden of proof."[46] However, it does not seem right to make the presumption irrebuttable. It would be appropriate and logical to allow the persons charged with the duty of supervision of a minor child to adduce proof to show that there was no default in proper supervision on their part and so to be relieved of their responsibility.

In the future we hope that equality between the spouses will be established legally. Parental authority will then be exercised jointly by the father and the mother. In such a case their liability should be joint instead of alternative.

With respect to teachers, however, the presumption does not seem to be appropriate. Except those who are teaching in the very few private schools, teachers are state employees. Why should they be singled out from other state employees and be burdened with such onerous liability? In order at least to ease their burden, it would be fair to put the burden of proof on the side of the victim to show that the particular teacher was at fault in exercising supervision over his or her pupil. It

would even be more equitable to charge the school (whether government or private) with the burden of compensation, except where the fault of the teacher is shown to be of exceptional gravity, in order to ensure compensation to the victim.

For the foregoing reasons, the author proposes the following provisions as a substitute to Articles 2124 and 2125, to be adopted by the Law Revision Committee authorized to revise Book IV of the Civil Code.

Article 2124-Parents' Liability

(1) Where the father and the mother jointly exercise parental authority over their child, they shall jointly be answerable under the civil law where their minor child causes damage to another, unless they prove that the damage was not caused by lack of proper supervision.

(2) Where only one of the parents exercises parental authority over the child, such parent shall alone be answerable.

Article 2125 - other Guardians of the Child.

(1) The following persons shall be answerable in lieu of the parents:

(a) the person in whose charge the child has been placed, where the child lives outside the family home;

(b) the school during the time when the child is at school;

(c) the master or undertaking during the time when the child is serving an apprenticeship.

(2) In the case of sub-article 1 (b) of this Article, the school which has paid compensation to the victim may recover from the teacher where it proves that the later's fault is of exceptional gravity.

Consequently, the last phrase in Article 2027 (3), i.e. "or provided by law", should be deleted for lack of reference to any specific situation.

NOTES

[1] Fault is defined under our law as "any act or forbearance which offends morality or the usual standards of good conduct", and it consists in an intentional or negligent act or forbearance. See Article 2030 (1) cum Article 2029. Under Ethiopian Law, fault is assessed by having regard to the conduct of a reasonable person and without regard to the age and mental conditions of the tortfeasor. See Article 2030 (2-3). Consequently, an infant or a madman could be declared faulty and held liable. Incidentally, unless indicated otherwise, all Articles refer to the Ethiopian Civil Code of 1960.

[2] The activities which make a person liable without his fault are (a) those considered "dangerous" (Article 2069), (b) deliberate infliction of damage to another in a state of necessity (Article 2066), and (c) infliction of bodily harm on another by one's act (Article 2067).

The reader may wonder how one can inflict bodily harm on another by one's act without being at fault. Consider, for example, a situation where minor children play soccer in the playground which is located just across from the Addis Ababa Municipality building. Suppose the ball, kicked very hard by one of them, goes out of the playground and hits and breaks the windscreen of a fast-moving automobile, as a result of which the driver of the automobile, sustain bodily harm from the broken windscreen. Here the harm is caused by mere accident. There is no fault on either side. The cause of the harm is the act of kicking the ball. However, note that the minor is not liable for the damage caused to the automobile.

Consider another example. Suppose a minor, while riding a bicycle, loses balance and falls on and injures a pedestrian when the front tyre of his bicycle suddenly bursts. Here too, there is no fault on either part. But it is clear that the minor's act of riding the bicycle and the subsequent burst of the tyre is the cause of the harm sustained by the pedestrian. Incidentally, note that generally, when a plaintiff suffers bodily harm due to an act of a defendant, the former need not prove fault on the part of the latter in order to claim compensation. In such a case the defendant shall be liable irrespective of his fault, provided there is no fault on the part of the victim.

[3] The things which make a person liable without his fault for damage caused by them are animals (Article 2071) buildings (Article 2077), machines and motor vehicles (Article 2081), and manufactured goods (Article 2085).

[4] M. Planiol, quoted by F.N. Lawson et al in Amos and Walton's Introduction to French law, 2nd edit. (Oxford, Clarendon Press, 1963), p. 203.

[5] See, for example, R.F.V. Heuston, Salmond on the Law of Torts, 16th edit. (London, Sweet & Maxwell, 1973), pp. 20-21.

[6] See, for example, George Krzeczunowicz, The Ethiopian Law of Extra-Contractual Liability (Addis Ababa, Faculty of Law, 1970), pp.38 and 61.

[7] These persons are usually teachers, artisans, administrators, and persons in whose charge the child has been placed if the child lives outside the family home.

[8] A minor is a person who has not attained the full age of eighteen years. See Article 198. However, not that there is no liability for the acts of an emancipated child even if he has not attained the full age of eighteen years. This is because " an emancipated minor shall be deemed under the law to have attained majority in all matters that concern the care of his person and the management of his pecuniary interests". See Articles 329, 330 and 333.

[9] See Articles 2126-2127;2129-2131. The liability of the employer is "strict" in the sense that his (its) proof of his (its) faultlessness cannot relieve him of his (its) liability. There are good reasons for imposing liability without fault on the employer. First, it is because the injurious faulty act was committed while the employee was performing work for the benefit of the employer. Second, had it not caused damages, the employer would have been the sole beneficiary of the work performed. Therefore, it could be proper to also charge the employer with the burden of compensation for damages caused by his employee because of a fault committed in discharge of the latter's functions or official duties. Incidentally, for purposes of this article, the word employee includes public servants and government employees.

[10] See Article 2135. Regarding the liability of the publisher of a book for defamation committed by the author, it seems that this liability is imposed on the ground that he has indirectly participated in the defamation by publishing and distributing the book to the public. Moreover, he has also derived financial benefit by publishing the book which contains a defamatory statement.

As regards the managing editor of the newspaper, his liability can be justified on the ground of negligence, for, had he not been negligent, he would not have allowed such a defamatory article to be published in the newspaper. Moreover, in both cases there may be instances where the author does not disclose his true identity. Thus, there is a need to aid the victim of defamation by such means to claim compensation from such person.

[11] See Jean-pierce Le Gall, "Liability for persons under supervision", International Encyclopedia of Comparative Law Vol.XII, ed. Andre Tunc (The Hague, Boston, London, J.C.B. Mohr, Tubinger, and Martinus Nijhoff publishers, 1973), p.7.

[12] This presupposes that a minor who is under a specified age is exempt from liability. For example, in Poland a minor under 13 years of age and in the Soviet Union a minor under 15 years of age does not incur liability. See Articles 426 of the Polish Civil Code, and Article 450 of the Civil Code of the RSFSR.

[13] See Le Gall, note 11 supra, p.7, and Art. 451 of the Civil Code of the RSFSR.

[14] See Ibid., pp. 8-25. The only exceptions according to Le Gall, are Louisiana (see its CC art. 2318) and Malagasy (See Malagasy's Law on the General Rules of Obligations, art. 223). This author thinks that the exception also includes Ethiopia (See Article 2124-25).

[15] Ibid., PP. 7; 25-29

[16] Articles 2124. The full text of the Article reads as follows:

"Article 2124-Father's Liability

The Father shall be liable under the Law where his minor child incurs a liability".

[17] Article 2125. Its full text reads as follows:

"Article 2125-Other Guardians of the Child

The following persons shall be liable in lieu of the father:

(a) the mother, where she exercise the paternal authority over the child;

(b) the person in whose charge the child has been placed, where the child lives outside the family home;

(c) the teacher or the master during the time when the child is at school or serving an apprenticeship;

(d) the employer, where, under the terms of the following Articles, his liability is involved in consequences of an act committed by the child."

[18] If the employer is the state, it will be liable only if its employee commits an "official fault" within the meaning of Article 2126 (2) cum Article 2127. If the employer is a body corporate or an individual physical person, it (or he) will be liable only if the employee commits fault in the discharge of his functions. See Articles 2129 and 2130 cum Article 2131.

[19] See Article 2136 and note 1 supra.

[20] See Article 2072 and 2082.

[21] See notes 2 and 3 supra.

[22] See Krzeczunowicz, note 6 supra, pp. 50-51.

[23] See Article 2081.

[24] Kreczunowicz, note 6 supra, p. 51, footnote 145, and p. 54.

[25] The French version seems to say, "Responsibility for the acts of others and plurality of liable persons". It reads: "De le responsibilité du fait d' autrui et de la pluralité de responsables". The Amharic version says *leliela sew tegbar alafi silemehon* (emphasis added). Professor Krzeczunowicz's revised translation, which seems to be erroneous, simply says "liability for others".

[26] Article 2136 reads as follows:

(1) A person who caused damage shall repair it notwithstanding that another person is declared by law to be liable for such damage.

(2) The person who caused the damage and the person whom the law declares to be liable for

such damage shall be jointly liable to repair such damage.

(3) The person answerable under the civil law for the action of another may demand that the author of the damage be made a party to the suit brought by the victim for compensation.

[27] As quoted by Le Gall, note 11 supra, p.5.

[28] The other reason is to ensure compensation to victims injured by the faulty acts of minors who are not usually capable of paying compensation for their victims. This is what Professor Krzeczunowicz says on page 54 of his book cited at note 6 supra. Those persons, he says, are legal guarantors, and their guarantee is that the child will not commit fault (emphasis added).

[29] Le Gall, note 11 supra, p.5.

[30] This defence is not restricted only to force majeure. He can also adduce proof to show that he was not at fault in exercising supervision. See Lawson, note 4 supra, pp. 227-228.

[31] Article 635 (1).

[32] Article 644 (2) cum Article 635(2).

[33] If the liabilityy of the mother is in lieu of that of the father, it follows that, if the father is liable, the debt incurred by the wrongful act of the child will be paid only from the personal property of the father and, if this is insufficient, from the common property. In other words, if the personal property of the father and the common property is not sufficient to satisfy the debt, it cannot be paid from the personal property of the mother. The reverse is also true, See Article 659 cum Article 660.

[34] Article 633

[35] Article 661 cum Article 662

[36] Article 639

[37] Article 2125 (b)

[38] Article 2125 (c)

[39] Le Gall, note 11 supra, p.23.

[40] ibid.

[41] See Labour Proclamation No. 64/1975, Article 27.

[42] This defence is not expressly prohibited, unlike the case of liability without fault (Article 2086 (1).

[43] Some readers may ask how a minor can legally own property, particularly the types of property

which make a person liable without his fault for damages caused by them. Under our law, there are no restrictions on the types of property a minor child can own. The minor can own any type of property, including commercial, industrial or other enterprises - Article 288. The minor can acquire such property through donation, bequest or inheritance - see Articles 287 and 299 (1). Incidentally, note that all the minor's property shall be controlled and administered by a tutor who shall ensure that the property of the minor be not mixed with his own property - see Articles 280 (2) and 283. Usually, the father and the mother are, during their marriage, jointly tutors of their minor children - See Article 204.

[44] See note 24 supra.

[45] Krzeczunowicz, note 6 supra, p. 38.

[46] Le Gall, note 11 supra, p. 6.