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Some Issues Relating to Life Insurance under the Ethiopian Commercial Code

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Abstract

This article is about some of the issues relating to life insurance based on relevant provisions of the 1960 Commercial Code and other laws of Ethiopia that are currently in force. The article first discusses the basic concepts of insurance. It then focuses on a problem attributable to the practice of the Ethiopian Insurance Corporation and five legal issues relating to life insurance. It also includes an analysis of court cases. However, due to the lack of recent Ethiopian court cases relating to life insurance, it only analyses cases from the 1970s. The article concludes with recommendations on all the issues discussed.

PART ONE

Contract of insurance in general

When one investigates the Commercial Code,† it is understood from the cumulative reading of articles 654(1) and 657(1) that an insurance contract pertains to a contract whereby one party, called the insurer, in return for financial consideration, assumes the risk of an uncertain event which is not within its control happening in the future, and promises to pay money or provide its equivalent in kind to the insured person where the uncertain event occurs. In order to clarify the definition of a contract of insurance, the following important elements can be analysed:

Assumption and transfer of risk

The primary element that is requisite to a contract of insurance is an assumption of a risk or loss and an undertaking to indemnify the insured against such loss.[1] This is certainly true in the case of the insurance of objects. It is a characteristic of insurance that a number of perils are covered, some of which involve risks affecting property or arising out of the insured person's civil liability,[2] risks arising out of death or life, or risks arising out of injury to the person or illness.[3] All such losses are spread

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† Unless stated otherwise, the articles cited in this article pertain to the 1960 Commercial Code of Ethiopia.

1 G Couch *Couch Cyclopedia of Insurance Law* (vol 1, 2nd ed, 1960, The Lawyers' Co-operative Pub Co) at 29.

2 See art 654 (2).

3 See art 654 (3).

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between the risks so as to enable the insurance company to grant cover at a fraction of its possible liability.

The assumption and transfer of risk depend on whether all risks are insured or not. Pursuant to article 663(1), it is a duty of the insurer to guarantee the insured person against all the risks specified in the policy. The risks must obviously occur as a result of unforeseen events or[4] negligence of the beneficiary (insured). However, there are certain cases where insurers do not insure due to the very nature of the risk. These are risks that are excluded by statutory provisions such as articles 663(3) which deals with risks arising out of the intentional default of the beneficiary, 676(1) which concerns losses due to international or civil war, 699 which talks about suicide,[5] and 700 which deals with the intentional killing of the insured. Certain risks can be excluded by specific terms of the insurance policy to which the insured person must adhere.

Premium

The purpose of a contract of insurance is to arrange the sharing, among a large number of persons, of the cost of losses which are likely to happen only to some of them or to happen at an earlier time to some than to others.[6] Payment of premiums is, thus, one of the duties of the insured who is covered by the insurance. He undertakes to pay a sum of money that is specified and agreed upon, in return for a benefit from the insurer. This obligation is enshrined in articles 654(1) and 666(1). These are some of the general provisions that are applicable to the insurance of objects, persons and liability for damages.

Insurable interest

It is an essential requirement of a contract of insurance that the insured should have an insurable interest over the subject matter of the insurance.

Various inks had been spilt in an endeavour to come up with a satisfactory and exclusive definition of an insurable interest, though to no avail. And, although there is no universally accepted definition, insurable interest can be explained by dichotomizing it. It can be seen that the concept is constituted of the words ''insurable'' and ''interest''.

From a lawyer's point of view, the term ''insurable'' refers to something that falls within the purview of insurance coverage. Risks associated with the subject matter of the insurance may be insurable according to the law.

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4 There is a discrepancy between the Amharic and English version of art 663(2) in respect of the conjunctions ''and'' and ''or''. The former uses the Amharic term *ena* [and] while the latter uses ''or''. However, the conjunction ''and'' should be disregarded, because it seems that there is no need to assume a cumulative requirement since risks arising out of contingent events cannot at the same time also be the result of a predetermined intention.

5 The legal question with regard to suicide is dealt with in Part Two below.

6 E MacGillivray *MacGillivray and Parkington on Insurance Law* (9th ed, 1988, Sweet & Maxwell) at 1.

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For instance, losses or risks sustained as a consequence of the destruction of one's property,[7] damage arising out of a person's civil liability,[8] perils sustained due to death of the insured[9] or losses or risks incurred as a result of bodily damage, illness or accidental death[10] are as a matter of principle capable of coverage by insurance and, hence, are insurable. On the contrary, losses or perils due to intentional default,[11] international or civil war,[12] suicide[13] or intentional homicide inflicted upon the insured[14] are susceptible to be excluded from coverage under insurance, and thus are not insurable.

On the other hand, it would be prudent to look into what the term ''interest'' means. Since it is a legal term, Black's law dictionary can be of help, as it defines the word ''interest'' as ''... the most general term that can be employed to denote a right, claim, title or legal share in something. In its application to real estate or things real it is frequently used in connection with the terms 'estate', 'right' and 'title'. More particularly it means a right to have the advantage accruing from anything, any right in the nature of property but less than title ...''[15]

Interest may also refer to the right that a person has over his/her life, and this can be insurable. By analogizing article 675(2), any direct or indirect interest in a risk, including death for the purpose of life insurance, can be insured. Thus, a man or woman has an insurable interest in his or her own life;[16] a husband or wife also has an insurable interest in the life of his wife or her husband,[17] etc.

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7 See art 654(2) which provides that ''... the insurance policy shall extend to the risks affecting property ...''. This is intended for the purpose of insurance against damage to objects, as governed by articles 675–84.

8 See art 654(2) which contends that ''... the insurance policy shall extend to the risks ... rising out of the insured person's civil liability''. This is covers insurance against liability for damages, as governed by articles 685–88.

9 See art 654(3) which sets out that ''... the insurance policy shall extend to risks arising out of death or life ...''. This covers life insurance in the event of death and endowment insurance, as governed by articles 691–710.

10 See art 654(3) which states that ''... the insurance policy shall extend to ... risks arising out of injury to the person or illness''. This covers insurance against accident and illness, as governed by just two articles: 711 and 712.

11 See art 663(3) which relates to ''... risks arising out of the intentional default of the beneficiary ...''. This covers all forms of insurance and applies notwithstanding any agreement to the contrary.

12 See art 676(1) which provides that ''... the insurer shall not be liable for losses or damages due to international or civil war''. Here, contrary agreement is possible.

13 See art 676(1) which sets out that ''... an insurance policy for event of death shall be of no effect where the insured person knowingly commits suicide''. Here, no contrary agreement is possible. See note 107 below for discussion of the concept of ''knowingly'' committing suicide.

14 See art 700.

15 H Black *Black's Law Dictionary* (6th ed, 1990, West Publishing Co) at 812.

16 D Houseman *Houseman's Law of Life Assurance* (8th ed, 1975, Butterworths) at 29.

17 Id at 30.

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Therefore, we can infer from this discussion that, if one can establish an interest over the subject matter of the insurance on the basis of the law, an insurable interest is said to exist upon it and can be insured against future uncertain events.

Promise to pay a sum of money or corresponding benefit

The insurer undertakes to pay a specified amount of money, substitute an equivalent in kind or repair the damage when the insured risk materializes. The Ethiopian Commercial Code explicitly makes it clear that the promise to pay an agreed sum of money is generally the duty of an insurer. According to article 665(1), the insurer shall pay the agreed sum within the time specified in the policy, when the insured risk occurs or at the time specified in the policy. When we analyse this provision, we see the ''promise to pay'' element in that the insurer is bound to pay the agreed sum within the time specified in the policy (as in the case of an endowment life insurance policy), or to pay the agreed sum upon the occurrence of the risk (which might be damage to an object, or liability for damages, bodily injury or death of the insured person).

Upon occurrence of uncertain event

This world is full of contingencies, none of which can be foreseen. Even if we can say that some are foreseeable, the degree of their occurrence is undoubtedly unknown. It is, therefore, due to the uncertainty of events that insurers provide a scheme of guarantee, regardless of whether or not the event or risk will happen or, in the case of an event or risk which will happen at some time in the future, irrespective of when it will occur.

This fifth constituent element of an insurance contract is mentioned in article 663(2), according to which ''... risks arising out of unforeseen events ... shall be covered by insurance''. The unforeseeability of events indicates that the realm of an insurance contract revolves around uncertain or contingent risk or loss.

Nature of an insurance contract

As mentioned previously, an insurance contract refers to a contractual undertaking for payment of a sum of money or for some corresponding benefit to become due upon the occurrence of an uncertain incident of a character that adversely affects the interest of the assured person.

But, since a contract of insurance is a special type of contract, it possesses its own distinct features. It is classified as an aleatory contract. That is to say, it involves an element of chance and one party may receive more in value than the other.[18] In this regard, it has been remarked that: ''Contracts of insurance, like wagering contracts, are aleatory contacts depending on an uncertain event or contingent as to both profit or loss, for financial or other consideration the insurer agrees to pay or otherwise benefit the

18 S Huebner *Life & Health Insurance* (13th ed, 2000, Pearson Education, Inc) at 191.

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assured on the happening of a specified event or contingency which is outside the control of the insurer. Insurance is a contract upon speculation."[19]

It is also known that a contract of insurance is usually a contract of adhesion, since the insurance company and the insured party generally have unequal bargaining power: the later cannot negotiate the terms of the contract, but must take the contract as it is already drafted.[20] With the exception of some very large companies that may influence an insurance company to alter the terms of an insurance contract, it is considered a standard contract, prepared by the insurer, which is given to the insured on a take it-or-leave it basis. However, because of the rules regarding adhesion contracts, any ambiguities are resolved and interpreted against the writer of the contract, ie in favour of the insured. This principle is clearly entrenched in article 1738(2) of the 1960 Civil Code of Ethiopia (the Civil Code).

An insurance contract is a contract of the utmost good faith. The principle of *uberima fides* [most abundant faith] governs the relationship between the insured party and the insurer. In this regard, it is wise to bear in mind what B Saunderson noted:

> "Among the specific principles applicable to contract of insurance, the most important ones are utmost good faith and disclosure. The duty of an applicant for insurance to disclose to the insurer all facts material to the risk is an absolute and is centuries old. The duty rests on the premise that the applicant is in best position to know the facts, and is aimed at preventing fraud and encouraging good faith between the parties. However, there is no duty to disclose to the insurer facts about the risk that it knows or ought to know, nor is it necessary for the applicant always to go beyond and answer to questions [sic] posed by an insurer: thus if he is asked how many fires he had during the past three years; he need not disclose fires occurring before that period."[21]

Under the Ethiopian legal system, the doctrine of utmost good faith is very significant. It can be said that article 667 imposes the duty of utmost good faith on both the insurer and the assured party. This means it is a double-edged sword, in that all parties to the insurance contract must deal in utmost good faith by fully declaring in the insurance proposal all material facts of which they are aware. If there is a violation of a good faith contract, it is categorized as material misrepresentation or concealment.[22]

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19 R Colinvaux *Colinvaux's Law of Insurance* (6th ed, 1990, Sweet & Maxwell) at 1.

20 R Nader and W Smith *Winning the Insurance Game* (1993, Doubleday) at 35.

21 B Saunderson *Insurance Law* (1971, Coast Legal Pub Ltd) at 2. See also Colinvaux *Colinvaux's Law of Insurance*, above at note 19 at 7.

22 Art 668(1) is the governing provision, by virtue of which the policy concluded under such circumstances is generally of no effect.

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In addition, life insurance contracts are said to be valued policies. This means that the insurer agrees to pay a stated sum of money irrespective of the actual economic loss.[23] Pursuant to article 689, contracts of life insurance, as well as insurance against accident and illness, are not deemed to be contracts for compensation. The amount insured may be freely fixed in the policy and becomes due regardless of the damage suffered by the insured person. Accordingly, the insurer's liability shall not exceed the amount specified in the policy.[24]

Last but not least, contracts of insurance are conditional and unilateral.[25] The insurer's obligation to pay a claim depends upon the payment of premiums and the happening of a contingent event. It is the duty of the insurer to guarantee the insured person against the risks specified in the policy.[26] This guarantee denotes that the insurer is duty bound to pay the agreed sum within the time specified in the policy, or when the risk insured against occurs.[27] Before the insurer has to discharge these duties, there are two conditions precedent which must be fulfilled: payment of premiums and occurrence of the risk. So the insured person shall pay the agreed premium at the time specified in the policy[28] in order to get paid upon occurrence of the risk.

Some scholars say that, in principle, once the premium has been paid, insurance contracts are unilateral in nature as the insurer is the only party that gives a legally enforceable promise to pay the agreed amount of money or compensation after the loss. However, this may not always be correct because, under the Ethiopian legal system, the insured person has a further duty to inform the insurer within fifteen days of an increase in the risks where such occurrence is due to the insured, or within fifteen days of the insured becoming aware of such increase.[29] The insured party also has the duty to inform the insurer of any occurrence likely to render the insurer liable as soon as he knows of such occurrence or within not more than five days.[30] Furthermore, the insured may choose to make premium payments in instalments. For instance, the insured person can pay premiums annually, semi-annually, quarterly or monthly as per article 2 of the Ethiopian Insurance Corporation Life Insurance Policy. The insured's duty of rendering information and the ability of the insured to pay the premium by way of instalments demonstrate that insurance contracts need not always be unilateral.

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23 Huebner *Life & Health Insurance*, above at note 18 at 191.
24 Art 665(2).
25 Huebner *Life & Health Insurance*, above at note 18 at 191–92.
26 Art 663(1).
27 Art 665(1).
28 Art 666(1).
29 Art 669(1).
30 Art 670(1).

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Definition and nature of life insurance

The concept of life insurance can generally be subject to a statutory definition or the common law, depending on a state's legal tradition. Since Ethiopia accepts the continental European legal system, the statutory definition seems to be the relevant authority. The provisions concerning life insurance are therefore found within the Commercial Code, under section 2 of chapter 4, title III. Article 691 defines life insurance as "... a contract whereby the insurer undertakes against the payment of one or more premiums to pay to the subscriber or to the beneficiary a specified sum on certain conditions dependent upon the life or death of the subscriber or third party insured".

From this definition, it may be deduced that life insurance is a contract between the policy owner and the insurer. The policy owner, sometimes also called policy holder, is the person who has the right to exercise control over the policy.[31] He is usually, but not always, the person paying the premiums.[32] For example, when one insures one's own life for one's own benefit and pays the premiums oneself, such person is said to be the policy owner as well as the insured and beneficiary. However, if a man insures the life of his wife for the benefit of their children and pays the premiums himself, then he is the subscriber whilst his wife and children are the insured person and beneficiaries respectively.

It can therefore be seen that there are two parties in a life insurance contract: the insurer and the "subscriber".[33] The insurer is obviously a legal entity that agrees to pay a specified sum upon the happening of a given contingency known as death to named beneficiaries. The subscriber signs the contract of insurance and can be, but is not necessarily, the insured.

According to the definition envisaged in article 691, the insurer undertakes to pay a specified sum to the beneficiary upon the death of the insured,[34] alternatively the insurer promises to pay a specified sum to the policy owner if the latter is alive after a certain specified period of time.[35]

There are, however, times when life insurance for the event of death is made by a third party while the insured person is another person. This situation is covered by article 693 which requires that such an arrangement has the written agreement of the insured, with an indication of the amount insured. If the insured is a married person, consent of their spouse is also required.

Having discussed the definition of life insurance, let me turn now to some of its peculiarities.

It would not be untrue to claim that human life is full of ups and downs which are definitely beyond everyone's control. For this reason, depending on the kind of policy being selected, life insurance is said to provide

31 Nader and Smith *Winning the Insurance Game*, above at note 20 at 272.
32 Id at 271.
33 The Amharic version says *genzeb kefayu*, which means the policy owner.
34 This is called life insurance for the event of death. See art 692(2).
35 This is called endowment insurance. See art 692(1).

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financial support for beneficiaries named in the policy.[36] In particular, it is meant to protect members of a family from the financial consequences of the death of the breadwinner.[37]

Another peculiarity of life insurance is that it is not a contract for indemnity in the strict sense.[38] That is why article 689 states that a contract for insurance of persons (ie life insurance, and insurance against accident and illness) shall not be presumed to be a contract for compensation. As human life, body and health are invaluable, the amount can freely be fixed and is due irrespective of the damage suffered by the insured person.

Additionally, a life insurance policy is regarded as property.[39] But the provisions of book III of the Civil Code and the 2000 Revised Family Code of Ethiopia (the Revised Family Code) do not explicitly say that it is property. If a life insurance policy is considered to be the property of the insured person, it can be assigned to other persons. According to article 698, the written agreement of the insured person is required for the valid assignment of a life insurance policy.[40]

Life insurance for the event of death can be used as collateral (such as a pledge as depicted in article 697) to secure a loan from a bank. Furthermore, when one borrows money from a financial institution, the bank may take out a life insurance policy on the life of its debtor, so that accrued debts will be paid if he dies.[41]

According to article 692(2), life insurance is a contract between the insurer and the policy owner, whereby a benefit is paid to a named beneficiary (or other person having rights from the insured) when the insured event covered by the policy occurs. In order to be a life insurance policy, the insured event must be based upon the life of the insured person. The insured event covered under the policy is therefore, for example, death as a result of natural causes such as disease or senility, etc. In this regard, it is noted that, ''[t]he contingency insured against under a life policy is the death of the insured regardless of the cause unless the cause is one excepted under the policy.'' [42]

It is one of the distinguishing characteristics of a life insurance policy that a separately signed supplementary contract may be attached to it, providing for supplementary or additional coverage in the event of death by accident. This sort of contract is known as a supplementary accident life

36 Nader and Smith *Winning the Insurance Game*, above at note 20 at 264.

37 Ibid.

38 Cf art 678.

39 Couch *Couch Cyclopedia of Insurance Law*, above at note 1 at 83.

40 This issue is discussed below under ''Nature of assignment in general''.

41 Stated in a private interview by Mr Mengistu Meharu (head, Claims & POS Department, Life Main Branch of Ethiopian Insurance Corporation), Addis Ababa, 25 September 2007. This article analyses the corporation's insurance practices in detail, as it pioneered the insurance market in Ethiopia. See also M Tsegaw ''The determination of beneficiaries of a life insurance policy'' (2006) 1/1 *Ethiopian Bar Review* 35 at 51.

42 *Cumulative Supplement to Couch Cyclopedia of Insurance Law* (vol 1, 2nd ed, 1973, The Lawyers' Co-operative Pub Co), at 13–14.

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insurance contract.[43] Hence, in addition to the amount payable upon the occurrence of natural death, the benefits ensuing from the supplementary contracts are double indemnity[44] and premium waiver.[45]

The last peculiarity of life insurance worth mentioning is the fact that "... it must contain an element of risk in so far as the particular individual is concerned, and must involve the shifting of loss from the realization of that risk to a fund created by the payment of designated premiums".[46]

Formation of a life insurance contract

According to article 691, life insurance is a contract that is concluded between the insurer and the insured party. It is a special class of contract that is governed by its own provisions. Should these provisions fail to describe the manner and pre-requisites of an insurance contract, it would be necessary to apply relevant articles of the Civil Code that deal with contracts in general. So, without prejudice to the rules governing insurance as a special contract, the provisions of the Civil Code on contracts in general[47] are mutatis mutandis applicable to insurance contracts.

It is a mandatory principle in the law of contracts that, in order to form a valid contract, parties must express their consent freely through what is called offer and acceptance.[48] Hence, in a contract of insurance, an offer is made by the proposer who completes a proposal form and sends it to the insurer for its consideration.[49] The offeror or the applicant is duty bound to state exactly all the material facts and circumstances within his knowledge and which are likely to assist the insurer to appreciate fully the risks it undertakes to insure.[50] Then, if both parties agree on the material terms of the proposal and express their consent to be bound by it, a valid contract of life insurance comes into existence. This means the insurance company informs the applicant that it has set up a "provisional guarantee"[51] for the applicant or issues him with a policy consistent with the terms of the proposal. Alternatively, the insurer may make a counter proposal, so that negotiations may end with the insurer making a final offer of insurance cover to the applicant which it is up to him to accept or not.[52] Thus, the general rule is that a valid contract of life insurance is said to be concluded

43 See annex C: Supplementary Accident Insurance Contract.
44 Ibid. The amount payable is twice the face value of the policy.
45 Ibid.
46 Couch *Couch Cyclopedia of Insurance Law*, above at note 1 at 81.
47 See art 1676(1) of the Civil Code.
48 Cumulative reading of arts 1680(1) and 1681(1) of the Civil Code.
49 MacGillivray *MacGillivray and Parkington on Insurance Law*, above at note 6 at 87. See also annex A: Specimen Proposal & Declaration for Assurance. The first step in making a contract of insurance is to fill in the application form with material facts.
50 Art 667.
51 See art 657(3).
52 MacGillivray *MacGillivray and Parkington on Insurance Law*, above at note 6 at 87.

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when the insurance company accepts the proposal unconditionally and communicates this acceptance to the applicant or offeror.

In addition to consent sustainable at law, the capacity of the parties is also a prerequisite for the valid formation of a life insurance contract.[53] Since life insurance is a contract, it is necessary that there are two or more parties to the contract. The parties must have the capacity to perform a juridical act. One is said to be incapable if he is senile or minor,[54] insane[55] or a legally interdicted person.[56] Hence, such disabled and ''infirm persons''[57] do not have the capacity to conclude a contract of life insurance. However, all those physical persons[58] who do not suffer the general disabilities incorporated in article 193 of the Civil Code shall definitely be competent to conclude a binding life insurance contract. As the insurer has a separate legal identity from that of its members, its powers are set out in its memorandum or articles of association. As a juridical entity[59] that acquires a legal personality by law, the insurer has the capacity to enter into a valid and binding life insurance contract unless it is ''dissolved''[60] or ''suspended''.[61]

In a contract of life insurance a written document is necessary for the purposes of proof. By virtue of article 657(1) and (2), the life insurance contract concluded between the assured party and the insurance company shall be supported by the policy, which may only be varied in writing by endorsement. This shows that a written form is required for evidentiary purposes.

To constitute a valid and binding contract of life insurance, it is indispensable for the insurance to have a subject matter as well. Subject matter of the insurance refers to a person who has an insurable interest upon his life which may be insured against contingent risk and which has an appreciable pecuniary value.[62] The person whose life is being insured must therefore be clearly known and determined correctly in the policy, since he is the subject matter of the life insurance contract.

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53 Cumulative reading of arts 1676(1) and 1678(a) of the Civil Code.

54 Cumulative reading of arts 193, 199, 339(1) and 351(1) of the Civil Code.

55 Cumulative reading of arts 193, 339(1) and 351(1) of the Civil Code. See also art 261 of the Revised Family Code.

56 Cumulative reading of arts 193 and 380(1) of the Civil Code.

57 Pursuant to art 351(3) of the Civil Code, the court may pronounce an interdiction. This gives rise to the incapacity of infirm persons. See also arts 192 and 340 of the Civil Code.

58 As per art 389(1) of the Civil Code, since foreigners are assimilated to Ethiopian subjects regarding their enjoyment and exercise of civil rights, they can take out a life policy from an insurance company. This was also confirmed by Mr Mengistu Meharu, above at note 41.

59 By virtue of arts 2(13) and 4(1) (a) of proc no 86/1994, the insurer shall be a share company which is licensed to undertake insurance business of any class.

60 A juridical person loses its legal personality when it is dissolved and wound-up. See art 495.

61 See art 142 of the 2005 Criminal Code of Ethiopia.

62 Couch *Couch Cyclopedia of Insurance Law*, above at note 1 at 107. See also MacGillivray *MacGillivray and Parkington on Insurance Law*, above at note 6 at 90.

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Another essential requirement for the validity of a life insurance contract is consensus ad idem: the parties must be of the same mind as to the subject matter of the contract.[63] Article 667 imposes the duty of utmost good faith on the proposer (applicant) that he shall state exactly all the circumstances within his knowledge which are likely to assist the insurer to appreciate fully the risks it undertakes to insure. The insurer must also observe this duty of utmost good faith. The parties shall, therefore, be of the same mind as to the risk to be insured.

All these conditions (with the exception of a written document) must be fulfilled for a valid and binding contract of life insurance to be concluded.

Kinds of life insurance

Life insurance, generally, exists in various forms. For the purpose of this article and in the Ethiopian context, the following types of life insurance[64] have been identified:

Term life insurance

Term life insurance refers to a straight life insurance that is, in effect, for a specified period of time.[65] In a term policy, the insured is covered for a definite period of time, such as five or ten years, as established in the contract. So the only undertaking of the insurance company is to pay the sum assured when the insured dies within that time. Nothing will be paid if the insured is alive at the end of the fixed term.

Whole life insurance

Whole life policy pertains to life insurance whereby ''... the sum assured is payable on death only, and not on expiry of any fixed period''.[66] Here, the insurance company undertakes to pay a sum specified in the policy upon the happening of death. A whole life policy is what the Commercial Code in article 692(2) refers to as ''... [life] insurance for the event of death ...''. So, a whole life insurance policy provides coverage for the whole of the insured person's life.

Endowment insurance

An endowment policy is a kind of life insurance whereby the primary obligation of the insurer is to pay a specified sum at the end of a fixed time period to the insured himself where he survives the beneficiary.[67]

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63 C Marshall *Life Assurance Law and Taxation* (1995, The Chartered Insurance Institute, Study Course 565 Distance Learning Division) at 1/5.

64 See Ethiopian Insurance Corporation ''Life insurance policies'', available at <http://www.eic.com.et/PlcyLife.htm> (last accessed 21 January 2008). This information was obtained from the corporation's official website, which bears no date of revision, and was confirmed by Mr Mengistu Meharu, above at note 41.

65 Ibid.

66 Colinvaux *Colinvaux's Law of Insurance*, above at note 19 at 263.

67 See art 692(1). This is known as a pure endowment policy.

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Sometimes the insurer undertakes to pay the insured person a specified sum at the end of a fixed period of time (for example, if the insured reaches at the age of 70), or to the specified beneficiaries where the insured person dies. This type of life insurance is known as a combined policy, as envisaged in article 692(3).

Insurable interest in life insurance

As this article has attempted to explain, there must be an insurable interest for there to be a contract of insurance. For the formation of a contract to be valid, the insured must have an insurable interest in the preservation of another's life, limb or health; otherwise it amounts to a wagering contract.[68]

It is said that a person has an insurable interest over a thing if he will be prejudiced by its loss.[69] Because, if it is likely that he will not sustain a loss, there is no need to insure it. It has also been claimed that the insurable interest, as a rule, must be a pecuniary interest; it must be reasonably capable of valuation in money.[70]

In the case of a policy of indemnity, such as for the insurance of objects, the insurable interest should exist not only at the time of inception of the contract, but also at the time when the risk materializes.[71] Where the assured has no interest at the time when the event insured against occurs, it is clear that he cannot recover anything on an indemnity policy, for he has suffered no loss against which he can be indemnified.[72] Nevertheless, it is known that, in life insurance, it suffices to have an insurable interest at the time the policy is taken out; there are no statutory[73] or policy terms[74] that require there to be an insurable interest at the time when the risk occurs.

In a life insurance contract, the doctrine of insurable interest is so important that in its absence the contract will be a wagering one. Wagering contracts depend on a chance that one may claim for payment at the expense of the other gambler. But, this is not the case in insurance contracts that require the presence of an insurable interest.[75] That is why

68 Cumulative reading of arts 675 (2) and 713(1).

69 E Ivamy *Casebook on Insurance Law* (1969, Butterworths) at 1.

70 Colinvaux *Colinvaux's Law of Insurance*, above at note 19 at 49.

71 This can be inferred from the cumulative reading of arts 678 and 665(2).

72 MacGillivray *MacGillivray and Parkington on Insurance Law*, above at note 6 at 4.

73 Though the Ethiopian Commercial Code does not carry express provisions in respect of this issue, a close reading of arts 665(1) and 692(1)–(2) tells us that, when the risk insured against occurs, the insurer is automatically obliged to pay the sum specified in the policy to the insured himself or to named beneficiaries. The code therefore seems to imply that it is at the very beginning of the contract that there must be an insurable interest.

74 Examination of the specimen Life Insurance Policy of the Ethiopian Insurance Corporation reveals no requirement for an insurable interest at the time of loss.

75 For instance, in the case of insurance against objects under art 675(2), it is provided that a person who has a direct or indirect interest in a risk may insure it.

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article 713(1) provides that the provisions of insurance are inapplicable to games or gambling.

Insurable interest, therefore, refers to the assured's pecuniary interest in the subject matter of the insurance. The following sections examine the doctrine of insurable interest in respect of the interest of an insured in his own life and the interest of a third person in the life of another person.

Insurable interest in one's own life

It has become an almost universally accepted principle that every human being is presumed to have an insurable interest in his own life. If he does not have such an interest, it may be absurd to assert that another person has an insurable interest in him. Besides, it is provided in article 15 of the 1995 Constitution of Ethiopia that every person has the right to life. This tells us that a person's interest in his own life is an inherent one.

Many persons, therefore, insure their own lives by taking out a life insurance policy. Thus, insurable interest of a person in his own life can be inferred from the close reading of article 692(1), which provides that the insurer should pay the insured person a specified capital or life interest if he is alive at a fixed date. Article 692(2) also tells us the necessity of insurable interest, in that the insured person procures a life policy in his own life so that others persons called beneficiaries will be paid when the person assured is dead.

Insurable interest in another person's life

A man's insurable interest is not only limited to his own life but also extends to other persons' life. There are times when a certain category of persons aspire to insure the life of another person for their own or another person's benefit because they are interested in the continuance of the assured's life, as they would be prejudiced by the loss of life. Spouses (husband and wife) are the first and foremost in this category, in the sense that one is deemed to have an insurable interest in the life of the other for no reason except, as in the wording of the Revised Family Code: ''They owe respect, support, assistance and fidelity to each other.''[76] Thus, so long as there is a lawful marriage, a husband has an insurable interest in his wife's life and a wife likewise has an insurable interest in the life of her husband.[77] Though it is generally required that the insurable interest should be pecuniary, in default of monetary consideration this relationship by marriage does not amount to a wagering contract that contravenes public policy and legal rules. That is why it is remarked that ''... public policy does not permit one having no insurable interest to procure a policy of insurance upon the life of a human being and pay the premium as a speculation, or on a chance of collecting the insurance money. Such

76 See arts 49 and 57 of the Revised Family Code.

77 G Couch *Couch Cyclopedia of Insurance Law* (vol 3, 2nd ed, 1960, The Lawyers' Co-operative Pub Co) at 234.

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contracts are an incentive to crime in that where the required relationship is lacking the person to be benefited by the policy is interested in the death rather than the life of the insured."[78]

In other words, what can be inferred from the above statements is that, in the eyes of a reasonable man, by the mere existence of their relationship, persons who are so closely related want the other to continue to live, irrespective of monetary consideration. Thus, a fortiori, spouses, due to the nature of their relationship, can effect an insurance policy on the lives of each other.

Definition of beneficiaries and their right to proceeds of a life insurance policy

Beneficiaries are generally those persons who are particularly named in a life policy to receive the proceeds should the contingent event occur. According to G Couch, a beneficiary refers to "... one who receives a benefit or an advantage, or who is entitled to the benefit of a contract; that is, the one to whom the insurance is payable or who is entitled to the proceeds of the policy or certificate, or the benefits of an insurance fund, on the occurrence of the event designated. Any person, whether by assignment or otherwise, entitled to take under a policy of life insurance, is, in a broad sense, a beneficiary."[79]

From the above definition, it can be understood that a beneficiary so designated in a clear manner in the policy is the person who is entitled to receive proceeds of a life insurance policy. Though it is obvious from the foregoing discussion that the beneficiary is not a party per se to the contract, he is entitled to be paid the agreed sum of money upon the death of the insured.

With respect to the rights of beneficiaries, a close reading of articles 692(2) and 695(b) reveals that beneficiaries specified by their first names and surname in the policy are entitled to receive the insurance money upon the death of the insured. The beneficiaries' right to the proceeds of a life insurance policy can also be determined from the content of the policy and is subject to all the provisions and limitations of the policy.[80]

A specified beneficiary can exercise his right to the proceeds of a life insurance policy when the risk insured against materializes: upon the death of the insured person. So, the life insurance policy matures at the time of death of the insured person and, pursuant to article 706(1), the beneficiary may claim directly against the insurer. In order to exercise his right over the proceeds of the life insurance policy, the beneficiary must be alive. However, is the specified beneficiary supposed to be alive only at the date of the insured person's death? What if the beneficiary who was alive at the date of the insured person's death passes away before getting paid? Do

78 Id at 222.

79 G Couch *Couch Cyclopedia of Insurance Law* (vol 4, 2nd ed, 1960, The Lawyers' Co-operative Pub Co) at 489.

80 Couch *Couch Cyclopedia of Insurance Law*, above at note 79 at 491.

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the insurance proceeds revert to the estate of the insured person? In such cases, the capital to be paid by the insurer forms part of the estate of the insured person if the specified beneficiary is not alive at the date of the insured person's death.[81] This means the beneficiary did not have the right to claim for payment of the capital, because being alive on the date of the insured person's death is like a condition precedent for claiming proceeds of the life insurance policy.

On the other hand, if the specified beneficiary is alive on the date of the insured person's death, he can start exercising his right to claim payment of the proceeds of the insurance policy from the insurer as from that date. Article 702 states that the benefit shall be deemed to be payable only on the condition that the beneficiary is alive on the day when the capital or life interest is to be paid; the day from which the capital or life interest is to be paid is the date of the insured person's death, because a life insurance policy matures exactly on this date. Thus, if the beneficiary who was alive on the date of the insured person's death dies before collecting the capital or life interest to be paid by the insurer, then the proceeds of the policy devolve upon the legal heirs of the beneficiary.

Indeed, this line of argument is shared by Mr Mengistu Meharu who remarked that the legal heirs of the specified beneficiaries are considered as contingent beneficiaries to whom the Ethiopian Insurance Corporation pays the proceeds when a beneficiary who was alive on date of the insured person's death subsequently passes away, before collecting the capital or life interest.[82]

The right of beneficiaries to the proceeds of the policy depends largely on their agreement to the policy. If they agree that they would exercise their rights in the policy, it would be payable upon maturity; in such cases the insured person does not have the chance to revoke the rights of a beneficiary who has already agreed to the policy.[83] However, the insured party can revoke the allocation of the benefit of a policy to a specified beneficiary where the latter is late in expressing his agreement or does not express his agreement at all. So, the specified beneficiary should act within a reasonable period of time in order to exercise his right. Otherwise he may have to suffer the consequences of revocation. That is why the provisions of article 703(2) provide that the rights may be revoked until such time as the beneficiary has agreed to the policy. It seems that article 703 adopts the beneficiary's agreement to the life insurance policy as a criterion to differentiate between revocable and irrevocable beneficiaries. Apart from whether the beneficiary has expressed his agreement, it would be reasonable to consider the beneficiary's motive. Even though the beneficiary is said to have an insurable interest, he may be interested in the early death of the insured. In the law of succession, if descendants of a testator are

81 See art 705 of the Commercial Code and art 827 of the Civil Code.
82 Interview with Mr Meharu, above at note 41.
83 See art 703(1).

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interested in his death so that they can inherit his estate, the testator can, by inserting a provision in his will, disinherit the descendants due to their bad motive which may be considered a justifiable reason.[84] So, by analogy, the bad motive or ill-intent of the beneficiary can be taken as a raison d'être for revoking allocation of the benefit of a life insurance policy.

Contrary to article 703(1), which recognizes an irrevocable beneficiary, the Ethiopian Insurance Corporation's Nomination of Beneficiaries Form states that the insured's right to change the beneficiaries is reserved.[85] That is, whether or not the beneficiary agrees, the insured party can revoke the allocation of the benefit of a policy to a specified beneficiary. The beneficiary therefore has no vested or indefeasible interest during the lifetime of the insured, but only a revocable expectancy contingent upon being a beneficiary at the time of the insured's death.[86] Since the law must prevail over this inconsistent provision in the Nomination of Beneficiary Form, it is interpreted to mean that the insured person can exercise his right to change the beneficiary when the latter is late in expressing his agreement, does not express his agreement at all or does not at all know that the relevant insurance benefit exists.

Be that as it may, it is necessary to note that, once a beneficiary has agreed to the policy, their right to the proceeds is preserved. However, one must not overlook that beneficiaries cannot have greater rights than those provided by the contract, regardless of whether they have knowledge of the contents of the policy or even of the policy itself.[87]

Eligibility of beneficiary of a life insurance policy

When a person takes out an insurance policy on his life, he must be careful in selecting and designating a beneficiary. That is why the Ethiopian Insurance Corporation advises its customers to specify only those beneficiaries who have an insurable interest in their lives, in particular the spouse and children or legal heirs, for fear of a conflict of interest between specified beneficiaries and non-designated heirs at the time of any claim.[88]

Some scholars, however, argue that the insured has a wide freedom in the designation of a beneficiary. It has, for example, been propounded that "... the insured is unrestricted in his selection of the beneficiary of his insurance and the law will not review the propriety or desirability of his selection."[89] The insured may therefore take out a policy of insurance on

84 See art 938 of the Civil Code.

85 See Annex D: Nomination of Beneficiary Form, which is part of the main life insurance policy.

86 Couch *Couch Cyclopedia of Insurance Law*, above at note 79 at 561.

87 Couch *Couch Cyclopedia of Insurance Law*, above at note 79 at 491.

88 Interview with Mr Meharu, above at note 41.

89 G Couch *Couch Cyclopedia of Insurance Law* (vol 5, 2nd ed, 1960, The Lawyers' Co-operative Pub Co) at 78.

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his own life and is at liberty to make it payable to anyone he pleases. For instance, he may specify his aunt, sister, uncle, mistress, etc as beneficiaries.

It is important, however, to determine primarily who the eligible beneficiaries are or should be. This may be done by testing against the doctrine of insurable interest: that the question of eligibility is in effect nothing more than holding that the requirements as to insurable interests are satisfied.[90] Hence, for a given beneficiary to be named in the policy, he must be eligible to be a beneficiary in the first place, in the sense that he must have the required insurable interest in the life of the insured; otherwise it would be contrary to public policy, as envisaged by article 713(1), for him to be a beneficiary.

When the beneficiary does not have the required insurable interest in the insured person's life, the life insurance contract can be likened to a wagering contract, in which case it can be said that the beneficiary is interested in the death of the insured person rather than in the prolongation of his life.

Nature of assignment in general

Assignment refers to the transfer of an ownership right from one person to another. One of the characteristics of a life insurance policy is its assignability or transferability by way of sale or as collateral for securing a debt. In the law of property, it is known that an owner of a thing or an object has *usus*, *fructus* and *abusus* rights. That is to say, the owner may use, collect the fruits (profits) from and dispose of his property for consideration or gratuitously, inter vivos or in anticipation of his death.[91] Although insurance policies possess their own characteristics, they are regarded as property and the insured person or the beneficiary has the right to assign the life insurance policy to another person. The assignment of an insurance policy by the insured is said to be a present transfer of rights in property.[92]

An assignment of an insurance policy can be of two types. The first is absolute assignment. It refers to the complete transfer of all rights in the policy to another person either by way of sale or gift.[93] According to article 698, when the beneficiary assigns a life insurance policy for the event of death with the written agreement of the insured person, or when the insured person himself assigns a pure endowment life insurance policy to another person, the assignee becomes the new owner of the policy and can exercise his rights upon maturity of the policy. The entire interest in the policy is, therefore, vested in the assignee and the assignor has no further interest in the policy.[94]

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90 Couch *Couch Cyclopedia of Insurance Law*, above at note 79 at 496.

91 See art 1205 of the Civil Code.

92 G Couch *Couch Cyclopedia of Insurance Law* (vol 16, 2nd ed, 1960, The Lawyers' Co-operative Pub Co) at 659.

93 Huebner *Life & Health Insurance*, above at note 18 at 232. See also Marshall *Life Assurance Law and Taxation*, above at note 63 at 2/5.

94 Marshall *Life Assurance Law and Taxation*, above at note 63 at 2/5.

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In connection with the absolute assignment of a life insurance policy, there may be instances when the insured person redeems the policy for the event of death.[95] The process of redemption thus helps the insured person to reclaim his right over the life insurance policy.

The second type of assignment of an insurance policy is collateral assignment, which refers to a temporary transfer of an interest on a life insurance policy to another person.[96] A person may enter into a contract of pledge and undertake to deliver his life insurance policy to his creditor as security for the performance of an obligation (debt). In this way, a life insurance policy can be pledged in accordance with provisions of articles 950–58 of the Commercial Code.[97]

There can be statute or policy provisions that restrict or prohibit the assignment of a life insurance policy. When legal rules do not allow assignment, then any transaction to transfer a life insurance policy is invalid; in such cases, the specific insurance policy may not even allow assignment in contravention of the law. While article 698 makes assignment of a life insurance policy a lawful transaction within certain limitations, there may be times when policy provisions, such as that of the Ethiopian Insurance Corporation, require notice for the assignment of a life insurance policy to be valid. According to article 13 of the corporation's life insurance policy, no assignment of the policy, or of any interest in it, shall be binding on the corporation unless recorded by the corporation. It also adds that the corporation assumes no responsibility for the validity, effect or adequacy of any assignment. This seems to be correct for the obvious reason that the corporation wishes to avoid paying the claim twice, which is the corporation's major concern.[98] Article 13 of the corporation's life insurance policy provides that the corporation does not recognize any assignment of its life insurance policies until it has received written notice of it, and that it assumes no responsibility as to its validity.

It is worthwhile to note the difference between the assignment of the proceeds of a life insurance policy and assignment of the policy itself. A close reading of article 698 reveals that it expressly envisages assignment of the policy; according to this article, the subscriber (policy owner) is a different person from the insured person.

It can also be said that the assignment of the proceeds of a life insurance policy is implicitly governed in article 708(1). This means that creditors of the beneficiary might have the right to sums to be paid to the beneficiary. A beneficiary can therefore assign the proceeds of a life insurance policy to the extent of the debt owed to his creditors after the death of the insured.

95 See art 703(1).
96 Huebner *Life & Health Insurance*, above at note 18 at 232.
97 Cumulative reading of art 697 of the Commercial Code and art 2866 of the Civil Code.
98 Interview with Mr Meharu, above at note 41.

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Definition and nature of accident insurance

Insurance against accidents is generally one form of insurance that is closely related to life insurance. The insurer undertakes to pay a specified sum to the insured party when the latter is a victim of an accident during the agreed period of time, or to beneficiaries named in the policy where the insured person dies as a consequence of an unforeseen accident.[99]

Although accident insurance can be bought separately, a policy against accidents is sometimes taken out as a rider to the main life insurance contract. This in fact seems to be the practice undertaken by the Ethiopian Insurance Corporation.[100] Accordingly, if a person effects insurance upon his life, a supplementary accident insurance contract will be attached to the main policy, so that injury sustained due to unexpected, extraneous accidents will be covered.

A policy of insurance against accidents is not a contract of indemnity.[101] That means it is not a contract to compensate the insured for any amount of money; it is rather a contract to pay a certain fixed sum for loss of time on account of disability at the expiry of each four weeks during the continuance of the period for which the insurer is liable, or payment of the sum agreed for loss of life of the insured person.[102] In addition, since insurance against accidents and illness is one form of insurance of persons, article 689, which is one of the general provisions, applies. By virtue of this article, a contract for insurance against accidents and illness shall not be deemed to be a contract of compensation.

PART TWO

Existing practical problem relating to insurance made by one spouse on the life of the other

It is surprising to discover the practice followed by the Ethiopian Insurance Corporation that prevents someone from taking out a life insurance policy on the life of their spouse without a justifiable reason. This implies that the insurable interest of one spouse in the life of the other is not fully recognized by the corporation. The law neither expressly nor implicitly prohibits such procurement of a life policy between spouses. In the words of Mr Mengistu Meharu, ''... it is absolutely impossible for a husband or for a wife to insure the life of the other under the current practice of the Corporation.''[103]

The National Bank of Ethiopia is the government body which regulates insurance business in Ethiopia. During an interview, Mr Belay Tulu said that, although the concept of an insurable interest of one spouse in the life

99 See art 711(1).
100 Interview with Mr Meharu, above at note 41. See also annex C.
101 Colinvaux *Colinvaux's Law of Insurance*, above at note 19 at 301.
102 See general conditions of the Ethiopian Insurance Corporation Supplementary Accident Insurance contract, annex C.
103 Interview with Mr Meharu, above at note 41.

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of the other is a universally accepted principle, there is no public demand in the Ethiopian life insurance market for insuring the life of one's spouse.[104] If there were such demand, the National Bank of Ethiopia would have intervened and directed insurers to allow the underwriting of an insurance policy on the life of one spouse by the other.[105] Be that as it may, the practical problem persists.

Existing problem relating to insurance made for the event of death of an incapable person under the Commercial Code

Article 694 expressly prohibits life insurance policies effected for the event of death of an incapable person. This article states that: ''An insurance policy made for the event of the death of an incapable person shall be of no effect notwithstanding that the incapable person or his legal representative agreed to the insurance. The policy may be cancelled on the application of any interested party and all premiums paid shall be refunded.''

An incapable person is one who is under a general disability which depends on their age or mental condition or on sentences passed upon him.[106] The law is trying to protect the interest of an incapable person because he is not capable of understanding the importance of his actions and taking care of himself or administering his property. Thus, according to article 694, all persons are prohibited from insuring the life of a minor, insane or infirm person or legally interdicted person. However, what if a pecuniary insurable interest could be established in the life of incapable persons? What if the incapacity ceases to exist? Is the law trying to tell us that the life of an incapable person is not worthy of being covered under insurance at all? What is the rationale behind the prohibition in article 694?

Suicide and its related problem under the Commercial Code

Apart from natural death, there are times when people take their own lives for a variety of reasons. If the assured ''knowingly'' commits suicide, the life insurance policy for event of death would not be effective, as suicide is excluded by article 699(1).[107] This provision is mandatory in the sense that, even if the insurer agrees to be liable in such cases, the policy is of no effect.

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104 Stated in a private interview by Mr Belay Tulu (principal insurance inspector, Insurance Supervision Department of National Bank of Ethiopia), Addis Ababa, 27 September 2007.

105 Ibid.

106 Art 193 of the 1960 Civil Code of Ethiopia.

107 The English version of art 699(1) uses the term ''knowingly'' but the word ''intentional'' is used in article 700. The term ''knowingly'' denotes only awareness; however, the word ''intentional'' denotes awareness and desire to bring about a result. So the Amharic version of arts 699 and 700 makes use of the term *hone teblo*; this must mean ''intentionally'' because, in the subsequent art 700, the English version uses ''intentionally'' for the Amharic *hone teblo*. See also annex B: Life Insurance Policy, article 9 and annex C: Supplementary Accident Insurance Contract, both of which use ''sane or insane suicide''.

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It is important, however, to note that, even if the beneficiary has nothing to do with the intentional killing of the insured, the beneficiary's right is definitely affected: when article 699(1) provides that the insurance policy for the event of death shall be of no effect, it means the insurer shall not pay the proceeds of the life insurance policy to the beneficiary. Should the legal rule not take into consideration the rights of innocent beneficiaries as well?

In this regard, the policy of the Ethiopian Insurance Corporation has its own problems. By virtue of the provisions of the corporation's Life Insurance Policy,[108] where the assured commits suicide, while sane or insane, within two years from the date of issue or from any reinstatement of the policy, the insurance under the contract shall for be a sum equal to the premium paid and no more. That is, the insurer returns the premiums paid to the beneficiaries when death of the insured occurs after the specified period of two years, even if the death is attributable to suicide committed ''knowingly''. But, this is definitely contrary to public policy, in that the insured may wait for two years to pass and commit suicide for the benefit of the beneficiaries, or they can also assist him to take his own life.

Existing problem relating to the beneficiary of a life insurance policy for the event of death under the Commercial Code

In Ethiopia, the insured person who buys a policy of insurance on his own life generally makes it payable upon his death to his spouse and children. Nevertheless, there seem to be quite a number of instances where other persons such as brothers, sisters, nephews or nieces are designated as beneficiaries. According to articles 695(b) and 701(1), the insured person may specify any persons by their names as beneficiaries of a life insurance policy. The insured person can at the same time designate his spouse and children as beneficiaries using generic names (ie, by saying my spouse or children) in the policy. The issue upon the death of the insured person is whether the entire proceeds should be payable to those beneficiaries specified as per articles 695(b) and 701(1)? Alternatively, should the spouse and children of the insured person share in the proceeds with the beneficiaries specified by name pursuant to article 701(2)? This legal issue has been a subject of controversy in the High Court and Supreme Court of Ethiopia. In fact, it is still unresolved and each of these courts has reached different conclusions on the same issue. Analysis of the cases and the courts' decisions is presented in the following paragraphs.

Decisions of the High Court and the Supreme Court

In a case litigated between Mrs Tsgereda WeldeSelassie and the Ethiopian Insurance Corporation,[109] Mr TekleHaimanot W/Gabriel was the insured

108 See annex B: Specimen Life Insurance Policy, art 9.

109 *Tsgereda WeldeSelassie v Ethiopian Insurance Corporation* [1976] civil case no 602/73, High Court of Ethiopia.

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person. The plaintiff, Mrs Tsgereda WeldeSelassie who was the wife of the deceased (the insured), argued that she should be the sole beneficiary of the proceeds of the life insurance policy pursuant to article 701(1), because she was designated as a sole beneficiary in the policy by her deceased husband. On the other hand, Ms Sara TekleHaimanot W/Gabriel, the daughter, claimed that article 701(1) does not entitle the plaintiff to be the sole beneficiary because the subscriber's heirs are equally entitled, as envisaged by article 701(2).

The High Court held that article 701(1) does not provide that a specified beneficiary shall be the sole beneficiary of the insurance money. It further reiterated that, since the spouse and children are made beneficiaries by virtue of article 701(2), it helps us to determine that the law wants close relatives of a deceased person and those who are mentioned by him as beneficiaries in the policy to be the beneficiaries of that policy.[110] The court also tried to interpret article 701(1), saying that it does not make it mandatory that there should always be a specified beneficiary and, even when there is a specified beneficiary, sub-article (1) does not clearly state that such person shall be the sole beneficiary of the insurance policy. Besides, the High Court said that the phrase ''notwithstanding that they are not mentioned by name'' in sub-article 701(2) shows that the law makes the spouse and children beneficiaries. The trial court also added that the purpose of article 701(1) is to allow the insured person to add other beneficiaries, in addition to those who are beneficiaries by law; it does not exclude those beneficiaries mentioned in sub-article (2) from sharing the proceeds. The High Court finally decided that the plaintiff should be entitled to the proceeds in equal proportion with the deceased's legal heirs (ie Ms Sara TekleHaimanot WeldeGabriel and others).

Aggrieved by the judgment of the High Court, Mrs Tsgereda WeldeSelassie lodged an appeal with the Supreme Court. The Supreme Court analysed the relevant facts and issues of the case, and rendered its decision on the basis of an interpretation that it ascribed to articles 701, 705 and 695(b). The appellate court held that ''... the cumulative reading of articles 695 and 701 leads to the conclusion that, if the insured has specified the beneficiary, then the insurance policy will be deemed to have been made to the benefit of the specified beneficiary...''.[111] The court also reiterated that, if the spouse and children of the deceased were presumed to be beneficiaries even when the beneficiary is specified in the policy, articles 705–08 would be redundant.

Thus, the Supreme Court reversed the decision of the High Court and ruled that the whole amount of the insurance money should be paid to the appellant Mrs Tsgereda WeldeSelassie, the designated beneficiary in the life insurance policy.

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110 Id at 6.

111 *Tsgereda WeldeSelassie v Ethiopian Insurance Corporation* [1976] civil case no 677/76, Supreme Court of Ethiopia.

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In the second case of *Mrs Yeshimebet Fiseha v Ethiopian Insurance Corporation* that was litigated in the High Court,[112] the plaintiff (Mrs Yeshimebet Fiseha) brought a suit against the corporation. Since her late husband Mr Yohannes Nega designated her as beneficiary in the life insurance policy for event of his death, she argued that the defendant corporation should be ordered to pay the whole amount of the insurance money to her. She additionally based her claim on article 701(1).

On the other hand, the defendant (the corporation) tried to argue that it could not discharge its obligation since it had been so confused about to whom to pay to the insurance money, because both the spouse (the specified beneficiary, ie Mrs Yeshimebet Fiseha) and children of the insured claimed the proceeds of the policy. The corporation based its argument on article 701(2), which provides that the spouse and children of the insured are deemed to be designated beneficiaries. The corporation, thus, asserted that Mrs Yeshimebet Fiseha should not be paid the entire insurance monies.

The High Court held that the objective of article 701(2) is to make sure that the spouse and children of the insured would not face financial problems as a result of the death of a breadwinner family member. If the entire insurance payment is made to the designated beneficiary, the spouse and children might be destitute and thereby become a burden on society due to discontinuance of income earned by the deceased. Thus, the children should be deemed to be designated beneficiaries in order to share the insurance money, even though they are not named in the policy. The court, therefore, decided that the insurance money should be divided between the plaintiff Mrs Yeshimebet Fiseha and the children.

However, Mrs Yeshimebet Fiseha was not satisfied by the judgment of the High Court and appealed to the Supreme Court, claiming that the corporation should pay her the entire insurance money as she was the sole designated beneficiary. The court analysed the relevant facts and issues in the light of articles 701 and 695 of the Commercial Code and article 827 of the Civil Code. The reasoning of the appellate court was similar to that of the court mentioned in the case of *Mrs Tsgereda WeldeSelassie v Ethiopian Insurance Corporation*.[113] In its judgment,[114] the Supreme Court declared that a cumulative reading of articles 695 and 701 reveals that a life insurance policy for the event of death would be deemed to have been procured in favour of the designated beneficiary so long as the latter is named therein; nevertheless, in default of a beneficiary specified by name, the spouse and children are presumed to be designated beneficiaries. Hence, the Supreme Court reversed the judgment of the High Court and ruled that the entire amount of the proceeds of the life policy ought to be paid to the appellant Mrs Yeshimebet Nega for she was the designated beneficiary.

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112 *Yeshimebet Fiseha v Ethiopian Insurance Corporation* [1972] civil case no 799/72, High Court of Ethiopia.

113 *Tsgereda WeldeSelassie v Ethiopian Insurance Corporation*, above at note 109.

114 *Yeshimebet Fiseha v Ethiopian Insurance Corporation*, above at note 112.

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The third case concerning this issue is a case litigated between Mrs Yeshimebet Jemaneh and the Ethiopian Insurance Corporation.[115] The appellant Mrs Yeshimebet Jemaneh claimed that she was entitled to the whole proceeds of the life insurance policy for the event of death. The respondent corporation argued that, although the appellant was a specified beneficiary of the policy, the law also provides that the subscriber's spouse and children are deemed to be specified beneficiaries. In its judgment the Supreme Court concluded that, as per article 691, the proceeds of the policy have to be paid only to the specified person.

Existing problem relating to assignment of a life insurance policy under the Commercial Code

The legal rules may permit or prohibit the assignment of a life insurance policy. With regard to the rules in Ethiopia, article 698 provides: "The assignment, endorsement or pledge of the policy or the changing of the beneficiary named in the policy shall be of no effect unless the insured person agreed in writing."

When the insured and the subscriber are the same person, as in the case of pure endowment life insurance policy, assignment of the policy is definitely possible because no-one's consent is required. However, when the insured and the subscriber are different persons, if the beneficiary who is also the policy owner opts for assigning the life insurance policy, he should make sure that he obtains the written agreement of the insured person. This requirement for written agreement is necessary for the assignment to be valid. An assignment of a life insurance for event of death and that of a combined policy is therefore valid provided that the insured's written agreement is obtained. This requirement limits the beneficiary's rights to assign the life insurance policy freely, because the insured may not be available at all times and willing to give his consent; it can therefore be difficult to obtain the written agreement of the insured person.

It may also be more problematic when a third party procures a policy of insurance on the life of another person. For this purpose, article 693 contends that an insurance policy for event of death made by a third party on the life of another person shall be valid when the insured person agrees in writing, and provided the consent of the spouse is also obtained if he or she is married. Hence, in such circumstances, especially when the insured is married, the assignment of the policy is only valid with the written agreement of the insured and his or her spouse. That is to say, the beneficiary can only validly transfer the policy to another person if the written agreement of the insured and his or her spouse is obtained. The requirement for the insured person's written agreement enshrined in article 698 does not therefore allow the free disposition of life insurance policies by assignment.

115 *Yeshimebet Jemaneh v Ethiopian Insurance Corporation* [1971] civil appeal case no 749/70, Supreme Court of Ethiopia.

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Existing issues relating to accident insurance under the Commercial Code

Accident insurance for the event of death tries to accommodate risks sustained as a result of bodily injury or accidental death, which may not be covered under a life insurance policy. According to article 711(1), accident insurance enables those beneficiaries named in the policy to be entitled to a specified sum of money in the event of the accidental death of the insured. The legal rules governing insurance against accidents are articles 711 and 712. The latter article provides that the provisions relating to life insurance (ie articles 691–710) shall not apply to accident insurance. The apparent problem is therefore that, if these provisions relating to life insurance (especially article 701) are made inapplicable to insurance against accidents, the rights of any non-specified spouse and children will definitely be affected and defeasible; this is because, if the insured person fails to specify them as beneficiaries by their names or uses generic names such as ''my spouse'' or ''my children'', they are not deemed to be designated beneficiaries and cannot share the proceeds of the accident insurance policy with the specified beneficiary.

Moreover, if relevant provisions relating to life insurance policies cannot be applied, the following apparent problems arise. First, where there is no specified beneficiary or where the specified beneficiary is revoked or is not alive, the proceeds of the insurance policy cannot go to the estate of the insured person as envisaged in article 705. Secondly, what happens if the insured person commits suicide ''knowingly'' in the case of accident insurance for event of death? What would happen to innocent beneficiaries who do not have anything to do with the suicide of the insured? Thirdly, what would happen if the specified beneficiary does not agree to the accident insurance policy? Can allocation of the benefit of the policy be revoked? These and other legal questions arise due to article 712, which renders provisions relating to life insurance inapplicable. These legal questions are even more relevant when an accident insurance policy is procured independently and separately from a life insurance policy.

CONCLUSION AND RECOMMENDATION

Today it is an undeniable fact that life insurance is important in commercial transactions. The interactions are governed by legal rules and insurance policy provisions. Sometimes, however, there are gaps in the law and this gives rise to a difference in interpretation by the courts. Practical problems, such as the one imputable to the Ethiopian Insurance Corporation, can also arise. The corporation overlooks the fact that there is insurable interest in the life of a spouse. The writer of this article, however, firmly believes that the practice undertaken by the corporation must be seriously criticized on the following grounds:

First, most foreign literature recognizes the existence of an insurable interest in the life of one spouse for the other and thereby in the ensuing policy. It is an almost universally accepted doctrine that a husband has an

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insurable interest in the continuance of his wife's life and likewise for the wife also.[116] By the mere fact that their marriage is lawful,[117] an insurable interest is presumed; it is not necessary to produce any evidence to rebut this presumption.[118] The fact that there are reciprocal rights and duties arising out of a lawful marriage tie is alone sufficient to support existence of both interests, regardless of the pecuniary relationship.[119]

Secondly, it is also known to everyone that spouses, once lawfully married, shall live under one roof,[120] support each other, have in principle common property,[121] etc. They are deemed to be of one flesh.[122] All these attributes affirm the presumption that one spouse has an insurable interest in the life of the other.

What can be deduced from this analysis is that it would not be contrary to the law to say that a husband/wife can insure lawfully the life of the other by making himself/herself or their children a beneficiary/ies. Hence, the position taken by the corporation concerning insurance made by one spouse on the life of the other must be, with all due respect, rejected.

Regarding the issue relating to article 694, it is important to examine what Professor Jauffret, who was the drafter of the code, said. He noted that, ''One can easily recognize the dangers of insurance of a third person. I, therefore, propose to require not only the consent of the third party but also of his spouse, and to prohibit all insurance of an incapable person.''[123] Reasonably speaking, this short statement is barely sufficient to justify the rationale behind the prohibitory article 694. It does not explain the rationale behind the prohibition, apart only from indicating the danger of insuring a third person. Of course, there is much danger associated with insuring the life of a third person; it would enunciate and encourage the termination of, rather than an interest in, the continued life of the insured, especially outside family relationships. But this danger can be avoided by requiring an insurable interest in the life of the incapable person. All in all, the background documents of the Ethiopia Commercial Code of 1960 are not of much use for the issue at hand. Thus, several factors may sometimes necessitate the need for a third person to be insured. These factors could

116 Couch *Couch Cyclopedia of Insurance Law*, above at note 77 at 264.

117 In the case of irregular union, the mere existence of relations between a man and woman does not indicate that the man or woman has an insurable interest in the life of the other. This means that a man or woman engaged in an irregular union cannot insure the life of the other, unless he / she can reasonably expect to receive a pecuniary benefit from the continued life of the other person and if he / she would suffer financial loss from the latter's death.

118 Ivamy *Casebook on Insurance Law*, above at note 69 at 30.

119 Colinvaux *Colinvaux's Law of Insurance*, above at note 19 at 269. See also Ivamy *Casebook on Insurance Law*, above at note 69 at 198–200; and MacGillivray *MacGillivray and Parkington on Insurance Law*, above at note 6 at 38–39.

120 See art 53(1) of the Revised Family Code.

121 Id arts 62 and 63(1).

122 Genesis 3:24 (King James Version, Holy Bible).

123 P Winship *Background Documents of the Ethiopian Commercial Code of 1960* (1972, Faculty of Law, Addis Ababa University) at 87.

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include, for example, the presence of an insurable interest in the life of the incapable person (in the form of a pecuniary advantage based on an enforceable legal right at the time of the inception of the life insurance contract) or cessation of the incapacity. Therefore, it is recommended that article 694 should be interpreted in such a way that the problem is analysed from different perspectives.

In principle, statutorily excluding suicidal death from insurance coverage ensures that the insurance contract does not become wagering. ''There is a presumption,'' one author remarked, ''in the case of every insurance contract that the assured cannot by his own intentional act bring about the event upon which the insurance money is payable and then recover under the policy... Thus, a life policy does not prima facie cover the contingency of the assured committing suicide while sane, or, put another way, the event of the assured's death does not mean or include the event of his self caused death while sane.''[124] Therefore, it can be concluded that it is not fair to punish innocent beneficiaries of the proceeds and it is recommended that article 699(1) be interpreted to mean that an insurance policy for the event of death shall be of no effect where the insured person ''knowingly'' commits suicide with the involvement of the beneficiaries. The insurer would therefore have to establish that suicide was committed ''knowingly'' by the insured and the beneficiaries participated in the suicide.

The legal issue relating to sub-articles 701(1) and (2) is still the subject of controversy among the legal community. Professor Alfred Jauffret, the drafter of the Commercial Code, said that he had concluded the most liberal solution for determining beneficiaries of insurance in the case of death.[125] Accordingly, the insured person may specify by name whoever he wants to be a beneficiary.[126] Thus, there is no doubt that this specified beneficiary is entitled to claim the proceeds of the life insurance policy. The insured can, however, use generic names such as ''my spouse'' or ''my children'' instead of specifying his spouse and children by their names, because he may not even know their names as the life insurance policy might have been bought prior to marriage and before the birth of a child or children. That is why the phrase ''notwithstanding that they are not mentioned by name'' in article 701(2) is used. It follows then that the spouse and children have the right to share the proceeds of the policy with specified beneficiaries. However, if the insured person has not used generic names (''my spouse'' or ''my children'') in the life insurance policy, those beneficiaries who are specified by their names are entitled to claim the whole amount of the capital to be paid by the insurer. Other individuals, however, ought to be specified by their names explicitly in the life insurance policy.

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124 MacGillivray *MacGillivray and Parkington on Insurance Law*, above at note 6 at 183.

125 Winship *Background Documents of the Ethiopian Commercial Code of 1960*, above at note 123.

126 Art 701(1).

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It is currently a practice in many countries that borrowers often make use of life insurance policies as collateral for loans.[127] Article 697 envisages that: ''A life insurance policy may be pledged by annexing a schedule to this effect to the policy or by endorsing a policy to order or in accordance with article 2866 of the Civil Code.'' Furthermore, a life insurance policy is believed to be a transferable security. It is therefore concluded that a life insurance policy should be assignable in a way which is less restrictive than under article 698. For instance, it should be transferable after the lapse of a reasonable time if the insured person is not willing to give his written agreement without justifiable reasons or is unavailable; article 698 should be amended to achieve this.

Concerning the last issue, it can be concluded that article 712 should be amended so that relevant provisions relating to life insurance would be applicable mutatis mutandis to insurance against accident and illness. Interestingly, the Supplementary Accident Insurance Contract of the Ethiopian Insurance Corporation provides in its general provisions that indemnity for loss of the life of the insured person is payable to the beneficiary under the life insurance policy to which the contract is attached, if he survives the insured, and otherwise to ''the estate of the insured''.[128] This seems more reasonable than the statutory provision. Moreover, if the insured person uses generic names such as ''my spouse'' or ''my children'' in the life insurance policy to which the supplementary accident insurance is attached, the spouse and children are entitled to claim the insurance money from the Ethiopian Insurance Corporation when the insured person dies as the result of an accident.[129]

In summary, the existing legal provisions which raise various questions or anomalies should be revised, new legal provisions that accommodate the lacunae should be enacted and insurance practice itself should be made consistent with domestic legal rules as well as international norms of insurance. Besides, the judges should take cognizance of the true spirit of the law for they are the ones who are entrusted with the task of interpreting and applying the legal rules.

127 M Tsegaw ''The determination of beneficiaries of a life insurance policy'' (2006) 1/1 *Ethiopian Bar Review* 35 at 51.

128 The Amharic version says *lemedn gebiw hgawi werashoch* [heirs-at-law of the insured].

129 Interview with Mr Mengistu Meharu, above at note 41.

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