

AMBO UNIVERSITY SCHOOL OF LAW

Law of Insurance

Dhaba T

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- ▮ Law of insurance is an area of financial law governing nature and function of insurance
- ▮ It deals wz definition of insurance, types of insurance, function of insurance, requirements for formation of valid contract of insurance, requirements to operate insurance business, rights and duties of parties to insurance K
- ▮ The course has generally five chapters:

COURSE OVERVIEW

- ▮ Chapter one (insurance in general, significance and basic principles of insurance)
- ▮ Chapter two (regulation of insurance business: types of insurance, parties rights and duties)
- ▮ Chapter three (Insurance of Objects: scope of risk covered, scope of compensation)
- ▮ Chapter four (Liability insurance: third party vehicle insurance, payment and right of substitution)
- ▮ Chapter five (Life insurance: nature and scope of risk, designation of beneficiary, insurance against illness and disease)

OVERVIEW CONT'D

Insurance in general

A. The notion of insurance :

- ▮ It can be defined in several ways. It can be defined from an **individual (Insured)** point of view which is a risk transfer mechanism (from insured to insurer), from **insurer** view point in which it is a risk distribution mechanism
- ▮ **Insurance** is a cooperative economic device to spread the loss caused by a particular risk.

CHAPTER ONE

▯ In both definition there exist a term risks.

Q) What is risk? It refers to potential of loss, undesirable consequence....Think of risks involved in health after appropriate diagnosis is made, risks created by food poison, risks occurred during transportation, risks occurred at place of work, risks occurring during construction, damages that can be sustained by machine while operating, damages on goods in stock or vessel...

▯ Risks r known for their uncertainty, peril (damage sustained) and hazard (የአደጋው አባባሽ) and others

▯ Risks could be divided as financial vs non financial, fundamental/ those affecting the mass such as earth quake. Ex suname/ vs particular risk/affecting a particular individual/

CONT'D

- ▮ Under Ethiopian law, art 654 ff commercial code talks about insurance. However, the code gives no meaning to insurance rather it defines insurance policy. As per proc 746/2004 (art 2/16): it is a contract whereby an insurer by collecting a premium from the insured agreed to pay compensation where specified risks in the agreement did occur.
- ▮ The definition embodies the following elements:

INSURANCE DEFN

- a. There exists two parties in the insurance (the insured/beneficiary and insurer)
- b. There exists premium
- c. Insurance is a risk transfer scheme
- d. There exists compensation for the damage sustained.

Q) Does the forth element operate for life insurance?

Q) Do you think that insurance would avoid/prevent losses?

CONT'D

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- ▮ An insurance contract is aleatory rather than commutative/level/balanced. Aleatory contracts have a chance element and an uneven exchange
- ▮ An insurance contract is a unilateral contract (one party makes legally enforceable commitment)
- ▮ An insurance contract is a conditional contract
- ▮ No assignment of right is authorized under indemnity insurance but in life insurance one can assign his rights. (696-698)

FEATURES OF INSURANCE K

- Q) R both the same or different? Both r different b/c
- a. Their object is different (risk compensation vs gamble for money)
 - b. In insurance there is an insurable interest whereas in gambling there is no insurable interest.
 - c. Insurance is based on principle of indemnification except for life insurance whereas there is no indemnification issue for contract for gamble.
 - d. Insurance is based on scientific calculation whereas in contract of gamble there is no calculation scientifically

INSURANCE VS WAGERING/GAMBLING K

- ▯ Insurance has the following significances.
- a. Indemnification for Losses. (cash, kind, repair, restitution)
- b. Reduction of worry and fear
- c. Serves as source of investment funds (ex. Real estate purchase, capital goods)
- d. It is a means of control of loss (creating awareness, restoring property stolen, investigating frauds committed such as suicide to claim life insurance)
- e. To enhance credit. It creates a confidence or a better credit facility. I.e it is advisable to extend loan on car that has insurance than the one without insurance.

SIGNIFICANCE OF INSURANCE

1. Principle of Utmost Good Faith (helps insurance comp to assume the risk & determine premium (667,668,669

- ▢ The duty to make a full and true disclosure of material facts. Disclosure has to be made at the inception and subsequently). Misrepresentation and non disclosure violates good faith ppl

2. Principle of Indemnity 665, 678, 679, 689

- ▢ All contracts of insurance are contracts of indemnity, except those of life and personal accident insurances where no money payment can indemnify for loss of life or bodily injury.
- ▢ The purpose of indemnity is restitution. Restoring back to his former status. Equivalent compensation to damage.
- ▢ Compensation will depend on sum insured/should be equal wz what is agreed up on the policy/, average principle/ ex under insurance/, excess or deductibles (extent of amount covered by the insured),

BASIC PRINCIPLES OF INSURANCE

3. Proximate Cause (the risk must be covered and hence it must not be the one w/c the policy exclude or uninsured) 663, 665

- ▯ The insurer is liable only for those losses which have been proximately caused by the peril/danger/risk/ insured against. I.e considering the last cause of the risk.
- ▯ This will enable to decide whether z stated risk is covered under the policy or not.

4. Insurable Interest (otherwise the k will become void k) 675,693

- ▯ This is refers to existence in actual sense of the property or subject matter of insurance.
- ▯ Absence of insurable interest will make the policy the gamble or a wagering agreement.
- ▯ In order to have an insurable interest the person must have lawful relation wz a thing (whose source is from ownership, law such as k of bail, from k such as construction k, from strict liability) and also must be subject to monetary value except for life insurance. Example one cannot claim insurable interest on stolen property.

PRINCIPLE CONT'D

5. Doctrine of Subrogation (aims at avoiding double compens

- ▢ It applies only to property insurance.
- ▢ It is a situation in which the insurer that pays on behalf of the insured brings claim against third party at fault to take back the money it has paid. (683)

6. Risk Must Attach

- ▢ If the subject-matter of insurance ceases to exist (e.g. the goods are burnt) or the insured ship has already arrived safely, at the time the policy is effected, the risk does not attach, and as a consequence, the premium paid can be recovered from the insurers because the consideration for the premium has totally failed

PRINCIPLE CON'TD

7. Mitigation of Loss

- ▢ Insured must endeavor to minimize the risk.

8. Doctrine of Contribution 681

- ▢ Like the doctrine of subrogation, the doctrine of contribution also applies only to contracts of indemnity, i.e., to property insurances.
- ▢ The essential conditions required for the application of the doctrine of contribution are:
 - ▢ There must be double insurance (at different insurance firms)
 - ▢ There must be either over-insurance or only partial loss

9. Reinsurance

- ▢ An insurer assuming larger risk from the direct insurance business may arrange with another insurer to off load the excess of the undertaken risk over his retention capacity.
- ▢ Such arrangement between two insurers is termed as '**reinsurance.**' Thus, by the device of reinsurance the original insurer transfers part of the risk to the reinsurer.

10. Third Party Interests in Liability Insurance

PPS CONT'D

- Q) Ethiopian commercial code while defining insurance assert that an insurer will pay a sum of money where specified risk materializes. Does this mean that other mode of compensation are not applicable under Ethiopian insurance law?
- Q) Many of the insurance company's r applying **excess** and **deductibles** as principle though not regulated under commercial code. How will these principles enforced in courts?

ASSIGNMENT

Q) Why regulation of Insurance needed?

- enforce monetary policy objectives;
- promote domestic and international competition;
- enhance efficiency;
- maintain financial stability and security;
- protect consumers;
- encourage information flow and prudential decision making; and
- achieve general economic and social policy objectives.

CHAPTER TWO

REGULATION OF INSURANCE BUSINESS



- ▮ Regulation of insurance in our country took place through NBE. NBE has set different requirements starting from entry to exit from the market.
- ▮ These requirements are requirements of licensing, capital adequacy, reserving, accounting, valuation, liquidity, solvency, functional and ownership separation, risk diversification, risk transferring, information exchanging and fund guarantee requirements, prohibitions of anti-competitive mergers, agreements and practices, and abuse of dominant positions, rules on insider dealing and market manipulation, auditing, disclosure and others (refer proc 86/94 and supervision of insurance business directive of NBE: SIB/1/94 up to SIB/34/2012).

CONT'D

- ▮ Under commercial code, they r divided into two
 1. Indemnity insurance (654/2). Further divided into property insurance and liability insurance
 2. Life insurance (654/3)
- ▮ Currently there r different types of insurance such as health insurance, marine insurance, air insurance, vessel insurance and etc)

TYPES OF INSURANCE

- ▮ When we say K, requirements for formation of valid k must exist (1675). These are: meeting of mind, plurality of parties, proprietary nature, legally possible and enforceable obligations, form observance (optional). Generally capacity, consent, object and form.
- ▮ K will be undertaken through offer and acceptance mechanism.
- ▮ K of insurance must also comply z requirements of art 1678. failure to comply wz z requirements will result in invalidation of k as per 1808.

K OF INSURANCE AND INSURANCE POLICY

Q) What would be the effect of proposal form filled and submitted by the insured and the insurer failing to respond w/o delay?

□ In USA there r 3 remedies.

- a. Silence amounts to breach of implied agreement
- b. If an insured fills the proposal and also effect payment that is acceptance
- c. Failure to respond will result in tortuous liability.

Q) What about Ethiopia? Commercial code is silent.
Can we apply provision of civil code by analogy?

CONT'D

- To conclude insurance K two documents r needed.
- A. Proposal form (to be filled by insured). መግቢያ ቅፅ). This will help z insurer to determine premium and assume z risk. Z insured will provide detail information here. Ex description of proposed insured, description of risk, circumstance affecting z risk, sum insured)
- B. Policy (to be filled by insurer). It is a k and hence includes place of k, parties address, property insured, parties respective rights and obligations, duration, amount of premium, risks covered.

CONT'D

- ▮ Under indemnity insurance they r insured and insurer
- ▮ Under life insurance in addition to the above two there exists beneficiaries.

PARTIES TO INSURANCE K

- a. Obligation of insurer
 - 1. Duty to pay compensation as agreed on z policy (when risk in z policy in z period stated materialize) 663/665. earlier ppls such as good faith must exist to benefit
 - 2. Duty to serve as insurer

PARTIES RIGHTS AND OBLIGATIONS

b. Insured obligation

1. Duty to pay premium (659, 666, 709). Refer them for effects of failure to pay premium too
2. Disclosure of information and notification of occurrence of damage (670). Notification wz in 5 days. 5 days requirement is amended to 10 for 3rd party insurance wz procl 799/2005 art 17 (1)

Q) What is z effect of failure to notify z damage? 2 opposing views (one it denies z right to get compensation and z second view it will not deny). Refer cassation dec file no 17689 decided on tahissas 10/1998.

COUNT'D

□ It is an insurance where by an owner of an **object** enters an insurance for property he/she owns. In such kinds of insurance, an insurer will indemnify an insured where risk specified in the policy did materialize. Hence insurance of object is a contract for compensation (Art 678).

Q) **Who will enter into insurance of object?** To enter into insurance of object requirement of **insurable interest** must exist. Insurable interest here refers to a person's legally recognized r/ship to z subject matter of insurance. Hence, such r/ship must be of legal one in nature.

Q) How do u see article 675 from insurable interest point of view? It says any person interested in preservation only?

CHAPTER THREE

INSURANCE OF OBJECT

- Insurable interest consists of the following essential elements;
 - a. Existence of an object (property) subject to insurance. A property must be proprietary nature. (የመድን ሽፋን ሊሰጠው የሚችል ንብረት፤ መብት፤ ጥቅም እና ሁኔታ ሊኖር ይገባል). For instance loss of an object insured will result in the termination of the policy as per article 677 of commercial code.
 - b. Legal relationship of a person entering insurance with an object (መድን ገቢው የመድን ሽፋን ከሚሰጠው ነገር ጋር ሕጋዊ ግንኙነት ያለው ስለመሆኑ ማሳየት አለበት)
 - c. Relationship between an insured and an object must be enforceable and recognized under the law. (በመድን ገቢው እና የመድን ሽፋን በተሰጠው ነገር መካከል ያለው ግንኙነት በህግ ተቀባይነት ያለው መሆኑን አለበት)
- An insurable interest could be obtained from
 - a. ownership over property, (w/c could be joint or sole o/p).
Example: mortgagee
 - b. Interest arising from law (Example : K of bail)
 - c. Insurable interest arising from contract (Example: construction contract K)
 - d. insurable interest arising from strict liability (Example: Art 96 of labor proclamation)

CONT'D

- ▮ Therefore, to enter into insurance of object, requirement of insurable interest must be complied with. This interest could be either direct or indirect as enshrined on art 675.
- ▮ As far as **scope of risks** (remember the three types of risks namely: insured risks, excluded/excepted risks and uninsured risks) covered under insurance of object are concerned, those risks that r covered by the policy will be covered. Accordingly, it is only insured risks that will be under the scope of risks of insurance of object. Article 676 of commercial code for instance talks about uninsured risks; risks associated wz international or civil war).

CONT'D

- ▮ Insurance of object from the very outset is an insurance for compensation.

Q) What would be the scope of compensation?

- ▮ In insurance K, amount of compensation will be proportionate to the loss incurred. If the amount of compensation exceeds the damage sustained, it will affect the insurer as the premium collected is assumed to be the public money. The very essence of compensating is to reinstate the insured to its place.

SCOPE OF COMPENSATION

Q) What r the determining factors that limit scope of compensation?

- a. **Sum insured** (it refers to maximum amount recoverable under insurance policy)
- b. **Average principle** (when an insured enters into under insurance). Here compensation paid will be:
 - $\frac{\text{Sum insured} \times \text{damage/loss sustained}}{\text{market value of an object}}$
- c. **Excess and deductibles** will be taken into account

CONT'D

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Q) What would happen when there exists under insurance and over insurance?

- a. Under insurance (679). When the value of the object insured is of greater value than the amount for which it is insured. The remedy is **self insurance**
- b. Over insurance (680): when compensation exceeds the value of the object insured. The effect is that if fraud exists, termination and if no fraud, compensation paid will be equivalent to the value of the object. Premium paid earlier will be retained but for prospective premium adjustment (reduction) could be made.

CONT'D

1. Doctrine of subrogation (683). Will they bring direct claim or substitute themselves under insured? የጋራ የመግባብያ ሰነድ አላ፤ አንዱ መድን ሰጪ ሌላውን የሚጠይቅበት።በተግባር እየተሰራ ያለው ነገር በደንበኛ እግር ተተክቶ ሳይሆን ቀጥታ ክስ እያቀረቡ ነው።
2. Salvage value related (የተሸከርካር ቅሪት አካልን በተመለከተ ዋጋው ሳይሰላ ቀጥታ እየጠየቁ ነው።የማይገባቸውን እየጠየቁ ይገኛሉ። ማለትም ቀንሶ መጠየቅ ስኖርባቸው ሳይቀንሱ እየጠየቁ ይገኛሉ።)

DISPUTABLE ISSUES ON K OF
OBJECT (አከራካር ጉዳዮች)

1. Competition in Ethiopian Insurance market and its regulation (Group 1)
2. Supervision and regulation of Insurance Industry in Ethiopia (Group 2)
3. Regulation of licensed insurance brokers under Ethiopian Insurance law (Group 3)
4. Comparison of Ethiopian Insurance Industry wz selected African countries (Group 4)
5. Licensing and cancellation of Insurance licenses under Ethiopian Insurance regime (Group 5)

GROUP ASSIGNMENTS

CHAPTER FOUR

LIABILITY INSURANCE (COMPULSORY THIRD PARTY LIABILITY INSURANCE) PROCL 799/2013

Q) Why third party liability insurance necessitated? The preamble has an answer. Accordingly the legislation is enacted as a response to escalating vehicle accident (aims at responding to the problem), the need to provide emergency medical treatment to victims, reducing social problems of such accidents, the need to fill the legal voids.

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Q) Who is third party? **Third Party**” is as any person other than the insured person’s family, the driver or any person employed on a vehicle to which an insurance policy applies at the time when an accident occurred giving liability under such insurance policy. (Art 2(10))

□ Hence the law excludes; insured person’s family, driver or any person employed on a vehicle.

Q) Why such exclusion? What is the policy behind it?

CONT'D

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- In line with the above preamble, article 3 of the same proclamation stipulates that:
- 1, No person shall drive or cause or permit any other person to drive a vehicle on a road unless he has a valid vehicle insurance coverage against third party risks in relation to such vehicle.
 - 2, Notwithstanding the provision of sub article 1 of this article, the Ministry may determine vehicles to operate on the road without requiring compulsory motor vehicle insurance coverage.
- Q) What is the effect of driving a vehicle w/o the certificate?
Article 13 (it will be regarded as prima facie evidence that a vehicle is not insured. Detention of car and administrative penalty (art 30 fine ranging from 3,000 birr to 5,000 birr))

CONT'D

Q) Can insurer object payment based on various grounds? Article 5 has an answer. It states that, once a certificate of insurance (third party) is given for the insured, an insurer cannot object payment of compensation based on the ground of age, physical condition of the person driving, condition and value of the car, number of person travelling, time the vehicle is used. Hence this shows that there is **clear unlimited liability**. The above statement is further strengthened on article 6 which states that any agreement which limit liability of insurer shall have no effect

GROUP DISCUSSION

□ We have to notice that third party insurance does not cover all subject matters. **Hence, there are excluded subject matters.** These are clearly indicated on article 7. Accordingly; the following shall be **excluded from the coverage of any insurance policy against third party risks**

1. death or bodily injury to the insured person or member of the insured person's family;
2. liability in respect of death or bodily injury caused to a person hired by the insured person and occurred in the course of such employment;
3. damage to the insured vehicle;
4. **CONT'D** liability in respect of damage to goods carried on the basis of rent or payment on the insured vehicle; and
5. Damage to any property owned by or is under the custody of the insured person.

- ▮ As it is clearly indicated under articles 9, 12, and 13 of the proclamation, an insurance company shall issue a **certificate of insurance to third person** at the same time it issues an insurance policy and **insurance stickers**.
- ▮ The **absence of an insurance sticker** shall constitute a **prima facie evidence** that the vehicle has not been insured and the police shall have the power to detain such vehicle until the appropriate certificate of insurance presented

CONT'D

- ▮ As to the extent of liability, article 16 clearly stipulates that: the amount of compensation due to damage caused by an insured vehicle shall not exceed:
- ▮ Birr 40,000 (forty thousand) in the case of death;
- ▮ Birr 15,000 (fifteen thousand) in the case of bodily injury; and
- ▮ Birr 100,000 (one hundred thousand) in case of damage to property.
- ▮ Any person who alleges to be entitled to compensation above the limit provided for under sub-article (1) of this article shall have the right to claim the same from the insured person in accordance with the relevant laws. (i.e extra contractual)

CONT'D

Q) What about foreign registered vehicles such as diplomats vehicles and etc? The treatment of Foreign Registered Vehicles is provided under article 26 of the proclamation as follows:

- The driver of any foreign registered vehicle permitted to be driven on the roads of Ethiopia shall possess a valid certificate of insurance and insurance sticker or, where the insurance policy is not issued by a local insurance company, he shall produce a yellow card or an equivalent proof of insurance coverage. It is a certificate issued for payment of compensation as per COMESA protocol.

Q) What about extent of compensation?

- The insurance coverage against third party risks with respect to an accident caused by any foreign registered vehicle while driven on the Ethiopian road shall not be less than the amount of compensation specified under Article 16 of this proclamation.

CONT'D

1. Obligation of insured

- ❑ Providing true information (utmost good faith pple) Art 11
- ❑ Notifying the accident (wz in 10 days though it is 5 days under property insurance). Art 17
- ❑ Duty to secure insurance coverage (Art 15)

2. Obligation of Insurer

- Providing compensation
- Duty to execute court judgment
- Obligation to provide insurance sticker

PARTIES OBLIGATION UNDER LIABILITY INSURANCE

- ▮ Article 691 of commercial code defines it. The elements of the definition are:
 - a. it is a contract,
 - b. for payment of premium,
 - c. to subscriber/beneficiary
 - d. Presupposes occurrence of certain condition dependant on life/death of subscriber.
- ▮ It is not a contract for compensation (Art 689). Amount to be paid is subject to agreement b/n insurer and subscriber.
- ▮ One of the essential element of life insurance is that it imposes reciprocal obligation on both parties (subscriber has obligation to pay payment specified in the policy whereas insurer has an obligation to pay the money/premium stated in the policy to beneficiary stated in the policy)

CHAPTER FIVE

LIFE INSURANCE

- Commercial code of Ethiopia recognizes three types of life insurance;
- a. **Endowment life insurance (692/1).** Here payment of premium will be made provided that the person is alive on the specified date (premium will be paid until the specified date lapses). If the person dies before the specified date, payment of premium will stop. The very intention of this type of insurance is to help the subscriber economically during retirement and to encourage investment.
- b. **Whole life policy (692/2).** Here payment of premium will continue until the subscriber dies and stated payment be made to beneficiaries. የመድን ገቢውን ሞት ተከትሎ የፖሊሲው ገንዘብ ለተጠቃሚዎች ይከፈላል)

CONT'D

c. **Combined policy (692/3).** In such of life insurance, the subscriber will enter into agreement of both nature (endowment and whole life insurance). በዚህ መሰረት መድን ገቢው ከ መድን ሰጪው ጋር የሚዋዋለው በተወሰነ ቀን ወይም ጊዜ ውስጥ በሕይወት ኑራ ከተገኘሁ የፖሊሲው ገንዘብ ለራሴ ያከፈለኝ ነገር ግን ከተባለው ቀን ከመድረሱ ከዚህ ዓለም በሞት የተለየሁ እንደሆነ በወሉ ላይ ለተጠሰዉ ተጠቃሚ የፖሊሲው ገንዘብ ያከፈል የሚል ያዘት ይኖረዋል

CONT'D

- ▮ Like any insurances, requirement of insurable interest must exist. However it is possible to enter into life insurance by third parties (693). But the consent of insured is mandatory. If the person is married, the consent of his spouse is also mandatory.
- ▮ Generally, life insurance is not an insurance for compensation unlike others.

INSURABLE INTEREST

- ▮ From the very outset life insurance will be made on conditions stated above (up on living alive on stated date or up on occurrence of date within specified date).
- ▮ However, the following **risks are not covered** under life insurance;
 - a. Entering into life insurance by third parties w/o consent of insured
 - b. Commission of suicide by the subscriber (699)
 - c. Murder committed by beneficiary (700)

SCOPE OF RISK UNDER LIFE INSURANCE

Q) How do you see article 701 (1) and 701(2) and art 705?

- 1.** If beneficiary specified, those beneficiaries by operation of law will not benefit. i.e those beneficiaries by law will benefit if no beneficiary is stated in the policy
- 2.** Even though specified they both will benefit
- 3.** If no beneficiary is stated it will form part of succession. How can a wife succeed then?

GROUP DISCUSSION

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- ▮ **Rights** of insured among others include, the right to benefit from the insurance and has an **obligation** of maintaining insurance principles such as utmost good faith, paying premium and related
- ▮ An insurer has an obligation to pay stated amount and has right to collect premium

RIGHTS AND OBLIGATION OF PARTIES

- ▮ It is an insurance contract whereby an accident during specified policy period did occur or suffer specified disease.
- ▮ An accident is the result of unforeseen circumstance which may result in disability.

Q)Labor law regulates occupational accident. When an accident at place of work and during working hours did occur, an employer has an obligation to provide medical remedies which includes hospitalizing abroad. It also regulates occupational disease. How do you see them with insurance against illness and accident?

INSURANCE AGAINST ILLNESS AND ACCIDENT (711,712)

▮ Life insurance for the event of death are specifically made for the benefit of beneficiaries.

Q) Who are beneficiaries there? As far as Ethiopian commercial code is concerned, it recognizes three types of beneficiaries;

- a. Designated beneficiaries (701/1)
- b. Presumed beneficiaries (beneficiaries by law (701/2)
- c. Beneficiary designated by will(ኑዛዜ), schedule (የኢንሹራንስ ወል በተጨማሪ ጽሑፍ) or endorsement (ለታዘዘለት የሚለውን ኢንሹራንስ ወል በጀርባው ላይ በመፈረም)

DESIGNATION OF BENEFICIARY