

# **Law of Insurance**

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# Definition of Insurance\_

- Firstly, from the point view of an individual it may be defined as **a risk transfer mechanism** or an economic device whereby a person, called the insured/assured transfers a risk of a **possible financial loss** resulting from **unforeseeable events** affecting property, life or body to a person called the insurer **for consideration**.
- For instance, let us take a case of a laptop owner student, who always runs the risk of suffering a financial loss resulting from the loss or destruction of his property because of unforeseeable events such as fire, damages, even theft.
- Therefore, if the student purchases a laptop insurance policy covering these risks from an insurer, it means that **he transferred this possible financial loss to the insurer**.

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- Secondly, from the point of view of the insurer, insurance may be defined as a mechanism through which **a risk is distributed** among the group of persons who are exposed to the same type of risk, i.e., persons who bear the risk of suffering a financial loss as a result of events affecting property, life or body.
- for instance, Let us say that X insurance Company has, through its various branches, sold 200 laptop insurance policies, i.e., policies that cover losses related to laptop by damage or theft so that the insurer will have to pay compensation to the insured or the beneficiary of the policy in case where such property is destroyed or stolen.

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- The money collected from the sale of these policies form the pool out of which compensation shall be paid to those persons who have suffered financial loss because of damage to the laptops.
- Let us say that in the given financial year 50, policyholders students have sustained financial losses /or lost their laptops because of various causes which are covered by the policy.
- So, the insurer according to the obligation it has undertaken pays compensation to these policy holders out of

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- The pool mentioned above, i.e., the price collected by the insurer from the sale of the policies (premium). This in other words means that all 200 policy holders who have paid the premium have contributed to the compensation paid to those who have sustained losses.
- This also means that, the insurer has distributed the losses sustained by the 50 policyholders among the remaining 150 policyholders whose properties were **not damaged or destroyed in the given year.**

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- From the defns. provided above, we can understand that insurance is a **cooperative economic device** to **spread the loss** caused by a particular risk over a number of persons **who are exposed to it** and who agree to insure themselves against that risk.
- This means that insurance provides a pool to which **many persons** contribute a certain amount of money called the **premium**, and out of which the insurer compensates the **few** who suffer losses.
- This is always true in the case of property and liability insurance which cover contingencies and given for a short period of time, usually a period of one year, but does not so fully apply to insurance of persons particularly life insurance. (see Art 692) in which the policy usually becomes a claim ultimately.

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- We can also understand that by insurance, the risk is transferred from the individual to the insurer who takes into account the total or probability of loss in a certain period, and then fixes the premium to be paid by each person insured.
- Thus, it can be seen that insurance is a device by which an insured person can protect himself from heavy loss likely to be caused by an uncertain event by paying a comparatively much smaller sum of money as premium.

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- It has to be noted that insurance **does not and cannot prevent loss of property**, incurring civil liability, death, or injury or illness, rather it provides **financial compensation for the effects of misfortune**.
- In other words, we can say that insurance does not protect the insured property from loss or damage, or the insured from incurring civil liability or the insured person from death or injury or illness, but provides a financial compensation to the insured or the beneficiary who has suffered pecuniary losses as a result of loss or damage to property, or because he has incurred a civil liability or illness or death of the insured.

# The Development of Insurance System

- In some sense, we can say that insurance appeared simultaneously with **the appearance of human society**. We know of two types of economies in human societies: money economies (with markets, money, financial instruments and so on) and non-money or natural economies (without money, markets, financial instruments and so on).
- The second type is a more ancient form than the first. In such an economy and community, we can see insurance in the **form of people helping each other**. For example, if a house burns down, members of the community help build a new one. Should the same thing happen to one's neighbor, the other neighbors must help, otherwise, **neighbors will not receive help in the future**.
- This type of insurance has survived to the present day in some countries where modern money economy with its financial instruments is not widespread.

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- Turning to insurance in **the modern sense** (i.e., insurance in a modern money economy, in which insurance is part of the financial sphere), early methods of transferring or distributing risk were practiced **by Chinese and Babylonian** traders as long ago as the 3<sup>rd</sup> and 2<sup>nd</sup> millennia BC, respectively.
- Chinese merchants traveling treacherous river rapids would **redistribute their wares across many vessels** to limit the loss due to any single vessel's sinking.
- The Babylonians developed a system which was recorded in the famous Code of Hammurabi, / 1750 BC, and practiced by early Mediterranean sailing merchants.
- If a merchant received **a loan to fund his shipment**, he would pay the lender an additional sum in exchange for the lender's guarantee to cancel the loan should the shipment be stolen.

# Highlights of the Birth and Development of Insurance Services in Ethiopia

- The Bank of Abyssinia (Habesha Bank) started rendering what could be called modern insurance service for **the first time in Ethiopia in 1905** as an agent for a foreign insurance company.
- Mr. Muzinger, an Austrian citizen, opened a full-fledged insurance branch in Addis Ababa as an agent for Balois Fire Insurance Company. Many representative offices were opened by expatriates until the Italian invasion in 1936.
- During the Italian occupation **only Italian companies** were allowed to operate in Addis Ababa and other central regions of the country and in Eritrea.
- After World War II several British and other overseas companies provided insurance service **until 1950**.

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- In 1951, the Imperial Insurance Company was established by some enlightened Ethiopians.
- This development encouraged Ethiopians and consequently some 18 companies were established in 1954 with branches and agents in Addis Abab, Asmara, Dire Dawa, Massawa, Assab and Dessie.
- In 1970, the first proclamation on licensing and supervision of insurance services, proclamation NO.281/70 was enacted.
- An office for the supervision of insurance business was established under the Ministry of Trade and Industry.
- The office licensed only 15 companies .

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- The following year two insurance companies were closed and only 13 remained; but these 13 lasted until 1974, when the Dergue Regime came to power.
- On January 1, 1975 all these 13 insurance companies were **nationalized** in accordance with the proclamation of the provisional military government.
- The Government merged the 13 companies and, by proclamation **26/ 1975**, established the **Ethiopian Insurance Corporation as a monopoly in insurance business**. The Ethiopian Insurance Corporation functioned as a monopoly for nearly two decades until 1994.
- Following the 1974 Revolution, on January 1, 1975 all private banks and 13 insurance companies were nationalized and along with state owned banks, placed under the coordination, supervision and control of the National Bank of Ethiopia. .

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- Thus, from 1975 to 1994 there were four state owned banks and one state owned insurance company, i.e., the National Bank of Ethiopia (The Central Bank), the Commercial Bank of Ethiopia, the Housing and Savings Bank, the Development Bank of Ethiopia and the Ethiopian Insurance Corporation.
- After the overthrow of the Dergue regime by the EPRDF, the Transitional Government of Ethiopia was established and the New Economic Policy for the period of transition was issued.
- This new economic policy replaced centrally planned economic system with a market-oriented system and ushered in the private sector.
- Several private companies were formed during the early 1990s, one of which is Oda S.C. which conceived the idea of establishing a private bank and private insurance company in anticipation of a law which will open up the financial sector to private investors.

# Definition and Nature of Contracts of Insurance

- **A contract of insurance** is a contract whereby one party undertakes, in return for a consideration called **a premium**, to pay to the other party **a sum of money** on the happening of a certain event (death or attainment of a certain age, or injury) or **to indemnify** the other party against a financial loss arising from the loss or damage to property or from incurring civil liability.
- The party which promises to pay a certain amount of money to, or to indemnify, the other party is called **the insurer** (sometimes called the **assurer**- in cases of insurance of persons and the **under writer** in cases of marine insurance and the party to whom such protection is given is called the **insured** (or the assured).
- The document containing the terms and conditions of the contract of insurance is called **the policy**, and the insured is therefore, also referred to as **a policyholder**.

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- A contract of insurance is a type of **contingent** or **conditional** contract. As the name indicates, a contingent or conditional contract is a contract to do or not to do something, if some event, collateral to such contract, **does or does not happen**.
- In other words, it is a contract in which the performance of the obligation arising there from by the parties or one of them is dependent upon the **condition** or contingency **agreed upon by them**.
- Accordingly, as the obligation of the insurer/assurer to pay compensation or the agreed amount to the insured or the beneficiary is dependent upon materialization of the risk or risks specified in the policy.
- Thus, for instance, if X Insurance Company agrees to pay Birr 100,000 in exchange for B paying Birr 2500 as premium, if B's house is destroyed by fire; there will be contingent contract, the performance of which depends upon the happening of an uncertain event, i.e. the destruction of the house by fire.

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- Although a contract of insurance resembles, to a certain extent, a **wagering or gambling** agreement whereby the insurer bets with the insured that his house will not be burnt and giving him the odds of its value, it is a legal and enforceable contract with important economic and social purposes.
- **Note:** Wagering or gambling agreements are considered void in almost all legal systems. For instance, Art 713(2) of the Commercial Code of Ethiopia provides that games and gambling shall not give rise to valid claims for payment unless they are related to activities enumerated under Art 714, such as stock exchange speculations, sporting activities and lottery or betting authorized by the government.

# Insurance Vs gambling

- The object or purpose of an insurance contract is to protect the insured against **economic losses** resulting from a certain **unforeseen future event**, while the object of a wagering or gambling agreement is to gamble for **money and money** alone.
- In an insurance contract, the insured has an **insurable interest** in the life or property sought to be insured. In a wagering or gambling agreement, neither party has any pecuniary or insurable interest in the subject matter of the agreement except the resulting gain or loss.
- A contract of insurance (except life, accident and sickness insurances) is based on the principle of **indemnity**. However, in a wagering agreement there is no question of indemnity, as it does not cover any risk.
- A contract of insurance is based on **scientific calculation of risks** and the amount of premium is ascertained after taking into account the various factors affecting the risk. In a wager, there is no question of any calculation what so ever, it being a mere gamble.

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- Finally, let us see how a contract of insurance is defined under the insurance law of Ethiopia. Art 654 of the Commercial Code of Ethiopia defines insurance as follows:
- *Insurance (policy) is a contract whereby a person, called the insurer, undertakes, against payment of one or more premiums, to pay to a person, called the beneficiary, a sum of money where a specified risk materializes.*
- According to this definition, insurance is a contract between two or more persons in which one person called the insurer, agrees to pay the agreed amount of money or compensation to another person, called the insured, or the beneficiary where the insured property is lost or destroyed ( in cases of property insurance), or where the insured person incurs civil liability (in cases of liability insurance) or where the insured person dies or suffers bodily injury or falls ill (in case of insurance of persons).
- The insurer undertakes this obligation for consideration, called premium payable by the insured person.

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- Sub Art(2) of the same article provides that a contract of insurance may be concluded in relation to "damages" covering risks affecting property or arising out of the insured person's civil liability.
- These types of insurance are generally referred to as **indemnity insurances**, in which the insurer's obligation is to **pay compensation**, which is always equal to damage.
- Similarly, sub Art(3) provides that a contract of insurance may also be made in respect of human person's life, body or health in which the insurers obligation is to pay the amount agreed upon (the sum insured).
- This is a type of insurance in which the principle of indemnity or compensation is not applicable since human life or body does not have a market value, hence the name **Non-indemnity insurance**.

# Validity of insurance contract

- Thus, a contract of insurance, as a contingent contract is a perfectly valid contract, and the general **principles of the law of contract apply equally to such a contract.** Hence, to be valid, it must fulfill the following requirements:
  - (i) there must be **an agreement** between the parties
  - (ii) the agreement must be supported by consideration,
  - (iii) the parties must be capable of contracting (must have capacity),
  - (iv) the consent of the parties to the agreement must be free from defects, and
  - (v) the object must be legal or the object must not be illegal and immoral.

# Distinguishing Characteristics of Insurance

- Insurance contracts have the following distinct legal characteristics that make them different from other contracts.
- An insurance contract is aleatory rather than commutative.
- Aleatory contracts have a chance element and an uneven exchange.
- Under an aleatory contract, the performance of at least one of the parties is dependent on chance. An aleatory contract also involves an uneven exchange: one of the parties promises to do much more than the other party.
- Depending on chance, one party may receive a value out of proportion to the value that is given. On the other hand, a homeowner may faithfully pay premiums for many years and never suffer a loss.

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- In contrast, other commercial contracts are commutative. A commutative contract is one in which the values exchanged by both parties are theoretically even.
- For example, the purchaser of a real estate normally pays a price that is viewed to be equal to the value of the property.
- Although the essence of an aleatory contract is chance, or the occurrence of some fortuitous event, an insurance contract is not a gambling contract.
- Gambling creates a new speculative risk that did not exist before the transaction. Insurance, however, is a technique for handling an already existing pure risk.
- Thus, although both gambling and insurance are **aleatory** in nature, an insurance contract is not a gambling contract because no new risk is created.

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- An insurance contract is a **unilateral** contract. A unilateral contract is a contract in which only one party makes a legally enforceable promise. In this case, only the insurer makes a legally enforceable promise to pay a claim or provide other services to the insured. The term “unilateral” means that courts will enforce the contract in one direction only: against one of the parties; in this case, the insurer after the insured has paid the premium for coverage, the insured’s part of the agreement has been fulfilled.
- Under these circumstances, the only party whose promises are still outstanding is the insurer. Although the insured must continue to pay the premium to receive payment for a loss he or she cannot be legally forced to do so /compare Art 666/4/ of the Commercial Code/.
- However, if the premiums are paid, the insurer must accept them and must continue to provide the protection promised under the contract.

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- An insurance contract is a **conditional** contract. This means the insurer's obligation to pay a claim depends on whether or not the beneficiary has complied with all policy conditions.
- If the insured does not adhere to the conditions of the contract, payment is not made even though an insured peril causes a loss.
- The conditions section imposes certain duties on the insured if he or she wishes to be compensated for a loss. The insurer is not obligated to pay a claim if the policy conditions are not met. Typical conditions include **payment of premium, providing adequate proof of loss, and giving immediate notice to the insurer of a loss.**

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- The insurance contract is said to be a **contract of adhesion**, i.e., whose terms and conditions are not the result of negotiations between the parties, and one party has to agree to the terms and conditions prepared by the other.
- In such types of contracts, ambiguities or uncertainties in the wording of the agreement will **be construed against the drafter-the insurer**. If the policy is ambiguous, the insured gets the benefit of the doubt.
- This principle is due to the fact that the insurer had the advantage of writing the terms of the contract to suit its particular purposes and the insured has no opportunity to bargain over conditions, stipulations, and exclusions.
- Therefore, the courts place the insurer under a duty to make the terms of a contract **clear to all parties**.

# The Requirements to Carry on Insurance Business

- Art 656 of the Commercial Code provides that the law shall determine the conditions under which physical persons or business organizations may carry on insurance business.
- Accordingly, Art 513 of the code provides that banks and insurance companies cannot be established as private limited companies, i.e., a private limited company cannot engage in banking, insurance or any other business of similar nature.
- Similarly, Art 6(1) of the Licensing and Supervision of Insurance Business Pro No 86/1994 provides that no person may engage in insurance business of any type unless it applies to **and acquires a license** from the National Bank of Ethiopia **for the particular class or classes of insurance**.
- Art 4(1) and Art 2(3) of the same proclamation provide that such person has to be a **share company** as defined under Art 304 of the commercial code.

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- According to this article, a share company is a company whose capital is fixed in advance and divided into shares and whose liabilities are met only by the assets of the company.
- The capital of the company to be established as an insurance company must be wholly owned by Ethiopian nationals and/or business organizations wholly owned by Ethiopian nationals, and it must be established **and registered under Ethiopian law** and must have **its head office in Ethiopia**.
- These requirements / conditions in effect **prevent foreigners from engaging in insurance business** and foreign banks from opening branches and operating in Ethiopia.
- The most probable reason for this position is the need to **protect infant domestic insurance companies** which do not have the desired financial strength, knowhow and human resources to be able to compete with foreign banks which **have superior capacity in these areas**.

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- The other condition that a person must fulfill to obtain a license relates to the **minimum capital of the company**, i.e., it must have a minimum capital of 3 million Birr if it is applying for license to undertake general insurance business i.e., insurances other than insurance of persons, and 4 million Birr if it is applying for a license to undertake long term insurance business, i.e., insurance of persons and 7 million where the application is to undertake both classes of insurance.
- Such capital has **to be paid up in cash** and deposited in a bank in the name of the company to be established as an insurance company.

# Importance of Insurance

## Indemnification for Losses

- Payment of compensation by the insurer for losses permits individuals and their families to be restored to their original financial position after a loss has occurred.
- As a result, they can maintain their financial security. Since they are restored either in **part or in whole** after a loss occurs, they are less likely to seek financial assistance from relatives and friends.
- It also allows businesses to remain in business and employees to keep their jobs, suppliers will continue to receive orders, and customers can still purchase the goods and services they desire.
- The community also benefits because its tax base is not eroded. Businesses and families who suffer unexpected losses are restored or at least moved closer back to their previous economic position.
- the advantage to these individuals is obvious. The society also gains because these persons are restored to production and tax revenues are increased

## **Reduction of Worry and Fear**

- Another benefit of insurance is that it reduces worry and fear, both before and after loss. For instance, if family heads have life insurance for adequate amount to cover the future needs of their families, they are less likely to worry about the financial security of their dependents in the event of their premature death.
- Persons insured for long-term disability do not have to worry about the loss of earnings if a serious illness or accident occurs. Property owners who are insured enjoy greater peace of mind since they know that they are covered (they would be compensated) if loss occurs to their property.

# Source of Investment Funds

- The insurance industry is an important source of funds for capital investment and accumulation. Premiums, which are collected by the insurer in advance, usually at the time of conclusion of the contract and other funds which are not needed to pay for immediate losses and expresses, can be loaned to businesses or invested in manufacturing, real estate... sectors.
- Insurance, through compensation of losses, also encourages new investment. For instance, if an individual knows that his or her family will be protected by life insurance in the event of premature death, his or her and the family's financial resources are protected by various types of property insurances, he/she may be more willing to invest savings in a long-desired project such as a business venture, without feeling that the family is being robbed of its basic income security. In a way a better allocation of resources is achieved, i.e., idle funds/deposits are used for a more productive purpose.
- As insurance is an efficient device to reduce risk, investors may also be willing to enter fields they would otherwise reject as too risky, and the society benefits from increased services and production.

# Means of Loss Control

- Although the main function of insurance is not to reduce loss but merely to spread/distribute losses among members of the insured group, insurers are nevertheless vitally interested in keeping losses at a minimum. Insurers know that if no effort is made to prevent or minimize occurrence of insured risks, losses and hence premium would have a tendency to rise. It is human nature to relax vigilance when they know that the loss will be fully paid by the insurer.
- The following illustrations are some of the areas in which insurance companies play a very important role in loss prevention and control:
- Development of fire safety standards and public education programs
- Recovery of stolen properties
- Investigation of fraudulent insurance claims and thereby deterring intentional destruction of property and life
- The insurance industry also finances programs aimed at reducing premature deaths, accidents and illness.

# Enhancing Credit

- Insurance enhances a person's credit, i.e., it makes the borrower/debtor a better credit risk because it guarantees the value of the borrower's collateral/mortgage or pledge/, and gives the creditor /lender greater assurance that the loan will be repaid.
- For instance, when a house is purchased on credit provided by a lending institution, the lender normally requires a property insurance on the house before the mortgage loan is granted. The property insurance protects the lender's financial interest if the property is damaged or destroyed.
- It also enhances small businesses' competitiveness. Small businesses would not be able to compete with big businesses without an insurance to which they transfer risks to their assets.
- This is true because in cases where risks occur they would be compensated and the business remains in the market. However, in the absence of insurance, the occurrence of a certain loss may destroy the business and put it out of the market. Big businesses on the other hand, may safely retain some of such losses even in the absence of insurance.
- Hence, insurance through payment of compensation for losses will keep small and medium businesses in the market and enable them to maintain their competitiveness.

# **BASIC PRINCIPLES OF INSURANCE**

## **Principle of Utmost Good Faith**

- There are certain fundamental principles (or characteristics) more or less common to all classes of insurance business.
- The general rule of 'caveat emptor' (let the buyer beware), which applies to ordinary trade contracts, does not apply to insurance contracts. Insurance contracts are contracts of **utmost good faith**.
- Accordingly, it is the inherent duty of both parties to a contract of insurance to make **full and fair disclosure** of **all material facts** relating to the subject matter of the proposed insurance. It is so because insurance shifts risk from one party to another.
- A material fact for this purpose is a fact, which would affect the judgment of a prudent insurer in considering whether he would enter into a contract at **all** or enter into it at one premium rate or another.

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- Although the duty of utmost good faith applies also to the insurer, but this duty **rests highly on the insured** because he knows or is expected to know more about the subject-matter.
- The proposer must disclose all material facts truly and fully. There should not be any false statement or **half-truths** or any silence on a material fact.
- This applies to all material facts whether considered by him as material or not and whether known to him or not.

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- The proposer is expected to know every circumstance, which in the ordinary course of business ought to be known by him. He cannot rely on his own inefficiency or neglect
- If the principle of utmost good faith is not observed by either party, the contract becomes **voidable** at the option of the party not at fault, irrespective of whether the non-disclosure was **intentional or innocent**.
- Of course, in case of innocent misrepresentation the **premium is refundable** on the avoidance of the contract.

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- This principle consists of the following elements under the Ethiopian law; from the point of view of the insured, the principle of utmost good faith requires the insured;
- A) To disclose to the insurer, **at the time** of the conclusion of the contract, all facts related to the object, liability or person to be insured and of which he is aware and which he thinks will help the insurer to fully understand the risks it undertakes to insure (Art 667).
- The insured is required to disclose facts which may influence the decision of the insurer to enter into the contract or not or if it decides to enter into the contract if it would affect the amount of premium it would charge (Art 668(1))

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- To notify the insurer of changes that may occur after the conclusion of the contract. The insured must notify the insurer of changes in facts and circumstances surrounding the object or liability insured if such changes are capable of increasing the probability of occurrence of the insured risks.
- The test of materiality is also applicable here as the insured has to notify of changes if they are of such a nature or importance that, had they existed at the time of the conclusion of the contract and had the insurer known them, they would have influenced the decision of the insurer to enter into the contract or not and the level of premium it would have imposed. /Art 669/1/.

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- For instance, where the insured changes the purpose or use of his house from residence to a business purpose, let us say, distribution of gases /fuel. The insured has to notify the insurer of such change within fifteen days from the date he changed the purpose of the house and started the business, because the house is more exposed to risk of fire than when it was being used for residence.
- The notification of increase of risks has to be made within 15 days from the **date of occurrences** of such change, which increased the risk, where such change or occurrence is the result of the act of the insured.
- However, where such change resulted from the act of a third party, the insured is required to notify the insurer of such change within 15 days from the day when he **became of aware** such change.

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- Failure to comply with these elements of the principle of utmost good faith may have one of the following effects depending on the motive of the insured person.
- If the insured concealed material facts or made false statements there in **intentionally** with the motive to benefit from a lower rate /amount of premium, the **contract will have no effect** and the insurer shall **retain the premium**.
- Failure to notify the increase of risks according to Art 669(1) intentionally and with similar motive shall have the same effect.

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- However, if the failure to comply with these obligations is **not intentional or fraudulent**, i.e., if it is not a result of a motive to benefit from lower rates of premium, the policy shall remain in force.
- However, the insurer may terminate the contract by giving a notice of 30 days or maintain it by increasing the premium where insurer discovers the existence of such concealment or false statement or failure to notify increase of the risk before the **materialization of the risk**.
- However, if such concealment, false statement or failure to notify increase of risks is discovered after the risk has materialized, the insurer **shall not have the obligation to compensate the insured**.  
**Art.668**
- Rather it shall pay a reduced amount of money which shall be determined by taking into account the amount of premium actually paid and the premium that should have been paid had the insured not concealed facts or made false statements or failed to notify increase of risks.

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- To refrain from any fraudulent act aimed at making a net profit or obtaining undeserved benefit out of a contract of insurance.
- For instance, the insured must refrain from intentional /fraudulent over-insurance of the object, which occurs where on the date of conclusion of the contract, the sum insured/amount of guarantee provided in the policy exceeds the value of the object /Art. 680/1// or where the insured purchases several insurance policies from several insurers in respect of the same object, covering the same types of risks and the sum insured or amount of guarantee provided by the policies exceed the actual value of the object.

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- Over insurance where it is intentional or fraudulent may result in the termination of the contract by the court upon the application of the insurer to this effect and in addition, the insurer may be entitled to payment of compensation for **any damage** the insurer might have suffered because of the violation of **the duty to act in good faith**.
- However, if over insurance was not the result of intentional act of the insured to make a net profit from the insurance or insurances, the contract shall remain in force but only to the extent of **the actual value of the object**.
- In other words, the amount of guarantee /sum insured provided in the policy shall be reduced to the actual value of the object. (Art 680 (2) & Art 681(2)).

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- To refrain from purchasing an insurance policy in respect of goods or objects which are **already lost** or **damaged or destroyed** or in respect of goods or objects which are no longer exposed to a risk with the motive of receiving compensation for the loss or damage sustained before the conclusion of the contract.
- For instance, a person who purchases a motor insurance policy in respect of his motor vehicle which was already lost or damaged or totally destroyed at the time of the contract violates the principle of utmost good faith if he was aware of such facts and purchased the policy with the intention of receiving compensation for the already lost or damaged or destroyed property.
- In such cases, the insurer is entitled to retain all premium paid and may further claim payment of compensation for expenses it might have incurred. /Art 682/2/

# Principle of Indemnity

- The second fundamental principle is that 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.
- In case of loss, the insured can recover from the insurer the **actual amount of loss**, not exceeding the amount of policy. If there is no loss under the policy, the insurer is under no obligation to indemnify the insured.
- The purpose of indemnity is to place the insured, after a loss, in the same position he occupied immediately before the event. Under no circumstances, is the insured allowed to **benefit more than the loss suffered by him**.
- This is because, if that were so, the temptation would always be present to desire the insured event and thus to obtain the policy proceeds. This would obviously **be contrary to public interest**.

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- It must also be noted that indemnity is linked with 'insurable interest.' If a one-fourth co-owner gets the full property insured, he shall be indemnified to the extent of his interest or share only in the case of total destruction of the property insured.
- This principle applies to insurance of objects (property insurances) and liability insurances. According to this principle, property and liability insurances are contracts for indemnity or compensation, which, in principle, is equal to the actual value of the object or the amount of economic loss or damage sustained by the insured.
- Hence, in cases of insurance of objects, the liability of the insurer, if the risk materializes, shall be to pay compensation i.e., the actual value of object on the day of occurrence, where the object is totally destroyed or lost or the cost of repair in cases of partial damage, provided that such compensation cannot exceed the amount of guarantee/sum insured provided in the policy. (Arts 678, 665(2))

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- The principle of indemnity implies that the sum insured or the amount of guarantee provided in the policy is not necessarily payable. This is in line with purpose of insurance, i.e., reinstating a person who has suffered a financial loss to his original financial position.
- It also shows that the insured cannot claim its payment where the risk materializes unless the sum insured is equal to actual value of the object at the time of loss or damage or unless the policy is a valued policy as discussed above.
- However, there are instances, in which the principle of indemnity does not apply, i.e., the insurer does not have the obligation to compensate the insured person fully. One such instance is where the object or liability is under-insured.
- Under-insurance occurs where the amount of guarantee /sum insured agreed upon in the policy is lesser than the actual value of the object or the amount of potential liability of the insured.
- In such cases, the insurer's obligation is to pay the amount of guarantee/sum insured, rather than compensation of the insured (Art 679).

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- The other such instance is related to insurance of persons, where the parties freely fix the amount of guarantee and is payable regardless of the actual damage sustained where the risk materialized.
- This is mainly because it is generally accepted that human life or limb cannot be valued in terms of money and are irreplaceable and the insured or beneficiary who receives it cannot be considered to have made a net profit out of the insurance. (Art 689)

# Proximate Cause

- The next principle of insurance is that the insurer is liable only for those losses which have been proximately caused by the **peril insured against**.
- In other words, in order to make the insurer liable for a loss, the nearest, immediate, or the last cause has to be looked into, and if it is the peril insured against, the insured can recover. This is the rule of proximate cause/ causa proxima. / Insurers are not liable for remote causes and remote consequences even if they belong to the category of insured perils.
- The question as to which is the causa proxima of a loss, can only arise where there has been a **succession** of causes.
- When a result has been brought about by two causes, you must, in insurance law, look to the **nearest cause**, although the result would not have happened without the remote cause.
- The law will not allow the assured to go back in the succession of causes to find out what is the original cause of loss.

# Examples

- (A) In a marine policy, the cargo was a shipment of oranges. The peril insured against was collision with another ship. During the course of voyage the ship collided with another ship, resulting in delay and mishandling of shipment which made oranges unfit for human consumption.
- It was held that the loss was due to mishandling and delays and not due to collision, which was a remote cause, though without it no mishandling or delay would have resulted. As such, the insurer was not held liable. (For mishandling, the crew and their principal could be made liable but not the insurer.)

# Cont...

- Thus, in deciding whether the loss has arisen through any of the risks insured against, the proximate or the last of the causes is to be looked into and others rejected.
- If loss is caused by the operation of more than one peril simultaneously and if one of the perils is excluded (uninsured) peril, the insurer shall be liable to the extent of the effects of insured peril if it can be separately ascertained.
- The insurer shall not be liable at all if the effects of the insured peril and excepted peril cannot be separated.

# Cont...

- It may be added that although the principle of causa proxima applies mostly in the case of marine and fire insurances, it is applicable in life insurance as well.
- Because in 'personal accident policies' the proximate cause of the death should be accident and where the person dies as a result of natural causes the insurer is not liable on the policy.

# Cont...

- The principle of proximate cause is incorporated under the insurance law of Ethiopia, Title III of the Commercial Code of 1960. According to Art 663, the insurer shall guarantee the insured against risks specified in the policy.
- In other words, the insurer shall compensate or pay the sum insured only where the loss or damage to the property or death or injury to the person is caused by a risk or risks **specifically agreed upon in the policy.**
- So, to be able to determine whether an insurer is liable to pay compensation or the sum insured, we have to establish that the loss or damage or death or injury resulted from risks or perils covered by the policy since all insurance contracts clearly specify the risks and perils for which the insurer shall be responsible (i.e., risks covered by the policy) and those for which the insurer shall not be responsible.

# Cont...

- However, there are certain risks which are considered by the law as covered risks and those which are excluded. Accordingly, Art 663(2) provides that losses or damages due to unforeseen events, including acts of third parties, and those resulting from the negligence of the insured are considered as covered risks unless the parties exclude them clearly.
- While losses or damages resulting from the intentional action or inaction of the insured such as the intentional destruction of the property by the insured himself or a third party who is acting upon the instruction of the insured are considered as excluded risks.
- The law excludes **intentional damages** even where the parties might have agreed that such losses or damages are covered. This is a public policy principle since such acts shall affect the national economy and violate the purpose of insurance as a means of transferring potential but uncertain (as to time and extent) risks.
- Such acts even constitute a criminal offence punishable under the criminal law. / Art 659 of the Criminal Code of Ethiopia **old.** /

# Cont...

- Furthermore, Art 676 of the Commercial Code excludes from coverage, in all property insurances, risks arising **out of international or civil wars** unless the insurer, in a separate agreement, undertakes to cover them, because losses or damages caused by wars may be catastrophic and beyond the financial capacity of insurers.
- Where the object insured is lost or totally destroyed or the person insured dies or is injured as a result of a risk or peril not agreed upon in the policy or excluded by the policy or the law, the policy shall terminate as of right, and the insurer shall not incur any liability. /Art 677,

# Insurable Interest

- The Ethiopian Insurance Law does not sufficiently incorporate the principle of insurable interest.
- Art 675 of the commercial code, which is applicable to property insurances, is the only provision that deals with the subject.
- According to this provision any person who has a direct economic interest arising from property rights, such as **ownership, usufruct or use right or indirect economic interest**, arising out of contracts such as mortgage or pledge may insure such property to protect his interests.
- However, the rules governing liability insurance and insurance of persons fail to incorporate rules on the principle of insurable interest which is considered as a mandatory requirement for the validity of contracts of insurance.

# ***Cont....***

- Throughout the development of the insurable interest doctrine in case and statutory law, **two primary purposes** have captured the attention of law-makers, both **rooted in public policy**. The first is the elimination of insurance as **a vehicle for gambling, an activity**, increase in impoverishment and crime, and the discouragement of useful business and industry.
- The second is the removal of **the temptation** provided by a prospect of a net profit through insurance proceeds to **deliberately bring about the event insured against**, whether it is the destruction of property or human life.
- Insurable interest means some **proprietary or pecuniary interest**. The object of insurance is to protect the pecuniary interest of the insured in the subject matter of the insurance and not the material property as such.

# Cont ...

- A person is said to have an insurable interest in the subject matter insured where he will derive **pecuniary benefit from its existence** or will suffer **pecuniary loss from its destruction**.
- Insurable interest is thus a financial interest in the preservation of the subject matter of insurance. A purely **sentimental interest** or a non-monetary benefit will not cause an insurable interest.
- 'Insurable interest' is an essential pre-requisite in effecting a contract of insurance. The insured must possess an insurable interest in the subject matter of the insurance **at the time of contract**. (not usually)
- Otherwise, the contract of insurance will be a wagering agreement which shall be void and unenforceable

# Cont ...

- In the case of Life Insurance, insurable interest must be **present only at the time of contract** (i.e., when the insurance is effected). It need not exist at the time of death or when the claim is made because it is not a contract of indemnity. Thus, a life insurance policy is freely assignable.
- In the case of Fire Insurance, insurable interest must be present **both at the time when the insurance is concluded and at the time of loss**. Being a contract of indemnity, a fire insurance policy can be assigned only to one who has acquired some interest in the subject matter as a purchaser, mortgagee or bailee because unless the assignee has interest at the time of loss, he cannot be indemnified.
- In the case of Marine Insurance, insurable interest must be present at the **time of the loss** of subject matter and it is not essential for the assured to have an insurable interest at the time of conclusion of the contract of insurance.

# Doctrine of Subrogation

- The doctrine of subrogation is a corollary to the principle of indemnity and as such, it applies **only to property insurances**. According to the principle of indemnity, the insured can recover only the actual amount of loss caused by the peril insured against and is not allowed to benefit more than the loss he suffered.
- In case the loss to the property insured has arisen without any fault on anybody's part, the insured can make the claim against the insurer only.
- In case the loss has arisen out of tort or fault of a third party, the insured becomes entitled to proceed against both the **insurer as well as the wrongdoer**. However, since a contract of insurance is a contract of indemnity, the insured cannot be allowed to recover from both and thereby make a **profit** from his insurance claim.
- He can make a claim against either the insurer or the wrong doer. If the insured chooses to be indemnified by the insurer, the doctrine of **subrogation comes into play** and as a result, the insurer shall be subrogated to all the rights and remedies of the insured against third parties in respect of the property destroyed or damaged.

# Cont....

- Lord Cairns, in Simpson vs. Thomson, defined subrogation as: “a right founded on the well known principle of law that where one person has agreed to indemnify another he will, on making good the indemnity, be entitled to succeed to all the ways and means by which the person indemnified might have protected himself against or reimbursed himself for the loss.”
- According to the doctrine of subrogation, the insurer, after indemnifying the insured for his loss in full, steps into the shoes of the insured and is subrogated to all the alternative rights and remedies that the insured has against the third persons, until the insurer recoups the amount he has paid under the policy.
- In case something more is recovered under subrogation, the excess shall belong to the policyholder because the insurer is entitled to the assureds' rights in respect of the subject matter insured as far as he has indemnified the assured.

# Cont...

- The following points are worth in connection with the doctrine of subrogation:
- 1. This doctrine will not apply until the assured has recovered a full indemnity in respect of his loss from the insurer. If the amount of the insurance claim is less than actual loss suffered, the assured can keep the compensation amount received from any third party with himself to the extent of deficiency, and if after full indemnification there remains some surplus he will hold it in trust for the insurer, to the extent the insurer has paid under the policy.
- 2. The insured should provide all such facilities to the insurer that may be required by the insurer for enforcing his rights against third parties. Any action taken by the insurer is generally in the name of the insured, but the cost is to be borne by the insurer.

# Cont...

- 3. The insurer gets only such rights that are available to the insured. He gets no superior rights than the assured. As such, the insurer can recover under this doctrine, only that which the assured himself could have recovered.
- Art 683 of the Commercial Code provides that the insurer that has compensated the insured for the financial losses he has suffered because of loss of or damage to property have the right to substitute the insured and to proceed against the third party who caused the damage.

# Cont...

- This provision transfers to the insurer all the rights and remedies that are available to the insured against the party responsible for the loss or the damage to the property.
- The extent of right of subrogation of the insurer is limited to the amount of money it has paid to the insured. Therefore, where the insurer has not fully compensated the insured for the losses he has suffered, as in the case of under insurance, both the insurer and the insured may proceed against the third party who is responsible for the loss or damage.
- The insurer for the amount it has paid and the insured for damage he has not received compensation.

# Cont ...

- The law imposes on the insured an obligation to cooperate with the insurer to enable the latter to exercise its right of subrogation and to refrain from any act, which may damage such right or prevent the insurer from proceeding against the third party responsible.
- For instance, the insured has to provide the insurer with all the necessary information and evidences showing that the third party is responsible for the loss or damage to the property insured. He is also required to refrain from collusive agreements intended to release the third party from liability and assumption of responsibility with the intention of procuring a financial benefit to himself or helping the third party.
- The primary purpose of subrogation is to make sure that insurance is a means of compensation or reinstatement of the insured who has suffered a financial loss and not a mechanism to make a net profit out of loss or damage covered by insurance.

# Cont...

- It denies the insured the opportunity to claim payment twice, from the insurer on the basis of the contract of insurance and the third party who is responsible for the loss or damage to the insured object on the basis of tort law, for instance, and thereby making a net profit.
- Secondly, it is also intended to make sure that the third party /the tortfeasor/ does not escape liability because the owner of the property happens to have insurance and bears the consequence of his act.
- Others ppl's on your material; risk must attach(group one), mitigation of loss, doctrine of

# Chapter two

## The regulation of insurance business

### Types of insurances

- Now a day's insurance is classified in different ways, **based on risk point of view**, fire insurance, theft insurance, disability insurance, illness insurance, liability insurance ,insurance against damage etc.
- Based on the subject of insurance point of view, auto mobile insurance, body insurance, life insurance, nose insurance, teeth insurance.
- The business point of view classification. Marine insurance, aviation insurance, transportation insurance, (pipe line ,rail way postal service)cargo insurance.
- There are many types of insurance, almost more than you can list.
- Health Insurance: for the expenses of health care expenditure.

# Cont...

- **Disability Insurance:** Disability insurance, also known as disability income insurance, is another type of medical coverage. It pays part of your income if you become ill or injured and need an extended period of time to recover or if you can no longer work.
- **Life Insurance :** The main purpose of life insurance is to insure against loss of income due to death and can also be used for retirement planning and investing.
- It is the one kind of insurance you pay for, but only others benefit from it. Except in rare cases, the purpose of life insurance is to provide for others at the time of your death.

## Cont...

- **Liability Insurance:** Liability insurance protects you when others claim to be hurt or injured as a result of something you did or did not do. Generally, it pays medical bills or provides compensation to anyone who can prove you were negligent or acted improperly.
- Most states, in the world know a days, require you to have liability insurance on your automobile in case you are involved in an accident.
- Damage or injuries caused intentionally are not covered by liability insurance policies.

# Cont..

- **Homeowner's Insurance:** For most people, their home is their largest single investment. Having homeowner's insurance protects your investment against disasters such as fire, tornadoes, busted pipes, robbery, and other similar problems.
- Most standard homeowner insurance policies cover your house (the structure itself) and the contents (any personal property you have in the house).
- In addition, the majority of homeowner insurance policies provide **liability coverage** in case someone visiting your home is injured.
- **Automobile Insurance :-** Buying a car is an important goal for most young people. With the payments, gasoline, and insurance, it can be an expensive purchase.

# Types of insurance in our code

- **Insurance against damages**
  - *insurance of objects.(object not defined)(art.675)*
  - *Insurance of liability for damages.(art.685)*
- **Insurance of persons.**
  - *Life insurance( art.691)*
  - *Insurance against accidents and illness(art.711)*
- **Marine Insurance(art.288 of the maritime code of 1960)**
- **Ocean Marine Insurance:** provides protection for goods transported over water. All types ocean – going vessels and their cargo can be insured by ocean marine contracts; the legal liability of ship owners and cargo owners can also be insured.
- **Inland Marine Insurance:** provides protection for goods shipped on land. This includes insurance on imports and exports, domestic shipments, and
- **Aviation Insurance:** both against damage and liability.
- **cargo insurance:** means of transportation such as bridges and tunnels, rail roads, air plane, motor truck.

# The making of contract of Insurance

- Art. 654. - Definition.
- (1) An insurance policy is a contract whereby a person, called the insurer, undertakes against payment of one or more premiums to pay to a person, called the beneficiary, a sum of money where a specified risk materializes.
- ( 2) Where damages are insured, the insurance policy the risks affecting property or arising out of the civil liability.
- ( 3) Where persons are insured, the insurance risks arising out of death or life, or to risks the person or illness.

# **Parties in insurance contract.**

- Insurer and insured
- Specified beneficiary's( to show the insurable interest)
- Coinsurers.
- All of the normal rules relating to the formation of a valid contract apply equally to an insurance contract: offer, acceptance, consideration and an intention to form legal relations.
- Leaving aside the debate the need to be in written form or not.(art.289 of the maritime code)

## Cont..

- It will be rare for an insurance contract not to be in writing and both parties will find greater certainty in having the agreement **reduced to writing**.
- And in majority of cases its nature demands so.
- because the vast majority of insurance contracts will start out with a proposal form drawn up by the insurer.

# Cont...

- However, such proposal forms do not necessarily contain standard forms of wording. Rather it will be handled on a case by case basis.
- The competitive nature of insurance selling leads to companies competing in trying to convince applicants that their form is more user friendly than their competitors.
- Common sense should dictate that, in order to elicit full information from the applicant, and, in order that the insurer can make a sound underwriting decision, the questions should be detailed.

## Cont...

- **Art. 658. - Particulars in the policy.**
- *The insurance policy shall show:*
- *(a) the place and date of the contract;*
- *(b) the names and addresses of the parties;*
- *( c) the item, liability or person insured;*
- *(d) the nature of the risks insured;*
- *(e) the amount of the guarantee;*
- *(f) the amount of the premium;*
- *(g) the term for which the contract is made.*

# Cont..

- As it is a contract of adhesion the wording of the contract policy need to be clear and understandable to the ordinary reasonable person.
- Ordinary meaning of the term vs technical meaning of the term.
- Our law says nothing about the wording of the policies.
- in other jurisdictions have much more developed jurisprudence in the area, flood, theft, will full exposition of oneself to the risk insured.

# When we say the contract is formed?

- If the application is accepted unconditionally, then a contract is formed at least that appears to be the conventionally held view.
- The premium is normally the consideration which cements the contract. Obviously, it is not the actual payment that is required, except in situations as in, but the obligation to pay the premium.
- If the obligation to pay arises, then the contract does not date from when payment is made.

# Cont..

- **Art. 659. - Entry into force of insurance policy.**
- (1) Unless otherwise expressly specified, the insurance policy shall come into force on the day when the **policy is signed**.
- (2) Provisions may be made to the effect that the policy shall only come into force after the first **premium has been paid**.

# Rights and duties of the parties

- Art. 663. - Risks insured.
- (1) The insurer shall **guarantee the beneficiary against the risks** specified in the policy.(value of the object insured on the day of the occurrence.)
- (2) **Unless otherwise agreed**, risks arising out of **unforeseen events** or the **negligence of the beneficiary** shall be covered by the insurance.
- (3) **Notwithstanding any provision** to the contrary, risks arising out of the **intentional default** of the beneficiary shall not be covered by the insurance.

## Cont...

- Art. 664. - Faults committed by persons for whom the beneficiary is responsible.
- ( 1) The insurer shall guarantee the beneficiary against losses or damages due to the fault of persons for whom the beneficiary is responsible.
- (2) The provisions of sub-art. (1) shall apply regardless of the **nature or gravity** of the fault committed.

## Cont...

- Art. 665. - Duties of insurer.
- (1) The insurer shall pay the agreed sum **within the time specified** in the policy or
- when the **risk insured against occurs** or **at the time specified** in the policy.
- (2) The insurer's liability shall not exceed the amount specified in the policy.

# Cont...

- **Obligation of disclosure** (utmost good faith) (art.667) at the conclusion and after the conclusion of the contract.
- **Notifying the materialization** of the risk promptly. (art.670) or within five days.
- It is not possible to agree to the contrary but force majeure is acceptable.

# Payment of premiums

- Art. 666. - Payment of premiums.
- ( 1) The beneficiary shall pay the agreed premium at the time specified in the policy.
- (2) Notwithstanding any provision to the contrary, the policy shall not terminate as of right when the premium is not paid in due time. The insurer shall **demand** payment.
- (3) Notwithstanding any provision to the contrary, the policy shall be **suspended** after one month from a demand under sub-art. (2) where the premium is not paid.
- ( 4) Where the period of one month has expired, the insurer may claim payment of the premium or require the termination of the policy.
- (5) Where the premium is paid, the policy shall re-enter into force on the Day of payment.
- (6) The provisions of this Article shall not apply to life insurance.

# Cont...

- The practice on the ground shows the contracts made by d/t companies operating in the country frames in a manner they amounts to automatic termination.(against the law)
- May cancel the policy upon one month notice(against the law)
- Ato tigabu aniberbir vs iec 47/87 the appellate bench of the federal supreme court held the payment of the compensation for the risk occurred after the due date is passed. But in nice vs eshetu asfaw 445/2000 case held otherwise.
- But majority of scholars believes when there is a contradiction between the law and the insurance policy the law prevails as long as it is not against the interest of the insured.

# **Factors to be taken in determining amount of the premium**

- In Motor Insurance: The type of vehicle, the purpose of its use, its age (Model), and the fact that the driver has a consistently bad driving record.
- (c) In Marine Insurance: Type of packing, mode of carriage, name of carrier, nature of goods, the route.
- (d) In Personal Accident Insurance: Age, height, weight, occupation, previous medical history if it is likely to increase the chance of an accident, Bad habits such as drinking etc.
- (e) Burglary Insurance: Nature of stock, value of stock, type of security precautions taken.

# Way of payment of premiums

- Installment or lump sum payment method.
- Life insurance is usually paid by installment, although it is possible to have a single premium policy.
- A growing trend is to allow motor insurance to be paid by instalments as a method of alleviating the financial burden on the insured to pay a large sum annually.
- Instalment payments will only really work where the insured is able to utilise one of the banking transactions now available.
- Failure by the bank to pay one of the instalments would allow the customer (the insured) to sue his bank for failure to carry out his instruction. Some insurers will allow a late payment by virtue of any 'days of grace' provisions.

# Breaking insurance contract

- Termination of the contract by the agreement of the parties or the assignee or .(672(2) and 673(2))
- if the policy is made for specific time(task) it ends to function when that time(task) ends.
- Art. 677. - Loss of object insured.
- 'the policy shall terminate as of right where the object insured is lost for a reason not specified in the policy.
- Art. 671. - Bankruptcy.
- (1) The insurance policy shall not terminate as of right where the beneficiary is declared bankrupt. The trustees in bankruptcy shall benefit by the policy and shall be liable for the unpaid premiums.
- (2) The trustees in bankruptcy and the insurer may terminate the policy within three months from the judgment in bankruptcy.
- ( 3) The policy shall terminate within one month from the insurer being declared bankrupt.

# Cont...

- **Art. 674. - Limitation.**
- ( 1) Any claim arising out of a contract of insurance shall be barred after two years from the occurrence giving rise to the claim or from the day when the parties knew of the occurrence.
- (2) In case of concealment or false statements, the period of limitation shall run from the day when the insurer knew of the concealment or false statement.

# Exclusions Section

- An obvious place to look for policy exclusions is in the section entitled **exclusions**.
- Some policies contain both exclusions and limitations. A limitation is a partial exclusion. It narrows the scope of coverage for an insured risk.
- Exclusions Located Elsewhere
- A policy may contain exclusions that are not located in the exclusions section. Here are some places where they often appear.
- One of the most common places to find policy exclusions is the **definitions** section. Definitions attach specific meanings to words, so they can narrow the scope of coverage.
- For example, many policies define a coverage territory, which limits coverage to events that take place in specified countries.

# Cont...

- This definition serves as an exclusion, since events that occur outside the specified countries are not covered.
- Policies that do not specify a coverage territory generally cover events that occur anywhere in the world.
- Exclusions: Risks excluded. Art.676
- (1) Unless otherwise agreed, the insurer shall not be liable for losses or damages due to international or civil war.
- ( 2) The' insurer shall establish that the loss or damage occurred as provided in sub-art. (1).

# Chapter three

## Third party liability insurance

- **Liability Insurance:** Liability insurance protects you when others claim to be hurt or injured as a result of something you did or did not do.
- Generally, it pays medical bills or provides compensation to anyone who can **prove** you were negligent or acted improperly.
- Most states, in the world know a days, require you to have liability insurance on your automobile in case you are involved in an accident.
- Damage or injuries caused **intentionally** are not covered by liability insurance policies.

# Cont...

- According to Black's law dictionary compulsory insurance is the insurance that is compulsory and is required before you can operate a vehicle.
- Third party insurance is a policy under which the insurance company agrees to indemnify the insured person, if he is sued or held legally liable to a third party.
- The **first party** is a policy holder, i.e. either the owner of a vehicle or a lawful possessor authorized by the owner on behalf of the owner,
- the insurance company is the **second party**, and third parties are parties other than employee or members of the policy holder, such as the pedestrian who is knocked down by the insured in a motor accident.

# Cont...

- Art. 7 of proc.799/2013 excludes family members and employee of the insured.
- In this regard CTP insurance policy has intended to accomplish some specific objectives; under which the insurance company agrees to indemnify the insured person, if he is sued or held legally liable for injuries or damage done to a third party.

# The rational and emergence of compulsory third party insurance

- Currently, road traffic accidents are becoming one of the major public safety and development obstacles; particularly the toll is highest in developing world.
- Among the major causes of road accident in Ethiopia, the main contributors are the **inexperience of many drivers, ineffective policies**, generally awkward road and vehicle condition, urban traffic overcrowding and imbalance traffic supply and demand.
- If things are going like this recent study indicate, road traffic accidents will soon became the leading category cause of death in the world.
- Civil compensation for road traffic injuries has existed for several decades in most countries.

# Cont..

- In the process of building an prosperous society, car is changing from luxury consuming goods to ordinary merchandise, which causing frequently traffic accidents due to the poor standards of driving skills and little road discipline. (Bao and Gu, 2014).
- Before the realization of compulsory motor insurance the driver or vehicle owner could pay any judgment for the damages to the other party depending on the countries' legal system.
- But this becomes more and more difficult to administer overtime, particularly when the owner of the vehicle or driver is incapable of providing compensation for injury or damage following an accident.
- The assumption of countries initially developed compulsory insurance is to provide a financial protection system built to prevent any grievance that third parties could face, due to lack of solvency of first party who caused bodily injury or property damage

# Cont...

- Scholars say motor vehicles are causing for frequent traffic injuries but neglected public health challenge.
- As a result the situation necessitates high level of political commitment and immediate action for effective and sustainable prevention.
- Accordingly the particular law to protect third parties from possible injury and damages had proclaimed.
- Even though, the Ethiopian insurance market already provides voluntary third party motor insurance, the enactment of CTP (compulsory third party) motor insurance is the turning point for the insurance industry.
- The legislation was actually first considered for issuance and a draft for it prepared as long ago as the emperor's time and a draft legislation prepared for it.

# Objectives/preamble

- To lower road traffic accident,(record keeping) art.4(5) of pro.799/2013
- To reduce death as a result of road traffic accident by providing emergency medical treatments.
- To compensate road victims by insured vehicles and uninsured or unidentified hit and run vehicles, and
- To provide cover for CTP property damage by insured vehicles.

# CTP premium determination

- It may be free to negotiation or pre determined.
- CTP premium determination underlining principles are not expected to **generate high profit to insurers**, since it is a social insurance and also not to be a burdensome on insurer.
- The premium determination is dependent on certain homogenous parameters and low of large number.
- In this regard for the purpose of CTP premium determination Vehicles are classified based on homogeneous factors like purpose of vehicle, such as private and commercial.

# Cont...

- The premium determination is dependent on certain homogenous parameters and low of large number.
- In this regard for the purpose of CTP premium determination Vehicles are classified based on homogeneous factors like purpose of vehicle, such as private and commercial.
- The commercial vehicles also further classified based on body type and their generic usage, like taxi, car hire, goods caring (general cartage), construction/agricultural usage, own goods/passengers transport, public transport, learners and other sub factors, that includes, carrying capacity, engine capacity, ownership type, nature of goods caring (dry cargo/fuel cargo).

# **Insurance fund tariff determination**

- The amount of fund tariff to be collected shall be determined by the council of ministers based on the study undertaken by the agency as per article 23(2) of the new vehicle insurance against third party risks proclamation No 799/2013.
- The method of determining fund tariff was based on number of past road accident record and average court decision on each death/ injury compensation amount.
- Accordingly fund amount has been decided to collect 10% additional amount levied on every CTP insurance premium tariff.

**The objectives of insurance fund tariff collected from each insurance company**

- First; it is used to handle the emergency medical costs for each and every victim of road traffic accident.
- Second, it is utilized for covering the cost incurred for helping victims of untraced motor vehicles or hit and run cases.
- Thirdly, it helps to cover the medical and other associated costs of victims of uninsured motor vehicles

# Notifying the accident

- The proclamation of CTP motor insurance restrict insurer to reject claim on the ground of condition precedent to the contract, whereas under article 17 sub article 1, “any accident caused by the insured vehicle shall give notice immediately or at the latest within 10 days”.
- In this case the current insurance practice restricts victims to get compensation from insurer on the ground of a claim reported out of the time limit.
- There were situations where insurer rejects a claim because of accident caused by a person holding improper driving license and incomplete claim documentation

# Extent of liability (art.16)

## Extent of Liability

- 1/ The amount of compensation to be covered by vehicle insurance policy against third party risks shall be:
  - a) an amount not less than Birr 5,000 and not exceeding Birr 40,000 in respect of the death of one person;
  - b) an amount not exceeding Birr 40,000 in respect of bodily injury of one person; or
  - c) an amount not exceeding Birr 100,000 in respect of damage to property.

## Sub art.2

The medical expenses incurred for the injured person and costs related to other compensations in accordance with the relevant law shall be considered as part of the amount of compensation to be paid in respect of permanent bodily injury or death of the victim.

- Sub art. 3 gives other option to claim if alleges more than the estimated price.

# Enforcement mechanisms

- As stated under the Proclamation No. 799/2013, article 3, sub article 1, no person shall drive or cause or permit any other person to drive a vehicle on the road unless he has a valid insurance coverage against third party risk.
- Article 13, sub article 1 of the proclamation also states that, the non-possession of an insurance sticker shall constitute **a prima facie** evidence that the vehicle **has not been insured**.
- In this case police shall have the power to detain such vehicles.

# Cont...

- There is a requirement that vehicle owner must produce insurance certificate during vehicle annual inspection “Bolo”. (practical)
- In addition CTP policy renewal reminders communicate through public media and through telephone by the respective insurer.
- There is also traffic police random checking on the road.
- Art. 30 Any person who violates the provisions shall be punished with fine 3000-5000 or imprisonment 1-2 years.

## Chapter four Life Insurance

- Life insurance is an agreement between an insurance company and the policy holder to pay a specified amount of money to a **beneficiary** on the **insured's** death.
- Life insurance also defined as:-
- A contract whereby the insurer in consideration of a premium undertakes to pay a certain sum of money, **in lump sum** or **in periodical** payments of allowance either the **death** of the insured or on the **expiry of** a certain number of years.
- The Commercial Code defines life insurance as follow:-
- A life insurance is 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.(art .691)

# Cont...

- From the above definitions we understand that what are the obligations of the insurer (insurance company), what is the obligation of the insured or subscribe, whose life is insured and when do the obligations of the insurer mature.
- The other element from the two definition except the first one we can see that the insured(subject) in life insurance policy is **not only death**.
- That means sometimes insurer is liable to insured **who survive** based on the nature of their contract.

# Principles of Life Insurance

- There are principles which are applicable to all types of insurances like the principle of insurable interest but there are also principles that are not applicable to life insurance by its nature. E.g. the principle of indemnity.
- In our earlier discussion, we saw the definition of insurable interest.
- The same principle applies concerning life insurance. The principle exposed as “the beneficiary of life insurance policy should have an insurable interest in the life of the insured.
- In other words, there should be a reason for the beneficiary of life insurance to anticipate that some **economic benefits** either will or may result from the continuation of the assured's life, and that such beneficiary will be lost in the event of the assured's death.”

# Types of life insurance

- **Term life or “temporary” insurance:** Provides coverage for a defined time period, generally five, 10, or 20 years; pays cash benefits to a named beneficiary if the insured dies during the term of the policy. **Whole life insurance:** Covers the insured for their whole life; benefits are paid to the beneficiaries when the policyholder dies.
- **Universal life insurance:** Whole life insurance with more flexibility; allows the policyholder to maintain their policy and still make changes, from whole to term and vice versa, such as decreasing the death benefit or changing the premiums.

## Cont ...

- It is possible to make insurance policy by third party, but the consent of the insured is necessary. (art.693)
- It is not possible to make insurance contract on the life of incapable person.(art.694) even if he or his legal representative give his consent.
- It is also possible to make to ordered type of life insurance policy.
- *Where the policy is to order, the endorsement of the policy shall be of no effect unless it is dated and shows the name of the beneficiary. (Art. 696)*

# Exclusions in life insurance

- *Art. 699. - Suicide.*
- *(1) Notwithstanding any provision to the contrary, an insurance policy for the event of death shall be of no effect where the insured person **knowingly** commits suicide. The insurer shall establish that suicide was committed knowingly.*
- *(2) The policy shall be effective where the beneficiary can show that suicide was not committed knowingly.*
- *Art. 700. - Murder of beneficiary.*
- *intentionally kills the insured person and is convicted thereof by a criminal court.*
- *A current sample suicide clause states: in other jurisdictions.*
- *you, or your dependent, die by suicide, while **sane** or **insane**, or from an **intentionally** self-inflicted injury **within two years** from the effective date of your, or your dependent's coverage.*

- In addition to the particulars required under Art. 658 a life insurance policy shall show:
- *(a) the name, surname and the date of birth of the insured person;*
- *(b) the name and surname of the beneficiary, if he is known;*
- *(c) the occurrence on which the payment of the agreed amount depends;*
- *(d) the manner of calculating any reduction in the value of the Policy or its redemption value.*

# Cont..

what happens upon the simultaneous death of the insured and the beneficiary.(art.702) tries to address.

- Art. 702. - Beneficiary must be alive.

Unless otherwise agreed, the benefit shall be deemed to be payable only on the condition that the beneficiary be alive on the day when the capital or life interest is to be paid.

# Payment of premiums

- Art. 709. - Premiums not paid.
- *(1) The insurer may not bring an action for the payment of premiums due in respect of a life insurance.*
- *(2) If a premium has not been paid at the due date on a policy on which less than three annual premiums have been paid, the insurer may demand payment. If payment is not made within one month from the date of the demand, the insurer may terminate the policy. This period may not be shortened in the policy.*

## Cont ...

- (3) *If a premium has not been paid at the due date on a policy which at least three annual premiums have been paid and payment is not made within one month from the date of a demand for payment, the policy shall not lapse. The insurer may issue a paid up policy or otherwise reduce the capital or life interest of the policy according to regulations made under Art. 656.*

# Rights of creditors

- Art. 708. - *Rights of creditors.*
- ( 1) *The creditors of the insured person have no right on the sums to be paid to the beneficiary.*
- Art. 697.- *Pledge*
- *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 Art. 2866 of the Civil Code.*
- *But a written consent of the insured is needed(art.678)*

# Cont ...

- But in insurance of objects creditors have a better right to claim.
- *Art. 684. - Rights of privileged and secured creditors. (insurance of objects)*
- *(1) Notwithstanding any provision to the contrary, where a mortgaged object is insured, compensation shall be paid to the mortgagee. The mortgagee may claim directly from the insurer who may set up the defense's which he could have set up against the beneficiary.*
- *( 2) Payments made in good faith by the insurer to the insured in ignorance of the mortgage shall be valid*
- *The sums paid to the beneficiary will not considered as part of the inheritance. Art. 707.*

# The main debate in Ethiopian life insurance laws

- 701(1) and 701(2)
- *Art. 701. - Beneficiary of insurance policy.*
- *(1) An insurance policy for the event of death may be made to the benefit of specified beneficiaries.*
- *( 2) The following persons shall be deemed to be specified beneficiaries notwithstanding that they are not mentioned by name:*
  - (a) the subscriber's spouse, even where the marriage took place after the policy was entered into;*
  - (b) the subscriber's children, whether or not born at the time when the policy is entered into.(contradict with amharic vesion)*
- *( 3) Where the beneficiary is not specified in the policy or the beneficiary specified in the policy does not agree, the subscriber may name a beneficiary or substitute a beneficiary for another by will, schedule or endorsement.*

## Cont ....

- If there is specified beneficiary in the policy acc. to art.701 is there a need to share the payment with the beneficiaries' listed in art,701(2)?
- When is the beneficiaries' listed in art,701(2) comes to picture?
- What if it mentioned his/her wife/husband in name acc.to sub. Art.1?
- What if the specified beneficiary became ex-wife/husband?

# Cont..

- Because it is paid from the common property a wife and children are also dependent of their family, even not mentioned as specific beneficiary according to sub art.1 they the need to have their own share from the payment.
- It restricts the insured free will to assign the beneficiary he/she wants.
- Prof.jauffretn ,*"I have included the most liberal solution for the determination of the beneficiaries of the insured in the case of death."*
- Based on this it is possible to argue that it is restricting the liberty of the insured by making the wife the children to share the amount with specified beneficiaries. And contradicts with the following articles.

- Art. 705. - Beneficiary not specified.
- Where no beneficiary has been specified or he has been revoked or is not alive, the capital to be paid by the insurer shall be paid into the subscriber's estate.

Art. 827.(civil code) - Things making up inheritance. - 1. Life insurance.

- (1) Monies due in performance of a contract of life insurance to which the deceased was a party, shall form part of the inheritance where the deceased has not determined the beneficiary or the insurance is made to the benefit of the heirs of the deceased without any other indication.
- (2) In other cases, they shall not form part of the inheritance.

# Cont ...

- Using general terms in the time of conclusion of the policy.(art.701(2)read it with art.695(b))

# End

# Thank you

# General comments on your test answers

- Some of you like to go around the bushes rather than coming to the point in the question.
- Some of you use the technique convince or confuse.
- Some of yours worst enemy is your hand writings.( as it was to me back in times.)
- Start your argument with your strong base of evidence legal or factual.

## compulsary

- Policy intervention, it made mandatory third party insurance for both parties.art.4(3) insurer and art 3(1) policy holder.
- Premium determination art.2(14) nd compensation determination.art.16.
- Art.27(2) on emergency medical treatment.
- How we reconcile art.17(1) and art.6(2).