Types of Insurance

There are two types of insurance, these are General/non life insurance and life insurance. Accordingly, our Commercial Code has generally recognized two types of insurance. **These are insurance against damage/indemnity insurance and insurance of person Art 654 (2)&(3)**.

- Moreover, insurance against damage/**indemnity insurance** also divided into two: ***insurance against property*** and ***insurance against liability***.
- Insurance of persons also classified into ***life insurance*** and ***insurance against accidents and illness***. Let see each of them briefly.

❑ Property Insurance (Art 675-84)

Property insurance is an agreement of compensation the insured where the policy insured is damaged by the risk covered. Insurance against damages or property protects the insured against loss caused by direct physical damage to real and personal property. This category of insurance covers losses caused by accident or negligence that damages property; such as damage to one's automobile resulting from collision loss of home or business from fire. Others involve injuries to third persons and arise from extra-contractual liability of insured person. The uncertainty of loss in cases like these may be lessened by insurance.

The purpose of all property insurance against damages is indemnification for loss. This means that a person who experiences a loss recovers what he or she lost.

As we discussed before the principle of indemnity related to the principle of insurable interest. Moreover, the principle of insurable interest requires the existence of some significant relationship between the insured and the property.

What the insured gets as compensation /indemnity/ is not more than the actual value of the property at the time it was destroyed. If the loss ***is not*** total, the insured is compensated only to the extent of the loss. This is true even if the insured has policies with more than one company(cumulative insurance). Article 678 of the Comm'l Code states that; "A contract for insurance of an object is a contract for compensation". Therefore compensation ***shall not exceed*** the value of the object insured on the day of the occurrence."

Insurance companies provide such indemnification of loss for almost any kind of property and against almost all risks. Sometimes, exclusions may be stated in the policy (contract of insurance). Exceptions like losses due to war, invasions, insurrections, nuclear disaster and depreciation are common. In such cases the burden of proof is on the insurer. That means the insurer establish that the loss or damage resulted from war.

Over and Under Insurance

An **Over Insurance** means the value stated in the policy is greater than the actual value of the property insured. The insured will be entitled to the value stated in the policy in the case risk affecting the insured's property materialized.

On the contrary, **Under Insurance** means the value stated in the policy is lesser than the actual value of the property insured. The insured may recover only portion of his/her loss which the sum insured bears to the insurable value of the subject matter. For instance if the insured car actual value is birr 200,000, but he value 150,000 birr for insurance (under insurance), the insured will be entitled to 2/3 of any loss.

In relation to over and under insurance there are two important policies. These are the Value Policy and Unvalued Policy.

- **Value Policy** is a policy which specify the agreed value of the subject matter insured. In this case parties to the insurance at liberty to agree in the policy on the value of the insured object. In other word, in Value Policy the amount of indemnity is the agreed value. Thus, the insured entitle to the full sum insured in the case of total loss.

The insured also may recover the relevant proportion in the event of partial loss. Therefore, the insurer is duty bound to pay the insured the agreed value even though it is greater than the actual value.

- **Unvalued Policy** is a policy whereby the value of the property insured is not value at the conclusion of the contract. The actual value of the object insured just before damage is the measure of recovery. In other words, in Unvalued Policy the rule is that the measure of indemnity in respect of total loss of any property is determine not by its cost, by its value at the date and the place of loss. If the value has increased during the currency of the policy , the assured is therefore entitled to an indemnity on the basis of increased value.

When we come to see our law, both policies (value and Unvalued Policies) were reflected under our commercial code Art 665(2) and 654 (2) respectively. Our practice seems adhere to the principle of Unvalued Policy to limited extent. But the insurer limits their liability to a certain amount of money per property or per event beyond which they declared not to be responsible. (Read Art 679 and 680)

For more you must read cassation decision volume 13, file no. 69966, page 472

- Article 683 of the commercial code provides for the operation of the principle of subrogation in property insurance. And the purpose of the principle of subrogation is prevention of the unjust enrichment the insured, being paid by the insurer and the third party liable.

❖Consequential losses

Insurance of indemnity/property prima facie covers that the property only in respect of the loss attributable to its own value. In other words, consequential losses are not recoverable unless they are separately insured.

It is possible to have insurance against loss of profits arising as result of the loss of property. Such cover is popular with business. It is known as Interruption Insurance. For example, an owner of a minibus taxi can agree with the insurer to cover him a loss of profit if the car is damaged. So if the minibus taxi is damaged and stop business for 30 days to repair it, the insurer will pay the owner the 30 days income of the minibus taxi.

➢Insurance of liability for damages (Art 685-88)

In general, a person may be insuring against the risk of incurring liability to third parties. In other words, insurance of liability is an insurance against the insured's potential legal liability to a third party whether in contract or tort laws. Blacks law Dictionary, is defined the term **Insurance of liability** as "an agreement to cover the loss resulting from insured's liability to third part, such as a loss incurred by a driver who injuries pedestrian"**. Insurance of liability** is also termed as **Third Party Insurance** or **Public Liability Insurance.**

Moreover, Insurance of liability, like property insurance it is a contract of indemnity. In this respect, Art 654(2) of the comm'l code. States where the damage are insured, the insurance policy shall extend to the risks affecting property or arising out of the insured person's civil liability. From this provision we can understand that Property insurance and liability insurance are contract of indemnity. In short, civil liability insurance is indemnity insurance; it is compensation insurance.

❑Requisites for the Insurer's in Liability Insurance

The first condition is that, the insurer's liability is not incurred until the third party obtains judgement against the insured. In this regard Art 685 of the commercial code states "the insurer who insured a liability for damages shall not pay compensation until a claim is made against the insured person with a view to amicable or judicial settlement." Here if one person is insured against liability for damages, their party who claims to be injured by this person must appear to pay the insurance. Some employers may insure their employees against liability for damages they caused.

❑ Admission of Liability and the Conduct of Proceedings

Admission of Liability

It is a standard condition to prohibit admissions of liability without the insurer's consent. This is very important and regarded by insurer as essential for the protection of their interest. Art 686 of our commercial code reads that:

(1)Provisions may be made to the effect that admission of liability or compromise made without insurer's consent may be set up against the insurer.

(2)Admission of a fact does not amount to admission of liability.

From the above provision we can inferred that admission shall be made in the presence of the insurer. Otherwise there could be an abuse of the insurance scheme. However, admission of fact does not mean admission of liability.

The Insurer's duty to control the proceedings

The insurer has the right to control the proceedings. In other words, the insurers have the right to decide up on the proper tactics to pursue in the conduct of the action, provided that they do so for the common interest of them and their customers/ insured.

Similarly, according to Art 687 of the commercial code, the insurer has the right to control the proceeding. When we see the practice of our country, the insurer prefer to litigate for two reasons:

- Insurers are in better position by far to litigate; for they have their own lawyer
- For accounting purpose. Which means they effect payment on the basis of judgement.

In fact the criminal case finding can be used as evidence for the civil case that can be subsequently instituted, however; the insurer can not control/handle the criminal proceedings (Art 687 (2)).

- **Pay to be Paid**

If the parties agreed that the insured is not entitled to be paid until the insured has first made payment to the third party. The principle of pay to be paid is incorporated under Art 688 of the commercial code. According to this provision, the compensation should not go to the insured person. So the principle compensate to be compensated is applicable. To put in simple, let the insured pay the victim his/her pocket and let the insurer pay the insured-pay to be paid. The insured will be reimbursed by the insurer after s/he paid to the victim.

➢Insurance of persons (Art 689-712)

When persons are insured, the insurance policy shall extend to risks arising out of death or life or risks arising out of injury to the person or illness. Where the term" insurance of persons" is used in the policy, it includes the risk of ***death***, ***the risk of bodily injury*** or ***illness*** Article 654 (3).

Contract for the insurance of persons shall not be considered as contract for indemnity/compensation. That means what the insurer pays to the insured or to the beneficiary is not compensation. As a rule, compensation is always equal to loss, but you cannot express human value in terns of money.

You ***cannot*** put monetary value to a human life. As a result, the amount insured is freely fixed. As long as the insured afford it s/he can buy a policy for millions Art 689.

In property insurance, what one collects as a compensation is the value of the property on the day of contract and on the day of loss is not the same. Property usually depreciates. But human value does not depreciate. Therefore, the amount insured in insurances of persons is freely fixed and shall be paid regardless of the damages suffered by the insured persons.

Types of Life Insurance Policy

LIP would be either an Endowment Life Insurance Policy or a whole Life Insurance Policy.

An **Endowment Life Insurance Policy**: Where the policy is for the event of life, the insurer agrees to pay a specified capital or life interest provided the insured person is alive at a date fixed in the policy Art 692(1). Here the benefit is paid to the insured person himself because he is alive.

An Endowment Life Insurance Policy is intended only for a limited or up to particular age of the insured. Thus, premium is payable until maturity of the policy. Even though, the premium of rate in this policy is much higher than that of the whole life insurance policy, it is the most popular in common law countries, since it combines the advantage of saving for old age with that of protection of the insured's family in the event of his/her death before the maturity date of the policy.

On the other hand, a **whole Life Insurance policy also known as**

In other words, in a whole life insurance policy, the insure who enters into contract of insurance for the event of death agrees to pay, on the death of the insured person, a specified capital or life interest to those having rights from the insured person or to the beneficiary named in the policy. If the policy is for the event of death the insurance benefit is paid to a specified beneficiary or to those having rights from the insured Art 692 (2).

When we come to our law, Art 691 life insurance contract is defined ***as…… a contract whereby the insurer undertakes against the payment of the one or more premiums to pay 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***.

The above definition addresses questions such as what are the duties of the insurer? Whose life is insured? What are the obligation of the insured or the subscriber? When does the duties of the insurer mature?

Regarding the first question in life insurance, the obligations of the insurer is to pay a certain amount of money specified in the policy to the beneficiary or the insured person depending on the type of the life insurance policy.

Where as the duty of the insured/subscriber is like any insurance policy, to pay one or more premiums to the insurer.

As we have seen before, in whole life insurance policy, the obligation of the insurer matures upon death of the person whose life is insured. Where as in endowment life insurance policy, the obligation of the insurer matures where the insured manages to live for a certain period that specified in the policy (Art 692 (1 &2).

Art 692 (3) of the commercial code stipulates the possibility of a combined policy. That means the insurer may agree to pay a specified amount of money to the insured beneficiary where the insured either dies or survive to a specified maturity date.

The other important element is subscriber. The concept of subscriber is employed in the definition is to mean the one who goes to the insurance company and fill out the insurance policy. s/he may be one who insured his/her self. In this case the subscriber is the insured person. It is also a third person, who is not the party to the insurance contract, but agent of the insured person who fill out the insurance policy on behalf and in the name of the insured person such as a man can by a life insurance policy for the life of his wife or children.

However, an insurance policy for the event of death may be made by third party, such policy shall be no effect unless the insured person agrees in writing an indicates the amount insured. Where the insured person is a married person the consent of his/her spouse shall be required (Art 693).

As we have discussed before, the principle of insurable interest is designed to protect an individual from profiting from insurance via gambling or wagering from the insured object/property/business. Similarly, the principle of insurable interest is appropriate in life insurance to protect an individual from profiting from insurance via gambling or wagering from the life of others. Our commercial code, however; said nothing as to the principle of insurable interest in life insurance policy.

When we look to experiences of other countries' the principle of insurable interest in life insurance policy, there are three presumptions:-

1. A person has an unlimited interest on his/her life
2. A wife has an unlimited interest on life of her husband
3. A husband has an unlimited interest on life of his wife

Incapable Person insured

An insurance policy for the event of death if an incapable person shall be no effect notwithstanding that the incapable person or his legal representative agreed to the insurance. The policy may be cancelled on the application of the any interested party and all the premiums paid shall be refunded **Art 694**.

Contents/particulars of the life insurance policy Art 695

Assignment pledge, and change of Beneficiary

Assignment (Art 696)

The right incorporated in life insurance policy can be transferred to another person. The holder of the of the life insurance policy may assign his right in the policy to another person through endorsement Art 696. where the policy is to order, an endorsement of the policy no effect unless the it is dated and shows the name of the beneficiary. In other words, assigning the life insurance policy by endorsement possible only when the policy is “to order” and assignment is valid only the name of the assignee is written and the endorsement is dated.

Pledge (697)

It is also possible, the holder of the of the life insurance policy may pledge the policy as security for his debt. As you might know incorporeal rights contained in a document may be given to creditors as security for debt. Like wise, a life insurance policy, a

According to this article, a life insurance may be pledge by one of the following three modes:

- It may be pledge by annexing a schedule to the policy stating that the policy has been pledged or
- By endorsing a policy to order. Meaning when the policy is to order , it may be given as a pledge by endorsement or
- In the manner provided for Art 2266 (2) of the Civil Code & Art 950-958 of the Comm'l Code

Here the question is whether the assignee or the plegee has priority over the beneficiary in regard to the insurance benefits, which will accrue in the event of the death of the insured. It is to be recalled that the insurance policy in the event of death, the beneficiary of the insurance benefit is other person who may be specified by the insured at the time of the contract of the life insurance or the later date. A conflict thus, arises b/n the assignee or pledgee of the policy and the beneficiary of the policy when the original holder of the policy (insured) dies. Is it the assignee or the pledgee or the beneficiary who has a priority claim to the insurance proceeds or benefits?

The answer seems lie in Art 698 of the comm'l code. According to this article, where there is agreement of the insured, the assignee or the pledgee has a priority right to claim the insurance benefit. Whereas, where the is no agreement of the insured, the assignee or the pledgee or the new beneficiary has no a priority claim to the insurance proceeds or benefits, as the endorsement or assignment or pledge or changing the new beneficiary is not valid.

Suicide, Murder and other Criminal Acts in Relation to Life Insurance

It is a general perception that life insurance is intended by the purchaser to cover the insured's death from any cause. Typically, life insurance policies designed to provide coverage without regard to the cause of an insured's death. However, life insurance policy coverage may be subject to express restrictions or implied exceptions establishing limits on the all-risk character. Accordingly, there are two restrictions that provided in our commercial code.

Suicide: where death of the insured is caused by intentional

However, the insurer has a duty to prove that the insured has intentionally/knowingly (s/he must have sound mind that means s/he must be in a position to understand the importance of his/her action) committed the suicide Art 699(1).

Murder of the beneficiary: It is a general principle that a person who intentionally takes the life of the insured is preclude from recovering the benefits of a life insurance policy. This principle is based on public policy considerations Art 700. According to this provision, an insurance policy for the event death shall be of no effect where the beneficiary ***intentionally kills*** the insured person and is ***convicted thereof by a criminal court***. Meaning the insurer is exempted from paying the insurance benefit not only to the convicted beneficiary but also any other person, including the insured's estate.

Here one can rise a question as what will be the effect if the assignee or the pledgee murdered the insured? What if the insured dies in the course of or as a result of his/. her criminal

Beneficiary of the Life Insurance Policy

In LIP, the term beneficiary is ordinarily used to refer to the person who is designated in the policy to receive the benefits according to the terms of the contract, upon the death of the insured. Thus, in a LIP for the event of death, the insured may specify one or more beneficiary/ies to whom the insurance benefits will ultimately be paid when s/he dies.

Confirming the insured's right of designating a beneficiary/ies, sub Art (1) of Art 701 of the comm'l. code states that an insured may specify the any person as a beneficiary of his/her LIP, irrespective of his/her relationship or other things. The insurer may clearly indicates, in specifying a beneficiary/ies, the name of the beneficiary/ies or s/he may simply write generic terms such as my spouse and my children.

However, where the insured use generic terms, sub Art (2) of Art 701 reads that:

A. The subscriber's spouse, even where the marriage took placve after the policy was entered into

B. The subscriber's children, whether or not born at the time when the policy is entered into, shall deemed to specified beneficiary/ies, notwithstanding that they are not mentioned by name.

Where the insured ***has not*** specified the beneficiary/ies either by writing the beneficiary's name or by inserting such generic terms as children or spouse or where these beneficiaries ***do not agree***, the insured may name a beneficiary or substitute a beneficiary for another by will, schedule or endorsement Art 701(3).

Where the insured failed to name a beneficiary or substitute another beneficiary by will, schedule or endorsement, the insurance benefits shall be paid into the subscriber's/insured's estate/property (Art 705 read with 827 of the civil code).

- **Beneficiary Must Alive (Art 702)**

The purpose of designating or specifying the beneficiary in LIP is to benefit the beneficiary while s/he is alive. But what if the beneficiary dies at the time of the when the insurer's liability matured? In this respect, Art 702 of the comm'l. code stipulates that, unless otherwise agreed, the benefit shall be deemed to be payable only the condition that the beneficiary be alive on the day when the capital or the life interest is to be paid. In other words, when there is no agreement otherwise, in the policy and where the beneficiary is not alive on the day when the capital or the life interest is to be paid, the capital to be paid by the insurer shall be paid into in to the subscriber's/insured's estate/property (cumulative reading of Art 702 Art 705).

➢Agreement of the Beneficiary (Art 703)

As we have seen the insured has the right to revoke the beneficiary of his/her LIP and substitute by another by will, schedule or endorsement this is under Art 701(3). However, the insured has no right of revocation once the beneficiary has agreed to the policy. Thus, it is only until the specified beneficiary as agreed to the policy the insured has the right to revoke (Art 703).

The effect of Agreement of the Beneficiary on the insurer is dealt under Article 704.

➢Rights of the Beneficiary

When we see the basic rights of the named beneficiary in LIP, s/he has the right to claim the capital from the insurer directly. The beneficiary entitle to the money from the day when the contract was concluded, no matter that the beneficiary agreed to the policy after the death of the insured. The sum to be paid to this beneficiary shall not from the part of the insured person's estate Art 706(2).

Moreover, where the spouse of the deceased insured is specified as a beneficiary, the sums to be paid to her/him shall be regarded as her/his personal property. To put in other way, the sum he/she received from the insurer shall not from part of the common property of the deceased insured and the beneficiary spouse Art 706(3).

Art 707 of the comm'l code stipulated that, the insurance benefits which has been made to the beneficiary will not be subject to collation.

➢Rights of Creditors (Art 708)

It may happen that the insured who is dead now might have left some of his/her debt. As to whether the creditors of the deceased insured can claim the insurance benefits or not is dealt in Art 708 of the comm'l code. According to Art 708, the creditors of the insured have no right on the sums to be paid to the beneficiary. In other words, the sum to be paid the beneficiary does not constitute the estate of the insured.

However, where there is no beneficiary or where s/he not agreed to the insurance benefit or is not alive on the day of the insurance benefit is to be paid, creditors of the insured can claim the insurance benefits.

➢Failure to pay premium in LIP

The effect of failure on the part of the insured in LIP to pay premium is little bit difference from the effect of failure to pay premium in non-life insurance. The effect of failure to pay premium in LIP differs depending upon the number of the annual premiums paid by the insured. Art 709(1) of the comm'l code states that the insurer may not bring an action for the payment of the premiums due in respect of a LIP. Instead, the insurer may take one of the following action depending up on the number of annual premiums paid by the insured:

1. If a premium has not been paid at the due date on the policy on which less than three annual premiums have been paid, the insurer may demand payment. And if the payment is not effected within one month from the date of the demand, the insurer may terminate the policy Art 709(2). Here the insurer will not required to refund the premium already paid to it.
2. If a premium has not been paid at the due date on the policy on which at least three annual premiums have been paid, and the payment is not made within one month from the date of the demand for payment, the policy shall not lapse. Rather the insurer may issue a paid up policy or otherwise reduced the capital or the life interest Art 709(3). In other words, where the insured has paid at least three annual premiums, s/he will have life insurance coverage to the extent of the premium s/he paid.

Insurance Against Accident and Illness

Accident Insurance is the youngest of all classes of insurance. The introduction and development of accident insurance is related with the advancement and development of industry and technology in the 19 C. Motor insurance is one type of accident insurance. Thanks to technology, the first mechanically pro-peeled vehicle has come into being in 1894. and this development paved the way for the introduction of motor insurance from 1898 on wards. Thus, the development of motor vehicles made in accidents invariably to increase.

But, what does mean accident?

The term accident defined in Black's Law Dictionary as follows:

An unintended and unforeseen injurious occurrence, something that does not occur in the usual course of event or that cloud not be reasonably anticipated…an unforeseen and injurious occurrence not attributable to mistake, negligence or misconduct.

From this definition it is clear that the injurious occurrence must not be intended and foreseen from the practice of human being. And it excludes events that are caused by mistake, negligence or misconduct. Art 711(3)of the comm'l code defines in broader manner so as to include "any bodily injury arising out of unexpected extraneous occurances"

The Relationship b/n Life Insurance and Non Life/General Insurance

Life Insurance	Non Life/General Insurance
❖It is not a contract of indemnity as it is very difficult to ascertain the monetary value of human life	❖It is a contract of indemnity as is easy to the monetary value the insured object/property
❖Its objective may be to risk cover and or saving	❖ Its objective is only to cover the risk
❖Usually life time contract	❖A limited time contract and subject to renewal
❖ Death is certain only timing is uncertain	❖ The event totally uncertain
❖The earning capacity of the insured is relevant	❖The economic value of the