Debre Berhan University College of Law

Law of Insurance

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Introduction

- Course Outline
  - Part I Law of Banking
  - Part II Law of Negotiable Instruments
  - Part III Law of Insurance
- The course is part of the general Financial Law as it basically deals with financial interest.

Ctd

- **THE BASIC LAWS**
  - The 1960 Commercial Code
    - Article 896 to 967 on the Law of Banking
    - Article 715 to 895 on the Law of Negotiable Instruments
    - Article 654-712 on the Law of Insurance
  - The Banking Business Proclamation No. 592/2008
  - The Banking Business Amendment Pro. No. 1159/2019).
  - The NBE Establishment Proclamation No. 591/2008
  - The Insurance Business **Proclamation No. 746/2012**
  - Insurance Business (Amendement) **Proclamation No. 1163/2019**
  - Vehicle Insurance against Third Party Risks Proclamation N**o. 799/2013**
  - **The Civil Code- in relation to various kinds of transferable securities**
  - **Several Directives (More than 100) of the National Bank of Ethiopia in relation to Banking and Insurance**

Part I – Law of Banking

Chapter One - Introductions

- What are Banks?
- What are banking activities?
- What makes banking activity different from other kinds of financial activities?
- What do you think are the relevance of banks for the user, the society, and the economy at large?
- Is it necessary to establish a law regulating the banking sector?
- If yes, what areas and activities needs to be regulated?
- What kinds of regulation is required? Self regulation vs government regulation?
- Under the current political system of Ethiopia, which layer of the government has the power to regulate banks? Or financial institutions in general?

Banks

- Banks are institutions that deals in money and its substitutes and provides other financial services.
- Banks accept deposits, make loans, and derive a profit from the difference in the interest rates paid and charged respectively.
- Some banks also have the power to create money.
- In Ethiopia banks are defined to mean institutions undertaking banking activities.
- Banking business is defined under Proclamation No. 591/2008 Article 2(2) as an activity involving the **receiving funds** from the public; using such funds in in the account and at the risk of the bank **for loans or investments**; the **buying and selling of gold and silver bullion and foreign exchange**; **the transfer of funds**; the **discounting and negotiation** of promissory notes, drafts, bills of exchange and other evidence of debt; any **other activity recognized** as customary banking business.

1) Opening of current savings and time deposit accounts.
2) Acceptance of deposits of all kinds and issuing certificates of deposit.
3) Dealing in money exchange, transfer of foreign currencies and trading in precious metals.
4) Dealing in financial markets by receiving funds and reinvestment thereof.
5) Opening of Documentary (Letters) of Credit and confirmation thereof on behalf of others (Correspondent Bank) and the undertaking of all collection business relating thereto.
6) Issuing of Bank guarantees and bonds of all kinds.
7) Providing International Banking Service.
8) Issuing of Bankers' acceptances and exchanging thereof.
9) Acting as financial agent for others.
10) Providing advances and Bank facilities to manufacturers and exporters against tangible security or without security.
11) Providing loans and financing, either directly or in cooperation with others.

12) Investigation and evaluation of investment opportunities with a view to direct investment therein or the provision of finance in the various business sectors.
13) Promotion of and participation in industrial, agricultural, commercial and other business projects.
14) Dealing in the leasing of fixed assets and real estate.
15) Provision of financial and technical investment advice to other
16) To provide credit to poor men and women, micro insurance and other financial services in cities, towns, villages of the country with a view to provide them sustainable livelihood enhancement of their living conditions based on their needs, skills and traditional livelihood occupations, etc.
17) Provision of professional advice to poor persons with regard to investments in small businesses; Rendering managerial, marketing, technical and administrative advice to customers and assisting them in obtaining services in such fields.
18) To perform utility functions including providing safe deposit boxes to customers, providing money transfer facility, issuing traveler's cheques and accept various bills for payment: phone bills, electric bills, water bills.
19) Collection of money or proceeds of banking instruments on behalf of its customers through correspondent banks;
20) Encouragement of investment in cottage industries and income generating project for rural and urban customers as may be prescribed by the NBE
21) To negotiate, and issue Letters of Credit, Traveler's Cheques and Promissory Notes.
22) To receive all kinds of Bonds or valuables on deposit or for safe custody or otherwise, provide safe deposit vaults, collect and transmit money, Negotiable Instruments and all securities.
23) To borrow or raise or secure the payment of money from any bank or banks or any other person or persons for the Company's business.
24) Provide financial service for the purchase of Industrial and Agricultural Inputs, Livestock, Machinery and Industrial Raw Materials for its target market;
25) To distribute company's dividends including bonus shares (including fractional share certificates) out of profits accumulated or funds and resources of the company shareholders, in any manner permissible under law.

The Development of Banking

- Banking is of ancient origin, though little is known about it prior to the 13th century.
- Many of the early “banks” dealt primarily in coin and bullion, much of their business being money changing and the supplying of foreign and domestic coin of the correct weight and fineness.
- Another important institutions was the merchant bankers:
  - Who dealt both in goods and in bills of exchange,
  - Providing for the remittance of money and payment of accounts at a distance but without shipping actual coin.
  - Another form of early banking activity was the acceptance of deposits (the deposit of money or valuables for safekeeping or for purposes of transfer to another party; Ex. English bankers in particular had, by the 17th century,
  - London goldsmiths kept money and valuables in safe custody for their customers.
  - In any event, customers preferred to leave their surplus money with the goldsmith, keeping only enough for their everyday needs. The result was a fund of idle cash that could be lent out at interest to other parties.
  - About the same time, a practice grew up whereby a customer could arrange for the transfer of part of his credit balance to another party by addressing an order to the banker.

The Development of Banking in Ethiopia

- In **1905**, the first bank, the "**Bank of Abyssinia**", was established based on the agreement between the Ethiopian Government and the National Bank of Egypt, which was owned by the British with a capital of capital was 1 million shillings.
- The agreement allows the bank to engage in commercial banking and to issue currency notes but prevented the establishment of any other bank in Ethiopia. The Bank had branches in Harar, Dire Dawa, Gore and Dembi- Dolo as well as an agency office in Gambela and a transit office in Djibouti.
- In **1932**, under Emperor Haile Sellassie, Ethiopia closed the Bank of Abysinia, paid compensation to its shareholders and established **the Bank of Ethiopia** that started operation.
- Majority shareholders of the Bank of Ethiopia were the Emperor and the political elites of the time.
- The Bank was authorized to combine the functions of central banking (issuing currency notes and coins) and commercial banking. The Bank of Ethiopia opened branches in Dire Dawa, Gore, Dessie, Debre Tabor and Harrar.

Cont’d

- From **1936-1941, d**uring Italian occupation Bank of Ethiopia halted operation. But Banco Di Roma, Banco Di Napoli and Banca Nazionale Del Lavora were working during these period.
- From **1942-43-** Barclays Bank opened a branch and operated in Ethiopia during.
- In **1943**- the Savings and Mortgage Company of Ethiopia S.C. was also founded. the State Bank of Ethiopia was established combining the functions of central banking with commercial banking.
- In **1945 the Agricultural Bank** was established but was replaced by the Development Bank of Ethiopia in **1951**, which changed in to the Agricultural and Industrial Development Bank in **1970**.
- In **1946** Banque Del Indochine was opened and functioned until 1963.

Cont’d

- In **1963**, the Imperial Savings and Home Ownership Public Association (ISHOPA) and the Investment Bank of Ethiopia were founded. The later was renamed Ethiopian Development Corporation S.C. in 1965.
- **In 1963**, the State Bank of Ethiopia split into the National Bank of Ethiopia and the Commercial Bank of Ethiopia S.C. with the purpose of segregating the functions of central banking from those of commercial banking.
- In 1964, the first privately owned company named Addis Ababa Bank S.C., established. 51% of the shares of the bank were owned by Ethiopian shareholders, 9% by foreigners living in Ethiopia and 40% by the National and Grindlays Bank of London.
- Until the end of 1974, there were state owned, foreign owned and Ethiopian owned banks in Ethiopia established for purposes of central banking, commercial banking, development banking and investment banking.
- 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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- The three private banks, Banco Di Roman, Banco Di Napoli and the Addis Ababa Bank S.C. were merged to form “Addis Bank.”
- Eventually in 1980 this bank was itself merged with the Commercial Bank of Ethiopia S.C. to form the “Commercial Bank of Ethiopia,” thereby creating a monopoly of commercial banking services in Ethiopia.
- In 1976, the Ethiopian Investment and Savings S.C. was merged with the Ethiopian government Saving and Mortgage Company to form the Housing and Savings Bank.
- The Agricultural and Industrial Development Bank continued under the same name until 1994 when it was renamed as the Development Bank of Ethiopia.
- 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.

Cont’d

- During EPRDF,
  - The Free Market Economic policy were adopted at least theoretically.
  - The banking business were closed to foreign investors.
  - The Private banks re-emerged and started to flourish- some of them are ethnic affiliated while others are ruling parties of the time.
  - The Commercial Bank of Ethiopia, Development Bank of Ethiopia and Construction and Business Bank continued to be state owned banks. In 2011, the Commercial Bank subsumed Business and Construction Bank
- Currently
  - There are more than 25 private banks
  - 2 are owned by the government
  - Islamic banks are recognized and started to operate
  - The government recently adopted a policy that allows the opening of the banking industry to foreign investors;
  - The financial inclusion is low as most part of the society are not yet banked.

Significance of Banks

- Serve as financial intermediaries thereby **providing ideal source of fund for investment** to stimulate production, exports, creation of jobs and foreign exchange earnings of the country.
- Similarly bank lending to customers **who need the money for consumption**, which **encourages** producers and service providers to **expand their undertakings and increase production.** Expansion and increase in production requires **employment of additional workers, thereby creating new jobs**,
- **Encourages saving** by providing an incentive to save through payment of interest on deposits/savings and providing safety and security. **Saving is an important source of future investment** and the improvement of the living standards of the society.
- Banks also **facilitates transaction** by transferring money, issuing checks, giving guarantee and e.t.c.
- **Make payments easier, safer and cheaper.**
- The power of the national bank in fixing interest rates is particularly crucial in both investment and saving.

Types of Banks

- The principal types of banking are central banking and commercial banking.

1. CENTRAL BANKS
   - Called bankers to governments
   - Are “lenders of last resort” to commercial banks and other financial institutions?
   - They are often responsible for formulating and implementing monetary and credit policies.
   - They have been established specifically to lead or regulate the banking system;
   - Entrusted with the power of regulating the size of a nation’s money supply, the availability and cost of credit, and the foreign-exchange value of its currency.
   - Central banks carry out functions to maintain monetary and credit conditions conducive to a high level of employment and production, a reasonably stable level of
     domestic prices, and an adequate level of international reserves.

Central Banks

- Serve as fiscal agent of the government, supervising the operations of the commercial banking system, clearing checks, administering exchange-control systems, serving as correspondents for foreign central banks and official international financial institutions.
- Central banks are operated for the public welfare and not for maximum profit.
- Central banks traditionally regulate the money supply by expanding and contracting their assets.

Central Banks

Central banks typically alter the volume of their assets by six ways:

1. "**Open-market operations**" consist mainly of purchases and sales of government securities or other eligible paper. Open market sales of securities by the central bank drain cash reserves from the commercial
banks.
2. **Loans to banks,**
   - Called "discounts" or "rediscounts,"
   - Are short-term advances against commercial paper or government securities to enable banks to meet seasonal or other special temporary needs either for loan-able funds or for cash reserves to replace reserves lost because of shrinkage in deposits.
   - The rate of interest charged is known as the "discount rate," or "rediscount rate."
3. **Direct government borrowing from central banks**
   1. in many countries the central bank is the only large source of credit for the government and is used extensively.
4. **Buy and sell foreign exchange** to stabilize the international value of their own currency.
   1. engage in the so-called "currency swaps,"
5. **Fix and to vary the minimum cash reserves that banks must hold against their deposit liabilities.**
6. **Directing the availability of credit for particular purposes**:
   - ex during inflationary pressure and shortage of supplies, especially during wartime.

Central Banks

- The Central Bank in Ethiopia is called the National Bank of Ethiopia
- The National Bank of Ethiopia was reorganized by Proclamation No. 591/2008.
- Article 2(12) says NBE is a central bank of Ethiopia.
- Article 3 defines its legal status
- Under Article 4, the main purpose of the bank is
  - To maintain stable rate of price and exchange
  - Foster healthy financial system
- Article 5 lists the powers and responsibilities of NBE, among others,
  - Mint coin or print money,
  - Issue debt and payment instruments,
  - Determine the availability of money, interest rate,
  - License and supervise financial institutions,
  - Enact and implement foreign exchange policy and
  - Act as a banker, fiscal agent and financial advisor of the government.

National Bank of Ethiopia

- In terms of administration
- NBE has
  - Board of Directors,
  - Governor
  - Vice Governor
- Part three- on the r/n ship between NBE and Federal government- serve as fiscal agent and banker of government and provides credits and advances.
- Part four on the r/n ship b/n banks and NBE- licensing and registration, regulation and providing credits and advances. Art. 14 -16.
- Part five- on the r/n ship of NBE with anyone in the Country determining monetary unit and legal tender –Article 17 and 18
- Part six- on the r/n ship of NBE with international financial institutions- maintaining international reserve fund, Art- 19-21

Saving Banks

- Gathers savings and that pay interest or dividends to savers.
- It channels the savings of individuals who wish to consume less than their incomes to borrowers who wish to spend more.
- The mutual savings banks or trustee savings banks, savings and loan associations, credit unions, postal savings systems, and municipal savings banks serve this function.
- savings are invested mainly in government securities and other securities guaranteed by the government.
- This type of specialized banking service is not yet introduced in Ethiopia and hence there is nonbank, which may be considered as a savings bank.

Types of Banks

- **Investment Banks**
  - Investment bank is a firm that originates, underwrites, and distributes new security issues of corporations and government agencies.
  - Purchase the new security issue from a corporation at one price and selling the issue in smaller units to the investing public at a price sufficiently high to cover expenses of sale and leave a profit.
- **Development Banks**
  - Is a national or regional financial institution designed to provide medium- and long-term
    capital for productive investment, often accompanied by technical assistance, in less-developed areas.
  - The number of development banks has increased rapidly since the 1950s encouraged by the IBRD and its affiliates.
  - Includes Inter-American Development Bank, the Asian Development Bank, the African Development Bank.
  - One of the main activities of development banks has been the recognition and promotion of private investment opportunities.

Types of Banks- Ctd

- Development Banks- ctd
  - Fill a gap left by undeveloped capital markets and the reluctance of commercial banks to offer long-term financing.
  - The Development Bank of Ethiopia is established with the purpose of providing long-term loans to agricultural and industrial undertakings, which are considered crucial in the development of the economy.
  - It was intended to serve as the major financer for the various co-operatives and government owned farms and factories. Now it also provides long-term loans to private investors who are engaged in agricultural and manufacturing activities.

Islamic Banking

- "Islamic banking refers to a system of banking activity that is consistent with the Islamic law (Sheria).
- It is guided by principles of Islamic economics.
- Islamic law prohibits usury, that is, the collection and payment of interest and prohibits investing in businesses that are considered unlawful, or harem (such as businesses that sell alcohol or others contrary to Islamic values.
- In line with this, in the late 20th century a number of Islamic banks were
established.
- The word riba literally means increase or excess. It covers both usury and interest.
- Muslim scholars have all recognized the need of commercial banks that use in profit and loss sharing mechanism and have proposed a banking system based on the concept of mudarabh (profit and loss sharing).

Islamic Banking- ctd

- The Islamic development bank, an inter-governmental bank established in (1975) was born..
- In most countries the establishment of interest free banking had been by private; in Iran and Pakistan, however, it was undertaken by government initiative and covered all banks in the country.
- The best known feature of Islamic banking is the prohibition of interest.
- Islam allows only one kind of loan and that is qard-el hassan (literally good loan), where the lender does not charge any interest or additional amount over the money lent.
- The lender must share in the profits or losses arising out of the enterprise for which the
  money was lent for the business.
- Making money from money is not Islamically acceptable; money is only a medium of
  exchange, a way of defining the value of a thing it has no value in itself and should not be all owed to give rise to more money through fixed interest payments.

Commercial Bank

- Deals in money and in substitutes for money, such as checks or bills of exchange.
- Borrows from individuals, firms, and governments—i.e., receiving “deposits” from them.
- Makes loans or extends credit and invests in securities.
- The banker makes profit by charging interest and commissions for services rendered.
- A bank must always have cash balances and keep a proportion of its assets informs that can readily be converted into cash to maintain confidence in the banking system.
- also offers a wide variety of additional services to its customers, including savings deposits, safe-deposit boxes, and trust services.

Banks and Banking Transactions in Ethiopia

- Book IV Title III of the Commercial Code of Ethiopia which deals with banking transactions
- Proclamation592/2008 as amended by Proclamation No. 1159/2019; .
- Article 2(2) defines what includes banking business
- On the other hand, the term bank is defined, under Art 2(1)
- In addition to this, Art 4(1) of the same proclamation clearly prohibits foreign nationals and business organizations from undertaking banking business in Ethiopia.
- The definition of a bank and Article 9 exclusively reserve the banking sector to Ethiopian nationals

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- Licensing requirement
  - Article 4
  - Share company
  - 1/4th of the shares must be paid in cash
  - Minimum paid up capital of 5 billion birr
  - The management of the bank shall fulfill the requirements of NBE
  - The influential shareholder can only hold maximum of 5% - Article 11
  - Currently we have more than 26 banks
- The NBE regulates the manner of acquiring and transferring shares, conducting meetings, appointment and removal of directors preparation of financial statements, audit reports, appointment of auditors, and e.t.c

Continued

- The NBE regulates the minimum capital required to be maintained by banks, the maintenance of legal reserves, adequate liquidity, limitation on certain transactions, and etc.
- It also inspect banks.
- In the case of revocation of license and insolvency of a bank, the NBE plays a huge role in the appointment of the receiver and handling of tasks. Article 32-48 of the Proclamation.

CHAPTER TWO: MAJOR BANKING TRANSACTIONS

1. Deposit of Funds

- a contract whereby a person agrees to deliver and transfer the ownership of specified amount of money to a bank which agrees to repay them under the conditions agreed upon in the contract or on the demand of the depositor.
- Art 896. The contract of deposit of funds is almost identical to contracts of loan of money
- Where the deposit relates to “coins and other individual monetary tokens” and where
there has been an agreement that they shall be refunded to the depositor in kind, the bank does
not acquire the right of ownership and hence cannot dispose of such items. /Art 896 second
proviso/.
- The contract of deposit of funds results in the opening of an account in the name of the depositor by the bank in which the latter enters all transactions made with the depositor.
- The bank credits the account of the depositor with all deposits made by the depositor and debits the account where the depositor makes withdrawals or order payments to third parties. (Art 897).

- The type of account opened may either be a current account in which the depositor has the right
to dispose of the deposit at sight or on demand. This type of account also is a check operated
account, i.e., the holder may demand repayment of part or the whole of the deposit by drawing a
check on the bank payable to himself or a third party.
- As the repayment may be demanded at any time, this type of deposit does not bear interest. / Art 897, 898. /
- The account may also be a saving account, which is interest bearing and the right of the depositor to demand repayment may be limited. /Art 897, 98. /
- It may also be a time deposit or account in which the depositor cannot demand repayment or withdrawal before the lapse of the agreed period of time. This type of deposit normally bears interest at a rate agreed upon Art 897, 898 (2).
- Where the person has several accounts, each account shall operate independently unless the parties agree otherwise. /Art 902/
- The right of the depositor to demand repayment is limited to the amount of money held in account in his favor and he does not have the right to overdraw his account without a special agreement to this effect, which is one form in which banks give loan to their customers. /Art 899,945 of the Comm. Code and Art 2471 Civil Code.

2. Bank Transfers

- it is always a secondary transaction by which the debtor performs his obligations by
payment of money.
- Art 903(1) of the Comm. Code, a bank transfer is a transaction whereby the bank, upon the written order of the depositor /transferor, debits the account of the transfer and credits the account of another depositor/the transferee with the amount specified in
the instruction or transfer order.
- The transferor cannot order the bank the transfer of an amount which exceeds the balance.
- The transfer made pursuant to this type of agreement is considered as a loan or overdraft provided by the bank to transfer. / Art 905, 908, 899, 945 of the Commercial Code & Art 2471 of the Civil Code/.
- The transfer may cancel the transfer at any time before his account is debited and before the transferee acquires ownership right to the money.

- If the transfer order is communicated to the bank by the beneficiary as agreed according to Art 907(1), the transferor loses the right to cancel the order from the time the transfer order is issued and handed over to the beneficiary. /Art 906 and Art 907(2)./
- the transferee acquires the right of ownership over the money at the time when the account of the transfer is debited and even before the account of the transferee is
credited with the amount of transfer.

3. Deposit of Securities

- is a contract whereby an owner or of securities (shares or stocks, government bonds and company bonds (debentures) or other right holder agrees to deposit the securities with a bank which agrees to provide safe custody and handle or manage them for consideration.
- this is a transaction by which banks keep securities in their custody and perform all functions relating to them such as the collection of yields arising from securities deposited, i.e., dividends from shares/stocks, capital repayments and interest arising from bonds and handle purchase and sale of securities in the name and on behalf of the depositor.
- According to Art 912 and 914 of the commercial code, the bank which deposits securities has the duty to handle the securities deposited and to collect interest, dividends, capital repayments amortization and any other entitlements arising out of securities as soon as they can be claimed.
- It also has the duty to deposit the money collected by entering them in the deposit account of the depositor of the securities. (Art 912 and 913(2)).
- The bank must also take necessary measures and comply with formalities necessary to preserve the rights, arising out of securities such as renewal of coupon and payment of stamp duty.

4. **Hiring of Safes**

- Banks take charge of their customers' valuables like jewelry, negotiable securities, and documents of title to properties, will, and deposit them, as they can be conveniently stored.
- Banks deposit their customer's values in either of the following two ways:
  1. By accepting the valuables for safe-custody or
  2. By hiring out safe deposit boxes to their customers.
- In safe deposits or hiring of safes the bank and the customer execute a contract specifying the conditions on which the safe will be hired the contract includes the customer's duty to pay rental charges and the method of payment..
- a contract of hire of a safe is defined as a contract whereby a bank agrees to place at the disposal of the hirer a safe or a compartment of a safe for a specified period of
  time on payment of a rent.
- The bank under this transaction has the duty to prepare a room where the safes are to be kept called a strong room and prepare safes for the hirer, and take the necessary measures to ensure the up keep and safe custody of safes.

- However, the bank is under no obligation for the deterioration or damage of the contents of the safe.
- A person may hire a safe in a bank to deposit valuables such as gold, silver, diamond (jewelries), important documents such as title deeds, insurance policies, wills, inventions and works of art.
- However, the hirer may not deposit things that are dangerous by themselves such as explosives, inflammable things, narcotic drugs, guns and legal tender currency, which is supposed to circulate, or deposited through contracts of deposit of funds and not in hired safe, as this puts the money out of beneficial use.
- Violation of this prohibition is a ground for the cancellation of the contract by the bank. /Art 922/
- The bank has also the obligation to allow the hirer or his agent to have access to the safe by providing him with keys and identification cards during working days and of hours of business. /Art 921/

- The obligation of the hirer on the other hand is the obligation to pay the rent on time and return the keys to the safe by emptying the contents of the safe upon termination or cancellation of the contract. /Arts 919 and 923/1//
- The contract of hire of a safe shall terminate as of right where the hirer fails to pay a rent within a period of one month from the date of notice by registered letter given by the bank.
- Where the hirer fails to pay a rent for a single term, the bank demands payment by a registered letter.
- The contract shall terminate as of right where the hirer fails to pay the rent within a period of one month from the date when the bank gave the notice, and the bank shall take possession of the safe at the end of the period of notice by calling the hirer to be present on the date and time fixed.
- Where the hirer fails to appear on the fixed date and time or refuses to return the key and give up his safe by removing his deposits, the safe shall be forced open in the presence of a court official who shall draw up a descriptive report of the contents of the safe which shall constitute a conclusive evidence as regards

5. **Discount**

- Discount is a contract whereby a bank agrees to pay to a holder of a commercial instrument or security having a future date of payment an amount which is lesser than its actual value, against the surrender of the instrument and the undertaking to repay the value of the instrument by the holder where payment is not made at the maturity of the instrument.. /Art 941. /.
- The amount of commission and interest charged by the bank which discounts the instrument shall be calculated by taking into account the time remaining until maturity of the instrument and the value of the instrument respectively. /Art 941/2/ and 942/
- The bank, which discounts a commercial instrument or a security, shall acquire all the rights of the beneficiary of discount on the instrument including the right to demand payment from the person or persons who are liable on the instrument.

- However, if the bank is not successful in its claim for payment at maturity, it will have two alternative remedies, Art 944(1).
  - It may proceed against parties liable on the instrument under Art 790 of the
  commercial code, or the company which issued the share or bond, or
  - It may proceed against the beneficiary of the discount on the of basis the contract of
  discount (Art 941(1) and 943).
- However, the right of the bank is limited to the amount of money it has paid to the beneficiary plus commission, interest and expenses (944(2)).

6. **Bank Lending**

- Bank lending or credit services provided by banks are one of the most common and traditional functions of banks which,
- Art 2471 of the Civil Code, which also applies to loans provided by banks, defines a contract of loan of money or other fungible things as a contract where by a party called the lender, under stakes to deliver to the other party, the borrower, a certain amount of money or other fungible things and to transfer to him the ownership thereof on the condition that the borrower will return to him as much of the same amount and quality.
- Contracts of loan of money or other fungible things are not subject to special form and may be made in any manner.
- / Art 945. /

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- An open credit or overdraft loan may be given for limited or unlimited period of time, i.e. the bank may allow the customer to over draw his account for a period of one year, for instance, and the customer is expected to have the amount put at his disposal by the bank plus interest by the end of the period.
- All types of bank loans are given following certain procedures:
  - The bank under all cases must assess the credit-worthiness of the customer by studying the business and financial position of the customer, his credit history and finally by requiring a security or collateral in the form of mortgage or pledge.
  - A bank may require a potential borrower to mortgage a building, a motor vehicle, a business or his right to use urban land acquired by lease if the amount of guarantee does not exceed the lease price paid by the holder.
  - A bank may also provide loan against pledge of chattels of various types or pledge of incorporeal things particular claims, and securities documents of title to goods such as bills of lading, warehouse goods deposit certificates.

7. Documentary Certificates

- A documentary credit is a credit provided to persons engaged in foreign trade particularly importers who need to pay the price of goods in foreign exchange.
- An importer who intends to import goods into the country has to apply to a bank to open a letter of credit in which the seller of the goods is the beneficiary.
- Where the bank accepts the application of the importer, it opens the letter of credit equivalent to price of the goods and transmits or communicates it to its branch (if it has a branch at the place where the seller is situated) or to a bank with which it has a correspondence.
- The correspondent bank, which has received the letter of credit, shall notify the seller/beneficiary of the credit.

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- And the correspondent bank shall pay the price of the goods to the beneficiary of the credit after receiving documents representing the goods such as
  - an invoice,
  - a bill of lading,
  - a packing list and
  - an insurance policy covering risks associated with transportation (Where according to the contract of sale insurance is the obligation of the seller) and after confirming that the documents presented by the seller confirm with terms and conditions of the credit.
- The payment may also be made to third parties such as holders of bills of exchange to whom the right to receive the part or the whole of value of the letter of credit is transferred /Art 965,966.

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- The correspondent bank which has paid the agreed amount to the seller or third parties to whom the right to receive payment is transferred, shall send the documents it has received from the seller to the opening bank and the opening bank will hand over these documents to the importer after receiving the amount equivalent, in Ethiopian Birr, to the amount paid to the seller, interest and service charge (commission) for the service provided. In the absence of a contrary agreement, the bank is entitled to the hold and dispose of the goods imported (represented by the documents at its hand) and recover the amount of money it or its correspondent has paid plus interest and service charge or commission.
- /Art 959/

Cont’d

- Art 961 recognizes two types of document credits:
  - Revocable credits, which credits do not constitute a binding agreement between the opening bank and the beneficiary.
  - Hence, it may be modified or cancelled by the opening bank at any time by a notice communicated to the correspondent bank prior to payment or negotiation, or the acceptance bills there under by the latter.
  - A documentary credit is presumed to be revocable in the absence of a provision that clearly specifies that it is irrevocable. / Art 962,961. /
  - Irrevocable credits: are credits, which, on the other hand, represent a definite undertaking between the opening bank and the seller/beneficiary or good faith holders of bills of exchange, drawn by the beneficiary.
  - Hence, the bank is obliged to pay the money specified in the credit.

END OF PART ONE

Part II – Law of Negotiable Instruments

- **What are Negotiable Instruments?**
  - The word negotiable means ‘transferable by delivery’ and the word ‘instruments’ means a written document by which a right is created in favor of a person.
  - Thus, the term negotiable instruments literally refers to a document containing rights that can be transferred by delivery.
  - Article 715(1)
  - The rights that could be incorporated in negotiable instruments may be rights for payment of money arising out of various contracts such as the contract of loan, sale, lease, or any other contract performed by payment of a certain amount of money.

- Such rights may also arise from ownership in companies or loan made to the government or to a share company.
- The rights that are incorporated in negotiable instruments may be rights to receive goods under voyage or deposited in a warehouse.
- Art 716/1/

Features of NI

- the rights incorporated in negotiable instruments may be transferred by the transfer of the instrument
- a person may not exercise or enforce them unless he is in possession of the instrument
- Negotiable instruments are issued or negotiated based on other contracts.

Nature of Negotiable Instruments

- Negotiable instruments represent one form of property rights, i.e., exercised over incorporeal things “chose in action.”
- A holder of this type of property right must have actual possession of the object to exercise rights arising there from.
- Negotiable instruments also represent one kind of contract as every instrument embodies a contract or promise to pay a certain amount of money or to deliver goods according to terms agreed up on.
- As contracts, the general rules of contract shall apply unless they are specifically excluded from application by the special law applicable to negotiable instruments.

- Compare Art 733 of the Commercial Code.
- Art 734/1/ of the Commercial Code and Art 1728 of the Civil Code/.
- The requirements as to capacity and signature
- Art 717/2/. The parties must give their consent, which must be free from defects such as mistake, fraud, duress.
- The object of the contract must also be legal and possible.
- Art 717 /1/ of the Commercial Code and Art 1676 /1/ of the Civil Code./
- Art 717/3/ of the Commercial Code.
- the transfer of negotiable instruments has a special effect compared to the transfer of other forms of property and other contracts.
- the general principle governing contracts which transfer rights to other forms of property, particularly immovable properties and special movable properties, i.e., no one may transfer a better title than he has, does not apply in the case of transfer of negotiable instruments. See Art 717 /3/
- 751/2/, 752, 849 and 850 of the Commercial Code. Compare Arts 1161-1167 and Art 1966 of the Civil Code.

- Generally Negotiable instruments are written documents that are used to facilitate commercial transactions by providing a convenient and reliable means of transferring money or other valuable assets from one party to another.
- The basic features of negotiable instruments include:
  - **In writing**: Negotiable instruments must be in writing and signed by the issuer.
  - **Unconditional promise or order to pay**: Negotiable instruments must contain an unconditional promise or order to pay a specific amount of money or other valuable asset.
  - **Payable on demand or at a specific time**: Negotiable instruments must be payable either on demand or at a specific time.
  - **Payable to a specific person or to the bearer**: Negotiable instruments can be either payable to a specific person or to the bearer. Instruments payable to a specific person are called "order instruments," while instruments payable to the bearer are called "bearer instruments."
  - **Transferability**: Negotiable instruments are designed to be easily transferable from one party to another. They can be transferred through endorsement or delivery.
  - **Consideration**: Negotiable instruments must be given in exchange for some form of consideration, such as goods or services.
  - **No defenses**: Holders of negotiable instruments are generally protected from any defenses that the issuer may have against the original payee.
- These features make negotiable instruments a reliable and widely-used means of conducting commercial transactions.

Purpose of Negotiable Instruments

- The main purpose of negotiable instruments is facilitation of commercial transactions.
- Commercial instruments are substitutes for money and are used as means of performance of money obligations.
- Dealing with them reduces the risk of loss or theft and the ease with which they can be transferred creates convenience which will in turn facilitate business.
- Transferable securities have the purpose of raising capital in the form of contributions made by purchase of shares and bonds, which is used for starting new businesses or expansion of existing businesses thereby increasing the production of goods and services in the country.
- can be used as means of borrowing money, buying goods and services on credit and as method of evidencing a pre-existing debt.

Types of Negotiable Instruments

1. **Commercial Instruments**
   - are negotiable instruments incorporating rights for payment of a specified amount of money.
   - They are issued and negotiated on the basis and with the purpose of performing an obligation that can be performed by payment of a certain amount of money.
   - Hence, they are used as a substitute for money.
   - These are bills of exchange, promissory notes, checks, travelers' checks and warehouse goods deposit certificates as the types of commercial instruments recognized under the Ethiopian law.

2. Transferable Securities

- Securities are negotiable instruments incorporating rights for payment of money.
- The sources of such rights may be investments made in companies or loans provided to the government or its subdivisions through purchase of government bonds and treasury bills or to companies through the purchase of debentures.
- However, all securities are not negotiable instruments. What makes securities negotiable instruments is their transferability according to rules of negotiation.
- Bonds, stocks and transferable shares are instances of securities which are negotiable instruments considered.

- **Documents of Title to Goods**
  - These are negotiable instruments containing rights of ownership over goods that are being transported or goods which are warehoused and which enable their holders to receive such goods.
  - Refer Arts 571-576 and 610-619 of the Commercial Code regarding documents of title to goods under voyage and Arts 2814-2824 of the Civil Code regarding documents of title to goods warehoused.

Chapter Two

- **Commercial Instruments**
  - Article 732- 734
  - Are **Nis** that includes an **entitlement** in the form of **payment of money**;
  - Usually represents money (at least in terms of physical representation and legal recognition – save legal tender discourse!)
  - Includes BE, PN and Cheques;
  - Article 733 and 734 provides for the basic **formality (Art. 734)** as well as **substantive** (733) requirements for the formation of entitlements to CE.

Bill of Exchange

- **Definition**
  - Bills of exchange, therefore, involve an order to pay money rather than a promise to pay money.
  - The person issuing the order is the drawer, the person ordered to pay is the drawee and the person who receives the payment is the payee.
- **Requirements**
  - **Content Requirements Art 735 and 736**
    - Drawer
    - Drawee
    - Place of payment, place of issuance
    - time of issuance;
    - Time of payment, Art. 745
    - Its name
    - UNCONDITIONAL Order to PAY- Art. 744
    - A sum certain in money – Art. 740
    - Signature – Art 741 and 742

Bill of Exchange

- **Other Requirements**
  - **Interest**- Art 739 – only for at sight and fixed period after sight
- **Negotiation**
  - **Ways of Negotiation Art 746**
    - **Simple Delivery**: - if it is to bearer
    - Endorsement: - to order
    - In Blank Endorsement: similar with in bearer. Happens when the beneficiary unspecified or may consist simply of the signature of the endorser.

Bill of Exchange

- **Forms and Elements of Endorsement – 747 and 748**
  - Unconditional
  - Full- not partial- should be made to the full value of the instrument
  - Written and signed
  - Endorsement made according to the above requirements shall transfer all the rights arising out of the instrument from the endorser to the endorsee
- **Effects of Endorsement**
  - Transfers all the rights
  - Endorser guarantees both payment and acceptance

Bill of Exchange

- **Establishment of Title: Art. 751 and 752**
  - Through an uninterrupted series of endorsements only.
  - Persons sued on a bill of exchange cannot set up against the holder defenses based on their personal relations.
  - Art. 753 and 754 – in the case of endorsement by agents and pledge.
  - Art. 756: Place of endorsement- Presumption
  - Negotiable instruments issued in the name of a specified person may be transferred by canceling the name of the transferor followed by entering the name of the transferee in the instrument and entering the name of the beneficiary in the register kept by the person issuing the instrument or by issuing a new instrument in the name of the transferee and entering the name of the transferee in the register kept by the person who issued such instrument.

Bill of Exchange

- **Acceptance Art 757 -**
  - refers to the agreement of the drawee to pay the value of the instrument to the holder at its maturity.
  - By whom? – the Drawee
  - For what? Acceptance
  - Who presents? The Holder or Possessor
  - When? Before the date of maturity.
  - acceptance may be required by the drawer in any type of bill of exchange except those payable at sight or demand,
  - Time and Place modification: - Art. 758
  - Presentment does not entail surrender? – Art. 760(2)

Bill of Exchange

- **Forms of acceptance**
  - Need to include the word accepted
  - Signed by the drawee
  - Must be unconditional 762 but can be partial
  - Any other modification amounts to refusal
- **Effects of acceptance**
  - It is an undertaking to pay the bill of exchange at maturity.
- **Acceptance for Honour**
  - It is when the payment obligation is guaranteed by a third party.
  - Art 767 are requirements: - on the bill/allonge; expression; signature and for whom account?
  - Effect: - treatment like a guarantor. Article 768
  - Acceptance for honor represents a guarantee to pay the value of commercial instruments by any person who may even be a signatory of the instrument.

Bill of Exchange

- **Maturity Art. 769**
- **Categories –**
  - at sight, payable on presentment- 770
  - at a fixed period after sight, determined by date of acceptance/protest 771
  - at a fixed period after date, and
  - at a fixed date
- **Calculation- 772 and 773**
- **Payment**
- The drawer who pays a bill at maturity or a check is validly discharged and cannot be held liable
- The drawer must verify the signature of the drawer but not the signature of endorsers, as it does not have the specimen of signatures of all the potential endorser of the bill
- unless he has violated the opposition of payment or ‘stop payment’

Ctd

- **Time of presentment for payment- 774**
- **Partial payment is possible- 775**
- **When to pay? 776 – after maturity.**
- **Opposition- 779**

10. Recourse for non-acceptance or non-payment

- **Holder against the drawer and endorsers780**
- **Protest must be issued 781**
  - The holder who intends to exercise a right of recourse must have a protest drawn up. Protest is a written document drawn up by a notary public or by a court registrar evidencing non-acceptance or non-payment of a commercial instrument.
  - the holder of a commercial instrument must comply with before exercising his right of recourse is to give notice of nonpayment or non-acceptance to his endorser /if any/ and to the drawer or maker of the instrument.

Bill of Exchange

- **Place, requirements, and forms of protest- 784 – 786**
- **Joint and several liability to the holder: - Article 790**
- **Extent of rights of recourse 791and 792**
- **Loss of rights of recourse Article 796**
  - Failure to present the instrument for acceptance or payment within the time provided by the law or the instrument. However, where the limit of time for presentment for acceptance is provided by the drawer, the holder loses his right of recourse against endorsers, the drawer and other parties liable on the instrument with the exception of the acceptor.
  - Failure to have a protest drawn up in cases where the right of recourse cannot be exercised without a protest drawn up by a public officer or any person as per Art 1178 Art 796,825(1) (C).

Bill of Exchange

- **Alternative Remedies to a Holder Who Has Lost His Right of Recourse**
  - A holder of a commercial instrument who has lost his right to recourse/ the right to seek judicial remedy to recover the unpaid value of a commercial instrument) may still have an opportunity to recover his money based on the obligation underling the issuance or the transfer of the commercial instrument or the provisions of the law (unlawful enrichment)?
  - **Causal proceedings**: are proceedings based on the contractual or extra-contractual obligations for the performance of which the instrument is issued or transferred.
    - , the holder of a bill of exchange who has lost his right of recourse may sue the drawer or endorser who has issued or transferred the instrument to him based on the contractual or extra contractual obligation and recover the unpaid value of the bill of exchange or a check.
  - **Proceedings for unlawful enrichment:** A holder whose right of recourse is extinguished by reason of limitation of action /Arts 817 and Art 881/ or by reason of failure to present the instrument for acceptance or payment or failure to have a protest drawn up within the period provided by law or the instrument /as can be inferred from Art 799 (4)/, may institute an action based on the rules of unlawful enrichment against the drawer and acceptor up to the amount of money by which they have unlawfully enriched themselves at his expense.

Bill of Exchange

- The holder will be able to institute proceedings based on the rules of unlawful enrichment only if he is not able to bring causal proceedings (Art. 799).

- **Force majeure 797**
- **Unlawful enrichment**: Art 799 for rights limited by reason of extinctive prescription or limitation of action.
- **Intervention for Honour**
  - 802- 810
- **Parts of a set and copies – 811-815**
- **Alterations – Art 816**
- **Limitations of Actions: Art. 817 and 818**
  - Against acceptor After 3 years from date of maturity
  - Against endorsers and drawer after 1 year
  - Endorser against endorser and drawer after six month

B. Promissory Notes

- a document incorporating an unconditional promise in writing made by one person to another signed by the maker, engaging to pay,
- promissory notes are promise to pay money and they are only two parties i.e., the maker of the promise and the payee to whom payment is effected.
- Requirements – Art 823 and 824
- Application of BE provisions 825

Promissory Notes

- Features
  - Contains promise only not order.
  - To bearer only
  - Maker is the promisor
  - Liability of the maker: - Art 826
  - The concept of acceptance is not applicable to promissory notes unlike bills of exchange that may be accepted.

C. Cheques

- It is bill of exchange drawn on a bank and payable on demand.
- check is an unconditional order in writing, addressed by one person, the drawer, to a banker, signed by the drawer, requiring the bank to pay, on demand, a sum certain in money to or to the order of specified person or to bearer.
- A check is always drawn on a banker
- is always payable on demand
- while a bill of exchange may be drawn on any one and may be made payable on demand or at fixed or a determinable future time
- Acceptance is not necessary for a check since it is payable on demand.

Cheques

- A crossed check is a check containing two parallel lines drawn across its face by the drawer or holder. A check may be crossed generally or specially.
- The whole purpose of crossing checks is to make sure that the check is paid to the intended person by preventing payment to other persons into whose hands the check might fall.
- the fact that a check is crossed does not mean that it cannot be negotiated as open checks.
- A person to whom a crossed check containing such a provision is transferred shall not acquire a status of a holder in due course and does not acquire a better title than the transferor/ Art 865. /
- However, payment of a check may be stopped by the instruction of the drawer at anytime before payment without the need to prove the existence of a valid ground to do so. / Art 857.

Cheques

- Art 835, which prohibits such agreement on instruments payable at sprit or on demand.
- checks have to be presented for payment within a period of six months from the date of their drawing irrespective of the date of their issuance. /Art 854 and 855 of the Commercial Code /
- checks may be certified by the drawee, upon the request of the drawer, provided that it has a sufficient cover.
- Where checks are so certified, the drawee will have the obligation to keep the amount of such check in a separate blocked account for the benefit of the holder of the check until the expiry of the period provided for presentment for payment i.e., six months from the date of drawing. /Art 832.

Cheques

- **Formation Requirements of Cheque**
  - Article 827 and 828
  - 827(a) and 837
  - Article 827 (b) and 829
  - Previous cover Article 830
  - No acceptance – 831
  - Payee- Bearer, Order or name
  - Article 840

Cheques

- **Negotiability**
- Bearer – freely transferable
- To order – by endorsement
- Requirement of endorsement 843 and 844
  - Unconditional
  - Partial endorsement is null and void
  - Written
  - Signed
- Effect – 845 and 846
  - Transfer all rights
  - Endorser guarantes payment

Cheques

- **Prove of Title 847 and 849**
- **Personal defense is not acceptable – 850**
- **Acceptance for honour is acceptable – Article 853**
- **Presentment and payment**
  - Maturity- 854
  - Presentment – 855 within 6 months
  - Stopping payment- Article 857 and 858
  - Partial payment- 859
  - Discharge of drawee- Article 861

Cheques

- **Crossed cheques**
  - Article 863 and 864 special vs general crossing of cheques
- **Cheque payable in account**
- **Recourse for non-payment - Article 868**
  - When the cheque is not paid in due time
  - Against endorser, drawer and other parties.
  - Preconditions
    - Protest – Art 869
    - Notice – Art 870
  - Joint and several guarantee Art 872
  - Extent of claim of recourse and subrogation Art 873 and 874
  - Loss or rights of recourse
- **Limitations of Actions**
- 881 and 882

Reading assignment

- Read the following provisions of the commercial code in relation to checks
  - Article 883-886
  - Article 887-890
  - Article 891-895

PART III

LAW OF INSURANCE

Course overview

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

Relevant Laws

- The Commercial Code 654 – 712
  - 654-674 General Provisions applicable to all insurance
  - 675- 684 Insurance of objects
  - 685- 688 Insurance of liability
  - 689- 712 – Insurance of person (Life and Health Insurance)
- The Insurance Business Proclamation 746/2012 and 1163/2019
- Various directives of NBE
- The Decisions of Federal Cassation Bench

Terminologies

- Policy
- Premium
- Cover
- Insurer
- Insured
- Risk
- Beneficiary

Overview cont’d

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

Lecture one

Insurance in general

A. The notion of insurance :

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

Cont’d

- In both definition there exist a term risks.

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

- Risks r known for their uncertainty, peril (damage sustained) and hazard (የአደጋው አባባሽ) and others
- Risks could be divided as financial vs non financial, fundamental/ those affecting the mass such as earth quake. Ex suname/ vs particular risk/affecting a particular individual/

Speculative or dynamic risk

- a situation in which either profit OR loss is possible. Examples of speculative risks are betting on a horse race, investing in stocks/bonds and real estate.
- The decision to venture into a new market, purchase new equipments, diversify on the existing product line, expand or contract areas of operations, commit more to advertising, borrow additional capital, etc., carry risks inherent to the business.
- The outcome of such speculative risk is either beneficial (profitable) or loss. Speculative risk is uninsurable.

Pure or static risk

- is a situation in which there are only the possibilities of loss or no loss, as oppose to loss or profit with speculative risk.
- The only outcome of pure risks are adverse (in a loss) or neutral (with no loss), never beneficial.
- Examples of pure risks include premature death, occupational disability, catastrophic medical expenses, and damage to property due to fire, lightning, or flood.
- It is important to distinguish between pure and speculative risks for three reasons.
  - First, through the use of commercial, personal, and liability insurance policies, insurance companies in the private sector generally insure only pure risks. Speculative risks are not considered insurable, with some exceptions.
  - Second, the law of large numbers can be applied more easily to pure risks than to speculative risks. The law of large numbers is important in insurance because it enables insurers to predict loss figures in advance.
  - Finally, society as a whole may benefit from a speculative risk even though a loss occurs, but it is harmed if a pure risk is present and a loss occurs.

Static vs Dynamic Risks

- Static risks are risks connected with losses caused by the irregular action of nature or by the mistakes and misdeeds of human beings. Static risks are the same as pure risks and would, by definition, be present in an unchanging economy.
- Dynamic risks are risks associated with a changing economy. Important examples of dynamic risks include the changing tastes of consumers, technological change, new methods of production, and investments in capital goods that are used to produce new and untried products.
- Static and dynamic risks have several important differences –
- Most static risks are pure risks, but dynamic risks are always speculative risks where both profit and loss are possible.
- Static risks would still be present in an unchanging economy, but dynamic risks are always associated with a changing economy.
- Dynamic risks usually affect more individuals and have a wider impact on society than do static risks.
- Dynamic risks may be beneficial to society but static risks are always harmful.

Fundamental risks vs Particular risks

- Fundamental risk affect the entire economy or large numbers of people or groups within the economy. Examples are high inflation, unemployment, war, and natural disasters such as earthquakes, hurricanes, tornadoes, and floods.
- Particular risks are risks that affect only individuals and not the entire community. Examples of particular risks are burglary, theft, auto accident, dwelling fires. With particular risks, only individuals experience losses, and the rest of the community are left unaffected.
- The distinction between a fundamental and a particular risk is important, since government assistance may be necessary in order to insure fundamental risk. Social insurance, government insurance programs, and government guarantees and subsidies are used to meet certain fundamental risks in our country. For example, the risk of unemployment is generally not insurable by private insurance companies but can be insured publicly by federal or state agencies. In addition, flood insurance is only available through and/or subsidized by the federal government.

Subjective vs Objective Risk

- Is uncertainty based on a person's mental condition or state of mind. For example, assume that an individual is drinking heavily in a bar and attempts to drive home after the bar closes. The driver may be uncertain whether he or she will arrive home safely without being arrested by the police for drunken driving. This mental uncertainty is called subjective risk.
- Objective risk is defined as the relative variation of actual loss from expected loss. For example, assume that a fire insurer has 5000 houses insured over a long period and, on an average, 1 percent, or 50 houses are destroyed by fire each year. However, it would be rare for exactly 50 houses to burn each year and in some years, as few as 45 houses may burn. Thus, there is a variation of 5 houses from the expected number of 50, or a variation of 10 percent. This relative variation of actual loss from expected loss is known as objective risk.
- Objective risk can be statistically measured by some measure of dispersion, such as the standard deviation or coefficient of variation. Since objective risk can be measured, it is an extremely useful concept for an insurance company or a corporate risk manager.

INSURANCE AND REINSURANCE AS A RISK TRANSFER TECHNIQUES

- Insurance and reinsurance are both forms of financial protection which are used to guard against the risk of losses.
- Losses are guarded against by transferring the risk to another party through the payment of an insurance premium, as an incentive for bearing the risk.
- Insurance and reinsurance are similar in concept even though they are quite different to each other in terms of how they are used.
- Insurance is a more commonly known concept that describes the act of guarding against risk.

- An insured is the party who will seek to obtain an insurance policy while the insurer is the party that shares the risk for a paid price called an insurance premium.
- The insured can easily obtain an insurance policy for a number of risks. The most common types of insurance policy taken out is a vehicle/auto insurance policy as this is mandated by law in many countries. Other policies include home owner's insurance, renter's insurance, medical insurance, life insurance, liability insurance, etc.
- The insured who takes out a vehicle insurance will specify the losses against which he wishes to be insured. This may include repairs to the vehicle in case of an accident, damages to the party who is injured, payment for a rented vehicle until such time the insured's vehicle is fixed, etc. The insurance premium paid will depend upon a number of factors such as the insured's driving record, driver's age, any medical
- Re insurance is when an insurance company will guard themselves against the risk of loss.
- Reinsurance in simpler terms is the insurance that is taken out by an insurance company. Since insurance companies provide protection against the risk of loss, insurance is a very risky business, and it is important that an insurance company has its own protection in place to avoid bankruptcy.
- Through a reinsurance scheme, an insurance company is able to bring together or 'pool' its insurance policies and then divide up the risk among a number of insurance providers so that in the event that a large loss occurs this will be divided up throughout a number of firms, thereby saving the one insurance company from large losses.

Insurance defn

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

Cont’d

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

Q) Does the forth element operate for life insurance?

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

Features of insurance k

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

Insurance vs wagering/gambling K

Q) R both the same or different? Both r different b/c

a. Their object is different (risk compensation vs gamble for money)

b. In insurance there is an insurable interest whereas in gambling there is no insurable interest.

c. Insurance is based on principle of indemnification except for life insurance whereas there is no indemnification issue for contract for gamble.

d. Insurance is based on scientific calculation whereas in contract of gamble there is no calculation scientifically

Insurance vs Guarantee

- Insurance is a contract of indemnity whereby Insurer agrees to indemnify, or pay, the insured for certain types of loss while in a contract of guarantee, one party agrees to act on behalf of another should that second party default.
- In plain terms, this means that if an individual fails to pay her guaranteed debt or to perform some other duty or obligation, the guarantor -- the party who has agreed to act on behalf of another -- will step in to pay or perform the obligation.
- Insurance is direct agreement between the insurance provider and the policyholder, while a guarantee involves an indirect agreement between a beneficiary and a third party, along with the primary agreement between the principal and beneficiary.
- insurance policy calculations are based on underwriting and possible loss, while a guarantee is focused strictly on performance or nonperformance.

Cont’d

- In addition, insurance providers or policyholders can cancel policies with notice, while guarantees often cannot be canceled.
- In a contract of insurance, there are two parties i.e. insurer and insured while In a contract of Guarantee there are three parties i.e. Main Debtor, Creditor & Surety.
- Insurance contract is generally Cancellable while Contract of Guarantee is Non-Cancellable
- Insurance premium is based on the probability and quantum of losses while In contract of business, loss cannot be estimated generally so fee is charged for the guarantee service rendered
- An insurance contract transfers the Risk but There is No Transfer of Risk in a contract of guarantee

Significance of insurance

- Insurance has the following significances.

a. Indemnification for Losses. (cash, kind, repair, restitution)

b. Reduction of worry and fear

c. Serves as source of investment funds (ex. Real estate purchase, capital goods)

d. It is a means of control of loss (creating awareness, restoring property stolen, investigating frauds committed such as suicide to claim life insurance)

e. To enhance credit. It creates a confidence or a better credit facility. I.e it is advisable to extend loan on car that has insurance than the one without insurance.

Basic principles of insurance

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

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

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

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

Principle cont'd

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

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

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

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

Principle con’td

5. Doctrine of Subrogation (aims at avoiding double compens

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

6. Risk Must Attach

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

Pps cont’d

7. Mitigation of Loss

- Insured must endeavor to minimize the risk.

8. Doctrine of Contribution 681

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

9. Reinsurance

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

10. Third Party Interests in Liability Insurance

Lecture Two
Regulation of Insurance Business

Q) Why regulation of Insurance needed?

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

Cont’d

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

Types of Insurance

- Under commercial code, they r divided into two

1. Indemnity insurance (654/2). Further divided into property insurance and liability insurance
2. Life insurance (654/3)

- Currently there r different types of insurance such as health insurance, marine insurance, air insurance, vessel insurance and etc)

K of insurance and insurance policy

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

Cont’d

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

- In USA there r 3 remedies.

a. Silence amounts to breach of implied agreement

b. If an insured fills the proposal and also effect payment that is acceptance

c. Failure to respond will result in tortuous liability.

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

FEATURES OF INSURANCE CONTRACT

- **Aleatory**
- If one party to a contract might receive considerably more in value than he or she gives up under the terms of the agreement, the contract is said to be aleatory.
- Insurance contracts are of this type because, depending upon chance or any number of uncertain outcomes, the insured (or his or her beneficiaries) may receive substantially more in claim proceeds than was paid to the insurance company in premium dollars.
- On the other hand, the insurer could ultimately receive significantly more money than the insured party if a claim is never filed.

2) Adhesion

- In a contract of adhesion, one party draws up the contract in its entirety and presents it to the other party on a 'take it or leave it' basis; the receiving party does not have the option of negotiating, revising, or deleting any part or provision of the document.
- Insurance contracts are of this type, because the insurer writes the contract and the insured either 'adheres' to it or is denied coverage.
- In a court of law, when legal determinations must be made because of ambiguity in a contract of adhesion, the court will render its interpretation against the party that wrote the contract.
- Typically, the court will grant any reasonable expectation on the part of the insured (or his or her beneficiaries) arising from an insurer-prepared contract.

3) **Utmost good faith**

- Although all contracts ideally should be executed in good faith, insurance contracts are held to an even higher standard, requiring the utmost of this quality between the parties.
- Due to the nature of an insurance agreement, each party needs - and is legally entitled - to rely upon the representations and declarations of the other.
- Each party must have a reasonable expectation that the other party is not attempting to defraud, mislead, or conceal information and is indeed conducting themselves in good faith.
- In a contract of utmost good faith, each party has a duty to reveal all material information (that is, information that would likely influence a party's decision to either enter into or decline the contract), and if any such data is not disclosed, the other party will usually have the right to void the agreement.

4) Executory

- An executory contract is one in which the covenants of one or more parties to the contract remain partially or completely unfulfilled.
- Insurance contracts necessarily fall under this strict definition; of course, it's stated in the insurance and agreement that the insurer will only perform its obligation after certain events take place (in other words, losses occur).

5) Unilateral

- A contract may either be bilateral or unilateral.
- In a bilateral contract, each party exchanges a promise for a promise. However, in a unilateral contract, the promise of one party is exchanged for a specific act of the other party. Insurance contracts are unilateral; the insured performs the act of paying the policy premium, and the insurer promises to reimburse the insured for any covered losses that may occur.
- It must be noted that once the insured has paid the policy premium, nothing else is required on his or her part; no other promises of performance were made. Only the insurer has covenanted any further action, and only the insurer can be held liable for breach of contract.

6) Conditional

- A condition is a provision of a contract which limits the rights provided by the contract.
- Even when a loss is suffered, certain conditions must be met before the contract can be legally enforced. For example, the insured individual or beneficiary must satisfy the condition of submitting to the insurance company sufficient proof of loss, or prove that he or she has an insurable interest in the person insured.
- There are two basic types of conditions: conditions precedent and conditions subsequent.
- A condition precedent is any event or act that must take place or be performed before the contractual right will be granted. For instance, before an insured individual can collect medical benefits, he or she must become sick or injured. Further, before a beneficiary will be paid a death benefit, the insured must actually become deceased.
- A condition subsequent is an event or act that serves to cancel a contractual right. A suicide clause is an example of such a condition. Typical suicide clauses cancel the right of payment of the death benefit if the insured individual takes his or her own life within two years of a life insurance policy's effective date.

7) Personal Contract

- Insurance contracts are usually personal agreements between the insurance company and the insured individual, and are not transferable to another person without the insurer's consent.

Cont’d

- To conclude insurance K two documents r needed.

A. Proposal form (to be filled by insured).መግቢያ ቅፅ). This will help z insurer to determine premium and assume z risk. Z insured will provide detail information here. Ex description of proposed insured, description of risk, circumstance affecting z risk, sum insured)

B. Policy (to be filled by insurer). It is a k and hence includes place of k, parties address, property insured, parties respective rights and obligations, duration, amount of premium, risks covered.

Parties to insurance k

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

Parties rights and obligations

a. Obligation of insurer

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

Count’d

b. Insured obligation

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

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

Lecture Three
Insurance of object

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

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

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

Cont’d

- Insurable interest consists of the following essential elements;

a. Existence of an object (property) subject to insurance. A property must be proprietary nature. (የመድን ሽፋን ሊሰጠዉ የሚችል ንብረት፤መብት፤ጥቅም እና ሁኔታ ሊኖር ይገባል). For instance loss of an object insured will result in the termination of the policy as per article 677 of commercial code.

b. Legal r/ship of a person entering insurance K wz an object (መድን ገቢዉ የመድን ሽፋን ከሚሰጠዉ ነገር ጋር ሕጋዊ ግንኙነት ያለዉ ስለመሆኑ ማሳየት አለበት)

c. R/ship between an insured and an object must be z one enforceable and recognized under z law. (በመድን ገቢዉ እና የመድን ሽፋን በተሰጠዉ ነገር መካከል ያለዉ ግንኙነት በህግ ተቀባይነት ያለዉ መሆን አለበት)

- An insurable interest could be obtained from

a. ownership over property, (w/c could be joint or sole o/p). **Example**; mortgagee

b. Interest arising from law (Example : K of bail)

c. Insurable interest arising from k (Example: construction K)

Cont’d

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

Scope of compensation

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

Q) What would be the scope of compensation?

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

Cont’d

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

a. **Sum insured** (it refers to maximum amount recoverable under insurance policy)

b. **Average principle** (when an insured enters into under insurance). Here compensation paid will be:

- Sum insured X damage/loss sustained divided by market value of an object

c. **Excess and deductibles** will be taken into account

Cont’d

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

a. Under insurance (679). When z object insured is of greater vale than z amount for w/c insured. The remedy is **self insurance**

b. Over insurance (680): when compensation exceed z value of z object insured. The effect is that if fraud exists termination and if no fraud compensation paid will be equivalent to z value of an object. Premium paid earlier will be retained but for prospective premiums adjustment (reduction) could be made.

Disputable issues on k of object (አከራካር ጉዳዮች)

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

Lecture four
Liability Insurance (Compulsory third party liability insurance) procl 799/2013

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

Cont’d

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

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

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

Cont’d

- In line with the above preamble, article 3 of the same proclamation stipulates that:

1, No person shall drive or cause or permit any other person to drive a vehicle on a road unless he has a valid vehicle insurance coverage against third party risks in relation to such vehicle.

2, Notwithstanding the provision of sub article 1 of this article, the Ministry may determine vehicles to operate on the road without requiring compulsory motor vehicle insurance coverage.

Q) What is z effect of driving a vehicle w/o the certificate? Article 13 (it will be regarded as primafacia evidence that z vehicle is not insured. Detention of car and administrative penalty (art 30 fine ranging from 3,000 birr to 5,000 birr)

Group discussion

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

Cont'd

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

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

Cont’d

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

Cont’d

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

Cont'd

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

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

Q) What about extent of compensation?

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

Parties obligation under liability insurance

1. **Obligation of insured**

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

2. Obligation of Insurer

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

Lecture Five
Life Insurance

- Article 691 of commercial code defines it. The elements of the definition are:

a. it is a contract,

b. for payment of premium,

c. to subscriber/beneficiary

d. Presupposes occurrence of certain condition dependant on life/death of subscriber.

- It is not a contract for compensation (Art 689). Amount to be paid is subject to agreement b/n insurer and subscriber.
- One of the essential element of life insurance is that it imposes reciprocal obligation on both parties (subscriber has obligation to pay payment specified in the policy whereas insurer has an obligation to pay the money/premium stated in the policy to beneficiary stated in the policy

Cont’d

- Commercial code of Ethiopia recognizes three types of life insurance;

a. **Endowment life insurance** (692/1). Here payment of premium will be made provided that the person is alive on the specified date (premium will be paid until the specified date lapses). If the person dies before the specified date, payment of premium will stop. The very intention of this type of insurance is to help the subscriber economically during retirement and to encourage investment.

b. **Whole life policy (692/2)**. Here payment of premium will continue until the subscriber dies and stated payment be made to beneficiaries. የመድን ገቢውን ሞት ተከትሎ የፖሊሲዉ ገንዘብ ለተጠቃሚዎች ይከፈላል)

Cont’d

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

Insurable interest

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

Scope of risk under life insurance

- From the very outset life insurance will be made on conditions stated above (up on living alive on stated date or up on occurrence of date within specified date).
- However, the following **risks are not covered** under life insurance;

a. Entering into life insurance by third parties w/o consent of insured
b. Commission of suicide by the subscriber (699)
c. Murder committed by beneficiary (700)

Rights and obligation of parties

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

Insurance against illness and accident (711,712)

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

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

Designation of beneficiary

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

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

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