ABSTRACT OF AMHARIC TEXT

TITLE OF ARTICLE

The Determination of Beneficiaries of a Life Insurance Policy; by Mekbib Tsegaw, L.L.B. (H.S.I.U.), L.L.M. (University of California at Berkeley), Former Presiding Justice of the Supreme Court, Attorney at Law.

SYNOPTIC CATCHWORDS

Life insurance contracts under Ethiopian law – Type of contracts – Insurance policies for the event of death – Designated beneficiaries under policies – Beneficiaries designated by operation of the law – Common property of the spouses – Premiums presumed to have been paid from the common property of the spouses. Guidelines of interpretation to be followed where the law is not clear – Intention of the legislator – Reference to ***travaux preparatoire*** *and* ***avant projets*** *– Considerations of public policy. Freedom of contract – Insurable interest and eligibility. The use of insurance policies as commercial instruments for securing loans.* Code Articles cited:- C.C. 827. Com. C. 654, 691, 692, 701, 703. 705. Cases cited:- Tsigereda Wolde Selassie v Ethiopian Insurance Corporation, Supreme Court, F. No. 677/76, J.E.L., Vol. 16, pp.40-47, this Vol. pp. 97-98, Yeshiimebet Jemaneh v Ethiopian Insurance Corporation, Supreme Court, F. No. 749/70, J.E.L., Vol. 16, pp. 6-9, this Vol., p. 95. Tsigereda Wolde Selassie v Ethiopian Insurance Corporation, High Court of Addis Ababa, F. No. 602/73, J.E.L., Vol. 16, pp.20-27, this Vol. pp. 96-97.

RESUME OF MAIN POINTS

This Article is a *Rejoinder* to Dr. Girma Wolde Selassie's Article entitled "Designation of Beneficiaries of Life Insurance Policies Under Ethiopian Law." Dr. Girma reaches the conclusion that where a particular person is specifically designated in a life insurance policy as its beneficiary, he alone, to the exclusion of all others, is entitled to its benefits. The present writer reaches the opposite conclusion and maintains that the insured's spouse and

children, as beneficiaries by operation of the law, are entitled to a pro rata share of the benefits. Dr. Girma's Article has been published, in both Amharic and English, in Volume 16 of the *Journal of Ethiopian Law*, 1993. The present writer's opinions may be summarized as follows:

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It can first of all be maintained that the law on the subject (Art. 701) is sufficiently clear. Accordingly, under rules of interpretation, where the law ordains and its text is clear, neither considerations of public policy nor interpretation of the text in *tota lege perspecta* justify departure from it. Under the Article, there are beneficiaries by virtue of the terms of the insurance policy and there are beneficiaries by operation of the law. The spouse and children of the insured are beneficiaries by operation of the law, as a mandatory provision designates them as such. As a result, the insured cannot exclude them from the benefits of the insurance policy. He may, of his own free will, designate a beneficiary or beneficiaries of his choice and the law gives recognition to this freedom of choice of his by entitling the person(s) so chosen to share the benefits equally with the beneficiaries by law. [See full text of Art. 701 in the next paper.]

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The major argument raised by proponents of the opposite view in support of their contentions relies upon the opinion expressed by the French redactor of the Commercial Code in his short comments on Article 701. In this comment, the redactor expresses the view that he has included "*the most liberal solutions for the determination of beneficiaries of the insurance in the case of death…*" A "liberal" position regarding the designation of a life insurance beneficiary among French scholars, it is contended, is one that gives the policyholder the least restricted freedom. It is thus asserted that a contrary interpretation would run counter to this underlying principle behind the adoption of the Article.

This is a sound proposition supported by no less an authoritative text than the *avant projet* itself and deserves the highest consideration. However, it should not be forgotten in the process that the opinion expressed by the redactor is not limited to the provisions of sub-article (1) of Article 701 alone. It applies to the Article as a whole and it can thus be equally

maintained that the same *liberal* stance of achieving the goals of a fundamental social policy motivated the redactor to adopt the provisions of sub-article (2), in order to maintain the balance between the freedom of the insured and the interests of his immediate family members. It may also be added, in this regard, that our Code is not alone in preferring such a solution. Under the laws of some countries, a specified beneficiary under a life insurance contract is entitled to its benefits only if found eligible. And he would not be eligible if he lacks the necessary insurable interest. This proviso is designed to protect dependents of the insured.

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Proponents of the opposite view also raise another argument, which is in effect an extension of the previous one. They assert that interpreting Article 701 to mean that the spouse and children should get some portion, even when the insured dies having designated someone else as the sole beneficiary, goes against the declared legislative policy underlying the law, which is to give the policy-holder a free hand in the choice of the person to whom the benefit should go. Again, this point is well taken. Freedom of choice or contract is not a matter to take issue with as a principle; the question is the extent of such freedom. It is often said that the making of a will, represents a piece of private law making; it is, on its face, legislative power conferred upon the individual. The phrase is used to indicate the extent of the right which can be conceded by the law to the individual. But even this widest of rights has its own limits. The testator cannot disinherit his children. And so it is with subscribers of an insurance policy, for even stronger reasons.

In trying to emphasize the right of freedom of choice of the subscriber to a policy, care must also be taken not to overlook the fact that insurance premiums are often paid from the common property of the spouses. If we maintain that the proceeds of the policy should be paid to the designated beneficiary alone, we are, in effect, depriving the other spouse of her/his share from a benefit that materialized as a result of contributions made from matrimonial property of which such spouse is a joint owner. In the opinion of this writer, this above consideration may, in fact, be one of the reasons which militated in favour of the inclusion of the spouse and children as beneficiaries by law. If this was not the case, the spouse of the insured could

easily frustrate the claim of the designated beneficiary by instituting an action for half of the proceeds of the insurance benefit.

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The other point raised by proponents of the opposite view relates to the use of life insurance policies as commercial instruments. It is said that borrowers often use life insurance policies as collaterals for loans borrowed, as is witnessed in our country too where many home-builders borrow money from the Mortgage Bank by designating the Bank as their sole beneficiary. Article 697 of the Commercial Code also allows an insurance policy to be pledged. It is thus claimed that allowing the spouse and children to partake in the benefits would make the use of life insurance policies as a modern tool for a business transaction "worthless".

This is a strong argument based upon an important consideration of public policy which cannot be refuted except by invoking an equally or more important public policy consideration as a counterpoint. I can only say that, viewed from the context of present day socio-economic development in the country, the argument that considerations of turning life insurance policies into a "modern tool for business transactions" should be given priority over protection of immediate family members is not a very convincing and appealing one. As to the claim that, favouring such an interpretation would discourage bankers from issuing loans by using insurance policies as a pledge, the following can be said. When the insured dies, his rights and obligations pass to his heirs and legatees. If the loan received by the insured was used for the benefit of the household, which is usually the case, the surviving spouse may also be liable for the payment of the debt. This being the case, it is highly unlikely that the spouse and children will be inclined to litigate against creditors since the benefits of the insurance policy will ultimately go into the settlement of the debt which will pass to them. This serves as a built-in mechanism for protecting the interests of creditors and, thus, the role of insurance policies as commercial instruments will not be in the least affected.

EDITOR