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## **ABSTRACT OF AMHARIC TEXT**

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### TITLE OF ARTICLE

*Issues of Controversy Around Some of the Provisions of Ethiopian Insurance Laws and Contracts*; by Zekarias Keneae, Assistant Professor, Faculty of Law, A.A.U.

### SYNOPTIC SUB-TITLES AND CATCHWORDS

The subject matters treated in the Article could be conveniently divided into the five sub-titles indicated in bold face type below. Specific matters discussed under each sub-title are, in turn, indicated in italics following each sub-title.

**Problems Around Forms of Insurance Contracts:**- *Written Form – Signature of parties and attestation by witnesses – Contract of insurance to be supported by a document entitled “Insurance Policy” – Effect of non-compliance of the provisions as to Form – Invalidation of contract – Locus standi to invoke invalidation - Relationship between “Proposal Forms” filled by Insured and “Insurance Policies” issued by Insurer – Provisional guarantee or temporary cover. Code Articles cited:- C.C. Art. 1719, 1720, 1725, 1727, 1728, 1729, 1730, 1808. Com. C. Art. 657, 658, 659, 660. Cases cited:- Assefa Tiruneh v Ethiopian Insurance Corporation, Federal First Instance Ct., F. No. 190; Ethiopian Insurance Corporation v Fetan Construction Contractors, Federal First Instance Ct., F. No. 39988.*

**Problems Around Payment of Premiums:**- *Ethiopian law on premiums and their payment – Limits of application of Art. 666 relating to payment of premiums – Scope of application – Time limit – Provisions of insurance contracts on payment of premiums – Court decisions on issues of payment of premiums. Code Articles cited:- C.C. 1691, 1738. Com. C. 654, 658, 659, 661, 666, 671, 672, 673, 680, 709. Cases cited:-*

Tigabu Anberber v Ethiopian Insurance Corporation, Supreme Court Law Report, Vol. 1, 1982 (E.C), pp. 121-126. High Court of Oromia Regional State, F.No. 213/92. Supreme Court of Oromia Regional State, F.No. 1499/93.

**“Conditions” Commonly Inserted in Insurance Policies and their Interpretation** – *Ordinary conditions* – *Conditions precedent* – *Conditions and warranties differentiated* – *Effect of each.*

**Difficulties of “Assessment” where “damages” are insured:-** *Principle of compensation* – *“the insured shall be fully indemnified but not more than fully indemnified”* - *Insurable interest defined* – *Common provisions of insurance contracts relating to payment of damages* – *Loss of use or consequential loss how treated* - *Sum insured or market value whichever is lesser* – *Salvage rules* - *Court decisions on damages and their assessment.* Code Articles cited:- C.C. 1733. Com. C. 654, 665, 673, 675-688.

**Problems Around the Provisions Relating to Beneficiaries of Life Insurance Contracts For the Event of Death:-** *Court decisions on the issue* – *Opinions of writers* – *Draft legislative proposal on reform of the provisions.* Code Articles cited:- Com. C. 701. Cases cited:- Yeshiimbet Jemaneh v Ethiopian Insurance Corporation, Supreme Ct., F. No. 749/70, this Vol., p. 95. Tsigereda Wolde Selassie v Ethiopian Insurance Corporation, High Court of Addis Ababa, F. No. 602/73, this Vol., p. 96.

#### RESUME OF MAIN POINTS

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Under Article 1725 (b) of the Civil Code, all insurance contracts have to be made in writing. In addition, under Article 675 of the Commercial Code, it is expressly stated that an insurance contract has to be supported by a document called an “insurance policy”. This does not mean that the law envisages two separate agreements for the formation of a valid insurance contract. In law, as well as practice, a single contract suffices and presentation of the insurance policy constitutes proof the existence of such contract.

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Under Article 1727 of the Civil Code, any contract required to be in writing has to be supported by a special document signed by all the parties bound by the contract. It shall also be of no effect unless it is attested by two witnesses. In prevailing practice, Insurance Policies are signed by insurers only and not by subscribers and witnesses. This fact has not been a subject of controversy in the past forty-five years since the promulgation of both the Civil and Commercial Codes. In two recent actions brought before it, however, the Federal First Instance Court has, on its own motion, invalidated the insurance contracts which gave rise to the claims on the ground that they were not signed by the insured and two witnesses as required by law.

In the opinion of the author, the ruling of the court is justified neither by a proper reading of the Commercial Code, whose provisions as a special law prevail over those of the Civil Code, nor by international as well as local insurance practices. Article 658 (b) of the Commercial Code does not specifically require the signature of the parties and leaves out altogether the necessity of attestation by witnesses. It only requires that the names and addresses of the parties be shown thus leaving the question of form open to interpretation by taking insurance practices into account. And in insurance practice, the agreement over what are known as “Proposal Forms” precedes the issuance of a policy. These Proposal Forms are filled in, signed and returned by the insured and thus form the basis of the contract. The filling and submission of the Proposal Form constitutes an “offer” and the issuance of the policy an “acceptance”, the combination constituting a valid insurance contract.

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The inclusion, of what are referred to, as “conditions” and “conditions precedent” is common in all insurance policies currently issued by insurers. *Conditions* and *pre-conditions* are in many respects similar to what are known as *warranties* and it is invariably difficult to distinguish between the two in the way they are expressed in insurance policies currently in use. There is however a significant difference between the two and it would be appreciated if insurers, in particular, take this into account in the formulation of their policies. The non-observance of *warranty* clauses always

exonerates the insurer from liability whereas this is not always true in the case of *conditions* and *conditions precedent*.

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Under Article 678, it is stated that compensation shall not exceed the value of the object insured. This rule can only apply if the real value of the object insured is equivalent to the sum insured. If the sum insured is less or more than the real value of the object, its application may clash with either the rule expressed in Article 665 (2) that the insurer's liability shall not exceed the sum insured or with the principle that compensation shall not exceed actual damages.

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Almost all property insurance policies expressly provide that the policy does not cover loss of use or consequential loss resulting from damage to the object insured. This provision in insurance policies has been the subject of frequent and intense disputes and it would, perhaps, be true to say that, of all litigation relating to insurance of objects, those on this subject occupy the predominant position. In the opinion of the author, the insurer must, at least, be made liable for consequential loss resulting from his failure to exercise his obligation within a reasonable period.

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For many years now, there has been controversy around the question of beneficiaries of life insurance in the event of death. Despite a number of court decisions and Articles, the jurisprudence on the subject has not yet settled. [See next Article and Court Decisions].

EDITOR