

Addis Ababa
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COLLEGE OF LAW AND GOVERNANCE STUDIES SCHOOL OF LAW GRADUATES PROGRAM

Master of Laws (LL.M) in Business Law

INTRODUCING THE DOCTRINE OF SUBROGATION UNDER THE ETHIOPIAN PERSONAL INSURANCE REGIME

A Thesis Submitted in Partial Fulfillment of the Requirements for the
Award of Master of Laws (LL. M) in Business Law at School of Law,
College of Law and Governance Studies, Addis Ababa University

By: Tsegaye Demisse

Addis Ababa, Ethiopia

June 2020

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June 2020

Declaration

I, **TSEGAYE DEMISSE**, hereby declare that the thesis titled “*Introducing the Doctrine of Subrogation under the Ethiopian Personal Insurance Regime*” is my original work and that it has not been submitted for any degree or examination in any other university. I also pledge that all sources used in any form are duly acknowledged.

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Dedication

This paper is dedicated to in loving memory of Samson Wallelegn, who accidentally passed away while attending my LL.M. study!

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Acronyms and Abbreviations

AG	Attorney General of the Federal Democratic Republic of Ethiopia
Art.	Article
Arts.	Articles
C.C.	Civil Code of the Empire of Ethiopia 1960 (Proc. No.165)
Com. Code	Commercial Code of the Empire of Ethiopia 1960 (Proc.No.166)
Dra. Com. Code	Draft Commercial Code of Ethiopia.
E.C.	Ethiopian Calendar
E.I.C.	Ethiopian Insurance Corporation
E.L.G.I.C	Ethio-Life and General Insurance Share Company
Fed. Neg. Ga	Federal Negarit Gazette
MoJ	Ministry of Justice of the Federal Democratic Republic of Ethiopia.
Ny.I.C	Nyala Insurance Share Company
N.I.C	Nile Insurance Share Company
No.	Number
Proc. No.	Proclamation Number
USA	United States of America

Abstract

In insurance, subrogation is considered as one of the basic principles, and it provides that the insurer shall step into the shoes of its insured to claim reimbursement of what it had paid to the insured, from a third party liable. The Commercial Code of Ethiopia, which governs the insurance regime of the country, expressly prohibited both legal and contractual subrogation in the case of personal insurances. Although the prohibition was common to both civil and common-law countries, in the past, many countries have already introduced the doctrine to their personal insurance regimes with some reservations.

To this end, the researcher, using qualitative methodology, argues that there are no policy reasons which justify the absolute prohibition of the doctrine of subrogation in the case of the Ethiopian personal insurance regime. The justifications posed by domestic insurance law practitioners and academicians in support of the prohibition are so much exposed to rebuttal.

On the other hand, the recognition of legal subrogation right of government institutions and private employers to subrogate and claim reimbursement of compensation paid due to injury or death of their employee, from the third party liable; implies that the legislator has already recognized the applicability of subrogation on the case of claims which emanate from death or injury. The draft commercial code, prepared by the Ministry of Justice (currently Attorney General) in 2008, provided for the applicability of contractual subrogation in some personal insurance, although the latest draft wiped out this provision.

Owing to its legal, social, and economic significance, subrogation should be introduced into the personal insurance regime of Ethiopia. The researcher recommends that legal subrogation should be introduced in the case of personal insurance whose indemnity element is crystal clear like medical expense insurance, and also contractual subrogation should be recognized in the case of other personal insurance categories.

CHAPTER ONE

1.1. Background of the Study

The life of a human being is so much exposed too many serious perils, which could result in loss of property, life, or health of a person. Although the occurrence of such perils is unpredictable and impossible to prevent, it is possible to mitigate the consequential crises of perils through the instrumentality of insurance.¹ Based on this notion, some scholars defined insurance at its broadest level and wrote that insurance is a means or procedure that reduces uncertainty concerning the future.²

Insurance is also defined as a mechanism of risk shifting and risk spreading among persons.³ When we say risk transfer, it means an arrangement by which the insured transfers large but unpredictable loss, which could affect the property, life, or body of a person, to the insurer, by paying a certain amount of money in the form of premium.⁴ From the perspective of the insurer, it can be taken as a means by which the insurer spread risk among a broad group of similarly situated policyholders who agreed to accept a certain loss (the payment of the premium) in return for obtaining protection from the insurer.⁵

Despite the diversity concerning the definition of insurance, there are commonly accepted fundamental legal principles of insurance law, such as; the principle of insurable interest, utmost good faith, subrogation, indemnity and others.⁶ For the purpose of this study, the writer will focus on the doctrine of subrogation.

In insurance law, the principle of subrogation is a legal doctrine by which the insurer is substituted to the rights of the insured to claim reimbursement from a third-party liable, after paying to the insured person as per the insurance contract.⁷

¹ Kenneth. B and Harold. D, *life and health insurance*, (13th edition, Georgia state university 2000) 26

² R.Merkin and J.Steele , *Insurance and the Law of obligations*, (Oxford University Press 2013) 28

³ Kenneth. B and Harold. D (n1) 51

⁴ Ibid 59

⁵ ibid

⁶ George Rejda and Namara Michael, *principles of risk management and insurance* ,(12th, Pearson Education, Boston 2014) 184-192

⁷ Donald. J, 'Insurance Subrogation in Personal Injury Torts', (Ohio *state law journal*, 1978) 622

In old times the application of the doctrine of subrogation to property insurance and its prohibition in insurances of person was common to both civil and common law countries; however, the reason behind this bi-polar trend is intricate and controverted.⁸

From the late 20th century onwards, Scholars started to argue that personal insurance policies are purchased with the intention to indemnify either their families (in the event of death) or, in the event of an accident, to compensate themselves for their lost earnings;⁹ or to cover out pocket costs of medical expenses. Thus, subrogation of an insurance company should not be prohibited in personal insurances because it is possible to indemnify the loss sustained due to injury or death, either from the solvent tortfeasor or the insurer. Scholars further argue that the consensus to prohibit subrogation in life insurance draws upon certain overlapping arguments, each of which is exposed as less than irrefutable thus, life insurance subrogation should be enforced.¹⁰

Owing to the change in the understanding of personal insurances, courts of some countries like Canada and the USA permit contractual subrogation in personal injury actions. For instance, in the USA, from 1974 onwards, twenty-four states permit subrogation by case law, some form of contractual subrogation in personal injury actions.¹¹ To minimize the detrimental effects of insurance subrogation on the insured, as of 2005, thirty-three (33) states adopted the principle which provides that, out of the recovery from the third party, the insured is to be reimbursed first, for the loss not covered by the insurance.¹² Also, the trend in Canada seems to recognize the applicability of the doctrine of subrogation in disability insurances.¹³

⁸ Horn, *subrogation in insurance law and practice* (Philadelphia,1964) as cited by Jerzy (GEORGE) krzeczunowicz, in his book , *the Ethiopian law of compensation for damage*, (Addis Ababa university, faculty of law 1977) 88

⁹ Reuben, Hasson, 'Subrogation in Insurance Law-A Critical Evaluation' [1985] 5 Oxford J. Legal Studies, No. 3. 418

¹⁰ George S. Swan, '*subrogation in life insurance: now is the time*' (Ins. Counsel j 1981) 634

¹¹ Omer Lee Jr. Reed, '*Insurance Subrogation in Personal Injury Actions: The Silent Explosion*' , (1974) 12 Am. Bus. L.J. 112

¹² Marilyn F. Trefz, '*Why All or Nothing: A Middle Ground to Subrogation Law Will Protect South Dakota's Insured*' (2013) 58 S.D. L. REV. 65- 68 and 81

¹³ Reuben, Hasson, (n 9) 419.

When we see the Co.Code of Ethiopia, which governs the insurance regime of the country, it explicitly prohibits the application of both contractual and legal subrogation in the case of all types of personal insurances.¹⁴

The aim of this research is, therefore, to appraise the legal framework of Ethiopia which governs the doctrine of subrogation; to explore if there is any justification or policy reason which justifies the absolute prohibition of subrogation in the Ethiopian personal insurance regime and also to illuminate the amenability of the doctrine, to apply in the case of personal insurance regime and its significance.

1.2. Literature Review

So far, there is no literature or study conducted on the issue of introducing the principle of subrogation into the personal insurance regime of Ethiopia. However, there are few studies conducted on the issues which are closely related to this study, and they will be used herein after to illuminate the topic. There are some foreign studies, which deal with the extension of the doctrine of subrogation to the personal insurance realm.

Spencer L. Kimball, Professor of Law, at University of Michigan Law School and **Don A. Davies** who was Senior Law Student, at the University of Michigan, on their article entitled, '*the extension of insurance subrogation*'¹⁵ said that the traditional understanding for the prohibition of subrogation in the case of personal insurance is not based on justified reasons. They argued that in the case of medical payments coverage of an automobile policy, the economic loss of the insured could be quite adequately compensated either from the solvent tortfeasor or from his insurer.¹⁶ Thus, at least in those cases, the insurer should be legally subrogated quite as readily as in fire or collision insurance, once there has been full indemnification of the insured.¹⁷ They further argued that in the case of the rest of personal insurances, like life insurance and disability

¹⁴ Com. Code of The Empire of Ethiopia, 1960, proc. No. 166, Neg. Gaz., year 19, no 3 Art. 690

¹⁵ Spencer L. Kimball and Don A. Davies, *the extension of insurance subrogation*, (1962) 60 *Michigan Law Review*, No. 7. 841-872

¹⁶ Ibid 859

¹⁷ Ibid

insurances, insurance companies should be allowed to freely stipulate contractual subrogation clauses in their insurance policies unless there are policy reasons which prohibit doing so.¹⁸

George S. Swan, Assistant Professor of Law at the Delaware Law School, at the University of Widener, in his article titled, '*subrogation in life insurance: now is the time*',¹⁹ said that the wide consensus to prohibit subrogation in life insurance draws upon different but (in part) overlapping arguments, each of which will be exposed as less than irrefutable".²⁰ In keeping with the notion of individual responsibility underlying the ideas, both of the free market and a free Society, contractual subrogation should be enforced in the case of life insurance.²¹

Reuben Hasson, in his article named; '*Subrogation in Insurance Law - A Critical Evaluation*', argued that life insurance and accident insurance contracts should be held as a contract of indemnity because of the fact that it is clear that the intention of purchasers of these contracts is to indemnify either their families (in the event of death) or, in the event of an accident, to compensate themselves for their lost earnings.²² He further said that the loss of property should not be treated differently from the loss of an arm when both result in economic losses to the person who sustains them.²³

Marilyn F. Trefzt, in her article entitled; '*why all or nothing? A middle ground to subrogation law will protect south Dakota's insured's*',²⁴ said that the doctrine of subrogation is widely applicable in property insurance. However, the concept in the context of personal injury claims remained intensely prohibited at common law.²⁵ This tenor changed dramatically during the 1960's and 1970's and the application of the principle has extended to medical bills paid by automobile insurers.²⁶

¹⁸ Ibid 868

¹⁹ George S. Swan (n 10)

²⁰ Ibid

²¹ Ibid 638

²² Reuben, Hasson (n 9)

²³ Ibid

²⁴ Marilyn F. Trefz,(n 12) 65- 88

²⁵ Ibid 67

²⁶ Ibid

Mawcha Geremedhn in his master's thesis titled; '*the doctrine of subrogation in Ethiopian insurance regime: its significance and applicability to liability insurance*' discussed the gap in the law; and said that the doctrine is practically applicable to liability insurance by courts and insurance companies; thus legislative action is required to fill the gap and avoid the confusion in the area.²⁷

Jonathan A. Eddy, in his article titled; '*payment with subrogation under the Ethiopian C.C*', said that there is no clear justification for the prohibition of subrogation in the case of accident or health insurance policies of Ethiopia, in the face of the fact that allowing subrogation presumably has more social utility than conferring windfall accumulations of benefits.²⁸

Tesfaye Abate, in his article entitled; '*Indemnity and Indemnification in Relation to Personal Accident Insurance in Ethiopia*'²⁹ argued that the classification of personal accident policies as non-indemnity contracts has become only theoretical.³⁰ If life and accident insurance are considered to be indemnity insurance, the doctrine of subrogation is applicable.³¹

The writer of this paper agrees with the argument, of Tesfaye, that personal insurance should be treated as an indemnity contract. Further, the writer of this study illuminates the reason why they should be considered as indemnity insurances. The indemnity nature of personal insurance is predominantly emanated from the notion that personal insurance is seldom designed to compensate for the loss of these intangible things; rather, it is designed to compensate for the accompanying economic losses.³²

Tesfaye did not discuss the different types of personal insurances like life insurance, injury claims, and medical expense insurances separately and did not suggest which type of subrogation, legal or contractual, should be introduced in personal insurance regime of Ethiopia. Moreover, he did not analyze the legal framework of Ethiopia which governs the doctrine of

²⁷ Mawcha Geremedhn, 'the Doctrine of Subrogation under Ethiopian Insurance Regime: Its Significance and Applicability to Liability Insurance' (college of law and governance studies Addis Ababa University, 2020) 2

²⁸ Jonathan Eddy, 'Payment with Subrogation under the Ethiopian" C.C.' (1973) 9 J. Eth.L.No.1, 115

²⁹ Tesfaye Abate, '*Indemnity and Indemnification in Relation to Personal Accident Insurance in Ethiopia*' [2008] 1 Jimma U. J.L. 340-385

³⁰ Ibid 340

³¹ Ibid 351

³² Spencer L. Kimball and Don A 'Davies (n 15) 855

subrogation. Therefore, this study aims to address issues that are not covered by Tesfaye Abate as clearly provided in the statement of the problem herein below.

1.3. Statement of the Problem and Research Questions

The Com. Code of Ethiopia which governs the insurance regime of the country provides for legal subrogation in the case of property insurance³³, whereas the Code prohibits the application of both legal and conventional subrogation in insurance of persons.³⁴ The Code doesn't explicitly provide for or prohibit the application of the principle in liability insurance.

Previously, the prohibition of subrogation in the case of insurance of persons is common to both civil and common law countries, although the policy reason for the prohibition is intricate and controversial.³⁵

As it is discussed in the section dealing with the background of the study and literature review, from late 20th century onwards, distinguished insurance law professors like **Robert E. Keeton**,³⁶ **George S. Swan**,³⁷ **Reuben Hasson**,³⁸ **Spencer L. Kimball**³⁹ came up with strong justifications for the applicability of the doctrine of subrogation in the realm of personal insurances and its significance. Presumably, because of the influence of the aforementioned professors, and the strong influence of insurance companies, some common law countries, have introduced the principle of subrogation in their personal insurance regime.⁴⁰ In Germany, among the total coverage offered by accident and sickness insurance, the amount which is meant to cover actual damage like hospital and medical costs, including doctors' fees, is considered as damage insurance and as a result, subrogation is available in this instance.⁴¹ Art. 103 of the new

³³Com. Code (n 14)

³⁴ Ibid Art. 690

³⁵Horn (n 8)

³⁶ Professor of Law at Harvard Law School, in his book titled *basic text on insurance law 152 (1971) 149* he said that subrogation should be permitted if there is a contractual provisions which provides for the subrogation of the insurer to claim reimbursement from the third party tortfeasor.

³⁷George S. Swan (n 10)

³⁸Reuben, Hasson (n 9)

³⁹Spencer L. Kimball and Don A 'Davies (n 15)

⁴⁰Omer Lee Jr. Reed,(n 11) and Reuben, Hasson (n 9)

⁴¹Spencer L. Kimball and Don A 'Davies (n 15) 853-854

insurance act of Belgium, enacted on April 4, 2014, permits contractual subrogation in the case of insurance of person, save to life insurance. Art. 1916 of The Italian Civil Code provides that subrogation is applicable in the case of accident insurances. Insurance contract act of Spain enacted in 1980, under its Art. 82, recognizes the application of subrogation in the case of medical expense insurances.

When we come towards the case of Ethiopia, as it is stated earlier, the existing Com. Code absolutely prohibits both legal and contractual subrogation, in the case of all categories of personal insurances. The Code did not leave any room for the application of subrogation in some kind of personal insurance in which the indemnity element is so patent, like insurances purchased to cover out-of-pocket medical expenses. It is so unreasonable to prohibit both legal and contractual subrogation in this type of indemnity insurances, as Jonathan A. Eddy alleges it.⁴²

In this regard, the C.C. with a caption, ‘insured victim’, provides that ‘an insured person may claim compensation for the damage he has suffered on the same terms as though he had not been insured’.⁴³ Further, the Code provides that in the insurance contract, ‘they may stipulate a clause which allows for the subrogation of the insurer to the victim's claim against the person liable’.⁴⁴ Due to the existence of legal subrogation and the principle of indemnity, it is hardly possible to argue that this provision applies to property insurances. Thus, the issue, whether this provision is meant to be applicable in the case of personal insurance, call for further analysis.

In the D. Com. Code, which was drafted by the then MoJ (currently named AG) in 2008, there was a provision which provided for the application of subrogation in some limited personal insurance cases; like insurance purchased for the indemnification of prejudices resulting from bodily injury if the policy had stipulated so.⁴⁵ But the latest D. Com. Code, wiped-out the provision and clearly prohibits both legal and contractual subrogation in personal insurance.⁴⁶

⁴² Jonathan Eddy (n 28)

⁴³ C.C. Proc. No.165, Neg. Gaz., 19th Year. No. 2, Art. 2093 (1).

⁴⁴ Ibid Art. 2093(3)

⁴⁵ A Team of Fourteen National Experts, *Position of the Business Community on the Revision of the Com.Code*, Produced and distributed by the Addis Ababa Chamber of Commerce and Sectorial Associations with financial support from the Swedish Agency for International Development Cooperation, Sida, 2008 44

⁴⁶ Art. 709, of the D.Com.Code.

On the other hand, the civil servant's law, Proc. No. 1064/2010, provides that a government institution is entitled to claim reimbursement from the third party liable, an amount equal to the compensation that it has paid to the injured civil servant or the legal beneficiaries of the deceased civil servant.⁴⁷

Moreover, as per the binding decision of the federal Supreme Court cassation division,⁴⁸ which serves as a precedent in similar cases,⁴⁹ just like the government organization, a private employer which has paid compensation due to the death or injury of its employee as per the stipulation of the labor proc.,⁵⁰ has the right to claim reimbursement against the third party liable.

Thus, we can conclude that in Ethiopia, both government institutions and private employers are accorded with subrogation right to claim reimbursement from the third party liable, an amount equal to the compensation paid to the injured employee (civil servant) or their beneficiaries in the case of death; whereas insurance companies which are established to conduct insurance business as profit-making organizations are prohibited from claiming reimbursement via the doctrine of subrogation in the case of personal insurances.

Therefore, this research aims, to appraise the different Ethiopian laws which govern the application or prohibition of the principles of subrogation to claims related to injury or death of a person; examine the alleged reasons for the absolute prohibition of subrogation in personal insurance regime of Ethiopia; and explore the benefit of introducing the doctrine into personal insurance regime from the perspective of insurance companies, the policy-holder and the community at large.

Accordingly, this research is conducted to answer the following **major research questions**.

- 1- Is there any valid reason for the absolute prohibition of subrogation in the case of the Ethiopian personal insurance regime?
- 2- Is the doctrine of subrogation, amenable to be applied in personal insurances?

⁴⁷ Federal civil servants Proc., No. 1064, fed. Neg. Gaz. 24th year no 12, 15th December 2017

Art. 62

⁴⁸ E.I.C. Vs Africa Beza College-Awassa Campus, Federal Supreme Court, Cassation Division, File No. 99179, Unpublished Decided on September 25/2008 E.C)

⁴⁹ Federal Courts Proc, Re-amendment Proc. No. 454, fed. Neg , Gaz. 11th Year No. 42, 14th June.2005 Art. 2(4)

⁵⁰ Labor Proc. NO.1156 fed. Neg, Gaz 25th Year No. 89 5th September, 2019 Art 96(1),105,107,109,110

- 3- What type of subrogation, legal or contractual, should be introduced to different kinds of insurance of persons in Ethiopia?
- 4- What are the significances of introducing the doctrine of subrogation to the personal insurance regime of Ethiopia?

1.4. Objectives of the Research

1.4.1. General Objective

The general objective of this research is to propose the introduction of the doctrine of subrogation into the Ethiopian personal insurance regime, by exposing the absence of any valid justification for its prohibition and by illuminating the significance of its introduction.

1.4.2. Specific Objectives

The specific objectives of the study are:

1. To examine if there are any justified reasons for the absolute prohibition of the principle of subrogation in the Ethiopian personal insurance regime.
2. To analyze the legal frame-work of Ethiopia Governing the Doctrine of Subrogation, in the case of claims involving bodily injury and death.
3. To explore what type of subrogation, legal or contractual, should be introduced to different types of insurance of persons in Ethiopia.
4. To appraise the significance of introducing the doctrine of subrogation under the Ethiopian personal insurance regime.
5. To put forward recommendations for the law-making organ of the country.

1.5. Significance of the Study

The appraisal of the legal-frame work of Ethiopia, which governs the doctrine of subrogation, it is hoped, would serve an academic purpose. The study could help insurance companies to lobby the law-making organ for extension of the applicability of subrogation to personal insurance regime. It is also hoped that the study will help the law-making organ of the country while making a decision on the scope of applicability of the doctrine of subrogation concerning personal insurance regime. At the same time, the research will indicate areas that require further study.

1.6. Scope of the Study

This research is limited to discussing the introduction of the doctrine of subrogation into the regime of the Ethiopian personal insurances.

Hence, issues related to the principle of subrogation in the case of liability and property insurances are not within the scope of this research, although some concepts of insurance of property and liability insurance, which has a direct bearing on personal insurance, are slightly used.

1.7. The Methodology of the Study

The researcher analyzed the legal provisions of the Com. Code, C.C., and Civil servants Proc. No. 1064/2010, Labor Proc.No.1156/2011, and other laws falling in the area of study. The legal frameworks of some selected countries which have relevance to this study have been used. Therefore, the research has an aspect of doctrinal legal research.

The researcher opted to employ qualitative data gathering techniques by believing that it is a more appropriate mechanism to address the research questions the study aims to answer. Regarding the sources of data, both primary and secondary sources of data are employed.

In addition to analyzing the aforementioned legal documents, as a primary source, the researcher conducted an in-depth interview with insurance company attorneys, insurance business experts, former federal court judges, private lawyers, and a judge who is currently working at insurance and banking bench.

Moreover, the researcher has conducted focus group discussions with participants composed of public prosecutors, private lawyers, and insurance company attorneys to solicit their attitude on the prime concern of this research.

Purposive sampling is used to select the Participants of the interviews based on their expertise, position, and experience in the area, and the interview question was semi-structured.

As a secondary source, different online journals and commentaries, law books written on the subject matter published, and unpublished materials were considered. The journals and the commentaries were selected based on relevance with the subject matter under investigation.

Finally, the laws were analyzed based on basic principles of interpretation of the law, and the data collected through interviews were analyzed using descriptive techniques.

1.8. Limitations of the Study

The lack of domestic materials in the area and inaccessibility of recent foreign insurance law books were the main problem faced by the writer while conducting this study. Due to the outbreak of the pandemic contagious virus, covid-19, the researcher was unable to interview some insurance law practitioners like judges and individuals who took part in the drafting duty of the D. Com. Code.

1.9. Organization of the Study

The research has five chapters. The first chapter deals with the background of the study, literature review, statement of the problem and research questions, research objectives, research methodology, the scope of the study, and organization of the study. The second chapter deals with the notions of insurance in general, types of insurance, specifically about personal insurance and its classifications, the economic basis for personal insurance, and about the most important insurance law principles from the perspective of personal insurance. The third chapter discusses the overview of personal insurance in Ethiopia, and it examines the legal regime of Ethiopia governing the doctrine of subrogation in the case of claims involving injury and death. The fourth chapter explores and challenge the alleged reasons for the prohibition of subrogation in the personal insurance regime, and it also discusses the significance of introducing the doctrine of subrogation into the Ethiopian personal insurance regime. The Fifth chapter puts conclusions and recommendations of the study.

CHAPTER TWO

2. Notions of Insurance and Fundamental Principles of an Insurance Contract

2.1. The Notions Insurance

2.1.1. Insurance Defined

Most works of literature, written on different legal concepts, are usually forced to admit that it is hardly possible to provide a single comprehensive definition for their subject area, and “insurance” is not an exception.⁵¹

Even though it is challenging to come up with a single comprehensive meaning, it is possible to describe the notion of insurance from different perspectives.

From an economic perspective, insurance is all about financial intermediation function by which individuals exposed to similar peril each contributes to a pool, from which participants would claim compensation when they sustain damage due to covered events.⁵²

From a legal perspective, insurance is an agreement, between an insurance company and an insured, by which the insured pays a certain amount of money which is called premium so that the insurer undertakes to pay a defined amount of money when damage is sustained due to covered events, during the policy term.⁵³

When insurance is seen from the perspective of the policyholder, it may be considered as risk transferring device by which the insured, transfers large but unpredictable loss which could affect his property, life or body parts, to the insurer, by paying a certain amount of money in the form of premium.⁵⁴

For insurance companies, insurance may be considered as; a means by which the insurer spreads risk among a wide group of similarly situated policyholders who agreed to accept a certain loss (the payment of the premium) in return for obtaining protection.⁵⁵

⁵¹ Ray Hodgkin, *insurance law, text and materials*, (Second Edition, School of Law University of Birmingham, Cavendish Publishing Limited 2002) 1

⁵² Kenneth. B and Harold. D (n 1) 2

⁵³ Ibid

⁵⁴ Ray Hodgkin (n 51)

⁵⁵ ibid

Although the definitions discussed here above seems comprehensive, they fail to embrace the situation by which the insurance company agrees to redress by replacing in kind what insured losses due to the occurrence of the specified risk instead of monetary compensation.⁵⁶ Furthermore, they fail to comprehend the situation in which insurance companies undertake to pay compensation without the happening of any peril to the insured, when the specific date comes, or specific age is achieved, like a case of endowment life insurance.⁵⁷ Endowment life insurance is one of the broad categories of life insurance in which the insurance company pays compensation to the insured if the insured survives the policy term.⁵⁸ Therefore, from the above discussions, one can easily understand the difficulty of providing a single comprehensive meaning to the term insurance, which addresses specific peculiarities of different insurance categories. The classification of insurances into different categories could enable us to be more precise and somehow comprehensive in defining the type of insurance which we deal with.

2.1.2. Types of Insurance

In general terms, insurance can be classified as public and private insurances. Public insurance is an insurance arrangement that is funded through government plans like social security and Medicare; whereas private insurance is coverage offered by private insurance organizations based on contractual agreements between policyholders and the insurers.⁵⁹

The other mode of categorization is classifying insurance as “first party” insurance and “third party” insurance.⁶⁰ First-party insurance is insurance that is designed to provide coverage for the policyholder’s loss, whereas third-party insurance provides the policyholder with protection against potential claims to be brought by third parties against a policyholder.⁶¹

⁵⁶ Berhun. A, *Ethiopian insurance law: doctrines and practice*,(2016) 22

⁵⁷ Ibid

⁵⁸ Ray Hodgins (n 51) 3

⁵⁹ Definition and types of insurance available at <https://saylordotorg.github.io/text>. Last accessed on April 1/2020

⁶⁰ Jeffrey W, Peter N, Erik S, *principles of insurance law*, (LexisNexis law school publishing advisory board 2012) 56.

⁶¹ Ibid

In Ethiopia, there are three categories of insurance arrangements; insurance of objects, insurance of liability for damage, and insurance of persons.⁶²

Although there are different classifications of insurance, there are basic principles that are more or less applicable to all types of insurance contracts. The principles indicate the peculiar features of insurance contracts that distinguish them from other kinds of contracts.⁶³ Those principles provide legal requirements for the existence of valid insurance contracts and play a pivotal role while interpreting insurance contracts.⁶⁴

Among the fundamental principles of insurance contract, the most important ones are the Principle of Utmost Good Faith, Principle of Indemnity, Insurable Interest, and the Doctrine of Subrogation.⁶⁵ Some of these principles will be discussed in light of personal insurance, which is the focus of this study.

2.1.3 Insurance of Persons

Early societies relied on family and tribe cohesiveness for their security.⁶⁶ Economic progress and modernization entail the introduction of the notion of personal insurance as a response to society's quest for security.⁶⁷ In general terms, insurance of persons is one of the broad categories of insurance which provides protection for the life and health of a person.⁶⁸

2.1.4. The Economic Basis for Insurance of Persons.

The economic basis for personal insurances, life, and health insurance is the concept of human life value. Human life can be viewed as having two components: economic and hedonic.⁶⁹ Human life value focuses on the economic component but not on the hedonic component, which places value on the enjoyment one derives from living.⁷⁰

⁶² Com. Code (n 14) Title 3 chapter three deals with insurance of property and liability insurance; chapter 4 deals with insurance of persons.

⁶³ George Rejda and Namara Michael (n 6) 166

⁶⁴ Ibid

⁶⁵ Ibid 165- 175

⁶⁶ Kenneth. B and Harold (n 1) 49

⁶⁷ Ibid

⁶⁸ Ibid 3

⁶⁹ Ibid 16

⁷⁰ Ibid

In the code of Hammurabi, the Holy Bible, the Koran, and early Anglo-Saxon law, the concept of human life value is used to determine the compensation allowed to the relatives of an individual killed by a third party.⁷¹

“In recent years, the valuation of human life in connection with legal actions, seeking recovery for wrongful death has gained prominence.” “Human life value is a measure of the actual future earning or values of the service of an individual.” “From the standpoint of one’s dependents, an individual’s human life value is the measure of the value of benefits that the dependents can expect from their breadwinner (the main source of income)”⁷²

The human life value is subject to loss through premature death, incapacity, and retirement, and etc. Thus, the philosophical rationale for the existence of insurance of person is to cover the economic loss caused by the events mentioned above. This means individuals purchase personal insurance with the view of complete replacement of themselves as wage earners.⁷³

This allegation is in line with the proposition of professor **Spencer L. Kimball** who said that personal insurance is seldom designed to compensate for the loss of these intangible things like pain suffering or humiliation; rather it is designed to compensate for the accompanying economic loss.⁷⁴

Further, he argued that intangible losses do not only exist in the case of personal insurance but also, there are intangible losses which emanate from the loss of a favorite painting, highly valued gift from family member which has high sentimental value, or beloved animal which is covered by property insurance policies.⁷⁵ In fact, the loss of a beloved animal or a favorite painting may far transcend the economic loss; however, it is the economic loss against which the insurance is taken out, and which makes it "indemnity" insurance.⁷⁶

From the discussion here in above it is plausible to argue that the intention behind purchasing policies of personal insurance, life insurance or health insurance, is not replacing damaged or lost body parts in the case of disability insurance or replacing the life of a person in the case of life insurance. The compensation is not also the actual value of human life or body parts. However,

⁷¹ Ibid 15

⁷² Ibid

⁷³ Ibid 17

⁷⁴ Spencer L. Kimball and Don A ‘Davies (n 32)

⁷⁵ ibid

⁷⁶ ibid

the compensation is meant to cover the economic loss, which would be sustained due to the peril that happened to the body or life of a person.

2.1.5. Classification of Personal Insurance

As it is discussed in the preceding sections, personal insurance is one of the broad categories of insurance which provides protection for the life and health of a person.

There are three categories of life insurance and three categories of health insurance.

2.1.5.1. Types of Life Insurance

A. Whole Life Insurance

This branch of life insurance provides coverage for the whole of the insured's life; which means the insurer shall pay the proceeds of the policy regardless of when the death occurred to the insured.⁷⁷

B. Term Life Insurance

This category of life insurance furnishes coverage for a limited number of years and the payment would be effected if the insured's death occurs during the stipulated time.⁷⁸ Term life insurance policies customarily provide protection for at least a set number of years, such as ten to twenty years.⁷⁹

C. Endowment Insurance

Endowment insurance can be Pure Endowment, in contrast to term insurance, which furnishes payment to the insured if s/he survives till the end of a specified period, with nothing will be paid to the dependents of the insured in the case prior death.⁸⁰ This kind of endowment insurance is not often sold as a separate contract but insurance companies provide it by embedding it with other life insurance policies like term life insurance policy.⁸¹

The combination of the two policies will enable the insured to receive compensation if he survives after the specified period of time and also the dependents of the insured person will receive the payment if he dies before the specified time.

⁷⁷ Kenneth. B and Harold (n 1) 90

⁷⁸ Ibid 70

⁷⁹ Ibid

⁸⁰ Ibid 87

⁸¹ Ibid

2.1.5.2 Types of Health Insurance

Health insurance is any form of insurance whose payment is contingent on the policyholder incurring additional expense or losing income because of incapacity or lack of good health.⁸² As mentioned herein above, there are three categories of health insurance.

A. Medical Expense Insurance

This category of health insurance usually encompasses a broad range of benefits which is offered to cover medical expenses.⁸³ Some benefits are paid as a fixed amount without regard to the actual cost of care.⁸⁴

B. Long- term Care Insurance

This type of insurance provides protection against insured's exceptional expenses because of the need of assistance in connection with the essential activities of daily living.⁸⁵

C. Disability Income Insurance

This type of health insurance is commonly known as loss of income insurance, and it provides periodic payment when an insured loses income due to injury or sickness.⁸⁶

2.2. The Basic Principles of Insurance Contracts from the Perspective of Personal Insurance

In addition to the basic requirements of contracts in general, there are fundamental legal principles which are provided, as legal requirements for the existence of valid insurance contracts. These basic principles are more or less, applicable to all types of insurance contracts like property, liability, and personal insurances.

Some of the most important principles of an insurance contract⁸⁷ are discussed, from the perspective of insurance of person, hereunder. Those are the principles of Insurable Interest, Principle of Indemnity and the Doctrine of Subrogation.

⁸² Ibid 3

⁸³ Ibid 134

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Ibid 135

⁸⁷ George Rejda and Namara Michael (n 6) 165- 175

2.2.1. The Principle of Insurable Interest

The notion of an insurable interest deals with the relationship between the insured and the subject matter of the insurance. The principle of insurable interest emphasizes that; the insured must be in a position to lose financially if a covered loss occurs.⁸⁸ In the absence of an insurable interest rule, insurance would become a rampant form of gambling for which it would be purchased not to manage risk but to engage in wagering contracts.⁸⁹ In addition to the prevention of wagering contracts, the principle of insurable interest required to prevent insurance from providing a financial incentive for criminal or otherwise undesirable behavior.⁹⁰

When life insurance policy is purchased by the insured himself for his own life, for the benefit of himself, his estate, or a designated beneficiary; it is presumed that every person has an insurable interest in his own life.⁹¹

When a person purchases a life insurance policy, to insure the life of another person for his own benefit, he is required to prove the existence of a lawful and substantial economic interest in the continued life or health of the person insured.⁹²

Insurable interest may arise out of family or marriage relationships, creditor-debtor relationships, and business relationships.⁹³

Some scholars argue that insurable interest in the life of another person may be founded on family love and affection to persons closely related by blood or affinity.⁹⁴ In challenging this allegation (as cited by Peter Nash Swisher) Professors Keeton and Widiss opine that there should be a factual expectancy of economic gain from the continued life of the insured person" (or conversely, the showing of economic loss from the untimely death of the insured) besides love and affection in a family member's life, to purchase legally valid life insurance policy.⁹⁵

⁸⁸ Ibid 169

⁸⁹ Jeffrey W, Peter N, Erik S (n 60) 501

⁹⁰ Ibid 503

⁹¹ Ibid 529

⁹² Kenneth. B and Harold (n 1) 198

⁹³ ibid

⁹⁴ Peter Nash Swisher, *The Insurable Interest Requirement For Life Insurance: A Critical Reassessment*, 53 Drake L. Rev. 477 (2005), reprinted in 55 Defense L.J. 527 (2006), on line available at at: <http://scholarship.richmond.edu/law-faculty-publications> last accessed on April 8, 2020.

⁹⁵ Ibid

Stated differently, in view of the relationship, it is proper to presume that a pecuniary benefit or gain would have inured to the survivor had the insured lived.⁹⁶

The doctrine of insurable interest is required by law in order to protect the safety of the public by preventing anyone from acquiring a greater interest in another person's death than in his continued life.⁹⁷

Insurers seldom show much interest in checking proposed life insurance policy limits before concluding insurance contracts.⁹⁸ However, if a suspicious loss has occurred, insurers may seek to argue that a policyholder had an insufficient insurable interest to purchase the amount of insurance at issue.⁹⁹

From the discussion herein above, it is so logical to deduce that, it is the assumption of economic loss, which legitimatizes personal insurance, by urging that loss of life or body parts of a person can in a considerable measure be commuted into a money payment.¹⁰⁰

2.2.2. The Principle of Indemnity

As stated earlier, the very purpose of insurance is not to prevent probable losses or improving the financial situation of policyholders, but it is an arrangement of repaying the insured one for incurred losses covered by insurance.¹⁰¹ This means insurance exists to “payback” or “indemnify” policyholders for what they have lost.¹⁰²

Stated differently, the term indemnity denotes that the agreement between the insured and insurer in which the insurer assumes the duty to pay, no more than the actual amount of the loss sustained, due to covered peril so that the insured should not profit from a loss.¹⁰³ In addition to the prevention of the insured from making a profit from a loss, the principle of indemnity reduces moral hazard which could be an incentive for dishonest policyholders who could deliberately cause damage to collect the insurance proceeds.¹⁰⁴

⁹⁶ Kenneth. B and Harold (n 1)

⁹⁷ Ibid 536

⁹⁸ Ibid

⁹⁹ Ibid 529

¹⁰⁰ Spencer L. Kimball and Don A ‘Davies (n 32)

¹⁰¹ Jeffrey W, Peter N, Erik S (n 60) 96

¹⁰² ibid

¹⁰³ George Rejda and Namara Michael(n 6) 166

¹⁰⁴ ibid

‘If the loss payment does not exceed the actual amount of the loss, the temptation to be dishonest is reduced’.¹⁰⁵

Although the principle of indemnity has multifaceted benefits in insurance contracts, there are certain exceptions in which the doctrine of indemnity is not applicable. The exceptions are discussed herein below.

A. Valued Policy Insurances

Valued policy insurances are policies that pay, the face value specified in the insurance policies, if a total loss occurs, without the need to reckon the actual value of the property damaged due to the happened peril.¹⁰⁶

Valued policies typically are used to insure antiques, fine arts, rare paintings, and family heirlooms, the determination of the actual value of which, at the time of loss, is difficult.¹⁰⁷

“The specified perils to which a valued policy law applies vary among the states; some states cover only fire; other states cover fire and marine; some states include all insured perils”.¹⁰⁸ The laws generally apply only to real property, and the loss must be total.¹⁰⁹

B. Replacement Cost Insurance

In the case of Replacement Cost Insurances, the purpose of such insurance is not to bring back the damaged property to the place where the property was when the peril happened but replacing it with a brand new.¹¹⁰ This means there is no deduction for physical depreciation in determining the amount paid for a loss.¹¹¹ In this type of insurance, the insurer shall pay compensation, which suffices to replace the brand new version of the damaged property.

¹⁰⁵ *ibid*

¹⁰⁶ *Ibid* 168

¹⁰⁷ *Ibid*

¹⁰⁸ *Ibid*

¹⁰⁹ *Ibid*

¹¹⁰ *ibid*

¹¹¹ *ibid*

C. Personal Insurances

Life insurances and accident insurances are (strangely) not thought to be contracts of indemnity.¹¹² A life insurance contract is not a contract of indemnity but is a valued policy that pays a stated amount of money to the beneficiary upon the insured's death if the life insurance is purchased for the event of death.¹¹³ If the type of life insurance is an endowment, the insurer will pay after the end of a certain age limit.

Being similar to a life insurance policy, in the case of accident policy the insurer agrees to pay a specified amount of money for injuries contingent upon the occurrence of an accident without bothering about the actual amount of loss sustained by the insured person. Although most disability insurances are valued insurances, there are some sorts of indemnity insurances in the case of disability and medical expenses insurances, which are meant to cover only out-of-pocket expenses of the insured person.

2.2.3. The Principle Subrogation.

A. The Notion of the Term Subrogation

Subrogation is one of the most important doctrines of insurance that entitles an insurance company to "step in to the shoes" of its insured to claim reimbursement of what it had paid to the insured, from a third party legally responsible to make the damage good, in tort or contract.¹¹⁴

The application of the doctrine of subrogation presupposes the existence of a third-party legally liable since, under subrogation theory, the insurer bases his claim upon the right of recovery held by the subrogor (the insured).

"The term subrogation finds its roots in surety-ship.¹¹⁵ In surety-ship context, the debtor is primarily liable for the debt he owes to the creditor, and the liability of the guarantor is secondary".¹¹⁶ As applied to insurance, the tortfeasor is primarily liable to pay compensation to

¹¹² Reuben, Hasson (n 9) 417.

¹¹³ George Rejda and Namara Michael(n 6) 168

¹¹⁴ Spencer L. Kimball and Don A 'Davies (n 15) 971

¹¹⁵ Jeffrey A. Greenblatt, *'Insurance and Subrogation: When the Pie Isn't Big Enough, Who Eats Last?'*(The University of Chicago Law Review, 1997) 1339

¹¹⁶ *ibid*

the insured victim; if the tortfeasor does not pay the insured, the insurer must pay for the insured's injuries.¹¹⁷ The insured victim may be thought of as the creditor, and if the tortfeasor does not pay compensation, the secondarily liable insurer, will pay compensation for the insured's injuries.¹¹⁸ The insurer, after paying compensation to the insured victim, will take over the creditor's rights and remedies against the party primarily responsible (tortfeasor) for that damage.¹¹⁹ This is the essence of subrogation.

Since the doctrine of subrogation is the right of the insurer, which emanates from law or contract the insured should abstain from prejudicing the subrogation right of the insurer by engaging in to a settlement with the third-party liable.

If the insured has acted in the way which precludes a lawsuit by the insurer against the third-party liable, the insurer can raise this as a defense and will be properly excused from payment of the policy proceeds.¹²⁰ If the insurer has already paid compensation to the insured as per the insurance contract and if its subrogation right has been prejudiced by the insured's settlement with the tortfeasor, the insurer can seek recovery from the insured.¹²¹

“The cases that recognize the insured's prejudicial settlement with the tortfeasor as an effective defense to an action against the insurer for the prejudicing insurers right rest upon a threshold finding that the subrogation provision in question is valid, at least to the extent that it prevents double recovery by the insured”.¹²²

“Although the ratio of net subrogation recoveries to net incurred losses varies according to the type of coverage and the aggressiveness of the insurer; growing industry-wide consciousness of the great potential of subrogation has resulted in a significant increase in the aggregate recovery ratio under all coverage”.¹²³

¹¹⁷ *ibid*

¹¹⁸ *ibid*

¹¹⁹ *ibid*

¹²⁰ *ibid*

¹²¹ *ibid*

¹²² *ibid*

¹²³ Uriel Procaccia, ‘Denying Subrogation in Personal Injury Claims: A Needed Change of Direction.’(15 Wm. & Mary L. Rev. 93 1973), <http://scholarship.law.wm.edu/wmlr/vol15/iss1/5> 93

B. Types of Subrogation

The subrogation right of an insurer emanates from the law or contractual agreement. If the doctrine of Subrogation comes to play by operation of law, we call it legal subrogation or equitable subrogation.

‘Legal subrogation is allowed under some circumstances in which justice is thought to be better served by substituting the one who has actually paid to the rights that another has against a third party’.¹²⁴

Where subrogation emanates from contractual agreement, between a policyholder and an insurer, it is known as conventional subrogation.¹²⁵

C. Subrogation Priority

Who should be given priority in the claim of compensation from the third-party liable, in the case when insurance company paid compensation which does not fully cover the loss sustained because of insufficient insurance purchased by the insured person?

In such a case, on the one hand, the insurance company has the right to claim reimbursement from the third party via subrogation to the extent paid to the insured. On the other hand, the damage sustained by the insured person should be compensated fully. If the tortfeasor has assets so limited that he is unable to pay the claims of the insured and the subrogated insurer, which of two should be given priority; the insurance company or the insured one?

In addressing this question courts have used different rules in determining how a subrogation recovery is to be shared.

One view is that first, the insured must be reimbursed in full for the loss sustained; then the insurer will be entitled if there is any remaining balance from the third-party liable.¹²⁶ This is called the “insured made whole doctrine”.

Some others argue that, the insurer should be compensated fully before the insured is allowed to recover the unsatisfied loss. This is called the *pro-tanto* approach.¹²⁷ Perhaps the strongest policy

¹²⁴Jeffrey W, Peter N, Erik S (n 60) 626

¹²⁵ *ibid*

¹²⁶ George Rejda and Namara Michael (n 6) 171

reason for allowing priority to the insurer is the hope that it will increase the amounts recovered by insurers and lead to lower rates of premium.¹²⁸

The third approach is the *pro-rata* approach which provides that each party recovered an amount in proportion to the percentage of the total loss it bore minus its pro-rata share of the costs incurred in recovering from the tortfeasor.¹²⁹

D. Applicability of the doctrine of subrogation

In old days, there was a common understanding and practice, all over the world, about the applicability of the principle of subrogation in property insurance and its prohibition in personal insurance regime, although the policy reason behind this bi-polar approach are intricate and controverted.¹³⁰

“But in recent years new incentives for extending the range of subrogation have come into existence”.¹³¹ The prohibition of subrogation in the case of personal insurance and increasing use of insurances resulted in double recovery with respect to medical and hospital expenses.¹³² Insurance companies start to urge that that many claimants are unjustly enriched by the consequent double recovery.¹³³

Moreover, rising loss ratios and vigorous price competition in some fields of insurance have led companies to seek ways which could minimize their loss ratio.¹³⁴

As a measure to tackle the problems mentioned here above, insurance companies started to stipulate contractual clauses in their insurance policies which entitle them to step into the shoes of the insured and claim reimbursement from third-parties liable.¹³⁵

¹²⁷ Ibid

¹²⁸ Jeffrey W, Peter N, Erik S (n 60) 636

¹²⁹ Jeffrey A. Greenblatt(n 115) 1343

¹³⁰ Horn (n 8)

¹³¹ Spencer L. Kimball and Don A ‘Davies, (n 15) 842

¹³² Ibid

¹³³ Ibid

¹³⁴ Ibid

¹³⁵ Ibid 843

In addition to aggressive collection efforts and lobby of insurance companies, the influence of distinguished insurance law experts which is based on well-founded justifications resulted in the introduction of the doctrine in the personal insurance regime of many common-law countries.¹³⁶

Even though there are countries that allow for the application of the doctrine of subrogation in personal insurance, there are countries which stuck on the prohibition, like Ethiopia.

¹³⁶ Omer Lee Jr. Reed, (n 11) 112 and Reuben, Hasson (n 9)

CHAPTER THREE

3. Overview of the Ethiopian Personal Insurance Regime and Appraisal of the Legal framework of Ethiopia which Governs the Issue of Subrogation in the Case of Claims Involving Death and Bodily Injury

3.1. Introduction

Before specifically discussing personal insurance, it would be better by way of introduction to deal with the notion of insurance in Ethiopia, in general, and its classifications.

The Com. Code does not define what insurance is; rather it defines the term, ‘insurance policy’. According to the Code, ‘insurance policy’ is “*a contract whereby a person, called the insurer, undertakes against payment of one or more premiums to pay to a person, called the beneficiary, a sum of money where a specified risk materializes*”.

The Com.Code uses the term insurance contract and insurance policy interchangeably, thus we can take the definition mentioned herein above as a definition of insurance contracts.¹³⁷

Ethiopian Law recognizes insurance policies that provide protection for damages that may arise from possible loss of property and loss related to death or personal injury.¹³⁸ Under Ethiopian law, the insurance regime is broadly categorized into three types of insurances, they are; Insurance against damages, Insurance of liability for damages, and Insurance of persons.¹³⁹ For the purpose of this research, the writer will focus on personal insurances.

3.2 Insurance of Persons in Ethiopia

In Ethiopia, there are two broad categories of personal insurance, namely; life insurance and insurance against accidents and illness.¹⁴⁰

¹³⁷ Fekadu Petros, ‘effects of formalities on the enforcement of insurance contract in Ethiopia’, (Ethiopian journal of legal education volume 1, justice and legal system research institute Addis Ababa, Ethiopia, July 2008) 13

¹³⁸ Available on line at <https://insurancetoplists.com/types-of-insurance-in-ethiopia/> last accessed on 18/4/2020

¹³⁹ Com. Code (n 14) Art. 654,675,685,689

¹⁴⁰ Ibid Arts. 692 and 711

Life insurance may be insurance for the event of life or insurance for the event of death.¹⁴¹The Insurance Company may agree to pay a specified amount of money, having received a premium for an agreed period of time, provided that the insured person is alive at a date fixed in the policy.¹⁴² This type of policy is called Endowment Life Insurance.

Insurance for the event of death, on the other hand, is an agreement between an insurance company and a policyholder in which the insurer agrees to pay a specified capital in the event of the death of the life insured and the policy proceeds usually goes to the beneficiary whose name is mentioned in the policy.¹⁴³

In the case of insurance against accident or illness, the insurer undertakes to pay a specified sum to the insured person where the insured person is the victim of an accident and sustained bodily injury during the policy period or to the beneficiary where the insured dies.¹⁴⁴ The Com. Code also provides that the insurer may limit his guarantee (cover) to specified consequences of an accident like out-of-pocket medical expenses and also may insure coverage against illness.¹⁴⁵

3.3. Appraisal of the Legal Framework of Ethiopia which Governs the Issue of Subrogation in the Case of Claims Involving Death and Bodily Injury

3.3.1. The Civil Code and Commercial Code of Ethiopia

The C.C. recognizes three sources of subrogation, namely, legal subrogation, that is, subrogation of payer to the creditor's right by the operation of the law, and two forms of contractual subrogation, by the creditor and by the debtor.¹⁴⁶

The C.C. provides that in some cases, a person who pays another person's debt has the right of subrogation by operation of the law, without the necessity of any agreement, which is called legal subrogation.¹⁴⁷ 'When the law does not accord the right of subrogation, it may still occur as

¹⁴¹ Ibid

¹⁴² Ibid Art. 692(1).

¹⁴³ Ibid Art. 692(2)

¹⁴⁴ Ibid Art.711

¹⁴⁵ Ibid Art. 711(2)(3)

¹⁴⁶ Jonathan Eddy, (n 28) 106- 115

¹⁴⁷ ibid

a matter of agreement.¹⁴⁸ Contractual subrogation is dealt with under Arts.1968 and 1969 of the C.C.

Furthermore, Art. 2093(3) of the C.C. provides that the insurer and insured can agree so that the insurer, after paying compensation to the insured person, will be substituted in the shoes of the insured and claim reimbursement from the third-party liable.

The question is in which types of insurance are the contracting parties allowed to agree for the subrogation of an insurance company? In the case of property insurance, pursuant to Art.683 (1) of the Com. Code and Art. 1971(c) of the C.C. there is legal subrogation, which makes the existence of contractual subrogation superfluous.¹⁴⁹ On the other hand, Art. 690 of the Com Code prohibits the application of both legal and contractual subrogation in the case of insurance of persons.

Thus, the question is, in which instances the contracting parties are allowed to stipulate contractual subrogation clause in the insurance policies?

One may argue that the idea of contractual subrogation which is provided for under Art. 2093(3) is applicable in the case of liability insurance as to which the Com. Code says nothing about the applicability of legal subrogation.

However, the writer of this thesis strongly disagrees with such kind of interpretation. If the liability insurance relates to damage of property, there is no reason to prohibit the application of legal subrogation, which allows the insurer to claim reimbursement from the third-party liable after paying compensation to the policyholder. The reason and justification relied on for the applicability of subrogation in property insurance, the indemnity nature, is squarely applicable to this type of insurances. Hence, I would argue that legal subrogation should be applicable in this type of liability insurances.

On the other hand, if we say contractual subrogation is prohibited in the case of personal insurance, there could be no ground to allow contractual subrogation in liability insurances

¹⁴⁸ Ibid

¹⁴⁹ Jerzy(GEORGE) krzeczunowicz, *the Ethiopian law of compensation for damage*, (Addis Ababa University, faculty of law 1977) 86

which is purchased to provide coverage for the life or health of a person. Allegedly, subrogation is prohibited in the case of personal insurance with the view of providing the right of collecting compensation from both tortfeasor and the insurer based on the consideration that no monetary recompense can exceed the loss of life or body parts. As a result, if we say contractual subrogation is prohibited in the case personal insurances, it should also be prohibited in the case of liability insurances which involve death or injury because of similar justification.

Thus, the applicability of contractual subrogation, which is enshrined under Art.2093(3) of the C.C., still remains, to be an issue at hand.

The writer of this study would argue that, although the provisions of Art. 690 of the Com. Code prohibits contractual subrogation in the case of personal insurance, the intention behind the provisions of Art. 2093(3) of the C.C. is permitting contractual subrogation in the case of personal insurance policies and liability insurance policies which involves death or injury.

Moreover, Art. 2093(1) of the Com. Code provides that the insured victim can claim compensation from the tortfeasor as if he is not insured. This means the insured is allowed to claim compensation from both an insurance company and a tortfeasor, for the same peril. Owing to the existence of legal subrogation in the case of property insurance as per Art.683 (1) of the Com. Code, there could be no means by which the insured victim can claim compensation from both an insurer and a tortfeasor. Thus, it is plausible to argue that Art. 2093(1) of the C.C. is applicable in cases of personal insurance in which legal subrogation is not applicable.

Therefore, when we closely analyze Art.2093(1) of the C.C., we can logically construe that in the absence of contractual subrogation the insured victim, in the case of personal insurance, is allowed to collect double recovery from both the insurer and tortfeasor for the same injury. As per the provision of Art.2093(3) of the C.C., it is possible to stipulate contractual subrogation clause, in personal insurance contracts, so that the insurer may subrogate to the right of the insured and claim reimbursement from the third-party liable.

The federal Supreme Court Cassation Bench, whose decisions serve as binding precedents, in its decision rendered on the case between, *E.I.C. Vs Africa Beza College-Awassa Campus*, file no. 99179, provided that Art. 2093 of the C.C. applies only to cases of personal insurance.

Based on this interpretation, the writer of this thesis would argue that the prohibition of contractual subrogation, as per art. 690 of the Com. Code, is the short-sightedness of the drafters of the Com. Code to consider the rationale behind the stipulation of Art. 2093(3) of the C.C. and inability to harmonize the provisions of the two Codes. The fact that could strengthen this line of argument is that, during the enactment of the two Codes which was 1960, courts of common law countries, from which the insurance law of Ethiopia has been transplanted¹⁵⁰, have started to recognize contractual subrogation in the case of insurance which offers medical expenses coverage.

“For instance in 1954 a pair of Michigan cases, both *Michigan Hospital Service vs. Sharpe*, involving the same injured persons and tortfeasors, ‘marked a great reversal in judicial attitude towards the question of health insurance subrogation and the beginning of a new era of subrogation permissiveness in the case of medical expense coverage insurance.’¹⁵¹

In the Sharpe I case, a participant in the Michigan Hospital Service plan (Blue Cross) was injured in an automobile accident caused by a negligent third person.¹⁵² In this case, the accident victim had recovered the medical expense from the service policy and also settled with the tortfeasor.¹⁵³ When the service plan demanded reimbursement of what it has paid as per the plan, the court rejected its claim.¹⁵⁴

In Sharpe II, the facts were identical, except that the insurer had included an express subrogation clause in the policy.¹⁵⁵ The court upheld the insurer to be subrogated on the basis of existence of contractual clause and said that *it is neither unjust and unfair nor inequitable to give effect to an agreement which was not induced by mistake, overreaching, fraud or misrepresentation....*¹⁵⁶

¹⁵⁰ Fekadu Petros (n 138) 12

¹⁵¹ Uriel Procaccia (n 123) 97

¹⁵² Ibid

¹⁵³ ibid

¹⁵⁴ Ibid

¹⁵⁵ ibid

¹⁵⁶ Michigan Medical Serv. v. Sharpe, 339 Mich. 574, 577, 64 N.W.2d 713, 714(1954)

The effect of this decision resulted with a proliferation of subrogation clauses and rapid adoption of the Sharpe *II* holding in the majority of jurisdictions where the question arose.¹⁵⁷

During that time, in addition to the decisions of the court, scholars like, **Professor Spencer L. Professor Robert E. Keeton, others** have been strongly challenging the consensus reached on the absolute prohibition of subrogation in the case of personal insurances and argue that in the case of life insurance and disability insurances, insurance companies should be allowed to freely stipulate contractual subrogation clause in their insurance policy unless there are policy reasons which prohibit to do so.¹⁵⁸

Thus, the explosion of the idea of contractual subrogation in the case of personal insurance at the time of the enactment of the C.C.; the influence of the distinguished insurance law professors and the absence of justification provided for the prohibition of contractual subrogation in the case of personal insurance regime of Ethiopia as it was provided by Jonathan A. Eddy,¹⁵⁹ may support the presumption that the C.C. was intended to recognize contractual subrogation in the case of personal insurance.

3.3.2. Civil Servants Proclamation of Ethiopia

The Civil Servants Law, proc. No. 1064/2010, provides that when a civil servant is injured during or in connection with his work, the employer government institution has the duty to cover medical expenses mentioned in the Proc.¹⁶⁰ The proc. also provides that if the injury sustained by the civil servant caused disability, serious mutilation, or disfigurement, the government will pay compensation and other benefits.¹⁶¹ When the injury resulted in the death of a civil servant, his survivors will receive the gratuity provided by the public servants' pension law.¹⁶²

Where the injury sustained by the civil servant is caused by the fault of a third party, the concerned government institution shall be entitled to claim reimbursement from third-party at fault, an amount equal to the compensation, if paid to the injured civil servant or to the legal

¹⁵⁷ Uriel Procaccia (n 123) 98

¹⁵⁸ Spencer L. Kimball and Don A 'Davies (n 15) 868

¹⁵⁹ Jonathan Eddy (n 28)

¹⁶⁰ Civil servants Proc. (n 47) Arts. 53 and 59

¹⁶¹ Ibid Art. 60(1-3)

¹⁶² Ibid Art. 60 (4)

beneficiaries of the deceased civil servant.¹⁶³ If the civil servant received compensation from the third party who caused the injury, the concerned government institution may deduct from the salary of the civil servant the expense incurred due to the injury or death of the civil servant.¹⁶⁴ The aforementioned provisions of the civil servants Proc. are patent evidences which prove that the legislature has already recognized the applicability of the doctrine of subrogation in claims which involve injury or death.

This means, confusingly, profit-making insurance companies are prohibited from not only legal subrogation but also stipulating contractual subrogation clauses, in the case of compensation related to death, disability, or medical expenses, in the face of the fact that the government institution is accorded with legal subrogation right.

3.3.3. Labor Proclamation of Ethiopia

The Labor Proc. No. 1156/2011 provides that the employer shall be liable, irrespective of fault, for employment injuries sustained by his worker, and such liability shall be determined in accordance with, the provisions of this Chapter.¹⁶⁵ Further, the Proc. provides the details of benefits in the case of employment injuries that specifically, the employer has a duty to cover. The benefits are, medical expense coverage,¹⁶⁶ various cash benefits,¹⁶⁷ and compensation payment if the injury resulted in physical disability,¹⁶⁸ payment to his dependents if the injury resulted in the death of the employee.¹⁶⁹

Concerning the question, if the employer can subrogate to the right of an employee to claim reimbursement from a third-party whose fault caused the injury?; the Federal Supreme cassation bench, whose decision serves as a binding precedent, in the case between “*E.I.C. Vs. Africa Beza College-Awassa Campus*”¹⁷⁰, rendered a decision which provides that the employer’s liability

¹⁶³ Ibid Art. 62

¹⁶⁴ Ibid

¹⁶⁵ Labor Proc. (n 50) Art. 96 (1)

¹⁶⁶ Ibid Art.105

¹⁶⁷ Ibid Art.107

¹⁶⁸ Ibid Art.109

¹⁶⁹ Ibid Art.110

¹⁷⁰ E.I.C. Vs Africa Beza College-Awassa Campus, (n 48)

insurer has the right to legally subrogate to the rights of the employee and claim reimbursement from the third-party liable. This means the court has recognized the legal subrogation right of the employer. If the court believed that the employer has no subrogation right; it would not have recognized the subrogation right of the employer's insurer to subrogate and claim a repayment from the third party liable.

Thus, just like a government institution, private employers are accorded with the legal subrogation right to claim reimbursement from third-party at fault, an amount equal to the compensation, paid to the injured employee, or the legal beneficiaries of the deceased employee.

3.3.4. The Draft Commercial Code of Ethiopia

As it is discussed earlier, the Dra.Com.Code clearly prohibits the application of both legal and conventional subrogation in the case of personal insurance,¹⁷¹ just as it is prohibited under Art. 690 of the existing Com.Code.

The draft which was prepared in the year 2008, by MoJ currently called the AG, added a sub-Art. to the existing Art. 690 of the Com. Code, which provides that subrogation is possible in some limited cases if the policy had stipulated so.¹⁷² The cases mentioned are “...*cases of contracts for the indemnification of prejudices resulting from bodily injury*”, in which case the insurer who has paid out to the beneficiary can demand reimbursement from the third party liable for the prejudices.¹⁷³ This implies that the drafters wanted to introduce some sort of conventional or contractual subrogation in some limited cases of personal insurance.

However, latest Dra.Com.Code, at the beginning of chapter four, which deals with insurance of persons, provides that the insurer which has paid compensation as per the personal insurance policy is not allowed to claim reimbursement regardless of the existence of contractual clause, which provides for subrogation of the insurance company.

¹⁷¹ Dra.Com.Code (n 51)

¹⁷² A Team of Fourteen National Experts (n 45)

¹⁷³ Ibid

3.3.5 The Perception of the Supreme Court of the Federal Democratic Republic of Ethiopia, about the Applicability of the Doctrine of Subrogation in Claims Related to Death and Bodily Injury

The writer of this paper has exerted a lot of effort to find court cases on insurance of persons which involve the issue of subrogation, to have some idea on the reasoning of the court when allowing or prohibiting subrogation in the case of personal insurance, but the endeavor ended up in vain.

Even though the case was not exactly about personal insurance, the researcher found a case which has a direct bearing on the prime concern of this thesis. It involves a claim of subrogation to get reimbursed of money paid to the beneficiaries of a deceased employee on whose behalf the employer purchased liability insurance policy. The case is analyzed as follows:

The case was between, *E.I.C. and Africa Beza College-Awassa Campus*.¹⁷⁴ In this case, EIC claimed subrogation right, to get back money which was paid because of the death of an employee as per the liability insurance policy, from the third-party liable for the damage. Although the defendant is mistaken to call the type of insurance at issue as personal insurance, however, it is liability insurance in real sense and the defendant was technically arguing that the compensation paid by the insurer was related to death of a person, and subrogation right should not be allowed for the insurer.¹⁷⁵ Finally, the Cassation bench of The Federal Supreme decided that the insurer has the right of subrogation to the rights of the insured, the employer, against third-party liable.

In the reasoning part, the court said, the issue involved in the case at hand is not about personal insurance, but it concerns liability insurance. To put it differently, the insurance policy was not purchased by the deceased person, as a life insurance policy rather it was purchased by the employer of the deceased person to secure coverage for the legal liability of the employer towards its employees. In the case of liability insurance, there is no prohibition of subrogation, unlike personal insurance, in which subrogation is legally prohibited. Therefore there is no reason to prohibit the subrogation right of the insurer in the case at hand.

¹⁷⁴ E.I.C. Vs Africa Beza College-Awassa Campus,(n 48)

¹⁷⁵ Ibid

The basic problem here is that the court solely depended upon the type of insurance when deciding that the insurer has a subrogation right. The Court did not even illuminate why subrogation is applicable in the case of liability insurances which involves claims of injury or death and on the other hand, why it is prohibited in the case of personal insurance which obviously involves injury and death claims, up on the face of the fact that the issue at hand was whether subrogation is applicable or not, in claims emanate from injury or death.

According to the writer of this paper, it is not as such necessary to bother about the identity of the person who has purchased the insurance policy, which is meant to redress damage sustained due to injury or death of a physical person. For instance, if the policy was purchased by the deceased himself, the insurance becomes personal insurance and the insurer wouldn't have a subrogation right as per the interpretation of the Federal Supreme Cassation Bench. The court has recognized the subrogation right of the insurer merely because of the fact that the insurance policy is purchased by the employer of the deceased employee.

Scholars who argue for the prohibition of subrogation in the case of personal insurance, among other justifications, mainly substantiate their argument by urging that, owing to the extra-commercium nature of human life and body parts of human being, no monetary recompense for the loss of body parts or a life of a person could exceed the loss sustained, thus recovery from both an insurer and a tortfeasor should not be condemned, and subrogation of insurer should be prohibited in the case of personal insurance. When the decision is analyzed against the above justification, the reasoning of the bench remains so unreasonable.

The fatal mistake committed by the Federal Supreme Cassation Bench is that, nowhere in the judgment, the court tried to address the issue of making the heirs of the deceased employee fully compensated for their loss, which is caused due to the death of their breadwinner. They failed to understand that the amount fixed in the labor proc. is predominantly meant to limit the liability of the employer in the case when the employee sustains bodily injury or death due to employment-related injury. It is not meant to fix the total amount of compensation claimed from the tortfeasor.

The writer of this paper would argue that before allowing the subrogation right of the insurer, the court should have to make sure that if the dependents of the deceased employee were fully

compensated for their economic loss and moral damage sustained due to the death of their breadwinner.¹⁷⁶ To state it differently, the dependents of the deceased employee should be allowed to claim compensation both from the insurer and the tortfeasor until they satisfy their loss fully. The actual damage sustained by the heirs of the deceased, could be more than the amount fixed in the labor law.

To sum up, in general terms, the court's ruling in allowing the insurer's right of subrogation in the case of claims of injury or death is in conformity with the stand of the writer of this paper. The decision implies that the judiciary has already recognized the applicability of the doctrine of subrogation in claims relates to the injury or death of a physical person.

However, there were some reservations specifically; the failure of the court to make sure if the heirs of the deceased are fully compensated, before allowing subrogation right of the insurer; the unconvincing reason of the court which focuses on fixed sum nature of the insurance policy as a reason to allow subrogation; and finally its failure to illuminate the reason behind allowing subrogation in the case of liability insurance which involves claims of injury and death.

¹⁷⁶ George Rejda and Namara Michael (n 6) 171

CHAPTER FOUR

4. Critical Analysis of the Alleged Reasons for the Prohibition of Subrogation in Ethiopian personal Insurance Regime and Illuminating the Significance of Introducing the Doctrine Thereby.

4.1. Analysis of the Alleged Reasons for the Prohibition of Subrogation in Ethiopian Personal Insurance

The Com.Code which governs, the insurance regime of the country, clearly excluded personal insurance from the reach of the doctrine of subrogation. Stated differently, there is an express provision which disallows not only legal subrogation but also prohibits stipulation of a contractual clause allowing subrogation in personal insurance policies.¹⁷⁷

As the writer discussed earlier, there is no literature or minutes which explicates the policy reason or any other justification behind the absolute prohibition of subrogation in the case of the Ethiopian personal insurance regime.

Regarding the prohibition or application of the doctrine of subrogation, in the case of personal insurances, there are diverging and controversial arguments that are posed by different international scholars. Domestic academicians and insurance law practitioners argue that the reasons discussed here below are presumably the rationale behind the prohibition of subrogation in the personal insurance regime of Ethiopia. The justifications which are proffered by domestic legal professionals are, by and large, similar to those of justifications raised by international insurance law experts, concerning the prohibition of subrogation in the case of personal insurances. The writer of this paper analyzed the justifications as follows.

4.1.1. The Alleged Non-indemnity Nature of Personal Insurance, as a Justification for the Prohibition of the Doctrine of Subrogation

The question of whether all personal insurances are indemnity insurance or not is a big point of controversy.¹⁷⁸

¹⁷⁷ Com.Code (n 14) Art. 690

¹⁷⁸ Tesfaye Abate (n 29) 350

Scholars like Couch, argued that Personal insurances are not indemnity insurances; thus, the doctrine of subrogation is not applicable to them because of the fact that subrogation is a doctrine intended merely to carry out the principle of indemnity.¹⁷⁹

In line with the argument herein above; in the focus group discussion,¹⁸⁰ most of the participants who came from E.I.C, AG and NY.I.C argued that the prohibition of subrogation in Ethiopian personal insurance seems to be, because of the fact that personal insurance is not indemnity insurance. Instead, the amount of policy proceed is fixed by agreement in advance. This feature of personal insurance is provided under Art. 689 of the Com. Code.¹⁸¹ The doctrine of subrogation is a legal device used to effect the principle of indemnity.¹⁸² Thus, the non - indemnity nature of personal insurance left it away from the reach of the doctrine of subrogation.¹⁸³

On the other side, some other scholars strongly argue that personal insurances shouldn't be considered as insurances which do not involve indemnity element and should not be placed out of the reach of the doctrine of subrogation.

There are typical indemnity type of personal insurances like; medical insurances, which are purchased for the purpose of covering the out-of-pocket medical expenses of the insured person, and there is no reason to categorize them as non-indemnity insurances.¹⁸⁴ In this case, the insurance company pays compensation, to the extent incurred by the policy-holder for medication. Further, “the latent and subtle indemnity element of life insurance becomes very patent and clear in life insurance, taken out by a creditor on a debtor's life”.¹⁸⁵ In such type of life insurance policy the insurance company will pay the remaining debt for the beneficiary, up

¹⁷⁹ Spencer L. Kimball and Don A ‘Davies, (n 15) 845

¹⁸⁰ Participants of the focus group discussion are legal professionals; from EIC are 1.Betselase mokenin,2. Getu Melke,3.Endalkachew Hordofa; participant from NI; 1. Abdisa Dutu, Participants from AG 1. Yalematarik shimles,2. Tomas Berhane 3.Yonatan Shferaw; participants from private lawyers,1. Alebel Ashagree,2.Abel Beyene,3.Mesfin Chane 4.Beza Shewangizaw(Addis Ababa 15 January 2020)

¹⁸¹ Ibid

¹⁸² Ibid

¹⁸³ ibid

¹⁸⁴ Jeffrey W, Peter N, Erik S (n 60) 624

¹⁸⁵ Spencer L. Kimball and Don A ‘Davies, (n 15) 856

on the death of the debtor. Thus, categorizing all personal insurance as non-indemnity insurance is the wrong generalization.

Let alone, the personal insurances which involve apparent indemnity element, even, the fixed sums which are usually provided for the loss of an arm or a leg of a person are often intended to cover anticipated loss which would be sustained and thus are "liquidated damages clause," as much as is the valuation clause in fire or marine insurance.¹⁸⁶ Thus, considering the valued amount of compensation as unrelated with the actual damage sustained by the policyholder is a misunderstanding.

On the other hand, there are valued policies in the case of some property insurances like valued marine and fire insurance policies, to which the doctrine of subrogation is applicable, just like as in any other property insurances.¹⁸⁷ As a result, if we say subrogation is applicable only in the case of indemnity insurance, we should have to hinder subrogation in such type of property insurance as well, but actually, it is applicable in those kinds of property insurances.

When we see the case of Ethiopia, there are some valued policies offered by insurance companies, in some cases of marine and fire insurances, to which the doctrine of subrogation is applicable, like any other indemnity insurance policies.¹⁸⁸

The writer of this paper argues that the prohibition of subrogation in the case of Ethiopian personal insurance, based on the argument that personal insurances do not involve indemnity element is very flawed. Confining the applicability of subrogation only to the indemnity insurances is also another mistake.

In the first place, it has to be clear that indemnity is concerned only with the question of whether the insurer has agreed to pay a fixed amount of money upon the happening of particular peril or the amount of compensation is dependent on the actual damage sustained by the policy-holder. If the insurer has agreed to pay compensation, which is equal to the actual damage sustained by the

¹⁸⁶ *ibid*

¹⁸⁷ *Ibid* 853

¹⁸⁸ Interview with Fasika Dagne, Insurance and Banking Judge, kirkos Bench, Federal First Instance Court (Addis Ababa, 5 may 2020) and Interview with Getu Melke, senior legal experts at E.I.C(Addis Ababa 10 may 2020)

insured, the type of insurance will be indemnity insurance. If the amount is fixed in advance without regard to the actual damage, it is called a valued insurance policy.

Thus, although it is logical to say subrogation is a corollary to the doctrine of indemnity, there is no legal ground or logical considerations to conclude that subrogation is necessarily tied with the principle of indemnity. The insurer can subrogate and claim reimbursement from the third-party liable in the extent to which the insured is entitled to claim from the third party, after paying valued (fixed) amount of compensation to the insured as per the insurance policy stipulation.

Furthermore, as it is provided above, the application of subrogation in some valued property insurances refutes the allegation that the doctrine is only applicable to indemnity insurances.

Even if we say, subrogation applies to only indemnity insurance, the existence of indemnity element in the case of some personal insurances, as it is articulated herein above, nullify the allegation that subrogation is prohibited in the case of the personal insurance regime of Ethiopia because of the non-indemnity nature of personal insurances.

4.1.2. The Alleged Non-existence of Double Recovery (an unjustified enrichment) in the Case of Personal Insurance, as a Justification to Prohibit Subrogation

Some insurance law experts argue that the doctrine of subrogation is only applicable to property insurance, in order to avoid a double recovery or unjustified enrichment by a policyholder who actually has been indemnified.¹⁸⁹ Owing to the extra-commercial nature of human life and body parts, no monetary recompense for the loss of body parts or a life of a person could exceed the loss sustained.¹⁹⁰ Thus, collecting recovery from both the tort-feasor and the insurance company should not be condemned in the case of personal insurances.¹⁹¹ Specifically, Mr. Ali Mohamed argued that there are priceless sufferings and mental pains that emanate from physical injury, and there is also moral harm sustained by the family of the deceased person; thus, no monetary

¹⁸⁹ Uriel Procaccia, (n 123)

¹⁹⁰ Interview with Ali Mohamed Ali, former senior judge at The federal Supreme Court of The Federal Democratic Republic of Ethiopia and currently working as private lawyer (May 15 2020) and interview with ,Assistant Professor Fasil Alemayehu Zewude, instructor at Civil Service University and also working as private lawyer,(15 may 2020)

¹⁹¹ *ibid*

compensation could exceed the damage incurred by them.¹⁹² Therefore, it is not possible to say that there is a double recovery in the case of personal insurance.¹⁹³

On the other hand, there are well-founded arguments that elucidate that there is an apparent collection of double recovery which calls for the introduction of the doctrine of subrogation in the case of personal insurances.

First and for most, “personal insurances are seldom designed to compensate intangible losses; rather they are designed to compensate for the associated economic losses which can be assessed in terms of money”.¹⁹⁴

“The intention of purchasers of personal insurance policies is to indemnify either their families (in the event of death) or, in the event of an accident, to compensate themselves for their lost earnings; thus, why the loss of property should be treated differently from a loss of an arm when both results in economic losses to the person who sustains them has never been explained”.¹⁹⁵

The proponents of extra-commercium nature of human life and body parts, failed to consider that the amount of money which is specified in the insurance policies is not in consideration of the worth of life or body parts of a person rather it is in consideration of the economic loss which would be sustained due to the disability or death of a person. It is not the actual value of a person’s life, kidney or leg to which the insurer is paying rather it is a compensation meant to inure the anticipated economic loss due to the disability or death of a person. The economic loss which could be sustained due to the disability or death of a person can be determined based on various consideration like; the income, the age and life-expectancy of the victim and it is possible to make the damage good either from a solvent tort-feasor or the insurer, if the sum insured is enough to cover the whole loss sustained.

If we say that the rationale behind the purchasing of personal insurance is covering economic loss, and if we allow the insured person or his beneficiaries to collect compensation from both an

¹⁹² Ibid interview with, Ali Mohamed Ali

¹⁹³ Ibid

¹⁹⁴ Spencer L. Kimball and Don A ‘Davies (n 32)

¹⁹⁵ Reuben, Hasson (n 9)

insurer and a third party liable for the same loss, there is apparent double recovery or unjustified enrichment.

The existence of double recovery becomes crystal clear in the case of insurance policies purchased to cover out-of-pocket medical expenses. Practically, in Ethiopia, insurance companies are issuing health insurance policies that cover medical expenses incurred due to an accident, as per article Art. 711(2) of the Com.Code, but there is no practice of claiming recovery from third party liable via the doctrine of subrogation because of the legal denial.¹⁹⁶ In this case, due to the absence of subrogation, the injured person can collect compensation, to recover medical expenses, from both the insurance company and third party liable as per article 2093(1) of the C.C. and end up with the double recovery.

If it is argued that moral injury (intangible loss) is in the ambit of insurance coverage, the C.C. of Ethiopia provides for the payment of monetary compensation for the moral injury sustained by the victims of bodily injuries or, in the event of his death in consequence thereof to his family.¹⁹⁷

This shows that, with all the difficulty to determine the precise amount of compensation, the Ethiopian legal system opted to consider moral harm as compensable damage in its concern to redress significant injuries to an individual's personality interest (as distinct from his economic interest) and expressly provide for pecuniary compensation.¹⁹⁸

From the perspective of comparative law, Ethiopian law considers moral harm as compensable just like France and Belgium, unlike the Soviet legal system which provides no monetary compensation for moral damage because of the high regard which they have for human personality.¹⁹⁹ Countries which offer monetary compensation for non-pecuniary/intangible loss differ significantly on the assessment of the amount of compensation.

¹⁹⁶ Interview with Meron Tadewos, manager of personal insurance department of Africa avenue branch, at Ethio life and general insurance share company, (Addis Ababa, 29 April 2010); interview with Hailu Shibru, principal customer service officer of life Addis district) at E.I.C., and interview with Diramu Tadi, personal insurance branch manager of Nile insurance share company,(Addis Ababa, 1 May 2020)

¹⁹⁷ C.C.(n 43) Art. 2113

¹⁹⁸ Jerzy(GEORGE) Krzeczunowicz (n 150) 265

¹⁹⁹ Ibid 270

In France, the amount of compensation for non-pecuniary damage is equivalent to the monetary or economic damage sustained by a person due to the peril happened.²⁰⁰ In Mexico, the amount of compensation for non-pecuniary/moral harm may not exceed one-third of the pecuniary compensation.²⁰¹ Whereas, in Denmark, in boldly harm cases, the award for pain and suffering consists of standardized sums fixed at so-much-per day.²⁰² In Colombia, the maximum compensation for non-pecuniary damage is 120 USD.²⁰³

In Ethiopia, the maximum amount of compensation which can be paid as compensation for moral damage is 1,000.00(one thousand) Ethiopian birr.²⁰⁴

Therefore, when we see the trend in other countries and consider the provisions of the C.C. the intangible loss or moral damage sustained due to death or injury is compensable in terms of money. Thus, consideration of the intangible loss as a loss which can not be measured in terms of money does not hold water when we consider it in light of the above legal provisions.

We can argue that the maximum ceiling stipulated in the C.C. of Ethiopia is very minimal to compensate moral injury, and the amount should be exponentially increased; Otherwise, arguing for the prohibition of subrogation to provide double recovery for the insured person is so unreasonable. It lacks not only legal backing but also valid justifications in the realm of insurance jurisprudence.

Thus, it is also hardly possible to argue that intangible loss is unlimited in the case of insurance law in the face of the fact that moral/intangible loss is limited in of tort law.

Hence, it is possible to determine non-pecuniary/intangible loss sustained in addition to determining the economic loss sustained due to the peril that has happened and claim full compensation from a solvent tort-feasor or the insurer as per the insurance policy. If the insured is allowed to collect compensation from both the tortfeasor and the insurer, for the same peril,

²⁰⁰ Ibid 269

²⁰¹ Ibid 273

²⁰² ibid

²⁰³ ibid

²⁰⁴ C.C.(n 43) Art. 2116(3)

double recovery becomes crystal clear. These excessive recoveries are widely thought to produce a moral hazard, and thus to be objectionable.

Thus, the prohibition of subrogation in the Ethiopian personal insurance regime, based on the allegation that there is no double recovery in the case of personal insurance is very flawed.

4.1.3.Characterization of Insurances of Person as an "Investment" not as an Insurance Contract, as a Justification to Prohibit Subrogation

Some scholars argue that life insurance is not precisely an insurance contract; rather, it is considered as an investment; thus the principle of subrogation does not apply to them.²⁰⁵ In line with this allegation, some of the participants of the focus group discussion argued that personal insurance has an investment aspect and should not be taken as an insurance contract strictly to apply subrogation.²⁰⁶

The justification mentioned here above is susceptible to rebuttal because, although, endowment life insurance contracts have features of investment, term life insurance has no investment feature. ‘At least we have nowhere seen any suggestion that term life insurance should be regarded as an indemnity contract because it lacks an investment feature, nor that any distinction should be drawn for subrogation purposes between endowment and term life’.²⁰⁷

Similarly, accident insurance cases deny subrogation upon the face of the fact that accident policies have no as such an investment feature.²⁰⁸

This shows that the existence of the nature of investment in some life insurance policies is not really the reason for the prohibition of subrogation in the case Ethiopian personal insurance regime.

4.2. The Significance of Introducing the Doctrine of Subrogation under Ethiopian Personal Insurance Regime

To put it in general terms, ‘Subrogation is a "remedy", which is "equitable" in origin and is "restitutionary" in aim and effect’.²⁰⁹ The proper application of this doctrine in the realm of

²⁰⁵ Spencer L. Kimball and Don A ‘Davies (n 15) 851

²⁰⁶ Focus group discussion (n 181) Abdisa Dutu., Alebel Ashagree,

²⁰⁷ George S. Swan(n 10) 636

²⁰⁸ Ibid

personal insurance would play a tremendous role in serving the interest of justice, inter-alia other advantages. Introducing the doctrine of subrogation under Ethiopian personal insurance would have the following specific significances.

4.2.1. Prevention of Double Recovery (Unjust enrichment)

The principle of subrogation obliges the insured to choose between seeking recovery either from the tortfeasor or from the insurer.²¹⁰

As it is repeatedly discussed in the foregoing sub-topics, the Com.Code of Ethiopia expressly prohibits subrogation in the cases of personal insurances. The prohibition would enable the policyholder or his beneficiaries in the case of death, to collect compensation from both the insurer and tortfeasor as well.

Therefore, if we say that the amount of money stipulated in the personal insurance contract is fixed based on consideration of the anticipated economic loss and if we allow the policyholder to collect compensation from both an insurer and a tortfeasor, the existence of double recovery or unjust enrichment would be clear. Let alone estimated the probable economic loss, the C.C. of Ethiopia provided monetary compensation for the non-pecuniary damage which could be sustained due to the death or injury of a physical person.²¹¹

Based on the discussion in the previous sub-topics, we can say that it is possible to compute both economic loss and non-pecuniary loss, which could be incurred due to a death or injury of a person. Thus, the loss could be indemnified by the compensation obtained either from the solvent tortfeasor or the insurer depending on the sum assured; hence, in the absence of the doctrine of subrogation the existence of double recovery is crystal clear. Moreover, in the case of health insurance, which is purchased to cover only medical expenses, the existence of unjustified enrichment is undeniable. Because the injured may collect compensation from both insurer and tortfeasor as well for the same medical expenses.

The writer of this paper argues that in order to prevent this unjustified enrichment, the doctrine of subrogation should be introduced in the realm of insurance of persons.

²⁰⁹ Watterson, Modelling 'Subrogation as an "Equitable Remedy' (2016) 613

²¹⁰ Donald. J (n 7)

²¹¹ C.C. (n 43) Arts. 2113 and 2116(3)

4.2.2. Deterring and Punishing Negligent Behavior

In the case when the peril has happened due to the negligence of a third party, Subrogation would serve as a device which would enable us to put the ultimate liability of paying compensation on a culpable third party.²¹² This means in the case when an insurance company pays compensation to an insured based on an insurance policy, by exercising its subrogation rights, the insurer can recover the money from the negligent person who caused the loss.

Deterring negligent behavior may also be obtained by allowing the insured to claim compensation from the negligent third party, who is liable for the peril, in addition to the compensation received from the insurer.

However in some cases like; life insurance which is taken out by a creditor on a debtor's life, which is currently available in Ethiopia,²¹³ the persons who purchased the life policy on the life of debtor would claim and take compensation to the unpaid amount of debt from the insurance company. If there is no other person who claims compensation as per Art. 2095 of the C.C., the tortfeasor would go free without being punished financially for his negligent behavior.

Therefore, in such kind of instances, introducing the doctrine of legal subrogation would play a tremendous role in regulating tortious behavior. Presumably, developing countries, like Ethiopia, monetary punishment could play no less role than imprisonment, in regulating the behavior of citizens. It is obvious that the issue of, into whose shoes will the insurer step in, to claim reimbursement from the third-party liable will be a difficult question to answer. However, due to the peculiar feature of this situation, it would be better to accord the insurer, which has compensated the harm caused by another, with the legal subrogation right to claim reimbursement against the third party liable, to the extent paid by the insurer, just like the stipulation of Art. 1081(1) of the Civil Code of Russia.²¹⁴ It is justifiable to accord subrogation

²¹² Donald. J, (n 7)

²¹³ Interview with Meron, Diramu and Hailu (n 197)

²¹⁴ IBA, insurance committee substantive project, 2016, *insurers' rights of recovery*. Available online at https://www.ibanet.org/LPd/financial_services-section/subrogation.aspx last accessed on May 2 2020. In Russia Art.1081(1) of Russian civil code which deals with tort obligation as regress claim, provides that the person who has compensated the harm by another shall have the right of a claim back (regress) against the person liable in the amount of compensation paid.

right to a prudent insurance company, by stipulating exceptional grounds to the fundamental requirements for the application of subrogation instead of setting careless tortfeasor free based on technical considerations.

4.2.3. Reducing Insurance Premium Rate

Premium lowering role of subrogation is recognized by, R. C. Horn in his book, '*Subrogation in Insurance Theory and Practice*' and, by Professor Mc Coid in his article titled '*Allocation of Loss and Property Insurance*'.²¹⁵ Professor Jerzy (GEORGE) krzeczunowicz implied that permitting subrogation may lead to lower premiums and thus reduce the costs of business and its products.²¹⁶ Similarly, Jonathan A. Eddy, said that recognition of the subrogation right of the insurers could result in a substantial reduction of premiums and a benefit which would encourage individuals to purchase insurance policies and presumably has more social utility than conferring windfall cumulations of benefits to individual policy-holder.²¹⁷ However, professor Reuben Hasson argued that the existence of subrogation has no relevance in lowering the premium rates.²¹⁸

In Ethiopia, the trend of determining the amount of premium is not as such practiced in any type of insurance policies, yet.²¹⁹ The existing rate determination manual is transplanted from foreign countries, although insurance companies modify the amount depending on various considerations.²²⁰

Insurance law practitioners argue that there is no ground to prohibit the consideration of subrogation while determining the amount of premium. Thus, "Subrogation recoveries could be

²¹⁵ Reuben, Hasson, (n 9) 422

²¹⁶ Jerzy(GEORGE) krzeczunowicz,(n 150) 88

²¹⁷ Jonathan Eddy(n 28)

²¹⁸ Reuben, Hasson, (n 9)

²¹⁹ Interview, conducted on April 27 2010 Addis Ababa, with Samson Haile, who has been working as underwriter for the last 8 years at EIC and also currently pursuing his study on actuaries .

²²⁰ Ibid

reflected in the premium rate determination process, which tends to hold rates below where they would be in the absence of subrogation.²²¹

By considering the potential recovery which could be obtained from the legally liable third party, via the doctrine of subrogation, insurance companies could offer lower premium than from the amount which is offered in the absence of subrogation.²²²

Most of the time, insurance companies have a no-claim discount clause in their property insurance policies.²²³ No-claim discount is all about reducing the premium rate for an insured if he did not bring a claim to the insurance company in the previous year.²²⁴ Inter alia, the rationale behind such clause is in consideration of the fact that the insurance company did not incur any loss because of the specific policyholder.²²⁵ Existing internal manuals provides that the only parameter to accord this privilege is whether the insured did bring a claim to the insurance company or not, without considering the person at fault.²²⁶ However, practically insurance companies are according no-claim discount when the policyholder is not responsible for the damage sustained.²²⁷ Presumably, the privilege of no-claim discount accorded to the policyholder who sustained damage due to the fault of third-party is based on the consideration

²²¹ Interview with Mr. Fekadu Yami, Team Leader (vice director of Legal Services) at E.I.C. (Addis Ababa, 27 April 2010, and Interview with Meron (n 211) and Interview with Fassil Alemayehu (Assistant professor)(n 205)

²²² Samson Haile (n 239); *Samson Haile has explained the role of subrogation on premium reduction as follows. If we have 100 customers of personal insurance; to fix the amount of premium, for instance we may assume that three of our customers may sustain damage and claim compensation from the company. If we say the policy proceed of the customers is 1,000.00(one thousand) each and totally 3,000.00 (three thousand) and if we say the administrative cost is 1,000.00(one thousand) the total expense of the insurance company will be 4,000.00 (four thousand) birr. The company may consider 1,000.00(one hundred thousand) profit from the business. To fix the premium rate, this 5,000.00.00(five thousand) is divided among the 100 customers and annual payment of the insureds will be 50.00 birr per person. However if subrogation is allowed, the insurance may expect to recovery 1000 from tort feasons, then the insurance company will divide 4,000.00 (four thousand) birr among the customers and the amount of premium will be 40.00 birr per person.*

²²³ Interview with Mr. Tadele Tegegn, director of legal department at N.I and interview with Mr. Getu Melke, senior attorney at E.I.C. (Addis Ababa, 9 may 2020)

²²⁴ Ibid

²²⁵ Ibid

²²⁶ Ibid

²²⁷ Ibid and Interview with Amelwork Mekonin, principal risk management officer at E.I.C (May 12 2020).

of the potential recovery from the third party through subrogation right. Some domestic insurance practitioners claim that the internal manual should be amended in such a way which recognize that the insured should be allowed as of right to benefit from a no-claim discount clause in the case at least, when the insurance company subrogates and recovers all the expenses, within the specific policy period, from third-party at fault.²²⁸ If the insurance company allows no-claim discount based on this consideration, the role of subrogation in reducing the premium rate becomes so patent.

4.2.4. Benefit for the Insurance Industry

As discussed earlier, the doctrine of subrogation is a legal device that enables insurance companies to get back what they paid to a policyholder, from a third-party liable. “Effective subrogation practices by insurers can mean the difference between an underwriting profit or a loss,”²²⁹ as cited by Professor Reuben Hasson. This means the proceeds obtained through the instrumentality of the principle of subrogation contribute to the financial liquidity of insurance companies.

“Although the ratio of net subrogation recoveries to net incurred losses varies according to the type of coverage and the aggressiveness of the insurer, growing industry-wide consciousness of the great potential of subrogation has resulted in a significant increase in the aggregate recovery ratio under all coverage”.²³⁰

The interview conducted with an insurance business practitioners suggests that introducing the doctrine to personal insurance would have a significant role in maintaining the solvency of insurance companies and also enable insurance companies to offer personal insurance coverages to more customers.²³¹ It also enables insurance companies to raise the limit of coverage offered by different personal insurance policies.²³² In practice, insurance coverage provided in the case of personal insurance is very limited, or minimal.²³³ Insurers say, ‘now-a-days, customers are demanding to purchase medical insurance coverage beyond their limit on medical

²²⁸ Ibid Interview with Tadele Tegegne.

²²⁹ Reuben, Hasson, (n 9) 421

²³⁰ Uriel Procaccia, (n 123) 93

²³¹ Interview with Meron Tadewos (n 211) and Interview with Mr. Fekadu Yami (n 222)

²³² Interview with Diramu Tadi, personal insurance branch manager of Nile insurance share company, (Addis Ababa), 6 May 2020.

²³³ ibid

insurances'.²³⁴ Thus, they argue that introducing subrogation in personal insurance would increase their financial liquidity and profitability.²³⁵ Hence, it is possible to say that introducing the doctrine of subrogation would enable insurers to increase insurance policy limit on personal insurance coverage, which would have beneficial role to the society at large.²³⁶

²³⁴ *ibid*

²³⁵ *Ibid*

²³⁶ *ibid*

CHAPTER FIVE

5. Concluding Remarks and Recommendations

5.1. Conclusion

From the perspective of insurance law, the term subrogation is all about the right of an insurance company, to step into the right of an insured to claim reimbursement from third-party liable.

In old times the application of the doctrine of subrogation to property insurance and its prohibition in insurances of person was common to both civil and common law countries.

However, from the late 20th century onwards, many renowned international insurance law experts have been arguing for the application of legal subrogation in personal insurances which has clear indemnity aspect and also contractual subrogation in the other types of personal insurances although there are counter-arguments which support the prohibition. Many countries of both civil and common law legal systems have introduced contractual subrogation in certain categories of their personal insurance regime.

However, in Ethiopia, Art. 690 of the Com.Code prohibited the application of both legal and contractual subrogation in all types of personal insurance. However, Art. 2093(3) of the C.C. seems that it has provided a room to stipulate contractual agreement in insurance contracts. The existence of legal subrogation in the case of property insurance obliges us to presume that this stipulation is meant to apply contractual subrogation in personal insurances through the Com. Code prohibits it expressly.

In line with Art. 2093(3) of the C.C., in the D. Com.Code which is prepared by MoJ (currently named AG), in 2008, there was a provision which provides for the application of subrogation in some limited personal insurance cases; like insurance purchased for the indemnification of prejudices resulting from bodily injury if the insurance policy had stipulated so.²³⁷ But the latest D.Com.Code wiped out the provision and, clearly prohibits both legal and contractual subrogation in personal insurances.²³⁸

²³⁷ A Team of Fourteen National Experts (n 45)

²³⁸ D.Com.Code.(n 46)

Regarding the justification for the absolute prohibition of subrogation in the personal insurance of Ethiopia, there is no literature or minute which explicates the policy reason or any other justifications which have militated the law-making organ to prohibit subrogation in personal insurances.

There are some justifications, which are provided by international insurance law experts and which are endorsed by domestic insurance law practitioners as a justification for the prohibition of subrogation in the case of personal insurances, in general.

The main justifications are the non-indemnity nature of personal insurance, the absence of double recovery (unjustified enrichment), and the investment feature of personal insurance policies. When we closely examine these justifications, they are exposed as less than irrefutable.

When we see the first justification, the non-indemnity nature, it has two basic misconsiderations. First, in Ethiopia, there is health insurance that provides coverage to actual costs of medication, and also there are life insurance policies which are purchased by a creditor to secure coverage to unpaid debt upon the death of the debtor. In such types of personal insurances, the indemnity element is so clear. Second, there is no legal or philosophical basis which provides that subrogation is necessarily tied with indemnity insurances. The applicability of subrogation in some valued fire and marine insurances of Ethiopia repudiate the allegation that subrogation is only applicable in indemnity insurances. Thus, arguing that all personal insurances as non-indemnity insurances, on one hand, and concluding, as if subrogation is necessarily tied with indemnity principle, on the other hand, are the two mistaken considerations.

Next, the allegation which claims the non-existence of double recovery, in the case of personal insurance, is also attributable to misunderstanding of the concept of personal insurance and its purpose. The base for this allegation is that “no monetary compensation could exceed the loss of life or body parts. Domestic insurance law experts also believe that this justification could be the reason for the absolute prohibition of subrogation in the Ethiopian personal insurance regime.

After all, Personal insurances are seldom designed to compensate non-pecuniary losses; rather, it is designed to compensate for the associated economic losses which can be assessed in terms of money. Purchasers of personal insurance policy intend to indemnify either their families (in the event of death) or, in the event of an accident, to compensate themselves for their lost earnings

rather than replacing the lost life or body parts. This means individuals purchase personal insurance with the view of complete replacement of themselves as wage earners. When it is seen from the standpoint of dependents, the purpose of life insurance is securing the benefits that the dependents can expect from their main source of income. This notion is deeply embedded in the doctrine of insurable interest, which provides that in the case of personal insurance, the insurable interest must be an economically valuable interest rather than a sentimental one. This means it is possible to compute the actual loss sustained and probable future economic loss incurred due to death or bodily injury, although the precise computation is somehow difficult. Thus, if we allow the person to collect the compensation from two different persons on similar terms, apparently, the person will end up with double recovery. The existence of unjustified enrichment becomes crystal clear in the case of health insurance, which is purchased to cover out-of-pocket medical expenses.

Even if it is said that insurance law provides coverage not only for the economic loss but also for intangible or non-pecuniary losses, the Ethiopian legal system recognizes monetary compensation for intangible loss, which emanates from death or injury, in terms of money. If the law provides a certain amount of compensation for the intangible loss, it is possible to recover either from the tortfeasor or the insurance company.

Moreover, as per the provisions of the civil servant's law, Proc. No. 1064/2010, art 62 and as per the decision of the federal Supreme Court cassation bench²³⁹ division both government institution and private employers respectively, are accorded with legal subrogation right, to claim reimbursement from third-party liable, if they paid compensation to their employee or their dependents in the case of death, because of work injuries. This means both government institutions and private employees are accorded with the right to subrogate and claim reimbursement of compensation paid due to injury or death. As a result, the victim of the accident may not claim compensation from the third party liable on the same term. Therefore, it is hardly possible to believe that the reason for the prohibition of subrogation in the case of personal insurance regime of Ethiopia is associated with the consideration of the extra-commercium nature of human life or body parts and as a result to recognize double recovery.

²³⁹ Federal Supreme Court, Cassation bench decision (n 53)

The existence of an investment feature in endowment insurance cannot be a reason for the absolute prohibition of subrogation in all personal insurance policies.

On the other side, the introduction of the doctrine of subrogation under Ethiopian personal insurance regime would have the role of preventing double recovery which could produce moral hazard; it would enable us to punish and deter negligent behavior; it would have the role of reducing premium to the insured and would encourage purchasing of personal insurance policy and presumably has more social utility than conferring windfall accumulations of benefits to the individual policy-holder. It contributes to the growth of insurance industry by ensuring their profitability, which would benefit society at large eventually.

Therefore, it is better to introduce the doctrine of subrogation in Ethiopian personal insurance regime, both legal subrogation and contractual subrogation, depending on the type of insurance concerned.

5.2. Recommendation

Depending on the findings conclusion discussed here above, the writer of this study forwards the following recommendations.

- The provision of the Com. Code, which prohibits subrogation in the case of personal insurance, should be amended; in such a way that it recognizes legal subrogation right of insurance companies in the case of health insurance.
- It should be amended in such a way that Contractual subrogation is recognized in life insurance when the beneficiaries of the policies are the hires of the deceased, who can claim compensation as per Art. 2095 of the C.C.
- It should also be amended in such a way that contractual subrogation is recognized in the case of accident insurance policies.
- In order to minimize the detrimental effects of insurance subrogation in the case of personal insurances, the Com. Code should adopt some form of made whole doctrine, which provides that out of the recovery from the third party, the insured is to be reimbursed first, for the loss not covered by the insurance company.
- The National Bank of Ethiopia should enact directives which oblige insurance companies to extend the privilege of no-claim discount, in the case when the insured is not

responsible for the peril and if the insurance companies recovered all expenses from the third-party liable through subrogation right, which is currently available only to the customers who did not bring any claim from the insurance company.

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