#  <br> JOURNAL OF ETHIOPLAN LAW 

| $\begin{aligned} & 16 \$ \text { ARg } \\ & \text { 1RE1 } 1986 \end{aligned}$ |  <br> An Annual Journal | Vol. XVI <br> November, 1993 |
| :---: | :---: | :---: |



## 




 n+尹\&H1
d


In this isw':

## CASE REPORTS

## ARTICLES

 in the Event of isst.

Dr: Girma Wolde Sellassie
2. ismitation of sotions in Reavien tothe Recovery of Taxes
 Ethiopian Income Tax Prectanicion.

Ato Bekele Haile Sellasie
3. Ar Overview of tha Right to Strike in Ethiopia.

Ato Tilatuthesmome

## 

## JOURNAL OF ETHIOPIAN LAW

444: 1986
Vol. XVI
November, 1993

## 

## 

## PFCFABGEF









## 

Tn this is 所e:

## CASE REPORTS

## ARTICLES

1. Designation of the Bereficiary of a Life Incurance Policy in the event of Death

Dr. Ginma Folde Sellassie
2. Limitation of Actions in Relation tothe Reooveryof Taxes on Income from Sources Ghargeable under Schedulec of the Ethiopian Income TAX Proclandation.

Ato Bekele Eaife Sellasie
3. An Ouerview of the Right Lostrike in Ethiopia.

Ato Tilahun Teshone

## 











|  |  |
| :---: | :---: |
|  |  |
|  | P为7t90ct |
|  |  |
|  |  |
|  <br>  |  |
|  |  |
|  |  |
|  |  |
|  <br>  <br>  |  |
|  |  |
|  |  |
|  |  |
|  <br>  |  |
|  |  |
|  |  |

AH3安军











$$
\begin{aligned}
& \text { 日我舟五 }
\end{aligned}
$$

## JOURNAL OF ETHIOPIAN LAW

## Published at least once a year by the Faculty

 of Law of Adclis Ababa UniversityFounded in 1965
(to be cited as J. Eth. L., Vol. 16.)
EDITORIAL BOARD
Ato Yohannes Heroui
Head, Research and Fublications Department of
The central suprepte court of
The Transitional covernnent of Ethiopia
[Chairman]

| Ato Shiferaw wolde Michael | Ato Ibrahim Idris |
| :---: | :---: |
| Law Consultant and | Assistant Professor |
| Part-time Assistant Professor | Dean, Faculty of Law |
| Faculty of Law, | Addis Ababa University |
| Addis Ababa University |  |
| Ato Mekbib Tsegaw, Attorney and Law consultant | Ato Tilahun Teshome |
|  | Assigtant Frofessor |
|  | Faculty of Entw |
|  | Addis Ababa Univergity |
| Ato Hagos Debessu, Legal Asvisor, <br> Ghion Hotels Administration | Ato Zekarias Keneaa |
|  | Lecturer |
|  | Faculty af Law |
|  | madis Ababa University |
| Woiz. Origiral Wolde thiorgis <br> Legal expert, Ministry of Justice. <br> EDITORIAL STAFF |  |
|  |  |
|  |  |
| Ato Tilahun Teshome Editor-in-Chief |  |
|  |  |
| Ato Yohannes Chamie | Ato Yitayew Alemayehu |
| Articles Editor | Cases Editor |

Ato Amol Seid
Managing Editor

## Secretaries

Woiz Mehret Aderaye
woizt. Ayni Umer

## 






## 早気

19859.9






```
f+A >g (f)
```










## 






# ADDIS ABABA UNIVERSITY FACULTY OF LAW 


#### Abstract

The Faculty of Law of Addis Ababa University, established in 1964, offers courses in law leading to the LL. B. Degree and to a piploma in law. For further information you may contact the Faculty of Law, Addis Ababa University. P.0. Box 1176 , Addis Ababa.


## Faculty

Ibrahim Idris, IL. E, Assistant Professor and Dean. Aberra Degefa, LL. B, Assistant Lecturer and Assistant Dean Danlel Haile, LL. $B$, LL.M, Associate Professor Selamu Bekele, Li. B, Assistant Professor Tilahun Teshome, LL.B, Assistant Professor Bekele Haile selassie, LL. B, Lecturer Zekarias Kerea, LL. Br LL.M, Lecturer Tsehay wadd, LL. B, Leeturer Yohannes Chanie, LL. B, LL.M, M. Phil., Lecturer Awol Seid, LL، B, Assistant Lecturer Seleshi Zeyohannes, LL. B. Lecturer Mola Mengistu, LL. B, Lecturer Yitayew Alemayehu, LL.B, Lecturer Mezgebe Hatle Meskel, LL. B, Assistant Lecturer.

## Par-time Faculty

Shiferaw Wolde Micheel, LL.B, LL.M, Assistant Professor Getachetw aberra, LL.B, LL.M, Lecturer Hondimagegnehu Gebre Selassie, LL.B, LL.M, Lecturer Getachew Mengistie, LL.E, LL. M, Lecturer Michael Djiene Wenbou, Lic. en Droit, M.A., Ph.D., Associate Professor

## 








フ．山．＊． 1176





## IOURNAL OFETHIOPIAN LAE

We tnform all subacribers and readers that vol. 10 of the Journal had come out as Vol. Il due to error ag a result of which there is no Vol, 10.

```
The editors encourage all interested persong to
submit to us any manuscript which would be
suitable for publication in the Journel sucly as
scholarly articles, conments on court decisions,
and commentaries on ligislations.
Our address is: The Editor-in-chief
    Jourmal of Ethiopian Law,
    Faculty of Law,
    P.O.BOX 1176
    Addis Ababa, Ethiopia.
    Te1. 11-17-33
```

The Journal is distributed by the Book Center of Addis Ababa Lniversity. If you wish to subscribe, please address correspondence to the Book Center, Addis Ababa Unsversity, F. ©. Box lif6, Addfs Ababa, Ethiopia.

## 











 8平ヶ月。

## From The Editors

The journal of Ethiopian Law isa scholarly publication Addressing itaelf to all member of the legal profession．In publishirug a particulararticle，the Boardand editors do jot Wish to nonvey the impressioh that it is definitive on any proposition fox which it may gtand although the quality of the artiole is an important consigeration in determining whether it should be included in the Journal．when，in the opinior of a Board menber or an pititor．a judtoment is of interest and raises an important issue of law，or there is reason to believe that aspects of the decision are contestable，or the regult reached by the court is not clearly the ongy supportable eonclusion，it may be published


## 79－3

## 

 ..... 1
2．Ft．fl．at．602／73 ..... 10

3．中4．41，2，ex，中，677／76 ..... 28
／matefcstal

## 

 へのながロ
 ..... 48

（1） ..... 81
 ..... 178

## TABLE OF CONTENTS

Rage
Case Reports

1. Civil Appeal Case No. $749 / 70$
/Supreme Court/ ..... 6
2. Civil Case No. $602 / 73$
/High Court/ ..... 20
3. Civil Appeal Case No. $677 / 76$
/Supreme Court/ ..... 40
Articles1. Designation of the Beneliciary of a Life InsurancePolicy in the Event of Death
By Dr, Girma Wolde Selassie ..... 67
4. Limitation of Actions in Relation to the Recoveryof Taxes on Income From Sources Chargeable underSchedule ' $C$ ' of the Ethiopian Income Tax ProclamationNo. 173/1961 (As Amended).
By Ato Rekele Haile Selastie ..... 1413. An Overview of the Right to Strike in Ethiopia
By Ato Tilahun Teshome ..... 216

#  <br>  






















## 오 9









































 PムC\&

















 HCASAm











 40






 Atmp*


 207 MAC ©




# The Supreme Couit of Ethiopia <br> Civil Appeal Case No. $749 / 70$ 

Designation of a bencficiary in a life insurance policy - rights of the heirs ard the surving spouse int the event of death of at ithured persont - obligation of an inturer good faith required in the perfomance of a life inurance contract - jointity third parties as persons liable for contribution or indemnity to the defendart - intervention. Connm C. AIts. 691, 701, 705, 706 Civ. Pro. C. Arts 41, 43.

On appeal from a judgment of the High Cour derying claim of the dexighteded beneficiany to be entitled to the proceeds of a life innurance policy where such payment wat eartier made to the heirs of the insured upon order of the Addis ababa Awrijo Cowrt.

Held Judgment reversed

1. Pament of the proceeds of a life insurance policy to the derignated beneficiary is an obligation the inswer must assume.
2. Order of a lower count in this regard cannot be invoked for relief from rubsequent papment to be made to the designated beneficiary.

Tir 25, 1971"
Justices: Ato Teshome Haile Mariam
" Abebe Workie
" Getachew Afrassa
Appellant: Woiz. Yeshimembet Jemaneh
Respondent. The Ethiopian Insurance Corporation
After examining the argurnents of both parties, we have rendered the decision as follows:

## -. Decision

This is an appeal from the judgment of the High Court Fendered on Tir 26 , 1970 under file No. 1133/69.

The present appellant who initiated this proceeding alleged that:

1. her brother the late Ato Engida Jemaneh bad designated her as the beneficiary of his life insurance popicy the proceeds of which is Birr 30,000 ;
2. upon the death of her brother she clamed peyment of the said amount, but the respondent requested her to produce a dully probated court order in which her status is established;
3. When she fulfilled the request, the respondent once again failed to pay her the money on the ground that it had already effected the payment to the children of the deceased who are also his heirs;
4. Pursuant to Art. 705 and 706 of the Commercial Code, money due from this policy does not form part of the estate of the insured person;
and pleaded that the lisurance Corporation pay her the proceeds of the policy, f.e. Birr 30,000.

The Ethiopian Insurance Corporation affirmed that when the appellant claimed the proceeds of the policy, she was told to have her status as an heiress established. Before she had complied with the request, the respondent contended, the spouse and children of the deceased protuced a dully probated certificate of heirship from the Awraja Court on Tir 29, 1968 under file No. 2450/67. As it was further instructed to effect payment of the proceeds of the policy to these heirs by the said court, the Corporation stated, it had complied with the order and paid the sum to them, Respondent went on further and stated that the heirs have undertaken to intervene in any litigation that may ensue regarding this payment and prayed that these heirs be joined in the proceeding in accordance with Art. 41 of the Civil Procedure Code.

When the High Court ordered that the heirs of the deceased be joined in the proceeding they submitted a reply dated $20 / 4 / 70$ in which they stated the non existence of any ground justifying their intervention. The present appellant, on her part, argued that if the respondent had paid the proceeds of the policy to ineligible persons without there being any suit against it, it may claim restitution, but cannot in any way be relieved of its liability under the policy,
$I_{n}$ its judgrnent, the High Court stated that Woiz. Yeshimebet is a designated beneficiary of the life insurance policy. On the other hand, the heirs are also entitled to the proceeds of the policy pursuant to Art. 701 of the Conmercial Code. But as the Corporation paid the disputed sum not of its own wial but in pursuance of the order made by the Addis Ababa Awraja Court dated Tir 29, 1968 and Yekatit 4, 1968 under file $\mathrm{No} .2450 / 67$, it should not be beld liable for second payment,

The appellant brought an appeal from this judgment of the High Court on Ginbot 29, 1970 alleging that the lncurance Corporation was aware of the fact that the deceased had named her as a specified beneficiary of the policy and that she was in possession of the policy. She was furthemore informed by the insurance Corporation that payment would be made to her when she established at court that she is the sister of the deceasect. She argued that since the respondent is aware of all these, it is unlawfuly litigating against her by invoking a legal provision that goverms situations in whith the beneficiary is not specified in the policy. As regards the contention that payment was made pursuant to the order of the Awraja Court the appellant atgued that since the respondent was aware of the beneficiary specified in the policy it cannot avoid the obligation on this ground.

The appellant also objected to the judgment of the High Court which had reasoned that the fecision of the Awraja Court ordering payment to the heirs was improper, but had nonetheless suled that appellant should sue the heirs and not the Insurance Corporation.

Counsel for the respondent, in its reply dated Hamle 1, 1970 admitted that it had promised to pay the proceeds of the insurance policy when the heirs establish their right to the inheritance. It argued that although the appeliant is a specified beneficiary of the policy, the law also provides that the subscriber's spouse and children are deemed to be specified beneficiaries. The spouse and children of the deceased had established their status as heirs before the appellant did so.

The respondent further argued that the appellant was also the representative of a child of the deceased named Tamirat Engida, but that the Awrapa Court had rejected the claims of the appellant in its decision of Tir 5, 1965 (File No. 4311/67). The Awraja Court had also ordered on Tir $29 / 1967$ (File No. 2450/67) that, since the right of the legal heirs of the deceased to the inheritance should not be prejudiced by reason of the loss or non-production of the policy, payment should be made to the legal heirs who are the children of the deceased. Furthermore in the explanation to this decision made on Yekatit 4.1968 the Awraja Court had ruled that "the Ethiopian Insurance Corporation should effect the payment of the proceeds of the insurance policy in accordance with the earlier decision of the Court" and that this decision should be transmitted to the Corporation, thereby ordering the Coporation to pay the proceeds to the legal heirs. The Corporation therefore alleged that it had paid the proceeds of the policy to the heirs accordingly and that the legal heirs bad undertaken to intervene in and lirigate any dispute concerning the payment. The respondent therefore argued that even if the appellam were to be deemed as a beneficiary of the policy, she would have a claim only against the heirs, and the judgment of the High Court showld be confirmed.

This Court has examined the arguments presented by both parties. That the appellant is a specified beneticiary of the deceased's life insurance policy is not contested. The respondent's argument is based on Art. 701 of the Commercial Code and the order given to it by the Awraja Court. A life insurance policy is a contract between the insurer and the subscribes. The insurer has the duty to perform its obligation in accordance with the policy the beneficiary a specified in the policy. Article 691 of the Commercial Code provides that the proceeds of the policy has to be paid to such specified person. Article 706 of the Commercial Code further nules that the beneficiary may claim directly from the insurer. The appellant's claim is based on these provisions.

The fact that the respondent had requested the Awraja Court to whom it should pay the proceeds of the insurance policy instead of discharging its obligation as set out in the contract shows is lack of good faith in performing the contract. It is established that the appellant has requested payment to be made to her in accordance with the policy. The respondent had also asked her to comply with necessary formalities, Accordingly, the appellant had duly established her status at court. Tite respondent contended that it had paid the proceeds to the legal beirs in conformity with the order of a court. However, the respondent cannot benefit from an orcter it had confusingly led the court to make and avoid its responsibility since in a life insurance policy payment is to be made to the beneficiary. The beneficiary in this case is the present appeltant. W/o. Yeshimebet Jemaneh.

The Insurance Corporation had ro discharge its duties conscientiously, but had failed to do so in this case, ever though it was aware of all relevant facts, believing that a court order will relieve it of its obligation. We have therefore reversed the judgment of the High Court which was made without due cognizance to all these factors, and order that respondent should pay the proceeds of the life insurance policy to the appellant.

[^0]
## 

## 

## 










 3馬

## 












## 4C8






































































































## 













## 25. $87+\pi 692 / 21$












## 











































 ＋n＞




至


 F4finn


 4C84日。

















日










$443,333.03$
 －
$4 \subset 3,333,03$

$$
\begin{aligned}
& \text { de } 3,333.03
\end{aligned}
$$

$$
\begin{aligned}
& 4 \text { 4 } 3,33.03
\end{aligned}
$$

$$
\begin{aligned}
& \text { fe } 3,333.03
\end{aligned}
$$

$$
\begin{aligned}
& \text { A } 4 \text { 3,333.03 }
\end{aligned}
$$









# The High Court of Addis Ababa First Civil Division 

Cluil Case No. 602/73

Derignation of bencficiaries in a life insurance policy for the event of death - Rights of heirs and the surving spouse - Asrignment or pledge of proceeds of a $0 f$ ingrrance policy - Perions having rights form the insured - Application of the nule "stare decisis" Considenation of the best interests of minons - indispensable parties - mardatary joinder of parties - Suts by paupers. Comm. C. Arts (692(2), 698, 701, 706, 707 Cuv. Pnov. C Ats. 40(2), 467.

Action by a designated beneficiary to be entited to the whole proceds of a life inswance policy.

Held: Action disnissed.
The fact that the spouse and children of on insured person have been expreasty included in the Commercial Code of Euhiopia as beneficiaries of a Ife inswunce policy shows that they are equally entitted to the proceeds together with the derigrated beneficiary.

Tivent 2, 1976*

| Judge: | Ato Tilaye Tegegn |
| :--- | :--- |
| Plaintiff: | Wro. Tisgereda Wolde Selassie |
| Defendant: | The Ethiopian Insurance Corporation |
| Intervenors: | I. Wrt. Sara Tekle Haimanot |
|  | 2. Wrt. Mehret Tekle Haimant et al. |

The court renders the following judgneat after examining the case at hand.

## Iudpment

In her statement of claim dated Tahssas 27, 1973, plaintiff pleaded that:
On the basis of the request contained in a letter dated Yekatit 21, 1973, a life insurance policy No. 30480 was signed between her late husband Ato Tekle Haimanot Wolde Gabriel and the Defendant on Megabit 14, 1973;

The insured designated ber as the beneficiary of the policy under item 15 in accordance with Art, $660[1$ ) of the Commerciat Code of Ethiopia;

The defendant refused to pay the agreed sum in the policy, i.e., Birr 20,000 (twenty thousand) when she clamed ir after the deceased passed away on Yekatit 10, 1974: and prayed that the defendant be ordered to effect payment of the sum in the policy as per Art. 706(1) of the Commercial Code.

When summon was seved on the defendan, it presemted a statement of
 consideration.

The defendans. humerer; andicat:








 the second time to the usimgatiol henethiatics

Accordingly, defendant plealed that the heirs of the dextimed lut ginced in this

 the sum in the policy with this court so that patment he eltected when the beneficiaries are asceraimed.

After the plaintiff gave he: reply to this argument, thim cotery ruled, ina Sene 9. 1973, that the heirs of the deceaved be partion to the jurnceutiles. The amended statement of elaim, which wat no different in whotance fom the intial ont, was served on the intervenors.

Four of them namely Mehret lekle Haimanob, Amurimel Takle Haimanot, Meaza Tekle Haimanot and Nebiyu Tekle Haimunot submitted a reply on Tir 9, 1974. In this reply writuen by their atorney they disclosed that they do not claim the sum under litigation becusse they have now learned the proceeds of the insurance policy does not constitute par of abe eslate of their father.

The other heiress, Sara Tekle Hamanot, however, brought a differem argument in a statement written by ber pleader on Tikemt 8, 1974. She stated that Art. 701(1) of the Commercial Code does not entitle the plaintiff to be the sole beneficiary because the subscriber"s heirs are equally entitled under sub article 3 .

The plaintiff, who claims full payment, presented extensive legal atguments, including:

1. It is not possible to specify any beneficiary in addition to the ones desighated in the policy without the consent of the subscriber, Ato Tekle Haimanot Wolde Garbriel, and this is stated under Art 698 of the Commercial Code.
2. 'ITe word "tor" in Art 692(?) of the Commercial Code implies that if there arte desivhated heneficiaries, payment should only be effected to them - ollheraise. the word "or" should have been "and".
A. The atacment that sus the sum to be paid to a specified beneficiary , hatil und form part of the insured person's estate stader Art. 706(2) of the C'muntrial Code and further the oher statement that reads the sum in be paid in the subscribers spouse is to be regarded as the pervital propterty of the spouse in Art. 706(3), show that the benefit tron a lify insurince policy must be given to the spouse or childiren in
 the pality an per Ari. 7hl(2).

Thromgh luer limase Sircia leke Himanot, on her part, responded to this argument in the liflewinter manter.
I. What Art. 19 k wi the Commerciad Cote provides is that only the inatired himelf ar the who obtains his consent may assigo or pledge the imourunce prilicy which is treated as money. Also, with the excepuinn of Nehiyu, as no other beneficiary was added than those mated under item is of the policy in line with Art. 701 of the Code, the plaintift is wrong in citiog Art. 698.
2. The plainuiff has presented an argument that would defeat her claim by ching Art ${ }^{2} 92(2)$ of the Commercial Code. This is because the provision prowides that when the insured dies the insurer should pay a specified capital or life interest to those having rights from the insured or in the event of their non-uppearance to the beneficiary named in the policy.

The tue spirit and purpose of the law, in this respect, is not to derogate from, and contradict the other provisions of the law, but rather, to enable the person designated as the main beneficiary to share the precedes of the policy equally with those envisaged by Art. 701(2), notwithstanding that they are not mentioned in the policy.

The Insurance Corporation also produced copy of a decision rendered by the First Division of the Supreme Court in which it was held that the Corporation pay proceeds of an insurance policy to a designated beneficiary under Civil Appeal Case No. 749/70.

In light of these facts. legal arguments and the evidence presented, this Court shall now exarmine the case as follows:

It will firsi prowide interpretation on the legal provisions cited by the parties.

## Art 698 of the Commergial Code

In this prowision, it is stated that an assignment, or endorsement of an insurance policy or changing the beneficiary named in the policy is of no effect unless the insured person ugress in witing. The prowision makes clear that it is not possible to replace ar change the person speciffed as the beneficiary without the consent of the insured.

In the case at hand, since the clamant does not demand that Wro. Tsigereda, the specified heneficiary of the insurance policy, be changed or replaced by another person, and since the request of the intervenors is to get their share in accordance with the law, we have noth found this provision to have a direct relevance to the case,

A51, 692(2)
This prowision states that if the insurer has entered into a pontract for the event of death of the insured, the insurer shall pay the specified money to those that have rights from the insured person or to the beneficiary named in the insurance policy.

The plaintiff arguec that the term "or" toes not imply that the persons mentioned in Art. $701(1)$ and (2) would jointly receive the money but it rather gives the option to make payment to ane of them. If it is decided to interpret the law based on such argument, it would be the heirs that would be the primary beneficianies and not the plaintiff. Therefore,this argument presented by the plaintiff by invoking

Art. 692(2) of the Commercial Code is not tenable and is thes rejected, because it would not make the plaintiff the sole beneficiary.

## Aticles 706 and 707

Art $706(2)$ states that the money to be paid to the beneficiary shall not form part of the insured person's estate. Since the issue in this case is who the beneficiary of the life insurance policy is and not whether the insurance money constitutes part of the estate, and, furthermore, since Art. 707 provides that the money to be paid to the beneficiary cannot be refunded to the estate and cannot be feducted from his share, the court, holds that these provisions buve no felevance to the case and on this point we have thus rejected the plaintiff's claim.

Even if the Supreme Court has held that the insurance money should only he paid to the designated benefiniary, this court cannot be bound by such decision as the Ethiopian legal system does not follow the system of precedente. Accordingly, it renders its own decision by interpre" ng the law.

The provision that is directly retevant to the case at hund is Art, 701 of the Commercial Code. The Articte, captioned at beneficiary of inaurance policy". enumerates who such beneficiaries are in sub-articles 1 and 2.

In the Civil and Commercial Code of Ethiopia some sub-artieles are altematively listed under an article by using the word "or". Others are cumalatively listed using the word "and". [f the frovisions are listed alternatively, it is only in default of the creditor or debtor in sub-article 1 that the person mentioned in subarticle 2 will take the place of a creditor or dehtor; while in provisions that are listed cumulatively, persons mentioned in both sub-articles shall jointly be creditors or debtors.

Burt the sub-articles of Art. 701 of the Commercial Coule have nut becn listed in the alternative or cumulative as mentioned above. The words "and" or "or" have not been used. Therefore, various courts have interpreted this prowision either in the alternative or in the curnulative.

This court would interpret it in the following manner:

1. The beading of Art. 701 is "beneficiary of insurance" and it describes the beneficiaries in its three subsequent sub-articles:
2. The fact that sub-article 1 of this article prowides that the insurance policy in the event of death may be made for the benefit of a specified beneficiary does not make it a mandatory requirement that there should always be a specified beneficiary, and even when there is a specified beneficiary, the provision does not clearly state that such person shall be the sole beneficiary of the insurance policy: and
3. The phrase "notwithstanding that they are not mentioned by name" in sub-ari. 2 cum sub-article 1 , shows that the spouse and children are made beneficiaries by law.

In the opinion of this court, the purpose of Art. $701(1)$ is to give a right to the insured person to add other beneficiaries he wants, in addition to those who are beneficiaries by law' it does not exclude those beneficiaries mentioned in sub-article 2 from sharing the procecds. This interpretation is further wrengithened by the phrase, "notwithstanding that they are not mentioned by nime."

On the other hand, even if proceeds of an insufance paticy dues nut form part of the inberitance dinim, the fact that aloe spouse ind ebilded are made treneficiarien by virtue of sub-article 2 betps ins to determine hat the law unints clowe relstives of a deceased person and those who are mentioned by him in the policy to be beneficiaries of such a policy. According to the Civil Coule. wher descendants and ascendants could be heirs, But the fact that the voume and children have been expressly incladed as beneficiaries of the life insurance thows than these persons shall be deemed to be beneficiarjes toyether with the person that is apecified in the palicy.

Therefore, in this case, we hold that the life insurance of the deceased. Ato Teklehaymanot Wolde Gebriet, shall be paid to the persom whone nume is specifind in the policy in accordance with Art $701(1)$ and to those permans specified in Art. $701(2)$.

The file shows that Wrt. Mihset Tekle Haymanot etal. do not want to share proceeds of this insurance policy. From the oral litigation and the contents of the file of this case, we bave come to realize that they have given such response in order to support their mother who, as a beneficiary specified in the policy, was Kitigating against Sara T/Haymanot who is born from a different mother. However, we do not think that they intend to renounce their right. Since the reply was prepared for them by some one else for they are minors:

1. It is evident that such argument lacks good faith; and
2. Because of this argument an unwanted consequence could have resulted whereby the children might have lost the benefit of the insurance; therefore the court wishes to caution those who prepared the reply to refrain from such conduet in the futare.

Another point that makes this case unique is the issue of how much the deceased's wife, Wpizero Tsigered a Woldeselassie, will get considering that she is the specified theneficiary in accordance with sub-article 1 of Art. 701 of the Commercial Code, und she is also a beneficiary under sub-article 2 of same Article.

As stinted abowe, since sub-article 1 allows the insured person to specify any person he wiohes, and Woizero Tsigereda W/Selassie has been specified under this provision, this maken her a benefiniary; furthermore, by virue of sub-article 2 , she is ako minde a beneficiary.

One of the chiddren of the deceased, Nebiyou T/Haimant, was not born at the time the insurance policy wats sipned. Thus in pursuance of Art. 701(2) (b) of the Cimmercial cinde. he is nol deemed to be a beneficiany.

Therefore. we hold that the 20,1000 Birr that is payable under the iusurance policy shatl be divaled arnong the six berneficiaries as tollows:

1. Whazafo Tsigereda W/Selasie, pursuant to Art. $701(1)$

Biгт 3.333.03
2. Namb W/OTsigeted W/Sedussie, pursuant to Art. 7bll ${ }^{2}$ (d)
3. Whioseria Sara T/Haymanot
4. Whizerit Mibeel $T / H$ gymanot

Bire 3,333.03
5. Antanuel $7 / \mathrm{H}$ Hemant

Birr 3,333.03
$-\quad$ Bir $3,333.03$

As the bentefiaries listed from namber 3-6 have not paid court fees, they should pay il before an execution ofder is given. Let this be comminnicated to the High Court's Registrar.

All costs of the proceedings shall be paid by each party. Let this file be returned to the archives.

## Edibor's Note <br> *Unless stated orienuise, all dates are according to the Ethopian Calendar.

**The Amharic and English vervions of ant. 70h(2) (b) of the Comwercien Code are nor the same. The Englith version makes alt chitdren bentefictaries whether or not bont at the time the insurance policy was signed; ov the other hand, the Amincric version provides that orty those who were born of the time of the signing of the polloy shall be beneficiarier.

## 

## 

## 














1．动子

















6. $\quad \Rightarrow$ nf thaye7ct



## 946






 AT+7A:















 4: SAn


















































 a Anhnn nint
























































 $m \boldsymbol{m}+\boldsymbol{f}$ A.





































 \＄0． m

如相
















 エギィム．





 7 Tr－I

 ＋87ヶ7A




























 300


































## The Supreme Court of Ehiopia First Ciwil Division Civil Aporal Case No. $67 / 76$

Devignation of benefitiories in a life inturance policy - Right of the surviving spouse and heis : pupposer of a life insurance policy - the linited scope of precedence in Ethiopia Conflict of interest of minors and guardians - Removal of a guardian tutrix - Amendment of pleading - New facts and arguments on appeal Civil. C. Art. 827(2), Comm. C. Arts $69 I_{\mathrm{t}} 692,695,70 \mathrm{I} 705-708$ Gnv. Pro. C. Arts $9 I_{1} 329$.

On appeal from a judghtent of the High Count derning the defignated bencfictiay her request to be thitided to the whole proceeds of a life innwance policy.

Held: Judgment Reversed
A life Insurmene Policy may have two pupoter
A. The murer urderades to pay a specified capital or life interest to the insured if the is ative.
2. Upon the deruly of ne insured, the money is to be paid to those hating rigln' froun Sim or to the berteficiary nomed in the policy.
A) the whacrither in frete te make denations to anyone so can he make aryone he
 ч,


Sene 28, 1976

| Justices: | Ato Getachew Afrassa <br> Ano Demisie Yadetie <br> Woizt Rahel Alemionehu |
| :--- | :--- |
| Appellean: | Woiz. Tsigereda Wolde Sellassje |
| Respondents: | 1. $\quad$ The Ethiopian Insurance Corporation |
|  | 2. Sara Tekle Haimanot |

We have examined the file and given the decisito ats follows:

## Decision

 5. 1976 under Cisil Catse No. $602 / 73$.

The Appellant field her memoranduan of appeal dated Tahssas 25, 1976. It wass served wh the respondents. The first Respondent filed a reply writen on Megabit 17. 1976, and the 2nti, 4 th, 5th and 6th Respondents filed their repliss on Megabit 17 and Megabit 24, 1476. Linter on, the Appellatot filed a counter reply on Miazia 4, 1976.

Thin ciate aroxe from a disugreemen bemwen the parifes becaune each claimed w be the bencticiary of a life insurame polity wo which the deceased, Ato Tetklehaimanot W/Gebriel, was a subseriber.

The High Court considerest the Apprilant's clain in light of Art. 701 of the Commercial Code, and it also relitred to suth-ari (2) and held that the \$pouse and the children of the subwcriber are specified beneticiaries, It further noted that, altbough money due from a contract of a life inmithee pulicy does not form part of the inheritance, the Code promision intends to mate the miturel rektiwes of the deceased and his dependents beneficiaries ot the policy. Linder de Ciwil Code, the Court went on, ascendants and desendents cobld become heirs, but the law tonsiders only the spouse and children as thencficiaries of a life insumace poticy. Acoordingly, the High Coust interpreted the law mean that the policy subscribers spouse and children are specified beneficiarics even when the subweriber han cloarly designated the heneficiury. Finally, the High Court decided that in arduralance with Art. 76l() ind (2) of the Commercial Code. the insurance money shuld be paid wo both the spause (presert Appellant) and the children of th:. decensed.

Moreover, the court rejected the contemion that the children of the present Appeliant had refused to share in the imurance proceeds an the ground that the policy specified the Appellant as the sole bemeficiary. It further termed this contention as an act of bad-faith intended to prejudice the second Respondent (Appellant's step daughter). The Court tinally ruled that the life insurance money should be partinioned among the sponse (present Appellant) and the five children on an equal basis so that each would receive Birr 333.03.

The Appellant objected to this judgment on the ground that the High Court efred when it considered sub-arts (1) and (2) of Art. 701 of the Commercial Code as one and the same. The Appellant argued that sub-arts (1) and (2) of Art. 701 deal with two different forms of insurance payments and prayed that the judgment of the High Court be reversed, and the whole sum (Birr 20000) paid to ther as a specified beneficiary in the policy.

Counsel for the ferst Respondent stated that sub-arts (1) and (2) of Art 701 of the Commercial Code have always been controversial in the Courts. To this effect, he cited a similar case wherein the Insurance Corporation was obliged to make a second payment and lost Birr 60,400 as a consequence of the Supreme Conrt's reversal of the High Court's decision. Counsel then requested the court to decide who should be paid; the Appellant or the children?

Furthermore, eounsel stated that the actual amount due, based on the premiom, should have been Birs 15,625 ; bat it was wrongly set at Birr 20,000. To prove this point, he asked leave to introduce evidence under Art. 345 of the Civil Procedure Code.

In his reply, counsel for five of the respondents stated that, as there is a spectitied beneficiary pursuant to Art. 827 (1) of the Civil Code, and since the sum to be paid to such beneficiary does not form part of the tinsured's estate (Art 706/2/Commercial Code), we did not claim what we are not entiled to under the law.

The satient points of the reply by counsel for the second Respondent were the following:

- that the secopd Respondent is the eldest daughter of the deceased but not by the present Appellant;
- that the office of the Registrar referred the case to this court based entirely on the Appeliant's motion; and
- that this same ksue was formerfy decided in file No. 749/70.

Comosel finally requested that the case be reviewed by a panel of judges 50 that a.lasting and fust decision could be given. Should this be rejected, conmsel alternatively argued that the Appelfants interests are in direct conflict with that of the four minor ckildren. Based on this, the counsel prayed to the court that:
a. since the Appellant has a conflict of interest with the four children to whom she is a guardian tutrix, the representation of these children by the counsel for Appellant is unfair and should be revoked;
b. the contention of the Appellant and her four childen is contrary to good-faith and, since the case was instituted deliberately to injure the second Respondent, the judgrnent of the High Court should be upheld with damages and the file should be closed;
c. it he is expected to resume this appeal initiated by a person who has not sustained any harm he would like to clarify this fact

The deceased firsi married Wro. Aster Tekeste but the marriage was terminated by divorce after Sart Tekle Haimanol (the 2nd Respondent) was born Later on the deceased married the present Appellant and made her a specified beneficiary of hes life insurance policy. Ever since the dissolution of the first martiage, the second Respondent lived with the deceased. When deceased fell sick, the Appellant forced W't, Sara Tekle Haymanot to leave her father's house.

Upon the death of Ato Tekle Haymanot, Appellant presented her four children as sole heirs of deceased, although she knew that he also had another daughter. That Wrt. Sara is an heir of the deceased was hater determined by the Awraja Court when she appeared before it after reading the notice in the newspaper. The Awraja Court decided that, except for the deceased's bife insurance, Wrt. Sara is entitled to share the inheritance of her cleceased fother. Counsel for the 2nd Respondent asked that the decision of the High Court which legitimately entitled the Respondent also to share in the proceeds of the insurance policy be confirmed.

In his attempl to show what the relationship between Arts. 701 and 706 of the Commercial Code should be, coussel for the second Respondent stated that rights emanating from the law prevail over cuntractual riyhts. He suressed "specified beneficiary" and especially the phrase, "... even after the policy was entered into" in Act. 701 (2) (a) of the Commercial Code as crucial to the interpretation of the law.

Having considered these facts in light of the rules of interpretation concerning general princtiples and exception:, counsel concluded that the two prowisions should be interpreted positively so as to reconcile them, rather than to give them conflicting meanings. Cobnsel reiterated the fact that money due from a contract of life insurance لese, not form part of the inheritance, and denied that the Respondent argued to this effect.

He also stated that those who are heirs under the Ciwil Code are not necessarily specifted beneticiaries under the Commercial Code. The two rights relate to different properties. Therefore, Auts. 705 and 706 of the Conmercial Code are not relevant to the case under consideration. In addition, as stated in file No. $749 / 70$, the points of argument raised are not relevant to the issue.

Counsel also contends that there was no order or decision to the effect that the Insurance Corporation should pay one beneficiary and not the other. The Insurance Corporation should have paid both beneficiaries without any distinction between those whose rights derive from the law and those whose rights derive from the insurance policy.

In relation to this, counsel cited a case decided by the Supreme Court (Yeshimebet Jemaneh v. the Ethiopian Insurance Corporation). He enplained that the decision in that case had established that payment should be made to the specified beneficiaries, both in accordance with the law and the contract of imsurance. Finally, be challenged the appeal as unfounded and asked the Court to conlirm the decision of the High Court. In her counter-reply, the Appetlant made arguments substantiating her initial contentions.

This cour, on its part, has examined the file thoroughly. Bebore deating with the legal arguments we have considered: (1) first Respondent's contention for the detemmation of the actural heneficiary and (2) his request to introfuce evidence to show that the value of the jnsarance policy is Birs, 15,000 and not Birr 20,000.

It is clear that the suit was intially institured by the present Appellant who is a specified beneficiary in the policy. Therefore, the contention of the first Respondent that the actual bepeficiary be determined is mat appopriate. As regards the second point rabed by the first Respondem, it neither amended its reply nor did it objea to the antount before the lower court purstant tur Ar. 91 of the Ciwil Procedure Code. Therefore, we lave rejected the request, For it is not in accordance with Art 329(1) of the Civil Procedure Cude. We have also considered the replies made by counsel for the 3rd, thh. 5th and oth Respongents. In his reply, counsel supports the Appellant's claim and sugests that payment be made to the specified beneficiary named in the insurance palicy. This courn believes that this point is rot controversial. Hence. there is no point in dwalling on it.

Concersing the request of the Ind Respondent that the casc be tried by a panel of judges, in the opinion of this court, the cuse does not insolve any unusual and difficult question of law. Besides. this courl has repeatedly rendered decisions on similar cases. For these reasons, we rejes: Respondent's ctaim.

The second Respondent has also argated alternatively that the Appellant has conflicting interess with the children to whom she is a guardian-sultix, and therefore she must be removed. We reject his argument on the ground that one who deems the removal of a guardian necessury for the benefit of the minor should first obtain the dectsion of the family council in his favour. Without doing this, the second Respondent cannot demand the removal of the Appellant by the Court.

We have duly examined all the arguments made by all pathes. The Appellant claims the whole of the insurance money, for she is a specified beneficiary of the deceased's kife insurance policy pursuant to Ast. 701 (1) of the Commercial Code. The second Respondent on the other hand, invoking Art. 701 (2) (1) of :he Commercial Code has clamed her share as an heiress of the deceased. The cour: had previously interpreted the law while deciding many similar cases. Among then were tiles No. $1561 / 72$ and $749 / 70$. In file No. $156 \mathrm{t} / 72$, the court interpreted the li:w in the following way:

The argumen of both pattich is based on the provisions of Art. 701 ( $B$ and ? of the Commercial Code. In order to understand the purpose and spirin ar fac provision, Art 701 should be seen in liph of ohter relevant prowisions of the Commercial Code. It should that tex read together with Avt. 827 of the Civil Cude. which regutates the circumstances under which bife insumace momey maty or maly ons form part of the inheritance.






 is of such a thature.

The insurance poticy was concluded on such terms that the imsurer will proy t: the insured Birr 30,000 provided the insured, Ato Yohannes sieg is alive in tans.
 be paid to the decreased's wife. The Appellants clatim is bated mithis prosisim of the policy.

It is prowidect under Art. 601 and 692 of the Commercial Code that the inserer undertakes to pay to the beneficiary who is specified in the policy. Art. 701 (1) of the Commercial Code provides that an insurance policy for the event of death may be made to the benefit of a speciffed beneticiary. Sub-art (2) of the same anticie provides that the spouse and the chitdren of the subscriber shall be deemed to be specified beneficiaries notwithstarding that they are not mentioned by mame.

In order to understand it clearly, Art. 701 should be read together with Art. 695 of the Commerciat Code. According to the latter asticle, if the beneficiary is known, his name should be indicated in the policy. This shows that the insured rnay or may not choose a specified beneficiary. Thus the cumblative reading of Arth. 695
and 701 of the Commercial Code leads to the conclusion that if the insured has specified the beneficiary, then the insurance policy will be deemed to have been made to the benefit of the specified beneficiary pursuant to Art. 701 (1) of the Commercial Code. If, however, the insured has not specified the beneficiary in the policy, his spouse and children, pursuant to art. $701(2)$ will be deemed to be specified beneficiaries.

This conclusion is is conformity with other relevant provisions of the Commercial Code, (Arts. 705-708). It is also in conformity with Arr. 827 of the Civil Code which provides. "money due in petformance of a contract of life insurance shall form part of the inheritance where the deceased has not determined the beneficiary or the insurance is made to the benefit of the heirs of the deceased without any other indications in atl other cases, they shall not form part of the inheritance."

It the sponse and the children of the deceased were deemed to be beneficianies Lutn when the beaciliciaty is succitiod in the policy, Ayt. $705-708$ of the Commercial Code would he rendered redundant.

Tu sum uld the subscriber cun make any person the beneficiary of his life imareture in accuralance with the prowisioms of the Commercial Code. By the same
 A the subscitur is free wo moke doriations to anyone, 50 can he make anyone the liken it seccificel beneticiars. Onee be bus fone this, it will be considered as if he had mate a chmatian and the morice shoulde be paid to the specified beneficiary named in the pelies.

This lime at areument is allou supported by the prowisions of Art, 827 of the Cixil Code, mithons "... where the deceased bas not detemined the beneficiary $\ldots$... and allos the the provinom of Art. 705 of the Commercial Code, which reads, "where the deceusel hith not determined the beneficiary ...", and also by the prowision of Art. 705 of : he Conmercial Coden which reads, "where no beneficiary has been specified or hals ben ravoked or is not alive, the capital to be paid by the insurer shall be paill into the sulbacriber's estate."

In Ler drguments presented to the High Court the 2nd Respondent did not deny that the deceused had made his wife (present Appellant) a specifjed beneficiary to the life insurance. The Respondent contended that the Appellant should not be the sole and exclusive beneficiary. To substantiate her contentions, the Respondent stressed that all righs emanating both from the law and contracts should be realized on the basis of justice. The Respondent also emphasized the impact the words "beneticiary" and "specified beneficiary" may have on the interpretation of the law. Finally, the Respondent anatyzed the phrase "... even after the polity is entered, into"
contained Art. 701(2) (a) of the Commercial Code, in light of the rules of interpretation conceraing general principles and exceptions, and concluded that it is not proper to create contradiction between prowisions of the same article.

The case considered above hetween Yeshimebet Fissaha and the Ethiopian Insurance Corporation, et. al, is the one wherein the relationship between Commercial Code Art5. 70I(2), 705-708 and Civil Code Art 827 is extensively elaborated. Hence, we have ruled that the decision given in that case is relevant and applicable to the case under consideration.

Accordingly, we have rejected the contentions of the second Respondent. Hence, because pursuant to art. $701(1)$ and 706 of the Commercial Code, the Appellan has been named in the policy as beneficiary, we have ruled that the whole amount of the insurance money should be paid to the Appellunt. Thigereda Wolde Selassie.

The decision of the High Court is tereby reversed in accordunce with Art. . its of the Civil Procedure Code. Costs and damages shall be paid wh the Appollant in accordance with Arts. 463 and 464 of the Cjuil Procedure Crode.

[^1]
# 日  

$$
a+c \pi a / \sim 4 a^{2}
$$





















[^2]














』户かけん＝















 5 sar
















人)




















































 hAmm ${ }^{2}$























 —4 40












 74.







 f




## ＋中．701／2i＋C7F












「耳，

















































Eu h+GA $\quad$ AA





















































 +8Ct 50 .
























[^3]












力

 h99Am






























[^4]
## 9m+nP






























 P













































 festate/ 10 :
 4А7














# Designation of the Beneficiary of a Life Insurance Policy in the Event of Death 

## Girma Woldeselassie"

A person who takes out an insurance policy on bis own life obviausly intends that, upon bis death, some one should benefit from the proceeds. But the question that tas long been debated among jurists is whether societal interests should be imposed upon the policy-holder, so that at least his spouse and children are made beneficiaries by virtue of the law, or whether he should be given maximum freedom in designating a beneficiary of his own choice.

Ethiopian courts are today diwded over this same issue." In a number of cases presented to the courts, the policy-holders designated persons other than members of the immediate famity as beneficiaries of an insurance policy in the event of death. Upon the death of the insured person not only the designated party but also the spouse and children of the deceased clanmed payment, the latter two on the basis of Art 701 (2) of the Ethiopian Commercial Code. The issue betore the courts was whether the said provision entilled the spouse and children of the insured to benethe from the proceeds in spite of the fact that they were not mentioned is the policy, and despite the fact that a third party was expressly designtated as the sole beneliciary.

A divisfon of the High Court grants that, pursuantte the first sub-articte of the named provisien, the insured person can designate his own beneficiary, including persons other than the spouse ant children.

Bat in reading this provision jaintlywith the second sub-article, it arrived at the conclasibn that even if they are not designated by the insured, his spouse and children are at all imes presumed to be beneficiaries of any life insurance policy in the event of death. Thus, according to this court, if the insured names hes mother as the onfy beneficiary, the ledy will have to share the proceeds with the spouse and chiddren of the deceased (and other "heirs", accoreling to the French version), inspite of the fact that they are not designated.

[^5]Quite clearly this interpretation of the law follows the school of thought that rejects granting unlimited authority to the polig-holder in determining who the beneficiary should be. There are strong arguments to support this position.

To begin with, the policy-holder, mote often than not, is the sole breadwinner. For that reason, it is his duty to provide for the sustenance of the family in the ewent of his death. Even if there is property to be inherited, the liquidation process is commonly such a protracted affair that its proceeds might not be available for the immediate needs of the household. On the other hand, insuratice payments are supposed to be relatively easy to obtain in the form of cash.

Another argument involves the need to protect the common property. Since the proceds of life insurance do not form part of the insured's estate and, hence, are not subject to the nules of sucoession, a life insurance policy destined to benefit persons other than the spouse or children can be used as a means of excluding substantial assets from the estate.

Designating a third party beneficiary can be particularly injurious to the surviving spouse, who would otherwise be entitled to half of the benefit had it formed part of the estate. One should also note that, mest commonly, the insured pays the premiums out of his income, which, in turn is a conimon property.

Consequently, it makes good serse to safeguard such vested initerests of the spouse and children of the insured by making them beneficiaries to life insurance by witue of the law, even when they are not so designated. In the opinion of the said division of the High Court, theiefore, the Ethiopian law of life insurance in the event of death is motivated by these very conceris.

A division of the supreme Court is not persuaded by these argaments. Where there is a beneficiary expressly designated by the insured pursuant to the authority wested in him by the first sub-article of Art 701 , the latter court reasoned, such a beneficiary is entitled to the entire proceeds of the policy.

Turning to the interpretation of Art. 701 (2), the Supreme Court ruled that the spouse and children of the insured would be entitled to the benefits only where no one is expressly designated by the policy-holder.

In sum, therefore, the two courts are at complete loggerheads, According to the first decision,sub-articles 1 and 2 of Art. 701 are complementary. A third party can be designated as beneficiary, but he will have to at all times share the benefft with
the spouse and children of the insured even where these are not mentioned as beneficiaries.

According to the second decision, however, the will of the policy-holder is supreme and, as such, whoever is designated by him gets all the benefits that accrue from the policy. It is only where the policy-holder dies without designating a beneñiary that his spouse and children would be able to claim the proceeds.

These divergent decisions by the two courts, have, if anything, thrown both policy-holders and insurers into total confusion, which is compounded by the absence of the principle of stare decisis in our legal system.

That is one reason why the above is not a simple case of High Court decision being reversed by the Supreme Court. If it were, the issue would bave been much less significant. It is rather a situation where a lower court avowedly rejects a prior decijion of a superior court. The High Court did acknowledge that a decision of the Supreme Court covering a similar fact situation bad been brought to its attention; but the lower court declared that it did not agree with the interpretation by the Supreme Court of Art 701 of the Commercial Code, and that the lower court was not at any rate bound to conform to the judgement of the superior court. It therefore consciously arrived at a contrary conclusion. Quite evidently, these cases point up a timely question as to what position our legal system should adopt regarding precedence. That, however, is not the immediate concerm of this paper.

Here we are concerned with the fact that the two decisions mentioned above follow different schools of thought that entertain totally opposed approuches regarding the question of designating a beneficiary in a life insurance policy. The two perspectives, in turn, reflect different levels of social and economic development. Hence, the question that deserves to be pondered at this juncture in the development of the legal system is as to which approach best serves the needs of present-day Ethiopia.

A very useful way of getting a fuller understanding of a particular provision of any law is to study its historical evolution. Thus, original drafts, subsequent changes, minutes of the Codification Commission,and parliamentary debates are vital tools. What is at present readily available to us as regards the Ethiopian Commercial Code is only the avant-project which one finds reasonably helpful.

Even so, Professor Jauffret's ${ }^{1}$ comments are woefully scanty when it comes to Art 701 of the Commercial Code. But in one interesting sentence he does give us a possible clue as to what that proyision was intended to mear. "I have included," he wrote, "the most liberal solutions for the determination of the beneficiaries of the insurance in the case of death". Unfortunately he tells us no more, not even what he meant by "most liberal" One has therefore to look further to determine what a "liberal" policy would be regarding the determination of an insurance beneticiary in the case of death.

In the same avant-proiect Jauffret uses the term "liberal" on several other occasions. Making reference to the laws of some countries, for example, he notes that the walidity of the life insurance contract in the event of death is not affected by the fact of the insured committing suicide. He then characterizes such a position as "too liberal", and himself adopts the opposite coutse in his draft of the Ethiopian law. As those other countries chose to continue ro give effect to the will of the insured in spite of the act of suicide, Jauffret's use of the term "liberal" to describe that position leads one to conclude that he must also have employed the same term to impart the same idea regarding Art. 701, i.e., giviag supremacy to the will of the insured.

This line of reasoning can be further supported by reference to the sense in which other countries employ the term "liberal". The French law of life insurance is of particular relevance because it has had considerable influence on its Ethiopian counteppart. ${ }^{\text {² }}$

Another reason why we should seek the meaning of liberality in the French law is because it is known to be one of the most liberal as regards the designation of a benefficiary of life insurance in the event of death. According to one commentator, "Les Regles due droit français (Art. 63, Loi 1930) relatives a la determination au

[^6]bénéficiaire sont excessivement larges et liberales, pour permettre, au maximm,la realisation du but poursuivi par le sonscripteur".

Thus, what is commonly inderstood as a liberal position regarding the designation of a life insurance beneficiary, at least anong French legal scholars, is one that gives the policy-holder the least restricted freedom. Hence, one can reasonably conclude that, when Jauffet, French legal scholar, declares that he chose the "most liberal solution", his intention was to give the policy-holder the maximum liberty in the choice of the beneticiary of his policy. This goal was accomplished under subarticle $1_{\text {, }}$ where it is unambiguously provided "An insurance policy for the event of death may be made to the benefit of a specified beneficiary.*

Having thus established the policy underlying Art. 701 by our reference to the draftsman's avant-project as well as to the European conception of a liberal policy regarding the designation of a beneficiary, what remains is the task of reconciling the second sub-article to the first

To begin with, it has been argued that the first sub-article is totally consistent with the declared goal of the draftsman. It is the provision through which the drafteman intended to realize his goal of resolving the issue relating to beneficiary desigration in the "mosi liberal" fashion. The term "most liberal" is, in turn,understood to mean a policy that places the least restriction on the right of the policy-holder to choose his own beneffciary.

Tumang to the second su' article, it would be contrary to principles of legat drafting to assume that the draftsman included two contradictory provisions in the same article. In other words, sub-article 2 cannot be so interpreted as to defeat the declared objective accomplished by one sab-article earlier.

It should, however, be conceded that such an anomaly can occur in any legislation, especially if the original draft has been altered by people other than the draftsman. Such alterations may be carried out with less insight as to their effect on other prowisions or even on the policy on which the entire law is structured. In view of that possibility, one may wonder if sub-article 2 of Art. 701, assuming for the moment that it contradicts the first sub-article, is a later addition or modification by either the Codification Commission or Parliament.

[^7]
## Designation of the Beneficiary

But there is almost conclusive evidence that this was not the case. Jauffret's draft of the section of the Commercial Code on insurance was accepted by the Codification Commission without any alteration. The hand-written remark addressed to Jauffret, on the first page of the draft,believed to have been written by a nember of the Codification Commission, states that the draft was "wholly accepted".4

That the present content of Art 701 is exactly the same as the one in the original draft is further evidence that neither the Codification Commission nor Parliament introduced amy change in Jauffret's draft ${ }^{5}$

## The Meanige of Sub-art. 2 of Art 701

An effort has been made to establish the legislative policy underlying the Ethiopian law of life insurance as regards the designation of a benenciary. It has also been submitted that the original draft designed to reflect the said objective has mot been altered at any time during the Iegislative process. Finally, it is clear that sub-art. 1 of At 701 fully accords with the declared legislative policy, since it gives the policyholder a free hand in determinieg the person to whom the benefit should go.

Hence, interpreting sub-art 2 of Art 701 - as did one of the courts - to mean that the spouse and children of the imsured are at all times beneticiaries of a life insurance policy in the event of death, even where a third party has been expressly designated as the sole beneffciary, would contradict the basic policy underlying the whole provision and defeat a goal attained in the preceding sub-article. For that reason alone; the said interpretation should be rejected.

[^8]Other argaments can, however, be narsballed in support of the foregoing conclusion. Consistenty with its declared "liberality", the law empowers the insured to evoke the allocation of the benefit to a specified bencficiary so long as the latter has not accepted the benefit (At. 703 (2)). If, on the other hand, the spouse and children are deemed to be beneficiaries, by virtue of the law and independent of the will of the insured, there would be no point in authorising the insured to change his mind as to bis eartier allocation of the benefit, Once again, an interpretation of subanticle 2 of Art 701 which would lead to such an anomaly cannot be allowed.

Furhermore, the said interpretation would render worthless the use of life insurance policy as a modern tool for a business transaction. Nowadays, it has become common practice in many developed countries for a person to take out life insurance in favour of his creditor, by way of guaranteeing the perfomance of a certain obligation.

It has also been quite some time since this practice arrived in Ethiopia. Take, for example, the case of the thousands of people who have borrowed money from the Mortgage Bank to build homes. As a condition for obtaining the loan,each one of them had to take out a life insurance policy designating the bank as the sole beneficiary.

The Ethiopian insurance law, as a modera piece of legislation, recognizes such use of a life insurance policy. Artiele 692 (2), for instance, envisages a situatipn where the insuret may undertake to pay upon the death of the insured a specified capital "to those having rights from the insured person ..."

Articte 697 further clarifjes this point by expressly permitting the pledging of a life insurance policy.

Interpreting Art 701 (2) in a manner that would limit the free will of the insured would not only be contrary to the spirit of the above cired two provisions but would also produce a ludicrous result. In the case where the Mortgage Bark is the sole beneficiary, for mastance, the proceeds would have to be shared by the spouse and children of the insured, thereby defeating the whole purpose of the transaction and rendering totally ineffective the use of life insurance as a pledge.

On the basis of the above arguments, it is submitted that the interpretation of sub-art. 2 of Art. 701 to the effect that the spouse and children of the insured should get some portion of the benefit, even where the insured dies having designated some
one else as the sole beneficiary,should be rejected as contrary to the policy underlying the law as well as to several of its basic provisions.

Having said that, one has to examine the alternative interpretation given to the provision in question by the second court. Here, the court recognizes that, under Ar 701 (1), the insured is at liberty to designate a beneficiary other than his spouse or children, and that, where he does 50 , the designated beneficiary gets the entire proceeds of the policy.

With regard to the second sub-article, the court took the position that, even where the insured fails to designate them, his spouse and children become, by virtue of the law, beneficiaries of a life insurance policy in the event of death.

Then the court had to reconcile these two contradictory prositions, which task it achieved by concluding that the un-designated spouse and chilotren would be able to collect the benefit only where the situation envisaged under the first sub-article does not come into the picture, i.e., where the insured fails to designate a specific person. Thus, consistently with the above noted legislative policy, the court upheld the supremacy of the will of the insured. And to that extent, its decision is correct.

This writer, however, wishes to take issue with the count's interpretation of the second sub-article of the provision. According to this court the effect of the said subarticle is to make the spouse and children of the insured beneficiaries where lee dies without indicating who the benefit should go to.

Nevertheless, the law is absolutely clear as to what the destiny of the proceeds of a life insurance policy should be where the insured dies without designating a beneficiary. Both the Civil Code (Atl 827) and the Commercial Code (Art 705) provided that it "shall be paid into the subscriber's estate", thereby forming part of the inheritance. The unanimity of the two codes on this point, and the absence of ambiguity in the languages of the nwo prowisions, leave no room for interpretation. Hence,no construction of Ast 701 (2) of the Commercial Code, which contradicts the above cited provisions, as does ti:at of the abowe named court, can be allowed to stand.

What should the interpretation of Art. 701 (2) be and what purpose was it designed to serve? To answer those questions, one theds to look more closely at the wordings of sub-articles 1 and 2 of Art. 701.

Utrder the first sub-article, the subscriber is authorized to make his life insurance policy to the benefit of a "speciffed" person. What does "specified" mean? In other words, how specific should the subscriber be? The question is all the more significant because very many subscribers do not want to commit themselves irrevocably, in view of the unpredictability of their future relationship with the beneficiary. As a matter of fact, in some countries "only exceptionally will a particular person be designated as beneficiary by name".' (p. 18, Stockholm).

Under Danish law, for example, "If the policy-holder wants his spouse to receive the insurance proceeds entrely, he can obtain this result by designating as beneficiary "spouse", and he, therefore, need not mention the spouse by nanne. If the policy-holder wants his children to take the insurance proceeds, he can use as beneficiary designation the expression "children", (without having to mention each child by name)." (p. 17, Stockholm).

That being the case, no insurance faw would be complete without a provision that regulates the usage of generic terms in designating beneficiaries. It is submited that Art. 701 (2) is designed to serve that very purpose in the Ethiopian law of life insurance.

To substantiate this proposition, let us further examine the content of Art 701 (1), which authorizes the subscriber to make his life insurance policy benefit a "specified" person of "specified" persons. The question has been raised as to how specific he should be. One can find the answer, albeit indirectly, in the second subarticle. Under that provision, a certain category of people are "deemed to be specified beneficianies notwithstanding they are not mentioned by name" (emphasis added). Hesce, the word "specified" under the first sub-article should mean mentioning the beneficiaty by name, failing which the requirements of that provision would not be satisfied.

Such a condition obvisouty, has many advantages. It serves the interests of subscribers who are absolutely certain as to the person(s) to whom the benefit should go. Secondly, if names are mentioned, the wishes of the subscriber become so categorical that the possibility of disputes arising over who the beneficiary should be is almost nil.

[^9]On the other hand, req̧uring that degree of specificity of all subscribers would not be a practical proposition. As noted earlier, in wery many countries, only a minority of life insurance subscribers wish to identify by name a particular beneficiary in the event of death.

Unsure of what the future may have in store, many subscribers refuse to commit themselves irrewocably. Under Ethiopian law, for instance, "The allocation of the benefit of a policy to a specified beneficiary may not be revoked after the beneficiary has agreed to the policy" (Ar 703 (1)) of the Commercial Code; (see also Art 1961 (1) of the Civil Code). The consequence of such an arrangement can be fully grasped if one considers a person who, desirous of providing financial security for his farmily, takes out a life insurance policy for the event of his death. Suppose he designates "Tamima", bis wife at the time, beneficiary. Tamima readily accepts the policy. Sometime later, the two are divorced, and each gets married to another person. Assume also that the subscriber has a number of children from his new wife and none from the previous one. All the same, the proceeds would go to Tamima, thereby defeating the whole purpose behind the policy.

It is to guard against such eventrialties that many a subscriber prefers to use a generic term such as "ryy spouse" or "my wife" in designating a beneficiary.

Consider also the case of a subscriber who wants his children to benefit from the policy. If he mentions by name those that were already born at the time of subscription, those might be the only beneficiaries. But that would be contrary to the intention of a subscriber who wants all his children, including those born after he took out the policy, to benefit. That consideration explains why many people prefer to use "children". "offspring", or similar generic terms, to mentioning individuals by name.

Another word commonly employed by subscribers in "heirs" (which word, as noted earlier, is found in the French version of Arl 701 (2) of the Commercial Code but does not appear in either the Amharic or English versions). If the subscriber mentions by name his heirs as beneficiaries, the same question as arose in relation to children might arise.

What Art 701 (2) does, cherefore, is to recognize and give sanction to the use of generic terms in designating a beneficiary. In other words, if the subscriber prefers to use words such as "my wife". "my children" or "my heirs", persons who fit those characterizations "shall be deemed to be specified beneficiaries notwithstanding that they are not mentioned by name"

This position, incidentaly, is consistent with that of the French. In the words of A. Besson,

Sans doute rien n'empêche de faire whe dexignation nominative (precise), auquel cas le benefficiaire est nettement déterminé Male la detrmination est ruffisante lorsque le bénefficiaire est designte am moyen de qualites (famillales, professionnelles, sociales) pemettant de découvri avec centitude? te serait; ce qutalechéance du contrat, cebu? al proft dequel le souscriptetr a entendis stipuler: il suffit que le benefuciaire sodf determinable, Est ains parfaivement valuable la designation fäte au profit de la femme et, de facon phos generale, au profil due conjoint de l"tueré ... ${ }^{18}$

Art. 701 (2) also addresses other issmes that often arise in reletion to the use of generic terms in designating beneficiaries. In the case where the word "wife" or "spouse" is used, the question often is which one? The spouse subscriber was married to at the time of subscription, or his legal wife at the time of his death? Where the subscriber was not married at the time of subsctiption but got married later on, Art 701 (2) is unambiguous. Such a wife is the proper beneficiary.

But if the subscriber was married to X at the tine of subscription, tivorced her and was married to Y at the time of his death, the language of the law is not sufficiently clear. Even so, it seems to recognize the marriage that was concluded "after the policy was entered into": That position can also be supported by invoking the rason detre for such a policy,which, more often than not, is to prowide for the sustenance of the immediate family after one's death.

Further support may once again be sought in the French law, where it is held "En cas de dissolution du marriage (mort ou fivorce), la designation proft antomatiquement a la second feme ou au second conjoint".

As regards "children", the prowision in question is clear: not only children bon before the subscription but also those born later are included as beneficiaries. In French law, "non seulement les enfants ou descendants nes ou concus au moment de

[^10]
## Detignation of the Beheficiary

la stipulation, mais encore les enfants ou descendants a naitre, au quel cas les benéficiaires sont determines, selon cette qualité, á la mort de lassure". ${ }^{\text {la }}$

## Conclusion

There were times when it was almost universally believed that the primary purpose of a life insurance policy in the event of death was to protect the members of the immediate family of the insured against sudden deprivation. The then prevailing social and economic conditions justified this attitude. Of particular significance was the fact that the man was, more often than not, the sole breadwinner, so that his death almost inevitably meant a serious econōmic crisis for his dependents. Most frequently, therefore, it was to forestall such a crisis that men took out life insurance. Hence the identification of a life insurance policy with the interests of the immediate family of the insured. This state of affairs was, in turn, reflected in the old laws of many European countries.

With increased modernization, however, things changed tadically. To begin with, at least in the modern sector of most economies, the man is no longer the only member of a family who earns an income. Secondly,many countries have developed a variety of social security schemes so that the death of the head of a family no longer portends extreme economic difficuly for its members. Thus, providing for the sustenance of a farnily ceased to be the primary objective of a life insurance policy in countries where these changes occurred.

In the meantime, the business world found new uses of a life insurance policy. It was discowered, for instance, that it is one of the best ways of securing someone's obligation.

Then, the law had to catch up, even if belatedly, with the changed circumstances. In most countries of the developed world, this meant placing greater emphasis on the free will of the policy-bolder.

As noted by Jauffret, it was this liberal position that Ethiopia adopted with regard to the designation of beneficiaries of a life insurance policy.

One cant, of course, question the wisdom of adopting such a stand in a country where social and economic conditions are fundamentally different from those of

[^11]Europe. Ethiopian policy makers were not unaware of this fact. Yet, they were convinced that modern laws cond be used to force Ethiopia onwards to the current stage of the modern world. Besides, a modern insurance law would help attract foreign capital - the mainstay of the then developnental policy of the country.

On the other hand, the poticy makers must have accepted the inevitability of a period of tension between local conditions and the super imposed alien law. The decisions of the two courts discussed abowe are, in a way, reflections of the said tension. In this regard, one of numerous questions judges will have to address is how to protect the interests of the spouse within the context of a law that upholds the supremacy of the will of the insured.

Most countries that have liberal life insurance laws including the U.S.A. France and the former West Gemany - have recognized the need for such protection if the interests of the surviving spouse so require. On several occasions, their courts have set aside the will of the insured, despite the fact that their laws do not expressly authorise interference with the freedom of the policy holder in determining a beneficiary.

The most common case in many westem countries is where a married man designates his mistess as beneficiary. Courts have consistently beld such designations control hooos mores and gave the benefit to the wife, even though she was not expressly designated as beneficiary.

Thus, it appears that this is a better compromise approach to bridge the gap between those who believe that life insurance should exclusively benefit the immediate family and those who stress the supremacy of the will of the insured. While recognizing and giving full effect to the will of the insured who designates a third party as a beneficiary for perfectly legitimate reasons, it leaves room for the invalidation of the designation when it is contrary to morality or good fath.

It is, however, submitted that such an option is not available to Ethiopian courts confronted with a situation where a policy-holder may abuse his night to name a third party in a manner offensive to our sense of montality, or where the court is persuaded of the existence of fraudutent conduct. It is tre that, as a special contract, life insurance law is governed by the general principles embodied in Title XII of the Civil Code. The court can, therefore, invalidate the insurance contract on grounds of immorality if such exists. But the consequerice of invalidation under Ethiopian law does not lead to the same solution as the one that flows from the equity-based

## Desifturtion of the Beruficiay

decisions of the United States or Emropean courts - which it, for instance, substituting a beneficiary not designated by the policy-holder in the place of the one designated.

The result of invatidation under Ethiopian Law is the reinstatement of the contracting parties, i.e., the policy-holder and the insurance company, to positions they had held before they entered into the contract. This in effect means two things:

First, the insured gets back whatever he paid in premiums and possibly plus interest, and not the proceeds stipulated in the contract. Quite obviously, there can be a substantial difference between the two amounts.

Secondly. since the insured is dead by the time these issues are raised, the proceeds of the reinstatement go into the estate of the deceased, and not to a particular person who, by equity or moral considerations, should have been the beneficiary.

Thus, by invalidating, the court would in effect destroy the essence of the contract without attaining its objective of doing justice to the insured party.

The course which may possibly lead to the desired goal would be to vary the contract, that being what substituting a designated beneficiary by one who is not so designated may arnount to. Yet the Ethiopian law of contracts, strongly grounded on "Freedom of Contract", emphatically exhorts that "courts may not vary a contract or alter its terms on the ground of equity except in such cases as are expressly prowided by law" (Article 1763). The narrowly circumscribed exceptions (Arts 1766-1770) do not at all permit the degree of variation that would be necestary to replace one beneficiary by another. In light of this fact, Jauffret's assertion that he chose the "most liberal solution" nakes complete sense."

[^12]
#  <br>  <br>  



## $00712, P$








 Am申









f




















## 














 0A\＆）







月























[^13]



























## 

 h






 hyefhfle diffan ${ }^{12}$








[^14]


























力安十管
















































 ய- サi




































































































## 





















f









 474







 f A A













 ※羊気



















 ahahc efinAn

 oublatus fors ${ }^{37}$







P卉わ力日电






 1677









































 M3R日的
fybilect








#### Abstract

        














 400－






几 о














 +7月. EyTA.


























## 












fthiters









 7－f
入上学AF＝
































玉个hくAn



























 1/1968 A7A+ 5 ©































































白A
























































































 Fah**A.

 fotcram


中h,













PFharcs



























## 





























 リ474A日 ${ }^{71}$










 phtaft





































（10）四
几 中










 A















































## 



2. Rudof shorn, The Institute of Romba Law (Oxford: Glarendon Piess, 1901\%, b+K 298-300.
3. 72478
4. International Encyolopaedit of Comparatiwe Law HPeriod of limitetion" (Dordrechf, Boston, Lancaster: Juebirgen and Martinus Mijahoff Publishers, fgob, Vo. XI, partiI, Chapter 13, 57 23 -










6. International Encyclopoectia of Comparative Iaw, trin 23
 4. 226-231.
8. Philip s. James, Introduction to Enalishtur (London: English Langlage books Society and Butter Worth, 10th Edition, 1984 p. 301.
9. Rene David, ©pomertany on Contracts in Ethignd. Translated by Michael Kindred (Adeis Ababit Haile gelassie I University, Faculty of Law - 1973), $\boldsymbol{T} \boldsymbol{\pi} 89$.
10. Marcel Planiol. Treatise pin the ciyil Law, Transeted by Louisiana State law Institute 〔Faris: Loulsiara State law Institute, 1959, 619 345-356.
11. Corpus Juris secundum, Taxation's(St. Pau, Minne Sotar West Publishing Co., 1954), Vol. 84, p. 1429.





## Ithiter

14. Planiol, h7 $\boldsymbol{\pi}$ 378-380.
15. Corpus Juris Secandum, 18 46.



16. Worid Tax Series, Taxation in Brazil (Boston, Toronto; Little, Brown and Company Limited, 1957, 15262.

17. H4 h नo hox 262-263.
18. World Tax Series. Taxation in Italy (Chicago: Common Clearing Houses Inc., 1964), h77 248-249.
19. Word Tax Series, Taxation in Sweden (Canda: Little Brown and Company Limited, 1959), 1* 592.
20. World Tax Series, Taxation in the Federal Repubic of Germany (Chicago; Commerce Clearing House Limited, 1963), h7* 686-688.




















## 







 tG7s+4A=
29. Rober Warden Lee, The Elements of Roman Law (London: Sweet and Maxwell, 1956), 7ヶ 256.

31. Amos and Walton, Introdution. to. Erench Law (Oxford: Calredon Press, 1969), 17140.
32. $\boldsymbol{h} \boldsymbol{\sim}$ f中

















34. Comps Juris Secundum. 1732.



## 










36. David, 187.
37. George Krzeczunowicz, Formation and Effects of Conlracts in Ethiopian Law (Addis Ababa: Faculty of Law, Addis Ababa University, 1983), p.v. (preface).





中7

39．Krzeczunowicz，it 1.


41．च4 月9す

42．David，7\％ 89.

43．Robert Allen Sedler，Ethiopian Civil Procedure（Addis Ababa：Faculty of Law，HSIU in Association with Oxford University Press，1968）．p． 271 ．

44．David，4 89






## 


















## 





















 143 50 m


51. f atoty






























 P

PFha ecty












 5 mm








 46 49Cm
 43. 5 욷

 ha宜:





 Praty
















 * $\quad$ п






由尺F 日













pribiteg






里于A.


























# Limitation of Actions in Relation to the Recopery of Taxes on Income From Soarces Chargeable under Schednle 'C' of the Ethiopian Income Tax Prochamation No. 173/1961 (As Amended) 

by<br>Bekele Haile Selassie*

## Introduction

The expressions "prescription" and "timitation" are interchangeably employed thathis text, and signify the restriction by law of a right of action to a speciffed period, after the lapse of which its enforcement may be denied. The role of prescription in the field of obligations is one of the extingurisbingof a right of action and constitutes a pre-emptory fefence known as prescrintiotemporis, iee a plea of limitation to which an obtiger (one who has placed hinself onder a legal obitgation) against whon a clafm is brought may hawe recourse.

Does the Ethiopisn legai system in its present form allow tax-payers to awall themselves of this defence? This question lies at the very heart of this article, and tends to be highfy contentions, since the tax laws provide barely a hint at the answer.

The writer has opted to treat the question th the context of income tax which Is assessable and collectable on a yearty basis, in accordance with Proclamation No. 173 of 1961 (as amended), since he is of the opinion that this approach will make for easy comprehension of the anglysis. But this does not mean that the submissions are Invariably irrelevant to other tax laws. The reader should take into ancount the pertinent conditions regulated by these other laws, and will then find that the conclusions may be applicable there.

The first section of this article is given over to a general discussion on preseription. The writer tries to elucidate the significance of this ancient legal institutlon in this section, pelaining why it is negessary to fix a time limit for the exercise of a right of action. The last portion of the section contains a number of paragraphsthat forward the ceasons for not allowing tax claims to be immune from the operation of Lemitation, followed by a barebones outline of prescription rules found in the taxation systems of certain countries.

[^15]The second section consists of argumeatation and analysis. It represents the Writer's attempt to provide an answer to the question: Dqes the Ethigpian legal system in its present form allow taxpayes to have recourse to a plea of limitation? Begining with a terse discussion on the conception of obligation, it proceeds on to analysing the issue as to whether the limitation prowisions contained in title XII of the Ethiopian Civil Code are applicable to tax claims.

In the final section the writer tries to show how issues of prescription may be resolved under various sitnations involving actions for the recovery of tares on income from sources chargeable under schedule-C of the Income Tax Proclamation No. 173 of 1961 (as amended). It is hoped that this modest contribution will be of practical use to those who are charged with the administration and execution of the Ethiopian inconte tax laws.

## I. Siduificance and Justifications

Prescription, or limitation of actions, is a legal institution of quite ancient antecedents. Its genesis goes back at least to the classical period of the Roman legal system. The contrasting expressions of those days, actiones perpetune and actiones temporalis, are scraps of evidence in point. ${ }^{1}$

Prior to the fifth century A.D., the application of prescription was almost entirely restricted to penal actions, and it was exiended only in the course of time to civil actions. ${ }^{2}$ Even then, there was not general period of limitation in Roman Law until Theodosius II brought in an imperial enactment to that effect in 424 A.D. With this enactment, a period of limitation of a general character came into force, tuxed at thirty (and in exceptional cases forty)years, upon the lapse of which all unexercised actions were to be barred. ${ }^{3}$

One may not have much difficulty in maintaining that all legal systems of modem times exhibit instances of limitations. In countries where Common Law traditions prevail, the standard legislative procedure whth regard to limitation of actions is to lay down particular periods of time applicable to specified classes of cases. ${ }^{+}$A statutory provision that stipulates a general period of birnitation is quite rare, probably because of the existence in such countries of another legal institution called laches (undue delay). ${ }^{3}$

On the other hand, in countries where Common Law influence is nif or at a minimum, one often comes across provisions that prescribe a general period of Iimitation, after the expiration of which all claims of whatever kind are barred. This
general period of limitation is in addition to provisions laying down particular periods applicable to specified classes of cases. For example, in France, the Federal Republic of Germany, Austria, Poland and South Africa, there is a general period of limitation fued at thity years. Its length is ten years in Italy, Sweden, Mexico and \$witzerland, but only three years in Rumania and the U.S.S.R ${ }^{6}$

Prescription is in evidence in the fields of both private and public law. Here reference shall be made to just a few limitation provisions present in the Ethiopian Civil and Penal Codes, reserving mention of those in the area of taxation for later discussion. ${ }^{7}$

Many famons lewyers have stated that prescription is an essential and useful irsitution. One Common Law jurist remarks crisply,

Rigis of action cannot be allowed to endure forever. People mur be made to prosecute ther couses with reasonable diligence. Hence, rules of imitation have to be made, ie mies which prescribe the time within which claims are to be brought. ${ }^{\text {a }}$

A person who is entitled to bring an action is uspally expected to do so promptly. As the delay gets longef the probability of its beigg inaputable to tack of interest or neglect increases: protracted inaction is apt to give rise to the supposition that the claim has been abandoned on grounds of voluntapy remunciation, or ever because of a belated realization of the claim's untenability at law. Thus, it stands to reason that a delay in the exercise of an action can be tolerated onfy up to a certain length of time, at the end of which the delay must be held as having the effect of destroying the action. Professor R ne David, who carried out the vast task of drafting the extensive Civil Code of Ethiopia, has underlined this point in the context of contractual obligations as follows:

> Limitation is a means of extightishing obligations, which all Legal sytems recognize as necessary, Where a creditor fails for many years to exencise his rights, it is proper to declare the rights extinguished. It is probable, in fact, that this extinction has resulted from another cause, either papment of the debt by the debtor or rentission of the debt by the creditor. Alifhough there are no doubt cates where this is not true, they are exceptions: and even then the creditor cannor complain about losing a right that he wat in so ithe of a hury to enforce.

It does not take much to realize the gravity of the social disnoptions and disorder that may result from incertitude and insecurity, if clams are accorded the attribute of perpetuity, in the sense that they remain actionable at any time the claimant wishes to enforce them. Indeed,there is need for fixing a term within which an action is to be exercised, and the lapse of such a term must spell the death of the action, even to the prejudice of the individual who was entitled to bring it, but who falled to prevent the tem from ranning on by initiating legal steps in due time. Society is better served if the period within which a claim must be brought is determined by law, and made known to all. The renowned legal scholar and academician, Planiol, sums it up in the following words:

When the credtior remains too long without acring the law takes awty his action ... In the interest of onder and social peace, it is desirable to liquidate the past ...

There is no doubt that it is possible for prescription to be accomphished without the creditor receivirge satisfaction, ard withoul his intention to make a remission of the debt: it result then in a veritable spolizion. But here, ... the system of prescription is justified by the necessity of establishing a term for the exercise of action: to be equitable it suffices that the law give to the creditor a delay long enough in which to act and the delay ... which may be prolonged almort indefinitely by the causes of suspension ard intemuptiont seerts to satisfy equitable principles ... In fact the nare cases where prescription brings about shocking results cannot be compared with the much greater number of caces where it consolidates and safeguards situations regulary and entirely just ${ }^{10}$

However, the virtues of the institution of limitation of actions are allegedly bound to be in confict with the fiscal interest of the state. This may be one of the reasons that, in Common Law, the defence of laches is beld to be of no avail against the right of the sovereign to collect taxes. ${ }^{14}$ The fact that the soyereign is traditionally immune from the institution of laches may have inspired the conventional Common Law yiew on limitation, that the state can institute proceedings to satisfy its tax clains at any tine prior to payment, unless there exists an express statutory prowision that prescribes a term for the action. But this seemingly srict approach to the application of prescription to tax claims is relaxed by the presence of express limitation provisions that lay down periods within which tax actions must be brought. The state is bound to observe such prowisions. ${ }^{11}$

The French tradition as to prescription is quite rigorous, and displayed no instance of favourable treatment to debt cowing to the state motil 1920. In that year, the legislative body of France brought in an enactment which purportedly made the state immune from the application of limitation in some specified instances ${ }^{3}$ Planiol's guarded remarks about this piece of legislation,under the heading "prescription in favour of the state", seem to reveal his somewhat unwelcoming attitude towarts it:

> Arricle IIf of the fircal law of 25 June 1920 upset the nules of prescription by providing that, in certain cases, prescription, although taking awry the rights of the creditor, doctitor Iberdte the deblot, who is requited to pay to the state the anownt of the prescribed credit ... This was justified by the proposition that prescription reposes on a presumption of payment and that this presumption of payment cannot be invoked in ... cases (of debls owing to the government), because it is certain that the payment was not made ... I must be admitted that the debtor is onb bound to pay into the honds of the agentr of the state the sums as to which pretcription had ac-rued in his favour But, as the prescription must be pleaded by the debtor, and can always be intemupted by an ackowledgement of the debt, it is to be feared that the debtor will not let a prescription run for the benefil of the state onty ... It is impossible to reconcile this new idea with the traditional institution of prescription n. This law is one of the mast remarkable examples of the averturning of the Civil Law soleby by the pressure of fiscal preoccupations. ${ }^{\text {14 }}$

However, plausible it may seem to say that the presurnption of paynent is inapplicable to debts owing to the state, it does not justify the view that prescription must not be allowed to two against the so-called fiscal interest of the state. This is precisely because the presumption in itself is not a reason for having the institution of prescription, but is merely an expedient way of formulating its rules in law.

To the arguments marshalled earlier in favour of the institution of limitation of actions, one may add the stbsequent considerations from the standpoint of taxation, to give reasons why the proposition "prescription must not zun against the fiscal interest of the state" sticks in the throat.

To begin with what is obvious, the very function of tax collection demands diligence, as the budget of every state depends on it in no small measure. If the Tax Authority is put under the pressure of prescription, and is held accountable for

## Limitation of Acnown

revertue losses that may be sustained by the state as a result of a lapse of time, obviously tax actions should be enforced with dispatch, bringing on an increase in the efficiency of tax collection. Conversely, the absence of limitation of actions may not be so beneficial to the revenue intake of the state, since, as a generel rule, the risk of belated tan actions becoming inrelevant grows greater as the delay proceeds further.

The diverse socio-economic repercussions of unregulated defay in the exercise of tax actions may have even greater clatim on our attention. The enforcement of claims for cumulated overdue taxes may result in the destruction of enterprises that cater for the good of the community, driving their work force into unemployment. The likelihood of children and other dependents becoming victims of such a draconian measure is wery high.

The writer is not unaware of the assertion that "the taxing power (of a government) tas no limit", that "it carries with it the power to embarrass and destroy", and that a tax need not be invalidated on the sole ground that it causes the liquidation of a business. But one musc, at the same time, heed the maxim, that "the power to tax cannot be employed to embarrass and destroy useful and harridess operationts which are essential to the prosperity of the people and thus to defeat the very purpose for which the taxing power is conferred ${ }^{14}$, Hence,to condone the ruin of citizens by the enforcerment of cumalated overdue tax claims resulting from overlong in action on the part of the Tax Authority amounts to a gruss ahuse of the raxing power. Sound public policy dictates the establishment of a tern within which tax claims are to be brought.

Even when the grim results depicted above do not occur, unregulated delay in the assertion of tax claims is not to play havor with the well being of taxpayers by putting them in a state of incertitude and worry. This psychological impact is bound to interfere with their day-to-day living, and even to discourage their plans for new ventures. Why should taxpayers be subjected to mental strain for an indefinite time. just because of the inaction of the Tax Authority? Equity demands that relief should be granted to them in the form of a limitation set on the possible delay it delivering tax-claims.

One may toy with the ider that tax remission provisions may be employed to avoid the occurrence of the above undesirable consequences. ${ }^{16}$ But it must be noted that the application of remission provisions is, as a rule, made on a case-by-case basis, depending on subjective appreciation of facts. Consequently, such provisions cannot rival provisions of limitation of actions, in the role of consolidating and safeguarding situations which are "regularly and entirely just."

Much has been said in an attempt to lay bare the umwisdom of allowing tax actions to be knmune from the application of prescription, it is now time to complement the contention with what is actually seen in practice.

The tax laws of many countries abound with himitation provisions as to the rights of the state to assess taxes and demand their payment. These provisions corroborate the fact that the necessity of establishing a term is given prionity over the so-called fiscal interest of the state. The subsequent paragraphs give a glimpse of some of them. The tax system of Brazil features nules of prescription in relation to the assessment and collection of income taxes. An original assessment may be made either on the basis of the taxpayer's return or ex officio. and the period withit which this must be accomplished is fixed at tive years from the end of the taxable year in question.

Brazilian law also allows for the possibility of carrying out what is called an additional or supplententary assessment. The additional or supplementary assessment must be made within five years from the date on which the taxpayer received notice of the original assessment. This means that an additional assessment cannot be carried out where the Tax Authority fails to make an original assessment within the time prescribed for it. ${ }^{17}$ "Under the law in its present form ... the five-year periods referred so are substantive periofts of limitation, which extinguish the right to make an assessicuent. They cannot be suspended or interrupted by an act of government. ${ }^{\text {nib }}$

The period of intitation as to the right of the state to collect taxes is likewise fixed at five yars. It stants to run from the last day of the term fixed for the payment of the tax in the notice of an assessment. This period of limitation may be interrupted, say, where a demand for the payment of the tax is directed to the taripayer, or a grant of an extension of time for the payment is made. It is also suspended as long as proceedings for the collection of the tax are under way. ${ }^{19}$

In the tar laws of Italy, there is a series of limitation provisions applicabte to the government's right to demand the payment of a tax. The approach adopted is to lay down particular periods applicable to particular situations, and this accounts for the multiplicity of the provisions. Nevertheless, subject to the exceptions, the tax administration is barred from demanding the payment of a tax after a tapse of three years from the date on which a return has been filed. In a case where no return has been filed, the period of limitation lasts for twenty years as of the date due for the return, Service of an injunction on the taxpayer or an act of compulsory proceeding interrupts the running of the limitation periods. Where the period is validly
internpted, it is completed with the running of a whole new rerm equal to that fixed by the law. ${ }^{30}$

The Swedish tax system prowides another interesting example of limitarion in respect of the right of the govermment to collect taxes. The general rule in Sweden is that no claim for the payment of tax may be made against the taxpayer later than five years after the end of the collection year during which the amount in question should have been paid. This is trie even where the failure to collect is imputable to criminal conduct on the part of the taxpayer. In this respect, the Swedish approach appears to be a radical departufe from what is seen in the tax systems of many countries.

Within the prescribed period, the appropriate Tax Authority may sue a delinquent taxpayer for the recovery of an assessment in the Swedish Civil Courts. It may file a petition for distraining his property or opening bankruptcy proceedings against him. The initiation of such measures shall entitle the Tax Authority to satisfy its claims even after the expiration of the five-year period of limitations. ${ }^{21}$

The fiscal code of the Federal Republic of Germany contains detailed statutory rules on periods within which tax claims mist be brought. These rules do not make any distinction as beween limitations on assessment and limitations on collection. The period of limitations for both is generally five years, beginming to run at the end of the year in which the tax claim originated, i.e. at the time when all facts have accoued which fix the taxpayer's liability for the tax ${ }^{27}$ in the event that the tappayer is gulty of a criminal tax evasion, however, the period of limitation consists of ten years.

The rules provide for suspension and intermption on account of cerain events or causes. Suspension refers to an extension of the period of limitations in a case where the claim of the government for the payment of a tax cannot be asserted during the last six mpnths of the period of limitations because of an act of God, or of a public enemy.

Any owert act of an appropriate local finance office with a view to establishing the identity of a taxpayer or his liability for tax may also furntish a cause for intemuption. Even the usual pablic requent to file returns may constitute such a cause. Other causes may inciude the admission of liability by the taxpayer in any form, such as by filing a tax return, and the grant of an extension of time given by the Tax Authority for payment. At the end of the year in which such an interruption occurred or ended, a new period of limitation begins to $n$.

The most striking feature of the West Gefiman rules of limitations on tax claims is that they do not require the lapse to be raised as a defence by the taxpayer. Rather, they make the non-expiration of the period a procedural precondition for the assertion of any tax claim - a point which the Tax Authority must examine on its own motion throughout the proceedings. In this respect the West German nules radically depart from prescription rules in other areas of the Civil Law.

With the enpiration of the periof of limitations, the tax clain of the government is destroyed, together with accessory claims for cost or penaltics for delay or additions to the tax. And, if any assessment of income or profits is made after the claimis barred, the assessment shall be woid. ${ }^{23}$

Finally, it is only appropriate to turn to the Ethiopian tax system, to see if there are instances where prescription is allowed to run against the fiscal interest of the gowerament. Limitation provisions are, indeed, very scanty in the entite body of the Ethiopian tax legistation, let alone in the income tax law, for they are deficient in many aspects, especially in matters of prescription nules. Here the witer cites two instances, showing that prescriptions have been allowed to run against the fiscal interest of the goverament.

The first instance relates to the collection of customs duties. Where goods are short-levied by mistake or a refund is erroneously made, the customs director must demand the payment of the difference by or the return of the refund from the individual concemed, within five years. This period begins to run from the date on which the goods were mistakenly short-lewied or the refund was erroneodsly made. Because the person wiongly benefited is bound by the law "to pay the amount shortlevied or repay the amount erroneotsly refunded", upon demand being mate by the director within the prescibed period, it follows that no such clairn may be asserted after the period expites. ${ }^{24}$

The second instance pertains to the assessment of tax on income, and is relatively much closer to what this paper is concerned with. It is incumbent upon the Tax Authority to finalize the assessment of the taxable income in relation to a given year within five years from the date on which a taxpayer submitted to the Authority a declaration of his income. If this period expires, the Authority loses the right to assess the taxable income to the year in respect of which the declaration was made, for "the income declared shall be deemed to be approved, and the tax shall be deemed to have been assessed on that income", though the taxpayer shall not be released from liability to pay tax on income which has not been set forth in his declaration.

This is the only case where a period of limitations is provided in the Income Tax Proclamation of 173/1961 (as amended). Does it follow, then, that the actions of the Tax Authority to recover tax on income are indefinitely inextinguishable in all other cases? This is the problem that we shall come to gripe within the next section.

## II. Relevance of the Civil Code:

Book IV of the Ethiopian Civil Code is captioned "Obligations", and, under it, first comes Title XII with the heading "Contracts in General". Section VI of Chapter III of this title lines up twelve articles on limitation of actions. ${ }^{35}$ The next task is then to examine the relevance of this part of the code to actions connected with a tax liability.

The analysis chiefly focuses on Article 1677 and Article 1845 , as they are susceptible to controversy. The first raises the basic question of determining the scope of Title XII, ${ }^{27}$ the second poses the issue of whether the ten-year period of limitation prescribed under it is of a particular (special) character, in the sense that it relates only to contracts, or of a general character, in the sense that it may apply to obligations irrespective of their source. ${ }^{29}$ But the writer shall begin by expounding that a tex Liability constitutes an obligations, for it is on this very point that the whole analysis tums.

Diverse legal meanings are accorded to the word "obligation". But the classical definition of the tern, as P.W. Lee puts it, is "a legal bond whereby we are constrained by a necessity of performing something according to the laws of our country, ${ }^{23}$ signifying a duty imposed by taw which manifests itself in the performance of or forbearance from certain acts. Its widely accepted and current conception consists in the whole legal relationship existing as between a creditor and a debtor, the essence of which is a right and a corresponding duty. ${ }^{36}$

In broad terms, obligations may be classified as contractual or non-contractual, depending on their source. Contractual obligations wee their existence to voluntary agreements of contracting parties, while non-contractual obligations are either consequences of legal-sanctioned acts of individuals, or creations attributable to the sole authority of the law. ${ }^{31}$

It has long become standard procedure in scholastic circles to elaborate the principles of obligations in the context of private law, in particular that of contracts. But this approach to the treatment of the subject need not make one doubt that
obligations also arise from the authority of laws of a public nante. Revenue laws that impose the duty to pay taxes are typical examples of this.

Obligations are inherently amenable to civil suits and not to criminal prosecutions, and, as a rule, a tax liability is amenable to civil actions. But, since public interest is at stake in tax matters, fevenue laws also provide for the possibility of instituting a criminal prosecuion against a delinquent taxpayer. 33 This duality of divil and penal actions, however, must not be allowed to blur one's understanding of a tax liability as a kind of obligation, for each recourse is independent of the other. ${ }^{3}$

A tax liability is an obligation with legal relations that closely resemble those existing as between a creditor and a debror under a contract. Admittedly, there is little sense in calling a tax a debt in its ordinary meaning, for it is by defnition an enforeed contribution exacted by virtue of the legislative authoricy is the exercise of the taxing power on grounds of necessity. ${ }^{\text {H }}$ As such, it is held to be, for example, not subject to set-off. ${ }^{35}$ Nevertheless, the position of the Tax Authorily vis-a-vis the taxpayer is to all intents and pelposes identical to that of a crecitor vis-a-vis a debtor under a contractual obligation. What they both hawe as a right is a riyt in personam, actionable against a designated person or persons or a defined chass of persons. Both obligations are not, in principle, designed teach rate in favout of the obligee a general right of control ower all the acts of the obligor. Just as the dehtor may liberate himself from the contractual obligation by sacrificing a portion of his property for the purpose of setting the detm, so may the taxpayer obtain a discharge from his tax tiability by sacrificing a portion of his property to satisfy the tax claim.

Ituving underscored the fact that a tax Ilability consiluter an obligation, the writer shall now deal with the scope of Title XIf.

Articte 1677 stakes that thet relevant prowisions of the bicle under discussion shall apply to opligations "noturithstanding that they do not arise out of a contract" unless there exisi spectal prowisions applicable to them. This means that, where special provisions concerning the obljgations are daid down by the legislator, they override those in fitte XIL Conversely, where special prowisions are non-existent, such proxisions of thes Title as are relevant are useful to solve a particular problem of non-contractual obligation.

The language of the article in question leaves no room for doubt that the scope of Title XIfis extended beyond the realm of the laws of conuract. The possibility of applying its relevant provisions to those non-contractual obligations are envisaged by the Guth Code may not be contested either. The ctux of the matter is, however.

## Lhmitulion of Actions

whether the scope is widened so as to embrace all non-contractual abligations, without exception.

Some people may argue that the legislative intent as the scope of the Title on "Contracts in General" is only that of creating a possibility of applying ne relevant provisions of the Title to such non-contractual obtigations as are present mithin the province of the Civil Code (such as those arising out of the laws of status, succession, property, tort and unlawful enrichment). In an attempt to substantiate this, they may resort to the comment of the expert draftsman under Article 1677 , quoted below advocating that the word "Law' as employed there stands only for the Civil Code-
Obligations are crated by the law itself and by contracts and other
juraticat acts of indivianals. There is no real oposition between these
parious sources, however, since, in a broad sense, even the obligaroy force
of contracts depends on the law, which regulates them and ensures their
enforcoment. Moreover, the law often supplements the agreements of the
parties. It definer the contents of the contract and provides for various
problems that may not be fovereen by the parties ar the time of contacting,
but that may arise subsequenty. Finally, since the legistator is charged to
do justice, the imposes some contratt clauses and certain rules required by
equity and the miterest of society. ${ }^{36}$

Granted, the word "law" in the context of the above quotation may appear to be a substitute for the Civil Code, since its mention is purely in connection with contracts. One also fully acknowledges that the expert draftsman is entitled to his own opinion. But attention need be drawn first to the fact that the work "Commentary on Contracts in Ethiopia" is stid to be "an English translation of Dawid's hasty French Commentary ... on his preliminary French draft of what is now only a part of the Civil Code's Title (XII) ... ${ }^{37}$ Second, even if the comments were in his final draft, they would not be altowed to supplant the provisions of the Civil Code which have been incorporated in the law of Ethiopia after going through the scrutiny of the Codification Commission and the Parliament of the time. That they may be of help in clarifying such doubts and settling such ambiguities as may exist in the provisions is conceded. Their persuasive role in winning support for a stand taken by means of manoenvreing the letter and spirit of the articles may equally be admitted. But they must not be simply looked upon as authoritative dicta to which one must consent, as they are not part of the law of the land in their own right-a viewpoint solely based on these comments should simply be dismissed as untenable in so far as determining the application of the prowisions of the cofe is concerned.

When base gets down to the law, a comparisun between Article lonto and Articte 1677 prowides the suluitum the problem. Both dectitre the extension of the scope of the Tide on "Contracts in gerneal" beyond its normal bound and are






 for a reisuned explatarion of the omission.
















 sernem:






The athor is even more ctuegrial on this point while commenting on Article [677. Jlere te is mas only emphatic abour the powibility of applying the relevant prowisions of the Tithe an "Contracts in Guncral" to all obligations, irrespective of !lecir source, but also emphasises that it is permissifule to fall back on then to get an antwer fur any problem of a civil mature. wherever sulutions are not available in the










 there is an ned tor comment bristly what whent ment belewant prowisions" in the context of Armele lon7. It whold bo moted inat certain provesuns under Title XII afe









the principal questina set torth at the very beginning of our analysis. It affirms to our complete satimfuction that there is nuthing wrong in applying the relevant timitation provisisns of litue XII of the Cwil Code to eluims arising out of a tax liability in a case where special provisions with regard to them are not provided. Thus, the issue framed it relation to the applicatian of Article 1845 may seem unworthy of discussion. Indeed, the fact that Article 18455 spetiks in terms of conteracts does not tequire analysis and is nin the reasom for our comments on that article, since nearly every secnal prowision of the Title on "Contrats in General" speaks in terms of cantracts. But it becomes neecssary to examine the issue, as some people may advocate in Favenur of restrictiag the application of article 1845 unly to contracts manipulating the subsequent statement of the expert draftsman:

$$
\begin{aligned}
& \text { Articte thes dewh onty with condratual righs. White the nuler dealing }
\end{aligned}
$$

protitems, is sown thut dibiterion meeds to be convidered from different
posints at witw in the arcts of property whd fanily law than in connection
with contrets- This facr seens to justify the restrictions contaned in
Atticte Mas.:

Thin excergol muy he held as supporing the argument that the ten-year period of limitation prescribed under Article 1 A $4 \$$ is of a paricular (special) character, in the what that it appliex only to contrachaid ohligutions. But it does not take much to see that the view is untenable uthen set agans the very design of the Title on "Contracts in General".
 with rephal tat the sempe of the ipplitution of Tithe XII is the comprehensive extension
 liw whish neppertinent spergiprovision is provided elsewhere in the Ciwil Law. It has ilwa been shown that the cpesion as to whether a given provision under this tite apprice to such siturtions should he resolved purely on the basis of rules of logical relcuance. Elence, resirictiry its application only to contraces on grounds other than its irrchewney the momerntractual obligations constitutes an aberration from the avomed abjective of the Tille.

Considerimg the quesham of whether Article 1845 is relevant to actions stemming from non-sutratatal obligations, it readily hecomes apparent that the answer is in the athramative. However restrictivety the provision is said to be worded, there is nohitg that makes is of a putely contractual character and mothing goes :ganst lanic af one applies the toneyez period of limitation to actions arising out of
rotr-contractual obligations in respect of which no other special prescription provision is laid down. Perhaps it may be of interest to cite one eximple al such an instance. from the work of a scholar who used the teri-ytar period of timitation to solve a limitation problem relating to a non-contractual situation:

Tre Covit Procedare Code does mor specig' a prioud in whith the first application to etacture the decrec musy be fited. Since the decrece crentes an obligation for the bereptit of the decrec-former the watinary pertod of
 applicable, and if the applitation in field nome than ten years after the
 Wimitation ${ }^{\text {" }}$
 drafteman? While commenting under Article L8ts, Protisubr Reate Dawal mikis


 disapproval of a longer general period of limitation ihan teay years, He staes:

The French Civil Code (Article 2262) sets the sime ufter which reovery is barred at thity years, but evenome now agress that thri is two kous the Hedr of these criticioms Antick 1845 fues a ler-wor puriod of dimitanion,



Despite this fact, there are certain provisions fir longer pacrithe of limiation in the fields of family and property law of the Ethopian Cin Code ${ }^{\text {² }}$ I lence, what lie subnits in relation to the restriction of the application of sracte lisis maty well be
 ten years, It may not be taken as a statentent that cxcludes all mon-contractual obligations from the scope of the application of the article.

 whatever suluree, in long in special limitation provisions ire nissirus. Thus the witer




cause an outcry of despair from some quarters,yet it is in accord with the legishative intent embodied in Article 1677 of the Civil Code.

## 11L. Application Propositions

What remains row is to demonstrate under different situations how we think limitation issues affecting actions simed at the recovery of the tax on income from sources chargeable under Schedule C ought to be resolved. ${ }^{\text {ti }}$ This part of the articte is consecrated to this purpose, in the hope that it will be of some practical benefit to those who are encrusted with the responsibility of implementing and entorcing the income tax laws.

## 1. Where a taxpayer bas not declaced hisannal income and has not paid the cas thereon

The liability tor the tax on income from sources chargeable under schedule C is determined on a yearly basis,and all taxpayers ate under the oblyation to dectare their annual income and pay the tax thereon every year. ${ }^{47}$ Suppose a taxpayer did not fulfil these obligations with regard to a particular year. Now should a decision be rendered on the limitation issue as to the right of the Tax Authority to enforce its claims for the tax in question? ${ }^{-18}$ The disposition of such a case is apparently involved, as we shall be see below.

There are no special limitation provisions applicable to the situation under discussion. Therefore, the general period of limitation prescribed under Article 1845 of the Civil Code comes into its own. This means that the rights of the Tux Authority to assess and collect the tax in respect of a given year are to be burred ifter a lapse of ten years. No tak ascribable to a purticular year may be recoverable where it results from an assessment made after this period has run out without interruption, provided a pletu of limitation is ratised by the axpayer in question, to render the action brought ineffective.

This holding may come into question where the identity of a given taxpayer or his place of work and residence is unknown to the Tax Authority, and the lapse j.s. imputed to this reason. Here, there is a need to consider the issue of whether a lack of such knowledge constitutes grounds for the dismissal of a plea of limitation under the law in its present torm.

As lat is extinction of ownership by prescription goes, unawareness of the existence of a right furnsibes no legally valid excuse for seting aside a plea of

Iimitation. ${ }^{4 \prime}$ Na similar express prowisionts are contained in Section VI of Chapter dill of the Ticke on "Contracts in General". But it is not prohibited to apply by analogy the rule referred to abowe, of limitution of actions whose olyect is the extinction of offligations. Further. Avticle 853 of the Civil Codes, which proves the fact that the legishtos has adwerted to the questun as io what may bring about the dismissal of a plea of limitation, makes no mention whatsoever of a tack of knowledge as to the existence of a right while stipulating the conditionts under which this defence may not he avalable si Finally. it must be noted that Araicle 18.54 give recognition 10 the rule that a plea of kimitution can the set up ewen by a defendent who is in bad faith. ${ }^{51}$ For the above ressons, therefore, there is no legat ground to deprive the taxpayer of this defence, even where the lapse is alleged to be a consequence of a lack of knowledge


The wher imonetant point that nust be made clear while considering such a




 isercatuder, wry it judgenenc. In such instances, the period of limitation shall begin un run as of the dute an which the right hecones uctunable, now es of that date on which the shligation hats fullen the. By the application of this sule, one is able to


The yeatly tax bligeatian becomes due at the end of each atcounting period,







 the Authority mus keep check on the expiry of these terme m be certain that
 cud on these terms thal the riget of the Aathority wo dermine assertively the tax listsility at taveraces hecomes actionablan, and the ten-year period of limitation begins


The prescribed terms within which the obligations to declare annual income and pay the tex thereon are to be complied with consist of four months, two months, and one month, all being calculable from the end of the anmual accounting period for which the tax is due. ${ }^{53}$ This is in line with the three categories, namely (a), (b) and (c), into which all taxpayers are classified. ${ }^{56}$ Accordingly, the question as to when the period of limitation actually starts to non must be determined on the basis of the category to which the taxpayer in question belongs. We shall illustrate this by taking the annual acoonnting period of 1968 Ethiopian Calendar as an example:

The term beginning on 1 Hamle 1967 E.C. and ending on 30 Sene 1968 E.C. (8 july 1975 G.C. to 7 July 1976 G.C.) makes up the annual acoounting period in question. The terms prescribed for submissions of declarations of annual income to the Income Tax Auchority and for the payment of the tax thereon all begin to nun on 1 Hamle 1968 E.C. ( 8 July 1976 G.C.). As the tax is due on 30 Sene 1968 E.C., the expiry of the term applicable to taxpayers belonging to category (a), (b) and (c) occurs on 30 Tikimt 1969 EC, 30 Nehase 1968 E.C. and 30 Hamle 1968 E.C., respectively, (9 November 1976 G.C., 5 September 1976 G.C. and 6 August 1976 G.C. respectively), according to the pertinent article of the nules on the provisions as to time ${ }^{57}$ (See also footnote 35.) The date inmediately following the expify of each term then marks the beginning of the ten-year period of limitation, and its end shall be determined according to the rule set out in Anticle 1848 of the Civil Code. ${ }^{\text {sh }}$

## 2. Where a tampayer has declared all his anmal income in respect of a panticular year and fully paid the tax thereon within the appropriate prescribed eerm

The disposition of the limitation issue that may come up in the situation under consideration is not very complicated. It is quite plain that there is no need to bawe recourse to article 1845 , since the special limitation provision of Article 41 of the Income Tax Proclamation overrides it.

Pursuant to Article 41 the right of the Tax Authority to determine the liability of the taxpayer in respect of the annual accounting period shall be barred after five years as of the date on which it received from the tappayer the declaration of his annual income. It is important to note that this period may begin to run as of ary date on which the taxpayer submits the declaration of his annual income to the Tax Authority, and not necessarily as of the date following the date on which the appropriate term prescribed for fulfilling the obligation expires.

The Authority may not exercise its night to make an assessment with regard to the anmal income pertaining to the year in question once the five-year time-limit is

## Limitation of Actions

over. Not only that; the Tax Authority may have nothing to collect in this particular instance, since the taxpayer in the case not only feclared his annual income in respect of the year in question, but also fully paid the tax on the declared income in due time. In a case where all the anmual income is dectared and the tax thereon is fully paid in due time, there is little sense in speaking of the Authority's right to collect the tax after the five-year time-limit has run out without the time-limit having been utilized.

What about a case where the taxpayer is under the obligation to keep books of accounts and records but has failed so to do? Can the penalty for the breach be collectable after the time-limit for assessment has lapsed without being used? ${ }^{W}$ This may be a rate encounter, but it is quite interesting. The writer's stand on this question is that it must be possible. The tax paid on the deciared annual income furnishes the basis for computing the penalty. The general period of limitation applies to the right of demanding its payment.
3. Where the taxpayer has dectared all his anmual income in respect of a particular year within the appropriate prescribed term but has not pelt the tax thereot

In this situation, the question of whether the payment of the tax on the declared annual income in due time is a precondition for the application of Asticle 41 of the Income Tax Proclamation has a serious claim on one's attention. In fact, the writer is very much alive to the contention that the answer is "yes", and has opted to dispose of the issue straight away. In doing so, he shall first state the argument in fawour of the precondition mentioned above, and submit his refatations rext

The contention that the Eive-year period of limitation may not run in consequence of declaration of annual income alone is said to repose on Article 46 of the Proclamation: The tax on the declared taxable income shall be paid simultaneously with the submission of the declaration of income." Because Article 46 here makes an express enunciation, it is said that Article 41 becomes operative only where there is compliance with both obligations, of declaring annual income and of paying the tax thereon at the same time. An excess of zeal to validate this stand is usually expressed in assertions that Article 41 is intended to create a right for the benefit of taxpayers, who may not avail themselves of it tuless they fulfil all their tax obligations.

The above reasoning may sound plausible, yet when one looks into it wearing legal spectacles, it amounts to distortion. To begio with, the distinctions in purpose, as between the sections under which Aricle 46 and Article 41 come, do not warrant
any such embiruction. The wation wader which Article 46 comes is designed purely
 Cunversely, the section undes which Article 41 talls aims at defining and regulating the promer relaning whe thessment of the dax. and its poin of reference is the Tax Anthoring ${ }^{-1}$ In bact. Article +1 is a restriction on the right of the Tax Authoris to make ati inseswonem.

Secondly, the insertion af compliance with the oblgation to pay the tax in the pruwisums of Article 41 would oul cleat across the widely accepted precepts of legal interpretation. 'Jhe languge of the artiche is plain and shoum no signs of ambiguity. It con by no means be calted absurd, since there are instances of its meaningtal apprituion. Thus, only at the risk of being called usurpers of the legislative function, mity one bring inco Article 41 the obligation to pay the tox on the dectared annual income.

Cughant of the general rule that tax prowisions need to be strictly construed if labors af the Tax Authotity, But one cannot condone the impropriety of its wnoloment in justify the arbitrary introduction of forejgn legal elements into provisions whose langude and purpose are quite plan and whequivocal. Such an act canaltute th atbase of the aforementioned rule.
[hirilly th a matter of prinasiple, it is necessary to ace on a fair and reasomable
 arde to shoure aleir just appication. It is clear from the language of Article 41 that the logimestive intent is mothe other than the regulation of the time within which an ascessment on the cleclared anrual income shall be made. To this end, the provision fines a rumn thn scts the time when it commences" to run as the date on which the declaration of the ammin income is made available to the Tax Authority. Hence, its Ptiference to the dechation of annual income must be understood only in the context of limiturion af actiats, i.e. watarker of the date which ushers in the running of the simeslinit!
'hricle 4 L :ima at moking the Tax Authority diligent in determining the


 anpancs. Whan Aniche +1 has in view is mot, then the creadion of a right for the benefit in lixpubers - an assumption which would show a crass misreading of the purpue and rale af the legal insitution of prescription.

## Limitation of Actionr

Fourthly, a comparison between Article 41 and its countepart in Proclamation No. 77 of 1976 (as amended), namely, Article 26, reveals a uniforminy in legislative intent as to what is decisive for the operation of the limitation period. ${ }^{63}$ Article 26, which imposes a time-limit of the same lenglh in respect of the Tay Authority's right to delermine the liability for the tax on the declared annual income from agricultural activities, makes tho mention of the obligation to pay the tax $\mathrm{d}_{\mathrm{a}}$ a condition of the limitation. It simply states that the preseripaina shatl begin to :15 as of the date on which the annual income is declared. This approarth, similar to that manifested in the two provisions discussed above, supports the contention, in disregard of the opposite view. Incidentally, the reader is advised to look at Articles 15 (c) end 21 (c) of the Transaction Proclamation No. 205 of 1963 (as amended), where there is an express mention of payment as a condition of the limetation. ${ }^{\text {TA }}$

Having made this point, one monetheless feels the recessy of examining the imptication of the apparent requirement of Anticle 46 that the obtigations th declare antual income and pay the tax thereon need to be carried out imbltanetubly: it is hoped that this will set at ease the minds of those whuse view masy be different to the one matstained in the article. This treatment of the question shanid be considered from the perspective of sanctions.

Despite what is stipulated under Anticle 40 , tae law inposes separate penalies applicable to the breach of each of the two obligations. Nor-compliance with the obligation to submit declaration of annual income within the prescribed term carriss the penaly laid down under Article 66 of the proclamation. ${ }^{\text {b }}$. Breach of the obligation to pay the tax on decfared anmul ineome in due time, on the other hand,entails the penalty set out under Article 76 ." When is comes to the request for crinctrrence in the execution of the two obligatims. howeves no legal sinetion threatens its non-observance. To put it plainly, a tamoner may rot be peralized for not concurrently carrying out the obligation to declere his annual intume and pay the ma thereon Thus if a given tuxpayer has dechared his annual income within the appropriate prescribed term, but fails to pay the tas thereon it due time, he shall be liable for penalty pursuant only to Article 67, and nob: to Articie 6th. The purpose of that part of Article 46 pertaining to the requirement under consideration can be seen only as a reminder to taxpayers that they should have sufficient cash in hand whenever they appear to submit the declaration of their annual inconse hefore the Tax Authority, so that they may discharye forlhuith their liabitity as computed on the basis of what they dechered. This is tad down in tax in the interest aith collection

In summation, the writer mantains that the right tor athest the tian in respeat of the partichar accounting perind for what the taxpayer dedareil his ansual income
within the appropriate prescribed term shall be barred after tive years as of the date on which the laxpayer submitted his declaration, in the event it is not exercised in due time by the Tax Authority. Non-payment of the tax on the declared annual income in due time produces only that penal consequence laid down under Article 67 of the proclamation. It in no way constitutes a legal cause the effect of which is to render the limitation of Article 41 inoperative.

The lifritation question as to the right of the Authority to collect the tax on the sectared anmal income is another matler. As the taxpayer in the situation under consigeration paid no rax in respect of the accounting year in question, the Authority's right to demand the payment of the tax on the declared annual income is regulated by the general ten-year perion of limitation. Needless to say, the right to collect the tax on the dectared annual income remains attionable, even after the right to make an assessment in respect of the acrounting period in question is barred by the expiry of the five-year time-limit, as lone as the general period of limitation has notran out.
4. Where a taxpyer has declared al bis annual income in sespect of a particular year after the expiry of the appropriate prescribed term, and has paid no tax thereon.

Such an act on the part of the taxpayer produces the following legal consequences: first, it internupts the ten-year period of limitation which has started to rur in respect of the Authority's right to deternine the liability for the tan and demand its payment. Second, it causes the five-year time-limit to tun, to the prejudice of the right to assess the tax. Third, it also causes a new tem of ten years to begin running, to the prejudice of the right to temand the payment of the tan.

When the taxpayer submits the declaration of his annual income, he is in effect, making an acknowledgement of his liabiliy for the payment of the tax. Such an admission in wrfing intermpts the general period of limitation which has commenced to run in respect of the Tax Authority's right to assess and collect the tax as of the expiry of the appropriate term. As the dedaration of the annual income is, made in a form supplied by the Tax Authority for the purpose, the admission of the liabilty for the tax consists in filling in and signing the form ${ }^{67}$ As a result, all the time that expired prior to the submission of the declaration shall not be counted, but shall be completed by a new period qif ten years. ${ }^{*}$ But this period runs only in respect of the right to collect the tax, as the submission of the declaration causes Article 41 of the Income Tax Proclamation to apply.

## Lipritation of furiom,

The witer is well aware that there may be some whe idvocate in favour of restricting tite applicusion of the five-year time-limit only to thoce caves where the declaration of the annuad income in respect of a particular year is mide in due tine. There is no point in repeation lere what hat been said eartier in refation to the
 the fact that there is neither explicit nor inplicit reference to a pequirement of this sort in the provision. Sithaission of the declaratian af anomal income with regard tor a particular armual accounting periosi may he made in dhe linte without penalty. ar out of time with penalty, and in buhb cates withutatecting the application of Article 41.

Incidentally, the writer would ike ta indicati that the otlact legal consequence ensuing from the breach of the obligation to decite annual ancome in due time is the Getermination of lax kibility lw estimation."

 appropriate term










## 







a. within ten years in a cuse where no declaration of the annual income has been subrited to the Tan Authority.
b. within five years in a case where the dectaration of the annual income tias been submited to the Tax Authority.

Service wf such a valid original assesment notification shall interrupt any period of linitation which has commenced running in respect of the Tax Authority's right to demand the payment of the tax. This is due to the legal consequences that it produces, sel out below.

When it taxpayer is in receipt of an assessment notification, the law requires him to earry out einher of the following two actions within one month:

1. To setule accounts with the Tax Authority und pay the tax, if there is any (Article 46 of the Income Tax Proclamation);
2. To exercise his right of appeal to the Tax Appeal Commission. See Article 54 of Proctuation No. 173 of 1961 (as amended).

In it che where the tappayer fails to take either of the alternatives mentioned abowse the calse fur the interruption lasts only for one month as of the date on which the uscoment motificution has been duly served on the taxpayer. Thereafter, the stitus bf the insesment motification is to all intents and purposes identical to that of at ducose passed by the courts, for it becomes ipso jure immediately executive. ${ }^{\text {th }}$ The lion deens the tas liatility expressed in the assessment notification as tinat and conctusw, and ereates the obligation of enforcing it for the benefit of the Tax Authrity." 7he right to mate the first application for the execution of the andesment notilication musi be exercised within the general limitation period of ten ycurs, exactly as in the case of a decree rendered by the courts. The period shat beyin to rim at the end of the month fixed for the taxpayer either to settle accounts winh the Tins Authority or exercise his fight to appeal. If the Tax Authority fails to cxcoute the :asessment motification within the said period, its right to demand the payment of the tax shall be barred.

In a case where the taxpare takes an appeal to the Tax Appeal Commission from the alecision of the Tax Authority on his tax liability, its right to demand the pryment of the tixi shall obviously temain not actionable while the proceedings are Elmater wiy. If the putcone of the case is in favour of the Tax Authority, the decision bl the Commiswin is considered ws final and executive, subject to the possibility of
its being altered at a higher level of appeal. ${ }^{7 ?}$ Thus, the right to demand the payment of the tax according to the dectsion of the Tax Appeal Commission shall be barred if no appleation to enforce it is made to the courls within ten years.

The sumpension of the right to demand the payment of the tax is definitely further prolonged in the even that the decision of the Commission is against the Tax Authority. Here, athe Anthorify is entitled to take an appeal to the regelar court of appeal from the decision of the Commission, ind the finat disposition of the case may even be made alt the levet of the Supreme Court, " If the case is decided for the Tax Authority, the limitation as to the execution of such decision is gowerned by the rate applicable to any other decree. Thus, if no application for its enforcement is made within the genterat limitation period of ten yairs, the Jax Authority shall lose iss right to demand the payment of the tiax.

## 

Arice 70 (c) of the Income Tas Proclamation, which purportedly derogates from the poovisions of Arlicles 41 and 55 is desiyned fion the purpose of rectifying short levies ceused by the Fraudulent ats of taxpuyes. ${ }^{7+}$ It fatms out to the Tax Authority the right to rewine illay of its previous insesmonets at any time where taxpayers appear to have:

1. Omitted to give a full and praper dectaralion of their income;
2. refused to supply intomation its toline iemmint and source of their income and the size af their operation: qr sulunithed bilsh intomathan regarding these matiers:
3. committed any tan offence pamishatio thater the forisl Code. Incidentaly,
 Aricle 41, which, in effectutats in:a jot expiry at the five-vear time-limit may not relieve taxpayers from liabiliay ary the tox on the ineone which they have not sed forth in the dectaration. ${ }^{-8}$

Wher one considers Artice 7d) (c) from the itsuect of limitation, it does mon take much effort to realize that ine mos importalt words in the provisions are "at any time". What impression does these words give wlan they are seen in connection with the discovery the Tux Authority of the afferementioned ratudent acts? Thas is the crucial questien, and there seem to be two powible way of lowing at it.

First, it is possible to see the words "at arty time" in the context of infinity, and maintain that the Tax Auchority can determine afresh the liability of tapayers in
respect of a given annwal accounting period, whenever it acquires knowledge as to the commistion of any one of the ulfresaid fraudulent acts in relation to the previous assessment, regardless of the number of years that have gone by. This conception, in effect, leads to the conclusion that the Tax Authorig's right to revise any of its previous absesments is virtually immune from the operation of limitation rules. We may tend wimane a bar to the Tax Authority's rightresulting from the Authority's failure to exercise it within ten wears after the coming of the fraudulent acts to its notice. Yei this is a remote possibility, as it is very unlikely that the taxpayer in question can ucceed in extiblishing the date on which the Tax Authority acquired knowledge wf such facts.

Second it is equally possible to understand the words "at any time" in the context of the general period of limitation of Article 1845 of the Civil Code. Based on this concept, onte nay put forward the wiew that the Tax Authority must discover the fraudulent act in relation to a previous assessment pertaining to a given annual accounting period, and must exercise its right to determine afresh the tax liability, withir len years, th of the date on which;

1. the tax puyble on the income declared by the taxpayer in question is deemed as approwed, by wirtue of Aricle 41, ${ }^{2}$
2. the usessment notification served on the taxpayer in question becomes final and conclusive, by virtue of Article $55^{7}$ Of the two approaches referred to abowe, we recommend the adoption of the latter on the following grounds:
3. Generatly speaking, all the theoretical and legat reasons discussed above for laying town rules on limitation appear to favour the second apyratich.
4. In particular, as the right to revise a previous assessment presupposes a contact ulrewdy established between the tax Authority and the raxpayer, it appears unreasonable to allow the right to encure forever.
5. The secont upprorch offers a precise and more meaningful way of dectemininy the time on which the tax liability of taxpayers in respect of a given annust account year must close conclusively in respect of a giver anntal accounting year.
6. Ax the duty to huns out fraudulent acts perpetrated against the revenue intake is included within the right to revise a previous assessment, the
second approach is better co-ordinated for making the Tax Authority pursue this duty with diligence. It puts pressure on the Authority to resort to effective deployment of the inspection foree at its disposal, and to active solicitation for co-operation and collaboration from appropriate governmental bodies and mass organizations to that end.

It is imperative for the tax laws to contain provisions that deal adequately with the question of limitation. Recommendations to this effect may be not so hard to make, but unfortunately the introduction of tax reform of this sort does nat seem to arrive fast, as shown by experience. Meanwhile, one has to resolve such legal knots as are dealt with in this discussion with the aid of the relewant prowisions of the Civil Code. As stated recourse to the Civil Code is not prohibited by the law, and the writer urges that it should be made use of properly and with confidence.

The proposed applications of limitation may be at variance with the prevailing concept of limitation in relation to tax clams; some of them may even radically diverge from what has actually been followed by the courts in the disposition of much issues. Yet the writer remains satisfied that the proposals are the most practical to offer in the absence of elaborate rules governing limitation in the field of taxation.

## REFERENCES AND FOOTNOTES

${ }^{1}$ The meanings of the two expressions are "actions without a limitation period" and "actions subject to a limitation period", respectively.
${ }^{2}$ Rodolf Shom, The Instimtes of Roman Law (Oxford: Clarendon Press, 1901), pp. 298-300
${ }^{3}$ bid.
${ }^{*}$ international Encyclopedia of Comparative Law, "Period of Limitation" (Dordrecht, Boston Lancaster: Tuebingen and Martinus Nijhoff Publithers, 1986), Vol. XI. Part 11, Chapter 13, p. 23.
${ }^{5}$ In Common Law, laches is a defence which a defendant may raise to prevent the suit from proceeding on grounds of delay in the exercise of a right on the part of the plaintiff. The delay musi be long enough to be attributable to neglect or want to diligence operating to the prejudice of the defendant or giving rise to the presumption that the right is abandoned. Note that "limitation" and "laches" are not identical. The former signifies the fixed statutory term within which an action must be brought, whereas thi !ater denotes a more trureasonable delay in making a claim, independent of statutes.
${ }^{6}$ Internationtal Encycloperfia of Comparative Law p. 23.
'See Civil Gode Articles 1165 (2), 1192, 1000, 1810, 1024, 2143; Penal Code Arts. 226231.
*Philip S. James, Introduction_to English Law (London: English Language Book Soclety and Butterworth, $10^{1 / \mathrm{th}}$ edition, 1984), p. 301.
${ }^{9}$ Rene David, Commentany on Contractsin. Ethiopia, translated by Michael Kindred (Addis Ababa, Haile Selassie I University, Faculty of Law, 1973). p. 89.
${ }^{10}$ Marcel Planiol, Treatise on the Civil Law translared by Louriana State Law Institute (Paris: Louisjana State Law Institute, 1959), pp. 345-346.
${ }^{11}$ Compus Juris Secundum, Taxation (St. Paul, Minnesota, West Pubishing Co., 1954), Vol. 84 , p. 1429.
${ }^{13}$ ibid p. 1430.
${ }^{13}$ Note that these instances had nothing to do with taxes. They dealt only with transference of titles and sums of money which were considered as vacant property or property without owners.
${ }^{14}$ Planiol, pp. 378-380.
${ }^{15}$ Corpus Fizis Secmadum, p. 46.
${ }^{16}$ As examples of remission provision, see Proclamation No. 173 of 1961 (as amended), Art. 72, and Proclamation No. 77 of 1976 (as amended), Art. 45.
${ }^{17}$ World Tax Series, Taxation in Brazil (Boston, Toronto: Little, Brown and Company Limited, 1957), p. 262.

## ${ }^{18}$ bid.

${ }^{19}$ Ibid, Pp. 262-263.
${ }^{30}$ World Tax Series, Taxation in Italy (Chicago: Commerce Clearing House, Inc., 1964).pp. 248-249.
${ }^{21}$ World Tax Series, Taxation in Sweden (Canada: Little, brown and Company Limited, 1959), p. 592.
${ }^{27}$ World Tax Series, Taxation in the Federal Republic of Germany
(Chicago; Commerce Clearing House limited, 1963), pp. $686-688$.

## ${ }^{23}$ Ibic.

${ }^{2}$ Proclanation No. 145 of 1955 , Art. 106. When any duty has been short-levied or erroneously refunded, the person who should have paid the amount short-levied or to whom the refund has erroneously refunded been made shall pay the amount short levied or repay the amount erroneously refunded on demand being made by the Director within five years of the date of such levy or refund.
${ }^{26}$ Proclamation No. 173 of 1961 , Art. 41 : If a taxpayer has submitted a declaration of income, but does not receive, within a period of five (5) years from the date of the receipt of the declaration by the Tax Authority, a notice of assessment different from
the amount of tar declared, the income declared shall be deemed approved and the tax shall be deemed to have been assessed on that incone; provided, however, that the provisions of this Art. 41 shall not relieve the taxpayer from liability for the payment of income tax on income which has not been set forth in the satid declatation.

Note that the three-year period stipulated in Art. 41 of the primeipal proclamation is amended by Proclamation No. 65 of 1975 to five years.
${ }^{26}$ Civil Conte, Arts. 1845-1856.
${ }^{3}$ Civil Code, Ast 1677 Scope of Application of This Title, (1) The relevant provisions of this Title shat-apply to obligations notwithstanding that they do not arise art of a contract. (2) Nothing in this Title shall affect the special provisions applicable to certain obligations by reason of their origin or nature.
${ }^{28}$ Givil Code, Art. 1845: Period of Limitation. Unless otherwise prowided by law, actions for the performance of a contract actions based on the non-performanee of a contract, and actions for the invalidation of a contract shall be barred if not brought within ten years.
> ${ }^{2}$ Robert Warden Lee, The Elements of Roman:Law (London: Sween and Maxwell, 1956), p- 256

## *)Ibid.

${ }^{31}$ Amos and Walton, Introduction to French Law (Oxford: Calrendon Press, 1969), p. 140.
${ }^{32}$ Art 70 (a) of the Income Tax Proclamation No. 173 of 1961 (as amended). For example, "Any taxpayer who violates any of the provisions bereof shatl be punishable in accordance with the Penal Code of 1957".
${ }^{3}$ Civil Cote, Art. 2149: Effect of Criminal on Civil Action. In deciding whether an offence has been committed, the court shall not be bound by an acquittal or discharge by a Criminal Court.

Penal Code, Ast. 232: Effect as to the Civil Action. The limitation of the Civil Action for reparation of the damage caused, whether or not brought conjointly with the Criminal Action, is governed both as to its conditions, period of limitation and its effect by the ordinary prowisions of Civil Law.

In the event of the Criminul Action being bursed before the Giwil Action, this action may no longer be brogght before the Criminal Court, but must be heard by the appropriate Ciwi Court.
${ }^{24}$ Corpus Juris Secundump. ${ }^{32}$.
${ }^{35}$ It is intetesting to compare the folturing two provisions of the Civil Code in this respect: Art. 1833: Negative Conditions. Set-off shall occur regardless of the cause of either obligation except where: (b) the obligation is owing to the state or municipalities. Art. 3178: Set-off. Set-off may not be invoked by a person contracting with the administrative authorities except in the case of debts other than fiscal debts.

Note that theme is no such contradiction between Art. 1833 (b) and Art. 3178 in the Amharic wersion of the Civil Code. Both of them declare that it is impossible to raise set-off against debis representating taxes.
${ }^{3}$ David, P .7.
${ }^{3}$ Genrge Krzeczunawicz. Formation ancl Fifects of Citatracts in Fthiopian Law (Addis Ababa: Faculty of Law, Addis Absba Luiversity, INSB), pu, (Prefine).
${ }^{38}$ Civil Code, Art. 1676: Provisions Applicuble ti Coniracts. (1) The general provistons of this Title shall apply to contracts regirdios of the nature thereof and the parties thereto. (2) Norhing in this Titte shall affect such special prowisions applicable to cercoin contuth an are laid dusi in Book $v$ of this Code and in the Commercial Code.
${ }^{3}$ Krzeczunowicz, p.l.
*hid p. 5.
${ }^{41}$ Ibid.
${ }^{41}$ David. p. 89.
${ }^{\text {HRobert Allen Sedler }}$ Ethiopian Civil Procedure (Aldis Abuba: Faculy of Latw, HSIU in Axsocialion with Oxford Universigy Presh, 1968), p. 271.
${ }^{4}$ David, p. 89.
${ }^{4}$ (ivil Code. Art ilfos: Principle. (1) The possessor who has paid for fifteen cumberive suats the taxes relating to the ownership of an immovable shall become


Sins. This provinion has been made obsolete since 1975 by the legislation which brought to $4 \pi$ : $n d$ priwate ownership of land. Art. 1000: periods of Time. (1) Ant action of "petitio racreditates" shall be barred after three years from the plaintiff having become aware of his right and of the taking possession of the property of the irheritance by the deferdant. (2) It shall be absolutely barred after fifteen years from the death of the deceased or the day when the right of the plaintiff could be enforeed, unless the action relates to family immowable.
$A^{\prime}$ hrt. 4 (h) of Proclamation No 173 of 1961 (as amended): Without prejudice to the Rurot Land Use Fee and Ayricultural Activities Income Tax Proclamation No. 77 of 1476 (as atterided), on income from all other sources not specifically mentioned in Paragraphs (a), (c). (d), (e) and (f) of this Article: under Aticles 12 through 17 irclusive here of (Schedule C).
${ }^{17}$ Proctamation No. 173 of 1961 (as amended) $\dot{\text { Q }}$. Schedule C. Art. 12 (a), The tax on incume from suurces mentioned in paragraph (c) of Article 4 hereof shall be charged, lerfed, collected and paid annually, and shall be imposed on taxable income of the preceding sces, which shall, in principle, comrespond to the Ethiopian fiscal year:万ruwided, howeser, that the Income Tax Authority may, at its discretion, allow the use of a different unconnting year.
*This mith in indeed be at rare encounter in reality, if the requirement to obtain license for catrying on a trade or a husiness is rigorously applied (Art. 3 (1) of Proclannation Ni. 29.4 of 197 L , as ampended by Act. 14 of Proclamation No. 76 of 1976\%, and if the Income Tax suthority mukts effective use of its right to gain access to information abibut the operations and incomes of taxpayes (Proclamation No. 173 of 1961, as amended, Arts 23-27).

- Ciwil Cuce, Art. 1192: Prescription. The owner of corporeal chatel shall lose his righte as an owner where he fails to exercise them for a period of ten years by reason of his not knowing where such chattel was or that he was the own thereof.
${ }^{4}$ Civil Code, Art. 1853 Special Relations Berween the Paries. (1) The court may set aside a plea hased on limitation where it is of opinion that the creditor failed to exercise his rights in due time on account of the obedience he owed to or fear he felt of the debtor to whom the is bound by family relutionship or subordination. (2) It
such a case, thitd purtiss who guaranted ate payment of the debt shat however be released.
${ }^{53}$ Civil Code, Art. 1854: Bad Faith. A party thay plead limitation notwithstanding that he is in bud faith.
${ }^{52}$ Some people may be put out by un contentifon (thinking that it plass into the hands of delinguent tapayers), but they are advised to gauge the analysis in the eyes of the law. After all, even criminal actions, which appear to be more serious, are barred by a lapse of time, is indicated earlier, Incidentally, the ordinary limitation as to mageravated tax offense is fixed at wive years. (See Penal Code Art. 226 (e) in conjunction with Art. 355 (1), Art. 300 (12) ated Art. 361 (i). as well is. Art. I5 of Proclamation No. 21\% of 1981 ). Absolute limitation as to andugravated tax offenses is fixed in ten yeurs. according the rules set ont under Art. 231 of the Penal Code. The periods besin to run trom the day on which the offender first exercised bis criminal acrivity: see Penal Code, Art. 228 (2).
${ }^{53}$ Civil Code, Arc. E +it: Beginning of Period. The period ol limitation shall fun from the tay when the obligation is due or the righte uster the contract coutd be exercised.
${ }^{54}$ Proctamation No. 162 of 1959 (as arnended), St. 2. The fiscal yeur is hereby fixed at a period of one (l) yeur commencing on 1st Hame and ending on 30th Senc of the following year.
${ }^{55}$ Proclamation No. 173 of 1961 (an anoended), Art. 35 (c). [ncome from soufces churgeable under Schedule $C$ of this proctamation shall be dectared anntally as follows:
(I) If the taxpatyer is regured by regulations issuad by Our wimister of Finatnce to keep books of uccount and records in such a way its 10 be athe to subrio to the Income Tux Anthority at the end of the year a balance shes and a pront-end-loss accoant with necessatry specifications: within fols (f) mumpla from the end of the annual accounting period for whigh the tax as due:
(II) If the tupayer is required to keep only such books ot account and records as may be accessary for him to subnit to the Income Tax hathority at the ent of the year a summary of his daily rewente and ampoditure, divided, wor, in certain
 within two (2) months from the end of the amtal decourting peribed for whith the tax is due:
(III) If the toxpayer is not required to keep any books or records: within thirty (30) days from the end of the anmal acomoting period for which the tax is due.
itin connection with classification of tax periods and the obligation to keep books of accounts and records, sec Arts. $25-29$ of Legal Notice No. 258 of 1962.
${ }^{33}$ Civil Code, Art. 1860 (1) and (3); Period Fixed in Months (analogy) (1) Where the period is fixed in fronchs, or son to intude several months, the debt shall be due on such day of the last month as corresponds by its number to the day of the making of the contruct. (2) The thirteenth month of the Ethiopian calendar shall not be taken into accolint.
${ }^{5}$ Civil Code, Aft. t\&48: Catculation of Period. (1) The period of limitation shatl not inctude the day fion which such pertod hegins to ran. (2) The action shall be barred where the tast day of the period of limitatign has expired without havidg been used. (3) Where the das day of the period of limitation is a holiday at the place of payment, the uction shadl be barred on the next working day.
${ }^{59}$ Proclamation No. 173 of 1961 (as amended), Art. 68 . Any taxpayer in one of the categories specificd below whe fails to maintain such records and books of account as may be prescrilped by Our Minister of finduce shall pay a penalty of twenty per cent ( $20 \%$ ) of the amount of the tax due.
"Proclamatemn No, 171 of 1961 (as amended), Section XI, Payment of Tax. Arts. $44-$ 48 inclusive.
${ }^{4}$ Proclamation Vo. 173 of 1961 (us amended), Section $X_{,}$Assessment of Tax. Arts. $38-43$ inclusive.
mavil Code. Art. 2 bo4: Wndie Payment. (1) Whotever has paid what he was not required to pay may recover it. Civil Gode, Art. 2706: Sufficient Cause. (1) Recovery shall not foe intmited where the payment was in discharge of a barred debt.
${ }^{\text {Th }}$ Ptochamation No. 77 of 1475 (0x amended), Art 26.
 submitted his monimp dechatitions and paid tux thereon in due time, and does not receive, within a perion of tive ( 5 ) yatrs from the date of recept of the decaration by the Tak Abthority, a motice assessing an untiont of tax different from the amount of tax declareal, the tax dectared shall: he qeemed to have been approved and shall


## Linnitation of Acriqu)

become final and comelusive: prowided, however, that the provisions of this paragraph (c) shall not relieve the taxpayer from liabilig from the paymen al tan wich Hats not
 quarterly remens and paid the lermwer cas in duc time, an jreacribed in Article 20 hereof, and if no different assessment has been mude by the Tin, Auburity within five (5) years from the end of the gatiser of the year of which the tux was due, the tax as calculated on the basis of quarterly returns submitted by the trader shall be fintal and conclusive.
${ }^{65}$ Prociamation No. 173 of 1961 (us amended), Art. 60. Any whatyer who, being required to do so, fails to dectare his or (of an organization) it income whin the
 penalty, twenty per cent (20\%) of the amount of tath fitully assosed by the said Income Tax Authority.
${ }^{66}$ Proclamation No, 173 of 1961 (as amended), Art. 67 . Any taxpayer whafails to pay the full amount of tax due within thitey (30) divs ettor the payment is due sharl pay a penalty equal to two per cent $(2 \%)$ of the amonnt of tax which is in default, in respect of every thirty ( 30 ) days during which payment is in defolt, up to a buximum penalty of fifty per cent (50\%) of the amourt thee.
${ }^{6}$ Proctamation No. 173 of 1961 (tas amended), Art. 37 . Dectirations hall be made on special forms supplied by the Income Tux Austurity, which forms shall contain particulars regarding all revenues and expenditures to be haken into actomat in computing taxable income.
${ }^{69}$ Civil Code, Art. 1852: Effect of Intertaption. (1) A new period of limitation shalt begin to fun upon each interruption. (2) Such period shall be of ten yedrs where the debt has been admitted in writing or established by a judgment.
${ }^{67}$ Proclamation No. 173 of 1961 (is amented), Art. 40 . If no records and books of account are maintined by the texpayer, or if tor any reason the records and books of accounts are unacceptable wo the Income Tax Authority, or if a me tuxayer fatis so declare his or its income within the time specifed in Art 35 hereof, the Income Tax Authority may assess the tax by esintation (emphasis supplied).
${ }^{\text {A }}$ Proclamation No. 173 of 106 (as amended). Arl. 55 . An appeal must be made
 to the taxpayer: if nut appeat is made within this period, os if the appellant fails to deposit or pay, within the same period, the amoums referred io in paragraphs (b), (c),
(d) ar (e) of ifticle 54 hereof, the assessment of tak made by the Tax Authority shall be considered as finul and condusive and immediutely executive.
${ }^{3}$ See Ant ul if Proclamation No. 173 of 1961 (as amended).
${ }^{7}$ Sec Asts. 57 und it of Proctamation No. 173 of 1961 (as amended).
${ }^{3}$ See Asts 58-61 of Proclamation No. 173 of 1961 (as amended).
${ }^{4}$ Trankated literally into Enylish. the introductory provision to Article 70 (c) of the Amharic cesk reads without prejudice to the provisions of Art. 41 of this Pfoclamation
 firs epelicaisun. it appears to sefeat the whole purpose of Arr. 70 (c).
 promanos of Aricle 41 of this Proctamation and Are 55 of the principal Proctarnation, the frome Tux Authority is authorized to revise, at any time, any of its previous ussesmints of the tax in cuses where it appears that the tax payer (i) omitted to give a Eull zand proper dectaration of income; (ii) refused to supply information or supplied the Til Authority with false information concerning the surerce of his izoorle or size of his oplerations; (iii) commited any other (tax) offence punishuble under the Penal Code of the Empire of Ethiopia_

Note: The work "any wther offence" must be taken to mean tax offenses.
${ }^{7}$ It is imporiant to note that there is a problem in applying Article 70 (c) to the case governed by Article 41 twing to the absence of a prewious assessment made by the Tax Authority in the ordinary sense. As a result, we have no choice bui to regard the payable on the income sel forth in the declaration, and deemed to be approved by virtue of Asticle 41, as the original assessment of the Tax Authority.
"Incidentally writer would like to point out that the right to revise a previous asessment in wirtue of Article Tu(c) mity not be supplied to the situation where an apprat is made againat an assemoint notification, and a decision is rendered by the Tux Appeal Commission or by the regular appellate courts.

## 

## 








1. haphepryp7













[^16]













































 FA*








## 















































































































## 





























## 


 -

















 f







的


















斤


太事军吅


























 P日方苗









 -










## 

























































 *





## 




力












































 7最最平。
几な享
4）自駆学



















































## 






























F














































ナームT＊






























 $\boldsymbol{P} \boldsymbol{f} \boldsymbol{P} \boldsymbol{A}_{\mathrm{F}}$























## 






```
©
```





 $40 \times$















## 













## 















力














 कृ

## 



2. Black's Law Dictionary, 5th ed., 1979, West Publishing




































## 












 *TC 1741972 EanAHtA。



20. Report of the Committee of Experts on the Application of Conventions and Recommendations; International Labour Office Publication, Geneva, 1976, p. 120.

22. $\mathrm{h}+\mathrm{x}+\mathrm{T}+64 / 1968+87+\pi 2(22)$





























30. a\& h $74+\lambda 7+\$ 115$
31. (2) h




害事 2 。











42．75 万 5 d







 fと我




由＋c 1＊

# AN OVERVIEW OF THE RIGHT TO STRIKE IN ETHIOPIA 

By Tilahun Teshome"


#### Abstract

+n Condtions of labour exist involving such injustice, hardship and privations to large numbers of people ar to produce unrest so great that the peace and harmony of the word are imperilled .... The failure of any nationt to adopt humane conditions of labour is an obstacle in the why of olter nations which desire to improve the conditions in their own countries ...'


## 1. General

In any system of industrialrelations where employers and workers are bound by contractual relationships with separate and, at times, conflicting intenests, at is natural for the employer to exert his superior economic power and managerial skill to take as much of the gain as possible from the production and service rendering process, It is likewise natural for the workers to wage their own struggle by effective utilization of their organizational strengh to obtain a better share of the proft, good working conditions and employment seeurity. Stoppage of work as a collective measure to secure one or a variety of economic or social ends, commonly referred to as strike, is but one aspect of this struggle of workers. It is an act "... by a body of workers for the purpose of coercing their employer to accede to some demand they have made upen him, and which he has refused". ${ }^{\text {2 }}$

Strike grew out of the wage system in modern capitalism that payed the way for trade untonism and the institution of collective bargaining. It is not a stoppage of work resulting in the termanation of the contract of employment, and the workers continue to be attached to their place of work.

The majority of such economic strikes result from controversies ower wages. Disputes over Improvement of work conditions, occupational safety, decrease in working hours are also expressions of economic sitike. Points of controversy between employers and workers ower union recognition and discriminateryemploynent policy

[^17]resulting in strikes are also included in this category although they sometimes embrace other social and political dimensions.

Poitical surikes. on the other hand, are not motivated by the immediate economic interests of workers and thus do not spring from contractual relationships with their employers. They are usually catied by federations or contederations of trade unions or other pressure groups for political objectives. ${ }^{3}$

As a right, strike is recognized in many countries the world over although it is not uncommon to come across pieces of legislation that require a series of specified efforts towards dispute settlement before conducting the strike. There are, of course, totalitarian regines which are exceptions to this general trend that view all forms of strike as subversive. But the widety accepted wiew places recognition of this basic right is an issue of the day.

Modem developments in public international law are also in favour of this trend. That ... everyone has the right to work, to free choice of employment, to just and favourable conditions of work ... to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity ... is enshrined under Artide 23 of the Linited Sations Universal Declaration of Human Rights. Furthermare the right to strike js explicity recognized under Article 8 of the International Covenant on Economic Social and Cultural Rights adopted by the General Aesembly of the United Sations.

The International Labour Organization (ILO) too has adopted a number of conventions and recommendations dealing with freedom of association and the fight of collective hargaining of workers which states-parties are required to give recognition and provide guarantees for their effective implementation in their respertive jurisdictions. ${ }^{\text {² }}$

These conventions atid redommendations recognize the right of workers to estahtish and join trade unions of their choice, the right of unions to draw up their constitutions, to elect their represenatives and to freely organize their administration. Interferences intupding the exercise of the right to organize resulting in the dissolution or temporary suspension of trade unions, or anti-union discrimination in respect of empioyment or promotion and dismissal of workers for reasons of participation in union activities are strictly prohibited. Even the law of the land under the auspices of which the unions operate must nor be applied to impair these guarantees.

As the main theme of this paper is to treat the controversial notion of the right to strike from the Ethiopian perspective, in the forthooming discussion an attempt is made tu make a brief survey of past and present legislations pertaining to the subject in light of these general considerations.

## 2. The Labour Relations Proclamation No. 210 of 1963

Etbiopian legislative history shows this Proclamation to be the first of its kind enacted in the area of industrial relations. As expessed in its preamble, its objective was the creation of conducive labour conditions and the settlement of labour disputes by means of collective bargaining. Labour dispute is defined as meaning any point of misunderstanding concerning the terms or tenure of labour conditions; or the eligibility or authority of a person claining the right to represent cither employers or workers in negotiating, arranging, fuing, maintainjng or modifying the term of labour conditions. ${ }^{\text {s }}$

A machinery for the settement of trade disputes known as the Labour Relations Board was set up, with powers to consider, conciliate and arbitrate such disputes; to consider any complaint of unfair labour practice, to prohibit any such practice. tu direct any persons, groups or organizations to abstain therefrom; to enforce its decisions and awards by appropriate means; and to recommend to the Minister of Community Development and Social Affairs the dissolution of ofsanizations. As appeal from a decision of the Board on questions of law, not on findings of fact, was allowed to be taken before the then Supreme lmperial Court It purser was to examine such decision and if there was any error of law to refer the case to the Board for final action, giving at the same time binding directives on questions of law. ${ }^{\text {² }}$

The Proclanation further recognized the rights os associations of employers ardd werkers as well as the system of collective bargaining. As such workers were granted rights not only to form and join trade unions but also to have their unions affiliated to groups of unions confederated on a country-wide basis." The term strike was given staturary definition as being:
... ary temporay cessation of work by the concerted action of a group of employees taken in connection with and intended as a means of iryfuencing an existing labour dispute.

Despite this definition, however, the Proclamation did not have any provision in which the fight of workers to strike as a means of securing their demand was
recognized. It did not expressly deny it either. It prohibited unfair practices and it defined certain forms of strikes as elements of such unfair practices ${ }^{10}$ Difficult as the task of drawing any distinction between the forbidden practices and others may be, let as now exarnine the provision at some length.

The first proviso imposed on all forms of strikes was that they should not be initated, organized and conducted by any other person or group except trade uxions. Even workers of an undertaking with a serious trade dispute could not conceive of any idea of conducting a strike urless they had a unton. Workers in undertakings with less than fifty workers were not allowed to form a union although it was possible for them to join general labour unions with workers of other undertakings. But this, at the time, was a rare occurence.

It was also an unfair labour practice withis the meaning of the Proclamation to incite or conduct a strige which was outside the scope of the lawful activities of trade unions. The scope of activities of trade unions was taken to be the regulation of labour conditions and activities permitted in the Proelamation, as well as the study, protection and development of the economicsocial and moral interests of their members. It was in the scope of activities of trade unions to negotiate freely and voluntarily matters in the field of labour conditions and sette disputes anising therefrom by peaceful means whenever possible. ${ }^{11}$

Strikes initiated without willingness to negotiate in good faith or arbitrarily were likewise said to fall within the domain of unfair labour practices under the Proclamation. In this respect questions to be raised are: What is meant by initiation of arbitrary strikes? How is one to establish failure to show willingness to negotiate in good faith? What, after all, was meant by such terms as good faith and arbitrariness? Which body was empowered to determine the existence of these reasons? No explanation was given on these and related points of controversy and it seems the interpretation was left to the Minister of Community Development and Social Affairs, who had wide powers to implement the Proclamation and to issue subsidiary regulations for the better carrying out of its provisions. ${ }^{17}$ Other bodies in whom the power to interpret the Proclamation was vested were the Labour Relations Board and the Supreme Imperial Court.

Similariy, conducting or initiating strikes prior to submission of the dispute to the Labour Relations Board and before the expiration of a period of sixty days following such submission as well as coniducting strikes in violation of or against the final decision or award of the Board was also an element of tuffair labour practice and therefore unlawful in the eyes of the Proclamation. First, the attention of the
employer must be drawn to the dispute that might lead to the intended strike. In the event of failure to reach an agreement acceptable to the parties, the law required it to be taken before the Board. The Board, after having exhansted all possible means of antiving at amicable settlement, had two options. It might reject the demands of the trade union and its petition for strike upon such terms as it may think appropriate, or it might grant the pecition to strike so that the employer could be forced to subrint to the demands of the union. It was also possible to initiate and conduct strikes sixty days after taking the dispute before the Board and if the later failed to render any decision or award. Silence of the Board, for one reason or another, made the strike lawful onte the prescribed time lapsed.

Still other situations of strike that constituted unfair labour practice were those that were accompanied by violence, threats of force or unlawhis publicity. Incidents of violence and threats of force are not difficult to understand. But the meaning of the phrase "unlawful publicity" is controversial. What mode of publicity was lawful and what was not? Were unions banned from circulating documents and leaflets on the strike to their members and to the public? Were they expected to have information on the strike censored? Was a press release on the strike urlawful? Who was to decide its unlawful nature?

The last item included in the unfair labour practices list was more of categorization of the work by reason of its vital public nature, or the essential character of the services rendered. In the language of the Proclamation, strikes initiated and conducted by workers engaged, without limitation, in the provision of electricity, water and other public utility services, telephone and telegraphic commurucation, and transportation services were not lawful. With the exception of transportation services, other activities were as much of public businesses at the time of the enaciment of the Proclamation as they are today. ${ }^{13}$

The enumeration was not exhanstive, however, as the very phrase "withous limitation" implies. How then was the limit to be set up? Was it once again an issue left to the Minister of Community Development and Social Affairs? It was also a question that challenged the competence and independence of the Labour Relations Board and that of the Imperial Supreme Court. What was the guarantee available if employers or public authorities kept on saying the work threatened by a strike action was essential in character? A strike by its nature, is an undesirable phenomenon. Workers, in most cases fesort to it when all amicable efforts of settling a dispute fail to produce a positive result. It is the last card with which they play to exert pressure over their employer. Without mechanisms devised to limit the broad
interpretation to which the phrase "without limits" is subjected, one could not conceive of any effective strike under this Proclamation.

## 3. The Labour Proctamation No. 64 of 1975

The Labor Relations Proclamation No.210/63 of Imperial Ethiopia was superseded by the Labour Proclamation No. 64/1975 upon the advent of the Prowisional Military Administrative Council, widely known as the Derguc, to the country's political arena. Although there was no express provision which," in particular, repealed the former legislation, the reading of article 111 in the latter, in which laws, regulations or decisions inconsistent with the new law in respect of situations prowided therciat were to have had no effect. rendered it redundant on matters pertaining to industrial relations for all intents and purposes, No mention was made in it of employers' assoctations and the very term emptoyer was replaced by the word undertaking. deliberately or otherwise. One may be tempred to attribute these omissions and replacements to the apparent or real affiliation of the then policy makers to communist ideology.

Comprehersive as the legislation may seem, with, of course, a number of its own merits and drawbacks, and controversial us interpretations of some of its provisions were, this writer will try to limit the discussion io the provisions pertaining to organizational independence of workers and their right to strike.

Needless to sily, workers were granted the right to form and become members of trade unions; and similarly unions were given the right to form and become members of industrial trade untons, which in turn were allowed to establish one nutional associarion namely, the Als.Ethiopian Trade Union (AETLi) ${ }^{14}$ The organizational structure of these unions was more of a paramilitary set up designed to seree the idea of the so called democratic centralism which was applied to many of the organizations of the time. Only one trafe union was to be established in a single undertaking. Lower trade unions were to be subordinates to the higher ones and members were required to maintain strict discipline. Trade unions at the botom of the ladder were obliged to accept and implement the cecisions of superjor ones. ${ }^{15}$ All unionts were also expected to respect the norms and comply with instructions of polidical organs, especially that of the party whicle legally assumted the patronage of providing political and ideological guidance to the Ethioplan society, trade unions being no expecetion. It was also their duty to see to it that laws, regulations. ugreements, work tules and procedures were strictly observed by their members. ${ }^{17}$ Trade Unions orginized before the coming into force of this Proclamation were
dissolved and their rights and obligations were transferred to the unions formed according to the new law. No different was the fate of the Confederation of Ethiopian Labour Unions (CELU) which was only a voluntary and free association of the numerous unions that flourished during the Imperial era. All its rights and obligations were transferred to the All Ethiopian Trade Union. ${ }^{\text {EB }}$ The national union was recognized, dejure at least, as the representative of all workers in the country with powers to ", guide and supervise the labour movement and issue directives to unions to ensure theinfunctioning in line with socialist principles." ${ }^{\text {W }}$

The monolithic nature of the structure of these trade unions and the denial of choice of trade union membership was, obviously, criticized by many. One report by experts of the Internutional Labour Organization clearly said that the legislation was at variance with the right of workers to estabish and join sade unions of their choice contained under Article 2 of the Freedom of Association and Protection of the Right to Organize Convention No. 87 of the ILO which was ratifted by Ethiopia long before the promugation of this Proctamation? The report noted the afinantages of a strong trade union movement which is free from the shortcomings associated with undue multiplicity of small and competing arganizations, hut at the same time registered the objection of the experts ower unification of trade unions by legislative means. In this respect it went on to say:
... oftere is a fundomental difference berween a situation in which a rade
uthion monopoly is intitured or mumained by legintation and the factuad
shumtions which are fourd to exist in certain countries in which the
morkers or their rrade untont join together voluntarity in a single
organization without thir being the result of Iegislative provisions culopted
to that effect."

As to strike, the Proclamation defined the term in much the same way as the previous legisiation did. In addition, such actions as slow-down, dismption of work and preventing others from working were considered to constitute a sirike.? But this one tub failed to give express recountion of the right to strike. It rather described unlawful strikes as those:

1. initinted wirhout there being a collective trade dispute to which the rima union is a party, ever if there is a collective trade dispute the calse hisk not been refersed to the Labur Division of the High Court and exen if it has been referred fifty tatys have nor clapsed before any decisiun is given:
:- Intike
2. initiated in opposition to the decision of the Awraja Court or the Labour Division of the High Court.
3. instiated in wiolation of the eonstitution of the union. ${ }^{37}$

Obwions ats the cumbersome nature of this provision is, let us briefly explore the message it was intended to convey.

As poitted out above, although the Proclamation did not provide a provision on the right, it is possible to argue a contrarin from the meaning of the quoted provision to infer what a lawful strike is all about.

Strikes are mainly natural consequences of unresolved confliets between workers and their employers. The Proctamation did not, however, take all forms of disputes for causes warranting a strike action. In the first pace, the mature of the dispute had to the collective as distinct from individual. Secondly, only the trade unon in a given undertaking had to be the initiator of the strike. Questions may arise in this regard. What was meant by individual and collective trade disputes? How were the union and its members expected to demonstrate their solidarity with a worker against whon gross injustice was done even thuugh his dispute with the employer was of an indiwidual mature?

Definitions of both classes of urade disputes were, of course, prowided in the Proclamation. But drawing distinctions between the two was not always as simple as its reading would seem to imply: ${ }^{34}$ Nevertheless, once the dispute was ctassified as collective, only the union was allowed to initiate and conduct the strike. No other body or individual member could assume this task no matter how grave the cause may be to the workers. The cause must also be limited only to matters affecting workers in the underiaking to which the trade union was affiliated. Any other eause was rued out perse. This made calling sympatheticand general strikes an outright impossibility.

Next comes the procedure to be followed for a pre-strike setilement of the dispute. Before any meaningful strike action was contemplated, the trade union was expected to draw the attention of the Labour Division of the High Court to the dispute. Even then, the union had to wait for the prescribed fifty days to lapse. If the court were to prohibit the petition, the whole thing would end up there and then. Insisting on the strike action thereafter was tantamount to a criminal offence entailing loss of liberty or fines.

It is also stated that strikes were deemed to be untawtul if conducted in violation of provisions contained in the contitution of trade urions. The constitution, among other thingss must inclade the objectives of the urion, rights and duties of members, duties ancl responsibilities of leaders, general and other meetings of unions and their functions. ${ }^{25}$

The law was silent tegarding incorporating dispute settlement procedures in the constitution ol trade unions. But as the enumeration was not exhaustive, it is safe to ussume incorporation of these procedures in a constitution of a trade union as long is they do not comtint elements contrary to the provisions of the Proclamation, whatever this, may mbin. If so, no strike must be conducted without faithfuly following what was licid dowe in it.

These difficult resirictions imposed on the right to strike were also subjected fos severe criticima by everts of the International labour Organization. They considered the effects the the provison as rendering impossible "... for all practical purposes, the righ of workers to tase stike action for the furtherance or defence of their incerest." The experss in this connection pointed out that" ... the effective prohibision of surike tomstitutes a considerable restriction of the opportundies upen to trade animos. livio if the law of the land was respected by the Freedom of Assuctution, Convention, it must an be appled to impair the guarantecs provided in it" including the right of trace untions to organize their activities".

## 4. The Labour Proclamation No. 42 of 1993

The demise of the Dcrgee was followed by the formation of the Transitional Govemment of toduy's Ethopia, a few weeks alicr forces of the EPRDF took control of the country, ${ }^{37}$ In one of the moves to transform the socio-political falric of the nation in accordance with their political ideals, the new leaders have recently come out with anolher labour legistation.

The new luw recognizes the right of hoth workers and employers to form their organizations and participate in them. It is also possible to form federations and confederations of trade unions and employers associations. ${ }^{28}$ Only a single trade union, however, may be established int an undertaking. To qualify for trade union formation the wumber of workers in the undertaking must not be less than twenty. Those in undertakings with less than twenty workers muy form general trade unions with other workers in different padertakisgs provided they fulfill the required number of twenty. Whis approach is transplanted inte the new Proclamation from the provisions of its predecessor.

So far as the ofganizational structure is concerned, the new Proclamation has done away with some of the restrictions contained under Proclarmation 64/1975. Although the practical application of the law is yet to be seen, no mention is made of creating a single national confederation of trade unions, If even suggests the possibility of creating more than one confederation by laying down the word in the plural. The principle of organizational tertrulism anil the requirement of strict discipline is no where to be seen. Potential interference by public authorities and political groups with union activites uppears to have been redued to some extent.

The objectives of trade urions, their federatons and confederations alike, are, indeed the furtherance of the interests of their members. In view of this fact, however, there is a prowision in the Proclamation that casts doubt on the intentions of public officials, or those responsible for the drafting and implementation of the Proclamation at the very least, whether they want to leave the entire business of union activity to the full discretion of its reylulul members. This is manifested in a provisius which states that rade unions, their federations and confederatinns shail:
ensure that laws; regufations, directives and statententi are frown io. observed amd inplemenced b; mombers. ${ }^{\text {no }}$

Questions may urise at this point. Why do we new to hure this ides
 enforcement agencies? How du union members implement latw, regulations,
 against a member whe tails to perform stach a task?
 clearly stated butuer the Freadom of Associations and the Riglst to Organize Gonvention of the ILO ats well. But it is not in :lec prowince of trate unioft ativity to ensure observance and implementation of laws and regulations. The state has set up its own machinery to perform this tiak. One juith a tride anian not hecatse he interds to perform such functions hut to guad and promote his interest together with that of his fellow workers. Thit eweryne muse give dac rapict to the law goes
 follow.

With this observeten in nind, let is new se whis the new Proclamation has in store for strikers. There is a chatuter devored to the mesting and procedures of conducting a strike action, the main artiche of which is gunct both

1. Workes have the right to strike to protect their trterest in the manner prescribed in this Proclamationt ...
2. The provisious of sub-article 1 shall not apph to workers (sic) of undertakinge referred to in Article 136(2) of the Proclamation. ${ }^{37}$

A closer scrutiny of this article sheds light on the class of workers the right is said to apply to, the procedural requirements for conducting a strike action and the subject matter of the strike under contemplation which we will separately deal with as follow:-

## 4,1 Class of Workers who Cennol Claimithe Right

Not all kinds of workers have the right to seek, initiate and conduct a strike action. There are workers who are effectively excluded by the Proclanation from its scope of application. These include, amongst others, public servants members of the armed forces and the police and persons holding managerial positions. The Council of Ministers is also given power to derermine the applicabitity of this legislation to workers employed in foreigo diplomatic missions and intemational organizations within the territory of Ethiopia as well as those ennployed in religious and charitable organizations. ${ }^{3}$

Members of the public service, armed forces and the police are naturally cowered by special taws governing their activities. The staus of public servants, for example, is detenmined by a regalation which is still in force. Workers in the public service are unequivocally prohibited by this regulation from going on strike or participating in any concerted action ${ }^{\text {33 }}$

In this respect, as many countries, ours being no exception, take strikes by public servants as serious and sensitive issues, Convention No. 151 and Recommendation No. 159 of the $I L O$ need to be taken cognizance of. The Convention deals writh the protection of the night to organize and procedures for determining the conditions of employment in the public service. It takes note of the considerable expatsion of publie service activities and the need for sound labour refations in the area. It applies to all bound by contracts of employnent in the public service with the exception of those high level employees whose functions are nomally considered as policy making or managerial and those whose duties are of a highly confidential nature. ${ }^{34}$ The Comvention requires members of the ILO to grant adequate protection against any and all acts of anti-union discrimination similar to those granted to other classes of workers under previous Conveations. The rights of
workers employed in the public service to organize and to bargain collectively is respected and all protection accorded to individual workers and trade unions were extended to individual public servants and their associations. With regard to dispute settlement procedure the Convention has this to say:

The settlement of dispules arising it connection with the detentination of terns and conditions of employment shall be sought as may be appropriate to national conditions, though negotiations between the parties or through independent and impartal machinery such as mediation. conctlation and abitration, establuhed in such a manner ar to ensure the confidence of the parties involved.'35

Whether this country has ratified the Convention or not is not within the knowledge of this writer. But the fact that public servants are once again effectively precluded from the exercise of these rights by the ingenious method of elimination from the scope of application of the new Proclamation, he is certain.

The second class of workers who to not have the right to strike wader the new law are those who are said to be engaged in essential services. The Proclamation defines these services as those rendered by undertakings to the general public. They include:
a. air tranport and radway senices;
b. undenakings suppling electric power:
c. ustertakings supplyng water ard carying our city cleconing and sanitation serrices:
d. urban and inter-urban bus semices ond fillotg stofiont;
e. hospitals, chimics, dipensaries and phamacies;
f. banks;
g. fire brigade senvices; and
h. postal and relecomplumications senvices. ${ }^{36}$

Numerically, the workers engaged in the province of what the law calls essential serwices do constitute a sizable ratio of the population of trade union membership in the country. It may also be expected that it is in these undertakings that the highly qualified and politically conscious labour force is to be found. Then how does the law attempt to compensate for the denial of this essential right to these workers? One's effort to look for an answer to this question in the new Proclamation will be to no avail.

The raison d'etre of denying workers the right to strike in these undertakings is contentious roo. There are those who argue that the activities performed by these workers are 50 vital for the public at large and the effects of strike so devastating as to result in an jrreparable damage that it is proper to probibit such strikes. They sty such strikes are pronibited not becanse their objecrs are unlawfal but because it is believed that stoppage of work is so serious as to produce injury to the interest of the general public.

Those on the other side of the fence contend that the right to strike is not a luxury workers can afford to go without. First, they say, it is a violation of the principle of freedom of association enshrined in the warious conventions and recommendations of the JLO, the UN Universal Dectaration of Human Rights, the UN International Convenient on Economic, Social and Cultural Rights anil a number of other international documents. To draw distinctions between workers simply by the nature of the work they perform. they further argue, is tantamount to the denal of the equal protection of the lam.

The other points that must be considered are the difficulty of differentiating essential services from other kinds of services. Essential services are defined as anose services rendered by undertakings to the general public. Apart from activities clearly stated in the provisions which we have seen above; this generalized expression may also suggest the possibility of incleding other activities in the detinjtion of essenalial services. How, then, is it possible to delimit the wide interpretation to which the provision is open? What, after all, makes a cerain form of service public and essential? We have seen, for example, that workers in undertakings that provide urban and inter-urban bus services are denied the right to strike. What if lary drivers, say those working in the Ethiopian Freight Transport Comporation, decide to go on Strike? Is not the service they render to the public as essential as that of bus drivers? Some people might say iz is. Others might not Ticir argumend depends on which end of the stick they may find themselves positioned or on their subjective assessment of the problem at hatd. Preference of onte argument to the other in the event of controversy will undoubtedly be a challenge to members of the new Labour Relations Board and those in the judiciary.

Be that as it may, one should not unnecessarily extend the lis of activities to many fields with a subtle objective of legally blessing effective paralysis of strikes in all major fields of the economy. As the fight to strike is so pivotal to the frecciom of association of workers, any political order that boasts of promoting the cnuses of justice and democracy must stand pat in its policy by adhering to respect it

Sirthe

### 4.2 Procedural Requirements and he Subject Matter of the Strike

The right to strike is exercised by those workers to whom it is granted only when it is initiated and condected in accordance with the manners prescribed in the Proclamation. As suth before resorting to any form of strike they are expected to give udvance notice to the employer though their union indicating their reasons for so doing: they should make all efforts to solve and settle the dispute through conciliation; the strike action should be supported by a majority of workers concerned in which at least two-thirds of the members of the trade anion were present; and they should ensure the obserwance of safey regulations and accident prevention procedures in the undertaking. ${ }^{17}$

It is not sufficient to give adtuance notice of at least ten days to the employer but it is also necessary to serve the same to the representative of the Ministry of Labour and Social Affairs in the area or the concerned government pffices, whatever this may be. Onte may ask why unions hawe to notify the action to these bodies. The obvious reason is security. Others may be matters of policy because the Minister is the one responsible to oversee union activities. Can you guess what more?

Next comes the requirement of conciliation. Trade unions are expected to make all pussibse effors to solve and settle their dispuces through the institution of conciliation which in the definition of the Proclamation is:
> ... dse activity conducted by a privale person or persom appointed by the Minster at the joint request of the parties for the propose of bringing the parties together and seekidg to arrange between them voluntay settement of a labour dispute which their own efforts alone do not produce. ${ }^{\text {sy }}$

Matter that come before the competence of a conciliator are disputes of a collective nature like wages, conditions of work, collective bargaining, etc., that affect the entirety of woskers and the existence of the undertaking. To this end, the conciljutor endervours to bring about amicable settlement of the dispute within thirty days after the dispute is brought before him. If he fails to do so within the prescribed time limis he submis his report to the Minister and gets out of the picture. ${ }^{\text {jo }}$

It might seem that tawful strike is possible once the dispute is taken before the conciliator and his effort to bring aboul any meaningful settlement fails, if the parties do not submit the dispute to the Labour Relations Board, ${ }^{40}$ and further if the requirenents of adwance notice are observed. But the pre-strike journey of workers does not end up there and then. Anyone of the parties may submit the matter to the

Board and the strike action must wait for another period of thirty days within which the Board shall give its decision. The Proclamation does not provide the time limit for submitting the matter to the Board. But the exigencies of the problem demand an immediate action and what is meant by immediate action must be contirued by the standards of a reasonable person.

Yet again anyone of the contending parties may appeal against the decision of the Board to the Central High Court within thisty days after the decision has been read to or served upon him which ever comes first. The appeal must be restricted to a question of law which the appellant thinks has materially affected the Board's decision. ${ }^{41}$ What constilutes an error on a question of law and what does not seems to have been left to the subjective discretion of the justices of the Central High Court. Anyway, once the appeal is taken, the union is expected to obseve sill another period of thirty days within which the const may decide on the dispute.

On appeal the Central High Court has two options. The first one, which is an easy way out, is to affirm the decision of the Board in which event the union may or may not proceed with the strike action depending on the decision. But if the Court is of the copinion that the Board erred on a question of law that materially affects the outcome of the dispute at hand it:
> ... shall remand the matter to the flourd for further arrion not inconsistent with the Court's deternimation, with or without detailed cour directives, but the Court shall not itself reverse, modify or amend the Board's decision ${ }^{2}$

A person having a closer look at this provision may raise questions such as: How does such an error materially affect the outcome of the dispure? How does the Court arrive at a determination inconsistent with that of the Board if it "shall not reverse, modify or amend the Board's decision"? What else may actions of remand by the Court" with or without detailed ... directives' amount tor apart from reversal, modification or amendment of the Board's decision? What will the outcone be if the Board still insists on the correctness of its first decision?

Posing these questions the answers of which are open to some degree of controversy, when one looks at the hurdes unions have to face before conducting a lawful strike, the dispute may go all the way from mutual negotiation of the concemed parties to the conciliator, to the Labour Relations Boart and to the Central High Court before the contemplated action becomes viable. The minimum mumber of days to be observed comes to a hundred and thirty, i.e., ten days of advance notice to the

## Strike

employer and the concerned government office thirty days each before the conciliator, the Board and the Central High Coust with an additional period of thinty more days granted to the party who intends to appeal against the decision of the Board to the Central High Cozrt. And God knows what will surface in the meantime.

Coming to the remaining procedural requirements, that the decision to strike must be supported by the required number of workers is not hard to grasp. But that strikers are bound to ensure observance of safety regulations and accident prevention procedures sounds enigmatic. Why does a striker have to observe these regulations? Is not a strike an action taken by workers in unison to bring the employer to their terns? How are these regulations and procedures to be observed? Failure to do so does not have much to do with a strike action. It is a separate concept that deals with the individeal guilt of a worker or an employer which by itself has civil and sometinges penal consequences.

As to the subject matter of strikes, any lawful action within the meaning of the new proclamation must bave protection of workers' interests as its objective. But, the phrase "protection of interest" is open to different interpretations. The contextual reading of the various provisions sugeest the assumption that for a labour dispute to be a cause and motive of strike it must have a collective character. But no where in the Proclamation are individual and collective trade disputes defined. linspite of this seemingly deliberate omission to define the two classes of trade disputes, the Proclamation makers reference to both in some of its provisions; Article $138 / 1 /$ and Article $142 / 1 /$ to cite but two. This omission is likely to aggravate the already existing controversy in applying these concepts to practical problems for some time to come as Ethiopian courts do not follow the principle of stare decisis in adjudicating cases.

In an attempt to fuse the concept of both classes of disputes laid down under the previous Proclamation No. $64 / 1975$, the law generally states the definition of a "Labour dispute" as:
.a. ary controversy arising between a worker and an employer or trade wiont ahd employers in respect of the application of law, collective agreements, work miles, employment contrat or customary rules and also any dibagreentent arising during collective bargaining or in connection with collective agreements

The other related point that deserves our attention at this juncture is the possibility of conducting general, sympathetic or other forms of strike. The

Proclamation only speaks of economic strikes relating to the collective interestr of the unionized workers in a single undertaking. They must show that they bave a vested interest in the outcome of the dispute. We can, therefore, say that the new Proclamation too excludes expressions of solidarity workers may manifest to each other by way of general or sympathetic strikes. Although federations and confederations of trade paions are recognized, they cannot call such strikes, nor can they be parties to trade dispute proceedings before conciliators, the Labour Relations Board or before courts of law. One may wonder why the legislators felt the need for setting then up. Their functions are no more than political helter-skelter, to the observation of this writer at Jeast. ${ }^{* 4}$

## 4. 3 The employer

When dealing with labour disputes of this nature, the other crucial aspect to be considered is the position of the employer. Employment relationship is primarily a juridical act that results from a contract between the worker and his employer. As such it is an agreement whereby the worker undertakes to render to the employer:

> ... under the latter's directions for a detennthed or undetemined timest services of phyrical and intellectual natwe in considerotion of wages which the empLoyer wnderakes to pay him.

With all due considerations to the peculiar characteristics of employment contracts, to the human element involyed in it, to the economic strength and social superiority of the employer, etc.. the meeting of minds of the parties is as much of a cardinal concept in employment contracts just as it is in alf other kinds of contracts.

Cumbersome as they definitely are, let us assume that all the procedural requirements laid down in the Proclamation for conducting strike are met, and let us further assume that the workers do not fall in one or another category of exclusion from the exercise of the right to strike; what will be the out come if the employer insists on his position and refuses to bow to the pressure of the strikers? What if he goes one more step forward and aggravates the situation by exercising his right under the existing laws and collective agreements to terminate the contract of employment?

In a free enterprise economic system where property right is sacred, with legislative and even constitutional protection, the owner has the widest right over his property which may neither be divided nor restricted save as is expressly provided for by the law itself. ${ }^{46}$ Do we have to expect an indefinite continuation of the strike until he finally comes to the terms of the strikers? Or what other avenues of action

## Srike

are there to the workers? Such occurrences may seem improbatle, but they are not far fetched. The law does not seem to have foreseen this possibility too.
4.4

## - Penally Papotions ${ }^{-7}$

To initiate and conduct a strike after a dispute bas been referred to the Labour Relations Board or to the Centra High Court and prior to the lapse of thirty days before any order or decision is given is unlawful in the eyes of the Proclamation. It is also unlawful to refuse to obzy or to continue a strike in defiance of the final order or decision of the Board or unwarrantedly to delay obeying such an order or decision ${ }^{47}$ Violation of this procedure is an offence punishable with a fine not exceeding Birr 1,200 if committed by a union or Birr 300 if committed by an individual worker unless the provisions of the Penal Code prescribe more servere penalties in which case the punishment laid down in the alter becomes applicable. ${ }^{45}$

## 5. Concluding Remarks

To consider all strikes as homogeneous occurrences aimed at subversion stands in the way of dernocracy and enlightenment. As a social phenomenon of considerable degree of complexity, strike is a form of conflict that requires due recognition by the parties involved and by public authorities. It is an undesirable but, at times, an unavoidable incident. So long as discontent is the prime mover of change and development, any social order needs to appreciate this fact and work towards its just solution. There is quite a difference between social conflict, which is a fact of life, and confrontation which can be traversed by compromise, tolerance and by means of devising a wise and just policy. Suppression of differences is nothing but postponing the conflict for another time so that it may surface with a new and more serious bang.

More often than not, relations of workers to their employers and to the state in this courtry have been that of subservience at the best of times. In the forgoing discussion an attempt has been made to show the right of workers to freedom of association and that of strike in the Ethiopian perspective. With all due respect to their positive contributions, the three legislations we have gone through are far from being satisfactory by the standards of the various conventions and recommendations of the International Labour Organization and other international instruments.

Any meaningful recognition of individual and collective fights musi not be accompanied by impediments of one form or another that may bring about its paralysis. The legislator should subject such rights to limitations only in so far as the action is compatible with the nature of the right and for the purpose of promoting the
general welfare of the society. A right is just as dead as the paper on which it is written entess it is properly exercised when the need for so doing arises As embarking upon the road to democracy and free enterprise economic system is on the order of the day, we hope the architects of our society will view the issue with great perspicacity.

## Noter

1. Preamble to the Constitution of the Intemational Labour Organisation adopted at Philadelphia on 10 May 1994.
2. Black's Law Dictionary, 5th ed., 1979, West Publishing Company-
3. The other form of categorizing strikes is by the mode of initiation. Some of these are general strikes, sympathy strikes, sit down strikesand wilk cat strikes General Strikes are usually called by federations or confederations of trade unions in: a given sector of the economy, or generally at national or regional levels. They may also be called by political parties 10 which such federations or confecerations are affiliated. They may have promotion of economic and/or political interests of their members as an objective. Sit down strike is a form of strike conducted by workers who stop their work but do not leave their work premises. Wild cat strikes are carried on by a group of workers in an undertaking without authorization of union officials and sometimes against actions of such officials. Sympathy strikes involve two unions or more. They are manifestations of union solidarity wherein one union strikes in sympathy with the objectives of another.
4. To this end the major legal instruments of the ILO are :(a) Convention No. 87 of 1948 cited as The Freedom of Association and Protection of the Right to Organize Convention, (b) Convention No. 98 of 1949 cited as The Right to Organize and Collective Bargaining Convention, (c) Concention No. 135 of 1971 cited as The Workers ${ }^{*}$ Representatives Convention, and (0) Recommendation No. 143 of 1971 cited as The Workers' Representatives Recommendation
5. Proc. No. 210/1963, Ast. 2(1).
6. Ibid. Art 12.
7. Did. Art. 19.
8. Prior to the coming into force of the Proclamation, the status of unions whas equated with that of civil associations and was regulated by the Civil Code of the Empire of Ethopia, NegaritGazeta. Extraordinary Issue 19 th year No. 2 See Biook One, Title 3, Chapter 2 in general and see Article 406 of the Code in particular.
9. Proc. No. 210/1963, Art. 2(q).
10. Bid. Ant. 2 (s) cum. Art. 28.
11. Bid. Art. 22.
12. Ibid. Art 3 cum: Art. 37. The Minister subsequently issued the Minimum Labour Conditions Regulation No. $302 / 1964$ pursuant to the authority vested in him in the Proclamation.
13. Here, by Public business is meant business ventures conducted only by the government for reasons of their vital importance or the public character of the activities undertaken.
14. Proc. No. 64/175 Art. 49.
15. Ihid. Art. 50(4) (5) (7).
16. See the Proclamation to extablish the Commission for Organizing the Party of the Working People of Ethiopia No. 174 of 1979.
17. Prac. No. 64/1975. Apt.52. (1) (g)
18. Ibid. Art. 114(2).
19. Ihid. Art. 52(3) (b).
20. Report of the Commitee of Expers on the Application of Conventions.and Recommendation; International Labour Office Publication, Geneva 1976. p. 120.
21. Ibid.
22. Pros. No. 64/1975, Arc. 2(22).
23. bid. Art 106.
24. Ibid., Art. 2(5) and Art. 2(12) respectively defined collective and indiwidual trade disputes. By the former was meant any claim arising out of the interpretation or the improvernent of existing prowisions contained in laws or
regulations or collective agreements or work nues or accepted practices and disputes involving questions of representation by the workers or the undertaking or arising in the course of collective negotations. By the later was meant a claim of an aggrieved worker arising out of the wiolation or alteration of prowisions contained in laws, regulations, work tues or individual contracts of employment or the non-application of established practices by the undertaking.
25. Ibid. Arl. 55.
26. Report cited at note 20 above, pr 121.

2r. The EPRDF, Ethiopian Peoples Revolutionary Democratic Front, founded and nurtured in the highlands of Northern Ethiopia, effectively brought about an end to the era nt the Derque atter an insurgency operation that lasted ower a decude und a lialf. It is now suit to be an umbrella organization embracing The Tigrian Peoples Liberation Front (TPLF), The Ethiopian Peoples Demucratic Mowement (EPDM), The Oromo Peoples Democratic Officers Renvlutionary Movement (EDORM). It holds 32 of the 87 sits in the Council of representitives, the Supreme law making body in the country. The remaining 55 sis are sthared betwenseveral other potitical groupings and dibesain помvements.
24. Pruc. Na, 42/1993, Art.113.
24. Mid.. Art. 114 .
30. Lbict., Art. 115.
31. lbid. Arl. 157.
72. $\mathrm{Ibid}, \mathrm{Art} 3.$.

ㄱ. Puthic service Regulation No. 269/1962, Art. 83.
34. Latunur Relations (Public Serviac) Convention No. t51 of 1978, Intemational Lalmat Otganizition, Aft. 1. Par. 2.
35. Hid. Art. $k$.

## Journat of Ethoppion Len Fow dar jow

36. Proc No. $42 / 1993$, Art. 136(2).
37. Jhid Arl. 158.
38. lbict. Art. 136 (1)
39. Lhid. Art. 142.
40. The Labour Relations Board of the Imperial era was dope away with by Proe. Na. 64/1975 but is now feinstated by the new Proclimation with powers to ardulicate collective trade disputes to concilinte the parties and to give any orders and decisions as well ats to hear cases th prohibited acions.
41. Ptoc Not. 42/4593, Art. 154.
42. lhid.
43. Hhid. Art. 136(3).
44. Ibid. Art. 116. Functions gif tederations and confederations include strengthening the unity and spirit of cooperation of their members paticipation in the determiniation ot impropement of the conditions of work at the trade or industry level as well as to encourage members to strengthen their pareticipation in the construction of the national conomy. The question to be asked here is; How do these organs sinengthen the spirit of comperation and unity of their members whete they are not in a position tomake use of the mos important wedpon of soldarity expression?
45. Civil Code of Erhiopia, Art. 2512.
46. Ibid., Art. [204.
47. Proc. No. $12 /[993$, Art. 160.



[^0]:    Editor's Mote
    *Unless stated otherwise all dater are according to the Ethiopian Catendar.

[^1]:    Edifor's Note
    *Uniess sated othemise, all dates are accorditg to the Ethiopian Calondar,

[^2]:    
    " п\&

[^3]:    
    吾耧

[^4]:    
    

[^5]:    Former Assistant Professor of Law, Faculy of Law, Addis Ababa Eniversity.
    "See the cases published in this Journal (ed.)

[^6]:    ${ }^{1}$ The death of Professor Escara, the principal draftman of the Commercial Code, occurred before the completion of the work. Hence, Professor Jauffret took over the task at a later stage and was responsible for the drafting of the section of the Code on insurance.
    ${ }^{2}$ Jauffet himself states that he "took into account many moderri laws,especially the French law of 13 July 1930.." see Peter Winship, (ed.). Background Documents of the Ethiepiant Commercial Code of 1960 (Addis Ababa, Faculty of Law, A.A.U., 1972), p. 83 .

[^7]:    ${ }^{3}$ J. Hellner and G. Nord (ed.), Life Insurance Law in International Perspective, Reports from an Intentational Colloquiam (Stockholm, 1969), p. 29.

[^8]:    "Peter Winship derived the same conclusion when he wrote, "The Codification Commission apparently accepted Professor Jauffret's draft without amendments: the copy of the text in the Archives of the Faculty of Law, (Addis Ababa University)has a note at the top of the ferst page (thought to be in the handwriting of Maitre Perdikis, a member of the sub-commission) stating that the text was accepted without amendment." See P. Winship, cited at note 2 above,p. vi.
    ${ }^{5}$ The only discrepancy relates to a curious omission from both the Amharic and English wersions of the word "heir", found in the original draft. Even here, the discrepancy could not have been due to change made in the draft, since the French mester-version of the Commercial Cote still contains the word.

[^9]:    ${ }^{6}$ Hellner and Nord, cited at note 3 above, p. 18 .
    ${ }^{7}$ Ibid. p. 17

[^10]:    ${ }^{4}$ 1bid p. 29.
    ${ }^{9}$ Ibid.

[^11]:    ${ }^{10} 1 \mathrm{Ibid}$

[^12]:    ${ }^{11}$ A Iess satisfactory solution may be obtained by invoking unlawtul earichment (Art. 688 of the Civil Code), whereby the spouse "who proves that the personal property of his spouse has been enriched to the prejudice of his own personal property or of common property", may be awarded indemnity.

[^13]:    
    
    
    
    

[^14]:    
    
    
    
    
    
    
    
    
    
    

[^15]:    'Lecturer, Faculty of Law, Addis Ababa University.

[^16]:    

[^17]:    - Assistant Professor of Law, Addis Ababa University, former judge of the Supreate Cobrt of Ethiopia.

