



E-ISSN: 2789-9500  
P-ISSN: 2789-9497  
IJCCSL 2023; 3(2): 35-43  
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[www.criminallawjournal.org](http://www.criminallawjournal.org)  
Received: 16-06-2023  
Accepted: 21-07-2023

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## **Insurable interest as a requirement for the validity of life assurance contracts under the Cima code: A Cameroonian perspective**

**Ngoe Kamadje Albert**

### **Abstract**

Human existence is shrouded with a plethora of uncertainties which may be connected with the time of happening of an event or its happening at all. While these uncertainties subsist, life must go on. Following this, the CIMA Code has provided for the purchase of life assurance to cover financial hardship after the death of a breadwinner. However, for a life assurance contract to be valid, the policyholder must possess insurable interest in the life insured. Despite its importance in preventing gambling and reducing moral hazard in life assurance business, it is ineffective and inefficient under the CIMA Code. This paper aims at assessing the effectiveness of insurable interest in life assurance contracts under the CIMA code and the reality in Cameroon. By way of doctrinal research methodology, this paper reveals that although insurable interest in life assurance is statute driven, its applicability is ineffective since so many of its intricacies and lacunae are left to the court for interpretation which of course give rise to several undesired interpretations. It is therefore imperative for the CIMA Legislator to undertake reforms on the identified ambiguous provisions and fill in the lacunae in the Code so as to ensure the effectiveness of insurable interest as a condition for the validity of life policies.

**Keywords:** Insurable interest, life assurance, contract, policy, validity, CIMA Code, Cameroon

### **Introduction**

In the early eighteenth century, life assurance business looked more like a Vegas casino run by the Sopranos than the well-established and respected industry, it is today <sup>[1]</sup>. Anyone could purchase a policy on another's life without the policyholder knowing the insured or vice versa. If the life insured happened to die within the time period prescribed in the policy, there would be a payoff. In fact there was no requirement that the policyholder must have any interest whatsoever in the life of the insured beyond the policy. This practise made the insurance business looked more of a gambling or wager over the lives of persons. It was in this connection that England issued the Life Assurance Act to make the society a place to be. It Section 1 of the 1774 Act made it clear that:

No insurance shall be made by any person on the life or lives of any person, or the person or persons for whose use, benefit, or on whose account such policy or policies shall be made, shall have no interest, or by way of gambling or wagering: and that every assurance be made contrary to the true intent and meaning hereof shall be null and void to all interests and purposes whatsoever <sup>[2]</sup>.

The idea behind the above provision was to eliminate the element of wager and gambling from life assurance contracts. In effect, any life policy issued without the policyholder having insurable interest (I.I) in the life insured, in case of third party policies, is considered illegal and void. The CIMA <sup>[3]</sup> Code which is the law regulating the life assurance business in

<sup>1</sup>James R. Robinson and Stephen "Bo" Wilkins," Chawla, Irrevocable Life Insurance Trusts, and the Insurable Interest Problem", [www.naepcjournals.com.org>journal](http://www.naepcjournals.com.org>journal). Accessed on 12/14/2020, p.1.

<sup>2</sup> Life Assurance Act of 1774, chap 48.

<sup>3</sup> CIMA stands for Conférence Inter-Africaine des Marchés d'Assurance loosely translated in English as Inter-African Conference for Insurance Markets. The CIMA region consists of 15 Sub-Saharan African states which include: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Gabon, Guinea Bissau, Equatorial Guinea, Ivory Coast, Mali, Niger, Togo, and Senegal, Congo Brazzaville and Comoros Island. The Insurance organization is underpinned by a uniform code (known as the CIMA Code) that regulates the business in all the member states. It was adopted in 1992 and came in to force on the 15th of February 1995.

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Cameroon, provides that: The insurance in the event of death taken out by a third party on the life of the insured is void, if the latter has not given his written consent, indicating the capital or the annuity initially guaranteed. The consent of the insured must, on pain of nullity, be given in writing, for any assignment or constitution of pledge and for the transfer of the benefit of the contract subscribed on his behalf by a third party<sup>[4]</sup>.

Based on the CIMA Code, one is easily lured into thinking that, insurable interest in life in case of third party policies is gotten through the written consent of the life insured.

Getting a precise definition of what will in all cases constitute insurable interest in life assurance is not easy to find. This was the same problem faced by the Supreme Court of the United States of America (USA) in the case of *Warnock v. Davis*<sup>[5]</sup>, where it was held that:

“It is not easy to define with precision what will in all cases constitute an insurable interest, so as to take the contract out of the class of wager policies. It may be stated generally, however, to be such an interest, arising from the relation of the party obtaining the insurance, either as creditor or surety for the assured, or from ties of blood or marriage to him, as will justify a reasonable expectation of the advantage or benefit of the continuance of his life. It is not necessary that the expectation of the advantage of benefit always be capable of a pecuniary estimation.”<sup>[6]</sup>

The CIMA Code, though not referring specifically to life assurance provides that:

Anyone having an interest in the conservation of a thing can insure it. Any direct or indirect interest in the non-realization of a risk can be insured<sup>[7]</sup>.

Insurable interest in life policies can be defined as:

- An interest based upon a reasonable expectation of pecuniary advantage through the continued life, health and bodily safety of another person, and, consequently, loss by reason of their death or disability; or
- A substantial interest engendered by love and affection if closely related by blood or by law<sup>[8]</sup>.

For one to establish the existence of insurable interest in life, the following elements must be taken in to consideration:

- There must be life or limb capable of being insured,
- Such life or limb must be the subject matter of insurance and
- The insured or policyholder must bear some relationship recognized by law to the subject matter whereby he will benefit by the safety of the life or limb and he will be prejudiced by any damage, injury or loss of the life<sup>[9]</sup>.

In a nutshell, insurable interest is the legal right to insure<sup>[10]</sup>.

<sup>4</sup>Article 36 of the CIMA Code.

<sup>5</sup>104 U.S.(1881).

<sup>6</sup>James R. Robinson and Stephen "Bo" Wilkins, op.cit, p.2.

<sup>7</sup>Article 36 of the CIMA Code.

<sup>8</sup> Insurable Interest- Insurance Continuing Education: op.cit, p.1.

<sup>9</sup>Loloh M. N., (2013), “Nature and Scope of Life Insurance Contracts: A Comparative Study of the Common Law Inspired Life Assurance Act in Former West Cameroon and the CIMA code”, Unpublished Masters Dissertation, Faculty of Law and Political Science, University of Dschang, p.37.

<sup>10</sup>Ngoe Kamadje A., (2021), “Insurable interest in the validity of life assurance contracts: An appraisal of the CIMA Code”, Unpublished Masters Dissertation, Faculty of Law and Political Science, University of Dschang, p.6.

From the forgone definitions, it is clear that only policyholders are required to possess insurable interest. The beneficiaries where he is someone other than the policyholder is not required to possess it in the life of the insured. This instead heightens the risk of moral hazard and hence proliferating wager policies.

In a bit to clear off wager and gambling in the life assurance business scene in Cameroon, the CIMA Code forbids the following: The purchase of life policies on the head of a third party without a written consent; <sup>[11]</sup> the purchase of life policies on the head of an incapable (minors under 12years of age, adults under guardianship and persons placed in psychiatric hospital); <sup>[12]</sup> and the purchase of any insurance taken on the head of a minor over 12 years without the authorization and consent of his/her parents, tutor or curator <sup>[13]</sup>. However, the legislator has not mentioned if the insurer should have the duty to check insurable interest at the inception of the contract; if third party beneficiaries <sup>[14]</sup> must have insurable interest in the life insured, if insurable interest can exist at the time of loss in a life policy, and whether written consent by the insured must be voluntary for a life policy to be valid. All these worries only point to the ineffectiveness of the Cameroonian regulatory frameworks on life assurance and the requirement of insurable interest for its validity. In consonance with the above, this paper sets out to assess the effectiveness of insurable interest in its present state as a requirement for the validity life assurance contracts under the CIMA code. Against this background, it is needful to pore on the scope (I) and the deficiencies plaguing the effectiveness of insurable interest in life policies as well as the way forward (II).

### **The scope of insurable interest in life under the Cima code**

Before delving into the nitty-gritties of insurable interest as it applies under the CIMA Code, a word needs to be said on the effects of its absence. Lack of insurable interest in life policies under the CIMA Code gives birth to three repercussions to wit: nullity, Restitution of premiums and liability of parties. As far as nullity is concerned, where the policyholder lacks of insurable interest, the CIMA code in its article 59 stipulates that any life policy acquired on the life of another person must be backed by his or her consent else it will be null and void.

Paragraph 2 of the same article goes ahead to nullify any assignment or constitution of pledge and transfer of the benefit without a written consent. Given that nullity alone does not suffice to punish those who contract life insurance contracts without insurable interest, premiums paid are refunded. The test is as found in article 60 paragraph 3 which states that “Premiums paid are fully refunded”.<sup>[15]</sup> The CIMA Code equally imputes liability on where life policies are issued without insurable interest. The statutory authority for this is article 60 paragraph 4 which stipulates that; “The insurer and the subscriber are also liable, for each insurance knowingly concluded in violation of this prohibition, to the highest fine.”

It should be remarked that the effects of reimbursement of premiums and liability of parties only ensue where a life policy is bought on the head of an incapable. Hence, the real

<sup>11</sup>See Article 59 of the CIMA Code.

<sup>12</sup>Ibid, article 60.

<sup>13</sup>Ibid, article 61.

<sup>14</sup>Where the beneficiary is someone other than the policy holder.

<sup>15</sup>Article 60 paragraph 3 of the CIMA code.

effect of lack of insurable interest under the CIMA Code is that the policy becomes null and void as cautioned by article 59 above. Under this head therefore, the time when I.I must exist in life insurance (A), the determinants (B) and its place in assigned life policies under the CIMA Code (C) are worth examining.

#### **A. When I.I should exist and who to demonstrate it in life assurance contracts**

In the highly celebrated case of *Dalby v India and London Life Assurance Company*,<sup>[16]</sup> it was held that the interest only had to exist at the inception of the contract and not at the time of loss<sup>[17]</sup> That is, once the policy has been properly created, the policyholder needs not continue holding an insurable interest in the life insured. The contract is still legal if the policyholder has no insurable interest at the time of death. This implies that, it is possible to hold an insurance policy on the life of a divorced spouse, or an ex-debtor. This is what has equally encouraged the assignment and sales of life policies.

In fact the position under the CIMA Code is not that different albeit it's unclear stance as to the time when I.I should exist for life policies to be valid. However, looking at the provisions of article 59, one will infer that such an interest must exist only at the time of the contract. This is true because article 59 talks of written consent before a contract can be valid and such consent is required at the time of contract. This therefore means that insurable interest under the CIMA code must only exist at the inception of the contract<sup>[18]</sup>.

On the sphere of those to demonstrate I.I in life assurance, the CIMA legislator has placed the burden only on policyholders. One cannot deny that the policyholder is the person that procures a life policy and he probably needs to demonstrate insurable interest but, the problem is that this duty is only incumbent on the policyholder. What becomes of a third party beneficiary who is prone to moral hazard with the idea of recouping the policy benefits within a short notice? It should be noted that, a policyholder who lacks insurable interest in the life insured may acquire such an interest through a written consent by the insured as per articles 59 and 61 where, insurance in the event of death cannot be taken out by another person on the head of a minor who has reached the age of twelve without the authorization of that of his parents who has parental authority, his guardian or its curator. So too a beneficiary should need the insured's written consent for the life policy to be valid. Our reason for suggesting that insurable interest should also be incumbent on beneficiaries is that, they are the people who derive benefits from the outcome of the contract and are in the best position to cause the death of the insured so as to hastily enjoy such benefits. Therefore, beneficiaries should equally have the duty to demonstrate insurable interest in life assurance so as to reduce moral hazard which is one of the rationales for imposing insurable interest.

#### **B. Determinants of I.I in life assurance contracts**

From the definition of I.I, it is no news that there must be a

<sup>16</sup>(1854) 15 CB 365.

<sup>17</sup>Robert C., Evans, (1983), "The Operation of the Life Assurance Act 1774 (U.K) in relation to the Insurance of Buildings in England and Australia", Melbourne University Law Review, Vol. 14, p.273.

<sup>18</sup>Ngoe Kamadje A., (2021), op.cit, p.56.

pecuniary expectation (1) and love and affection (2) which the policyholder fears.

#### **Pecuniary expectation I.I**

The substantial pecuniary expectation insurable interest requirement in the life of another is generally found in certain business relationships which include: a creditor's economic insurable interest in the life of his or her debtor to the extent of the debt (1), economic interest of one business partner in the life of another (2) and group insurance in the lives of members (3).

#### **Creditors' I.I in the lives of their debtors**

Creditors are allowed to take out life insurance on the lives of their debtors, with the debtors' consent, up to the limit on the debt. Therefore taking out a life policy on a debtor's life for an amount that is disproportionate to the debt would amount to a wager on the debtor's life and will be considered null and void. However, if a debtor takes out a life insurance policy on his own life, and names the creditor as beneficiary, a number of courts have reasoned that the creditor would be entitled to the entire policy proceeds, even though it may be in excess of the debt, if that was the manifest intent of the parties. Nevertheless, in view of curbing moral hazard, it is imperative that where the creditor is the policyholder and names himself beneficiary, it will be preferable to limit the amount to be recovered by him to the actual amount of debt, premium paid, interest to the principal amount and handover the remainder to the estate of the debtor.

The CIMA code by providing that consent must be sought when assigning a life policy indirectly indicates that a creditor has insurable interest to insure his debtor's life on condition that the latter's written consent is obtained per article 59. His interest will therefore be lost by the simple fact that the debtor does not consent to the purchase of the policy.

#### **I.I between partners**

Considering that business partners have pecuniary expectation which come as a result of the demise of the other partner, they therefore have the legal right to insure each other's life. The CIMA legislator affirms this position by stipulating that:

"...Several people can contract a reciprocal insurance on the head of each of them by one and the same act."<sup>[19]</sup>

This implies that in a partnership, since loss may be incurred as a result of the demise or ill health of a partner, in order to cover such loss, the CIMA Draftsman makes it possible for partners to possess insurable interest in the lives of each other so much so that it gives them the capacity to contract insurance on the head of each other through one and the same act. The reason for doing this is based on the desire to reduce the financial hardship that may arise as a result of the death of a partner.

#### **Group insurance in the lives of members**

Group life assurance also called institutional life assurance is that which covers a group of persons usually employees of a company, members of an association against sickness, occupational injury and eventual death. It must be noted however that in Cameroon, occupational injuries and diseases are governed by different scheme whereby the organ responsible for its insurance is the National Social Insurance Fund<sup>[20]</sup>.

<sup>19</sup> See article 58 of the CIMA Code.

<sup>20</sup> See, Ordinance No73-17 of 22<sup>nd</sup> may, 1973 which instituted the National Social Insurance Fund and Law No77-11 of 13<sup>th</sup> July 1977

The CIMA code provides for insurance on the head of employees by their employers under a group insurance scheme in its article 95 thus:

A group insurance contract is the contract taken out by a legal person or an entrepreneur with a view to the membership of a group of people meeting the conditions defined in the contract, for the coverage of risks depending on the duration of human life, risks affecting the physical integrity of the person or related to maternity, risks of incapacity for work or invalidity or the risk of unemployment.

In this type of insurance, individual proof of insurable interest is not needed. The policyholder acquires insurable interest on the lives of the members of the group or company from the moment they become members to the group. It should be noted here that employment is condition precedent to coverage<sup>[21]</sup>. With group assurance, a single contract covers an entire group of people whereby the employer is the policyholder and the employees or members of the group are the ones covered by the group policy or are referred to as the lives insured<sup>[22]</sup>.

The CIMA code paints a beautiful picture of how group insurance looks like but, in the course of doing so, it has failed to state some prominent issues like the status of the members who are supposed to be covered by the policy. If we talk of the status of the members to be covered by the group policy, we mean should the member be someone whose demise will cause hardship to the group? If for example, the group insurance is to cover employees of a company, must the employees be 'key employees', whose untimely death will cause substantial economic loss to the company? If this is the case, then it will fit the meaning of insurable interest regarding the element of pecuniary expectation. But if the CIMA legislator can provide for group insurance without specifying whether the members should be crucial to the survival of the group, then he is indirectly promoting gambling in the guise of insurance in the sense that since not all members of a group play a pivotal role, the policyholder therefore has no insurable interest.

Another thing which is not clear is that the CIMA Code has not stated whether or not the members have to give their written consent before group assurance can be valid. But a cross reading of article 59 signifies that lack of a written consent by the members of a group will render a group assurance on their lives invalid.

Article 95 paragraph 2 states that "Members must have a similar relationship with the subscriber".<sup>[23]</sup> This means that all the members covered by group life assurance policy must have a similar relationship with the policyholder else, the policy will not be valid. Even if the members have the same relationship with the policyholder, the policy shall be null and void if the members don't give their consent in written. A member or an employee can be excluded from taking part in the group assurance when the relationship uniting him and the policyholder comes to an end or when he stops paying premium<sup>[24]</sup>. Therefore, an employer has insurable interest in the lives of his employees by virtue of their employment relationship.

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on the compensation and prevention of industrial accidents and occupational diseases amended by Law No 80-05 of 14 July 1980.

<sup>21</sup>Tadifou Mekem V. D., (2007), « L'assurance de Groupe dans le code CIMA », Mémoire de Maitrise, Université de Dschang, pp. 26-38.

<sup>22</sup>Loloh N. M., op.cit, p.53.

<sup>23</sup> Article 95 paragraph 2.

<sup>24</sup>Article 97 of the CIMA Code.

## Love and affection I.I

It is common knowledge that everyone has insurable interest in his or her life to an unlimited extent. The CIMA Code equally supports this idea as it stipulates that; "A person's life can be assured by himself..."<sup>[25]</sup> On this note, a policyholder's I.I in his own life cannot be overemphasized. This therefore calls for the examination of I.I in the life of one's spouse (1) and the love and affection I.I between parents and children (2).

### I.I in the life of one's spouse

A spouse has insurable interest in the life of his or her partner to an unlimited level the same way a policyholder has insurable interest in his or her own life. A wife may have an insurable interest in her husband and vice versa<sup>[26]</sup> With respect to the aspect of designation of beneficiary, a policyholder spouse must not designate him or herself as the beneficiary to the policy proceeds so, anybody can be named beneficiary. But most at times, life policies purchased by spouses are for the benefits of the policyholder-spouse.

Article 58 is indicative of the fact that spouses may buy life policies on each other's head as it provides that "...Several people can contract a reciprocal insurance on the head of each of them by one and the same act."<sup>[27]</sup> Although the CIMA code does not categorically state that spouses shall have insurable interest in each other's life, article 58 leaves one with the impression that husband and wife can buy insurance on each other's life.

The African setting is characterized by polygamous marriages<sup>[28]</sup> whereby a man is allowed to get married to two or more women. But the CIMA Code in encouraging the purchase of life policies by spouses does not specify whether such a marital relationship should be monogamous or polygamous<sup>[29]</sup>. That is, in case where a man marries two or more wives, the CIMA code does not even mention whether such a man has insurable interest in the lives of his wives or that, his wives have insurable interest in his life. Does its silence on this pertinent issue mean a polygamous husband does not have insurable interest in the life of his wives and vice versa?

Since the African society encourages polygamous marriages and the CIMA sub-region is characterized by states that do not frown at such a practice, the CIMA legislator should therefore state categorically that spouses can buy insurable

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<sup>25</sup>Article 58 of the CIMA Code.

<sup>26</sup>Eyong A. and Enow G. B., (2020), op.cit, p.23.

<sup>27</sup>Article 58.

<sup>28</sup> Member states to the CIMA Treaty like Chad, Cameroon, Burkina Faso, Benin, Togo, Mali, Senegal, Cote d'Ivoire, Central African Republic and Niger practice polygamous marriage.

<sup>29</sup> A polygamous marriage gives birth to so many responsibilities and these responsibilities may be very burdensome on the wives when their husband is no more. Today, Africans see education as a necessity for their off-springs and it is sometimes very costly and the living standard too, has greatly increased meanwhile income in the CIMA member states is very infinitesimal to feed the African extended family household. When the working class husband is still alive, the weight does not weigh so much on his wives but when he dies, all the burden drops on the shoulders of the widows to ensure that their children don't feel the negative impact of their father's absence. But for this to be possible, some savings must have been done in the form of life assurance where article 58 of the CIMA code is applicable. That is, the husband may purchase a life policy to cover his own life or that of his wives or the wives may buy it to cover the life of their husband. They may equally buy a reciprocal life assurance policy through one and the same act.

interest in each other's life and on this note, spouses in a polygamous marriage should not be an exception to this rule. One can't tell! Who knows whether the low rate of purchase of life assurance policies within the CIMA sub-region is as a result of the fact that the CIMA legislator has forgotten his identity (polygamy)? This presumption may be true in the sense that, most African homes are polygamous and consequently, even those who are interested in buying life policies are prevented from doing so reason being that the CIMA code is silent on that. For, if the CIMA code were to state that polygamous homes possess the interest to insure, the life assurance industry could have an unimaginable large size in the CIMA member states.

### **Love and affection I.I between parents and children**

It is recognized that the love and affection insurable interest between spouses applies with equal force to a love and affection insurable interest between parent and child in the purchase of life policies. Where the family ties are as close as in the case of parent and child, the danger of high moral hazard is somehow illusory. Thus, a parent generally has a love and affection insurable interest in the life of his or her child, and the child has a reciprocal love and affection I.I in the life of a parent, including an adult child who is not economically dependent on the parent.

However, in the absence of special economic circumstances, such as economic dependency or financial responsibility, a foster parent generally lacks I.I in the life of a foster child, and a foster child or stepchild may have an insurable interest in a foster parent, stepparent, or another person acting in loco parentis<sup>[30]</sup> only if the child is able to demonstrate financial dependency or an economic expectation or some pecuniary aid from the foster parent or stepparent. In order to avoid potential wagering contracts between family member the consent and knowledge of the insured to any life insurance policy procured by a parent or child is required, except for a child of tender years. The CIMA code is silent on this issue since it does not define the basis of insurable interest in life. Even though it is not provided under the CIMA code, a parent naturally has interest in the life of his or her child. It is general rule that insurance on the head of another in case of death must be backed by written consent of the insured under article 59 of the CIMA code. But when it comes to parent-child assurance, the consent of the child is irrelevant.

A parent can only be forbidden to buy insurance on the head of his or her child under the conditions laid down in article 60<sup>[31]</sup> of the CIMA code. This article is to effect that not even the parents of a minor under the age of twelve can insure his life. When there is no close familial love and affection insurable interest, then a person insuring the life of another generally must have a lawful and substantial economic interest in the continued life, health, and bodily safety of the person insured in order to prevent illegal wagering contracts on the life of the insured.

### **C. Consent: a complement for I.I in life assurance contract under the CIMA Code**

It is true that once a person has the legal right to insure the life of another, the resulting life policy shall be valid. But under

<sup>30</sup>In the place of a parent. This expression is used to refer to a person or entity assuming the normal parental responsibilities for a minor.

<sup>31</sup> It provides that, "It is forbidden for any person to take out insurance in the event of death on the head of a minor under the age of twelve, of an adult under guardianship..."

the CIMA Code, if the policyholder does not obtain the consent of the insured which must be written, the policy shall be null and void. This means that even if the policyholder has I.I in the life insured, if the latter does not consent in writing, the policy will be void. Article 59 paragraph 1 is clear on this point as it states that:

The insurance in the event of death taken out by a third party on the life of the insured is void, if the latter has not given his written consent, indicating the capital or the annuity initially guaranteed.

The need for the insured to give his consent in a third party policy only concerns insurance in the event of death and not in the event of life since the policyholder has no interest in speculating on the days of the insured. It was held in the case of Metropolitan Life Insurance Co. v. Monohan<sup>[32]</sup> that it is against public policy to buy insurance in the life of another without his knowledge. The court further stated that even though a wife has insurable interest in the life of her husband, she cannot procure a life policy on his life without his knowledge and consent likewise the husband is not supposed to do same. This is because it may create a fruitful atmosphere for murder whereby the policyholder who names him or herself as beneficiary to the insurance proceeds will be tempted to perpetrate murder in order to receive the sum insured.

The consent of the insured on whose life the policy is bought is not sufficient to validate a life policy. The consent must be evidenced in writing. This implies that oral consent by the insured will render the contract null and void. This can be seen in the promising wordings of paragraph 2 of article 59 as it states that;

The consent of the insured must, on pain of nullity, be given in writing, for any assignment or constitution of pledge and for the transfer of the benefit of the contract subscribed on his behalf by a third party.

This provision reduces the possibility of moral hazard in that a policy cannot be bought by one person to cover the life of another without his knowledge and consent which can result either from trustworthiness in the policyholder or some other criteria based on personal evaluation. In requiring the consent to be in writing, the law does not require anything special and by so doing, it will be immaterial whether the consent of the insured is given by notarial deed or by private deed. The purpose for insisting on written consent lies in the need for the insured to give his informed consent.

However, when the CIMA Legislator talks of written consent of the life insured, does he envisage the possibility of consent taken under duress, threat, fraud or misrepresentation? That is, does the legislator foresee that written consent may be obtained by such means and that the insurer should carry out investigations to know whether the consent was voluntary or involuntary and if it was involuntary, the insurer should not issue the policy? This question remains in the dark as has not cleared the air on this. If the above circumstances are taken into account, it will go a long way to protect the lives of helpless people in the society who are being bullied by the big guns in order to derive benefits on their lives all in the name of written consent to life policy procurement.

### **D. Assignment of life assurance policies and the requirement of I.I under the CIMA Code**

Assignment refers to the transfer of legal right or interest in a

<sup>32</sup>102 Ky 13. 42 S.W 924 (1897).

life assurance policy by the policyholder. Assignment can be absolute or collateral. If a life policy must be valid, there must be insurable interest on the part of the policyholder whereby even under an assignment, the new policyholder (the assignee) must possess it.

The question to be asked here is; must the policyholder only assign a life policy to a person who has insurable interest in the life insured or does it suffice that if the original policyholder has I.I in the life insured, it means assignment of the policy will automatically confer the policyholder's (assignor or borrower) interest to the assignee?

As to the question of whether the CIMA code recognizes the assignment of life policies and the need for insurable interest to be proven, article 9 titled, "Transmission of the insurance policy" answers the question in the affirmative. It states that, "The insurance policy can be to named person, to order or to bearer. Promissory policies are transmitted by endorsement, even in blank. Life insurance policy may be drawn to order and not to bearer." It adds in its paragraph 4 that the endorsement of a promissory life insurance policy must, under pain of nullity, be dated, indicate the name of the beneficiary of the endorsement and be signed by the endorser.

Apart from these requirements, the absence of the insured's written consent will render a life policy null and void. The test is as found in article 59 of the CIMA Code which cautions that:

The consent of the insured must, on pain of nullity, be given in writing, for any assignment or constitution of pledge and for the transfer of the benefit of the contract subscribed on his behalf by a third party.

The above provision makes it clear that any life policy assigned to whosoever without the written consent of the life insured, shall be null and void. This provision is very reasonable in that the life insured's life will be guaranteed since he or she cannot consent to a policy bought to cover his or her life to be assigned to someone with a questionable character who will stop at nothing to end his life. The CIMA code holds that assignments without the written consent of the life insured will render a life policy invalid which presumably implies that the assignee lacks insurable interest in the absence of such consent. But, considering only written consent as a condition for attributing insurable interest to an assignee, does not seem sufficient. Since insurers have a great role to play in life assurance contracts, the policyholder who intends to assign his life policy has to notify the insurer of his intentions so as to enable the latter decide whether to accept the assignment or not. Notifying the insurer of the intention to assign the policy fulfils the disclosure requirement or utmost good faith element that is usually expected of the contracting parties. Expectations therefore remain high that, the CIMA legislator to beefs up article 59 paragraph 2, or add paragraph 3, which will state that "Assignment of life policies will be valid on condition that the policyholder or assignor notifies his insurer of his intention."

## **II Deficiencies feeding the ineffectiveness of insurable interest in life assurance in Cameroon and some tips for a brighter horizon**

Despite the efforts made by the CIMA Legislator to ensure the effective application of the globally accepted principle of insurable interest in life assurance, their expectations have not been met due to some infelicities. Such challenges have hindered the effective application of insurable interest in life assurance so much so that the traditional rationales for it

imposition have not been achieved. These constraints emanate from two angles: textual lapses (1) and drawbacks emanating from the contracting parties (2). It should be borne in mind that, these deficiencies are concurrently discussed with the possible solutions as will be seen subsequently.

### **Textual lapses**

This deals with those deficiencies in the CIMA Code that has greatly fanned the flames of the ineffectiveness of the I.I in life assurance. They include the following:

### **The prevalence of ambiguous provisions in the CIMA Code**

One of the big challenges encountered by the CIMA community in terms of insurance purchase is the presence of some ambiguous or unclear provisions in the CIMA code. These provisions which are difficult to understand make many of the prospective buyers of life policies to be reluctant to go in for the business because one cannot invest money in a business he or she doesn't understand. In the domain of I.I in life assurance, one can find such provisions in the following dispositions:

The first can be seen in article 58 which holds that a person's life can be assured by himself or by a third party and several persons can contract a reciprocal insurance on the head of each of them by one and the same act. In fact, it is article 58 that sets the base of insurable interest in life assurance. It has rightly provided that a person can insure his own life. However, the Code is not clear when it states that a person's life can be insured by a third party as it did not mention whether such a buyer should have insurable interest in the life of the third party or not and what should be the relationship between the two persons. In essence, when the legislator talks of a third party buying insurance on the head of another, does he talk of parents, grandparents, cousins, in-laws, creditors, fiancé(es), concubines, friends, colleagues or strangers? The list of third parties here is not exhaustive and if the legislator intends to allow anyone to buy insurance on the head of another without the legal right to insure, it probably means that the legislator is creating an incentive for murder whereas one of the rationales for imposing insurable interest in the validity of life assurance contracts is to reduce moral hazard.

Against this backdrop, it is imperative to establish a list of persons who may have I.I in the life of others by stating for example that; "A life policy can be bought by a person on his or her own life or by a third party on the lives of his or her spouse, children, parents, debtors, employees, as well as business partners." When talking about spouses too, polygamous marriage should be taken into account since the "spouses" here is limited to monogamous marriage. If this is done, the application of the principle would be effective and would favour the growth of the industry.

Still on article 58, the legislator stipulates that, several persons can contract a reciprocal insurance on the head of each of them by one and the same act. It is not clear here whether the legislator intends that such a relationship should result from pecuniary expectation or love and affection. This therefore causes confusion as to whether this portion of the article should be applicable to spouses, creditors, business partners or employers.

Again, does the expression, "reciprocal insurance" mean both parties must buy insurance on the head of each other before the policy can be valid? All these uncertainties or ambiguities as to the exact interpretation of article 58 of the Code do not

reflect a fair drive towards the effectiveness of I.I in life assurance in Cameroon.

Also, article 72 provides that any interested party can take the place of the policyholder to pay the premium. This provision is obscure in the sense that it is not clear on whether when such a third party takes the place of the policyholder, he will acquire the capacity to assign the policy, change beneficiary(ies), and most importantly, must have insurable interest in the continuous life of the insured. This even pushes one to ask if such a person is a co-policyholder. If this is the intention of the legislator, it should therefore be stated clearly that any interested person can take the place of the policyholder to pay premium and by so doing, he or she shall have the right to assign the policy, borrow on it, change beneficiaries, surrender it and must possess insurable interest in the life insured. Leaving article 72 as it is, is problematic because a person who pays the premium in life assurance is a policyholder and such a person has some rights to enjoy during the currency of the policy like riders and the surrender value and when it is said "Any interested party can take the place of the contractor to pay the premiums," it implies that the original policyholder can no longer benefit from these rights. In fact, it means the original policyholder has forfeited his rights over the policy. It will therefore be appropriate for the "interested party" to know his position as a premium payer. If this is done, the rights of the parties would be respected since the new premium payer will know whether or not he is the new policyholder, to be able to exercise the rights of assignment, change of beneficiary and surrender of policy which will equally affect the rights of other parties like the original beneficiaries and the life insured as well.

#### **No life insurance definition of I.I**

In talking about the validity of life assurance contracts, the code does not even make mention of the expression "Insurable Interest" and even when defining insurable interest in article 36, it does not make any reference of such an interest in life. Article 36 of the CIMA code defines insurable interest as "Anyone having an interest in the conservation of a thing can insure it." This article is to the effect that anyone who has interest in the continuous existence of a thing can insure it so that in case it is damaged, the insured won't feel a great negative impact as a result of its loss. The article furthers in its paragraph 2 by stipulating that, "Any direct or indirect interest in the non-realization of a risk can be insured." In defining insurable interest, this article makes mention of conservation of a "thing" and this causes confusion as to whether this definition applies to both property insurance and life assurance. A simple literary interpretation of the word "thing" implies that the CIMA Legislator has defined insurable interest only with regards to property insurance.

The absence of a life assurance definition of insurable interest under the CIMA code poses as a big challenge to the effectiveness of I.I in life assurance in the sense that, parties do not have any idea about what is meant by I.I and who should possess it before such a contract can be valid. The case would be different if the legislator stipulated in paragraph 2 of article 36 that "Anyone who has an interest in the continued life of a person, can have it assured."

#### **Non-requirement of I.I by third party beneficiaries**

It is always advisable for a life policy to have a beneficiary to whom the insurance proceeds will be paid when the policy

matures so as to avoid confusion. But the question that is usually posed relates to whether the designated beneficiary must have I.I in the life insured before such a policy can be valid.

If the CIMA legislator has imposed the requirement of insurable on the policyholder in case of third party policies in order to reduce moral hazard, then such a requirement should be extended to the third party beneficiaries because they are in the best position to speculate the death of the insured in order to receive the policy proceeds. The CIMA Code has painted an attractive picture of beneficiary designation in life assurance policies but does not state whether a beneficiary should have insurable interest or not. The only provision which has the imports of insurable interest by the beneficiary is article 68 which stipulates that, in the absence of designation of a beneficiary in the policy or in the absence of acceptance by the beneficiary, the contracting party has the right to substitute one beneficiary for another<sup>[33]</sup>. It adds that such designation or substitution can only be made with the agreement of the insured, when the latter is not the contracting party. It is presumed that the beneficiary will automatically have insurable interest here because of the consent of the insured. At least, this consent respects the public policy nature of life policies. But again, it is not clear whether such consent should be oral or written. This too, is a disincentive to the effectiveness of I.I in life assurance under the CIMA Code.

If the duty to show insurable interest is equally imposed on beneficiaries, it will reduce the rate of deaths caused by beneficiaries. Such interest should be required to arise from strict family relationship and not the African extended family, business and partnership based on a written consent by the insured. It should only be allowed to extend to the African extended family relationship if the insured gives his written consent voluntarily. The voluntary written consent should be emphasized upon in the sense that the insured should be sure that such a person cannot speculate his death in order to recoup the policy proceeds.

#### **Non-provision of time for the existence of I.I in life assurance**

A keen perusal at the CIMA code reveals that the CIMA legislator has not provided for the time when insurable interest must exist for a life policy to be valid. This very pertinent is left to the courts to decide upon since the CIMA code is silent on it. It is not clear whether such interest should be required at the time of concluding the contract or when the loss occurs.

However, by analogy, the wordings of article 60<sup>[34]</sup> of the CIMA code reveal that such an interest must exist only at the moment of entering the contract. This is so because, a policyholder is only prohibited from buying a life policy on the head of a person in case of death at the moment when the person is under 12 years or is insane. It means that, if the person was sane at the contracting phase and later becomes insane, the policyholder still has insurable interest in his life and the law does not provide for the annulment of such a policy. Therefore, insurable interest must exist at the moment of the conclusion of a life policy.

If this is the intention of the CIMA legislator, then it will be important that the interest be lost as soon as the life insured

<sup>33</sup>Article 68 paragraph 3 of the CIMA Code.

<sup>34</sup>It is forbidden for any person to take out insurance in the event of death on the head of a minor under the age of twelve, of an adult under guardianship, of a person placed in a psychiatric hospital.

becomes insane and based on this, the policy should be susceptible to nullification. This is because the incapacity (insanity) of the life insured will create an incentive for the occurrence of moral hazard. Therefore, if the life insured dies during the period of mental derailment, the beneficiary should not be compensated for his death. This implies that, I.I should be required to exist both at the inception of the contract and time of loss. If this is done, the application of insurable interest in life will be effective since it would guarantee the insured's life.

Requiring I.I only at the inception of the policy only aims at preventing gambling in the guise of insurance and not to reduce moral hazard or prevent killing. These two rationales can only be met if I.I in life assurance is required both at the inception and moment of loss.

By doing this, policyholder-beneficiaries who have lost insurable interest after the conclusion of a life assurance contract, will be prevented from killing the insured in order to receive the policy proceeds. A good example of policyholders who have lost insurable interest after the conclusion of life assurance contracts but are still permitted to benefit from the death of the insured are ex-spouses and ex-creditors or settled creditors.

Under the CIMA code, spouses have insurable interest in each other's life and this interest subsists even after divorce. Allowing this interest to subsist after divorce creates a moral hazard incentive against the insured spouse in case where the policyholder spouse is the beneficiary. Since divorce usually results to a "cat and rat" relationship, the policyholder spouse who designates him or herself as beneficiary will be tempted to cause the death of the insured. This therefore calls for the surrender<sup>[35]</sup> of such policies in case spouses divorce. It will mean no harm if the policy is annulled and the surrender value<sup>[36]</sup> paid to the policyholder.

This will call for the application of article 65<sup>[37]</sup> of the CIMA

<sup>35</sup> Surrender is when the policyholder voluntarily decides to pre-close a policy before the date of maturity.

<sup>36</sup> It is the amount which the policyholder would get in case of surrender of the policy. It is decided on the basis of the number of premiums paid and the terms of the insurance plan and it is lower than the maturity value in most cases.

<sup>37</sup> Any natural person who has signed an insurance proposal or a life insurance policy or a capitalization contract has the option of waiving it by registered letter with acknowledgment of receipt or any other means attesting to the receipt during the period of thirty days from the first payment.

The waiver entails the return of the premium paid, less the cost of the policy, within a maximum period of thirty days from receipt of the said waiver.

Beyond this period, the sums not returned automatically produce interest at the legal rate increased by half for two months, then at double the legal rate.

The insurance proposal, the insurance policy, or the capitalization contract must indicate in particular, for contracts which include them, the surrender values guaranteed at the end of each of the first eight years at least, as well as, in the same table, the sum of the premiums or contributions paid at the end of each of the same years. For these same contracts, the insurer must insert a box at the start of the insurance or policy proposal, the content of which is limited to Article 65-1 of the Insurance Code.

Failure to provide the documents and information provided for in this article automatically entails the extension of the period provided for in the first paragraph until the thirtieth day following the date of effective delivery of these documents and information.

Code. But if the policy should be allowed to subsist, therefore, the legislator is indirectly encouraging the proliferation of moral hazard which insurable interest is out to curtail. If it is required that the benefiting spouse should show proof of condominium at the time of loss, then the principle of insurable interest will be given the respect it deserves. This will go a long way to enhance its effectiveness.

### **Drawbacks emanating from the contracting parties**

The parties at the helm of a life assurance contract are the insurer and the policyholder. Both are vested with rights and duties. On the part of the insurer, he has the obligation to perform the service determined by the contract when the insured risk materializes or when the contract expires, within the agreed period<sup>[38]</sup> obligation not to compensate or indemnify claims after the expiration or suspension of the contract<sup>[39]</sup>. The policyholder on his part has the obligation to answer exactly the questions asked by the insurer, in particular in the form of declaration of the risk by which the insurer questions him during the conclusion of the contract, on the circumstances which are likely to be appreciated by the insurer, the risks it takes on<sup>[40]</sup>. The insurer in performing its functions, acts through agents who conclude life policies on its behalf and in the course of concluding such contracts, they indulge in some practices that turn to hinder the effective application of the principle of insurable interest in life assurance like completion of proposal forms on behalf of policy buyers (1). The policyholders on their part, lack knowledge on certain insurance concepts like insurable interest (2).

### **Completion of proposal forms by insurance agents**

It should be noted that insurance companies make the completion of a proposal form a prerequisite for obtaining an insurance policy. It is always common for the potential life policy buyer to be assisted by intermediaries who bring the form for completion or at times actually fill out the forms themselves. Insurance agents are intermediaries or canvassers who act for the insurer to solicit proposals and effect insurance<sup>[41]</sup>. They are remunerated on commission basis depending on the number of businesses they introduce into the company. As a result of this, most of them especially in Cameroon focus on business acquisition rather than educating the customer or policyholder on the importance of certain requirements for the validity of life assurance contracts. One of these requirements which is so paramount to the validity of a life assurance contract is insurable interest in the life insured.

In allowing an agent to complete a proposal form on one's behalf could lead to the conclusion of life assurance contracts where the policyholder lacks insurable interest in the life insured in case of third party policies. This is true in the sense that since intermediaries are interested in increasing their commissions, they go ahead concluding life policies even when the policyholder does not have insurable interest. Another factor relates to the fact that insurers fail to call the attention of policyholders on the concept of insurable interest, its importance and the consequences of its absence. Since the agents are not under any duty to check insurable interest before they can conclude a life assurance contract, they

<sup>38</sup> Article 16 paragraph 1 of the CIMA code.

<sup>39</sup> Ibid, article 16 paragraph 2.

<sup>40</sup> Ibid, article 12(2) of the CIMA code.

<sup>41</sup> Eyong A. and Enow G. B., (2020), op.cit, p. 43.



indulge in issuing such policies without regards to the principle because the legislator has not put in place any sanction which can be inflicted on them for violating such a duty. This lack of regards on the part of the insurer has negatively affected the application of I.I in life assurance in Cameroon.

To redress this drawback, it is incumbent on the CIMA Legislator to impose the duty on the insurer to check I.I before issuing a life policy. In addition, the legislator should provide that failure to respect such a duty by the insurers or insurance agents when they are acting under their scope of powers will give rise to an action in negligence against the insurance company, in favour of the life insured. And if the agents are not acting within their scope of powers, they shall be personally liable to the life insured for promoting moral hazard and gambling in the guise of insurance. This way, insurance companies and agents will be prudent in the way they issue policies which will consequently amount to the effectiveness of I.I in life assurance in Cameroon in particular and CIMA sub-region in general.

#### **Lack of knowledge on the concept of I.I by life assurance buyers**

The insurance business is one of the least talked about in Africa. Many Africans do not know so much about insurance talk less of concepts like insurable interest which is complex and difficult to be understood even by some intellectuals. The incorporation of the concept in the CIMA Code has not only created misunderstandings between insurers and policyholders as a result of its ambiguous nature, but has equally affected its effective application. This does not however mean that it should be jettisoned. This is because it plays a very important role in the protection of the continuous existence of the life insured although this importance is not known to so many policyholders. They think that life assurance can be bought on the head of any person. If one were to reason critically but without bias, he will come to a conclusion that the lack of knowledge by policyholders on the concept of insurable interest in life is engineered by the inherent ambiguous and insufficient provisions in the CIMA code. And this has affected its effectiveness in life assurance.

As mentioned earlier, this lack of knowledge which hinders the effective application of I.I in life assurance is the handiwork of ambiguous provisions and loopholes in the CIMA code. The knowledge of the policyholder would have been enhanced and assured if the CIMA draftsman had defined what is meant by I.I in life assurance and state categorically the class of persons who should have insurable interest in the life insured. The CIMA code should also provide that the insurer must explain to the policyholder to his understanding what is meant by I.I in life, when it must exist, who should be designated as beneficiary to the policy proceeds and to who it can be assigned if need be. Hence, if the legislator adopts such reforms, the policyholder will be filled with knowledge as to what concerns I.I in life and this will eventually lead to its effectiveness.

#### **Conclusion**

To wrap up, it should be recalled that the CIMA Code has imposed the requirement of insurable interest for the validity of life assurance contracts, but it is found to be unworkable due to some infelicities or deficiencies attributable to the text itself and the contracting parties. In fact, the uncertain scope of insurable interest under the CIMA Code has imparted fear

in the minds of several Cameroonians on being insured by others based on the fact that the Code opens a floodgate for murder. In cognizance with this backdrop, the author recommends that the insurer be obliged to check I.I at contracting phase, I.I be required to exist both at the inception and moment of loss, and I.I be possessed by beneficiaries notably, in case of third party policies. This approach reduces the possibility of gambling and moral hazard and also saves the lives of many innocent insured's. Equally, where the interest ceases to exist before the policy matures, policyholder has to notify the insurer to that effect. This should be applicable especially in cases of I.I deriving from pecuniary expectation. This notification serves the purpose of enabling the insurer to refrain the policyholder from continuing to pay premium and to reimburse that which has been paid after deducting expenditures.

In Cameroon, a life policy concluded without insurable interest by the policyholder is void. In terms of sanctions for contracting life policies without I.I, the CIMA Code only punishes those who buy life insurance on the head of a minor under the age of twelve, of an adult under guardianship, of a person placed in a psychiatric hospital to the highest fine. It is therefore the court's discretion to determine the fine.

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