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The Thailand Civil and Commercial Code

The Thailand Civil and Commercial Code

Civil and Commercial Code

(ประมวลกฎหมายแพ่งและพาณิชย์)

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PRELIMINARY

Section 1 . This law shall be called the **Civil and Commercial Code** (ประมวลกฎหมายแพ่งและพาณิชย์).

Section 2. It shall come into force on the 1 st date of January B.E. 2468.

Section 3. On and from the day of operation of this Code, all other laws, bye laws and regulations in so far as they deal with matters governed by this Code or are inconsistent with its provisions shall be repealed.

BOOK I

GENERAL PRINCIPLES

TITLE I

GENERAL PROVISIONS

Section 4. The law must be applied in all cases which comes within the letter and spirit of any of its provisions.

Where no provision is applicable, the case shall be decided by analogy to the provision most nearly applicable, and, in default of such provision, by the general principles of law.

Section 5. Every person must, in the exercise of his rights and in the performance of his obligations, act in good faith.

Section 6. Every person is presumed to be acting in good faith.

Section 7. Whenever interest is to be paid, and the rate is not fixed by a juristic act or by an express provision in the law, it shall be seven and a half per cent per year.

Section 8. "*Force majeure*" denotes any event the happening or pernicious result of which could not be prevented even though a person against whom it happened or threatened to happen were to take such appropriate care as might be expected from him in his situation and in such condition.

Section 9. Whenever a writing is required by law, it is not necessary that it be written by the person from whom it is required, but it must bear his signature.

A finger print, cross, seal or other such mark affixed to a document is equivalent to a signature if it is certified by the signature of two witnesses.

The provisions of paragraph two shall not apply to a finger print, cross, seal or other such mark affixed to a document before the competent authorities.

Section 10. When a clause in a document can be interpreted in two senses, that sense is to be preferred which gives some effect rather than that which would give no effect.

Section 11. In case of doubt, the interpretation shall be in favour of the party who incurs the obligation.

Section 12. Whenever a sum or quantity is expressed in letters and in figures, and the two expressions do not agree, and the real intention cannot be ascertained, the expression in letters shall be held good.

Section 13. Whenever a sum or quantity is expressed several times in letters or several times in figures, and the several expressions do not agree, and the real intention cannot be ascertained, the lowest expression shall be held good.

Section 14. Whenever a document is executed in two versions, one in the Thai language , the other in another language, and there are discrepancies between the two versions, and it cannot be ascertained which version was intended to govern, the document executed in the Thai language shall govern.

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TITLE II

PERSONS

CHAPTER I

NATURAL PERSONS

PART I

Personality.

Section 15. Personality begins with the full completion of birth as a living child and ends with death.

A child *en ventre sa mere* is capable of rights provided that it is thereafter born alive.

Section 16. In calculating the age of a person, the birth day shall be counted. If only the month of birth is known, the first day of such month shall be counted as the birthday but if it is not possible to ascertain the date of birth of a person, his age is calculated from the first day of the official year during which such birth took place.

Section 17. When several persons have perished in a common peril, and it is not possible to determine which of them perished first, they will be presumed to have died simultaneously.

Section 18. If the right to use of a name by a person entitled to it is disputed by another, or if the interest of the person entitled is injured by the fact that another uses the same name without authority, then the person entitled may demand from the other abatement of the injury. If a continuance of the injury is to be apprehended, he may apply for an injunction.

PART II

CAPACITY

Section 19. A person, on completion of twenty years of age ceases to be a minor and becomes *sui juris*.

Section 20. A minor becomes *sui juris* upon marriage, provided that the marriage is made in accordance with the provisions of [Section 1448 \(/Law-Texts/thailand-civil-code-part-3.html#I\)](#).

Section 21. For the doing of a juristic act, a minor must obtain the consent of his legal representative. All acts done by him without such consent are voidable unless otherwise provided.

Section 22. A minor can do all acts by which he merely acquires a right or is freed from a duty.

Section 23. A minor can do all acts which are strictly personal.

Section 24. A minor can do all acts which are suitable to his condition in life, and actually required for his reasonable needs.

Section 25. A minor, after completing fifteen years of age, can make a will.

Section 26. When the legal representative permits a minor to dispose of property for a purpose specified by him, the minor may, within the limits of such purpose, dispose of it at his pleasure. He may do the same as to property which he has been permitted to dispose of without any purpose being specified.

Section 27. The legal representative may permit a minor to carry on a commercial business or other business, or to enter into a hire of services contract as an employee. In case of refusal by the former without reasonable ground, the minor may apply in the Court for granting permission.

The minor shall, in relation to the carrying on of business or the hire of services under paragraph one, have the same capacity as a person *sui juris*.

If the carrying on of a business of service so permitted under paragraph one causes a serious damage or injury to a minor, the legal representative may terminate the permission granted to the minor or may, in case of having been granted by the Court, apply to the Court for revocation of the permission granted. therefore

If the permission is unreasonably terminated by the legal representative, the minor may apply to the Court for revoking the termination of permission of the legal representative.

The termination of permission may by the legal representative or the revocation of permission by the Court would make the minor's capacity of a person *sui juris* cease to exist, but does not affect any acts done by the minor before the termination or revocation of the permission.

Section 28. A person of unsound mind may be adjudged incompetent by the Court on the application of any spouse, ascendants, descendants, guardian or curator, a

person taking care of the person or the Public Prosecutor.

The person adjudged incompetent under paragraph one must be placed under [guardianship \(/law-texts/thailand-civil-code-part-3.html#1585\)](/law-texts/thailand-civil-code-part-3.html#1585). The appointment of guardian, power and duties of guardian, and termination of guardianship shall be in accordance with provisions of [Book V \(/Law-Texts/thailand-civil-code-part-3.html#II\)](/Law-Texts/thailand-civil-code-part-3.html#II) of this Code.

The order of the Court under this Section shall be published in the Government Gazette.

Section 29. An act done by a person adjudged incompetent is voidable.

Section 30. An act done by a person of unsound mind but not adjudged incompetent is voidable only when the act was done at a time he was actually of unsound mind, and the other party had knowledge of such unsoundness.

Section 31. If the cause of the incompetence ceases to exist, the Court shall, on the application of the person himself or of any of the persons mentioned in Section 28, revoke the adjudication.

The order of the Court revoking the adjudication under the Section shall be published in the Government Gazette.

Section 32. A person who has physical or mental infirmity, habitual prodigality or habitual intoxication or other similar causes that make him incapable of managing his own affairs, or whose management is likely to cause detriment to his own property or family, may be adjudged as quasi incompetent by the Court upon application by any of the persons specified in Section 28.

The person adjudged quasi-incompetent under paragraph one must be placed under curatorship.

The appointment of curator shall be in accordance with the provisions of Book V of the Code.

The order of the Court under the Section shall be published in the Government Gazette.

Section 33. If it is found by the Court in trial of the case for a person to be adjudged incompetent on account of unsound mind that he is not a person of unsound mind but has mental infirmity, he may, if is deemed suitable by the Court or upon the application of the party or the persons specified in Section 28, be adjudged as quasi-incompetent. The same shall apply if it is found by the Court in trial of the case for a person to be adjudged quasi-incompetent on account of mental infirmity that he is a person of unsound mind, he may, if it is deemed suitable by the Court or upon the application of the party or the person specified in Section 28, be adjudged as incompetent.

Section 34. A quasi incompetent person must obtain the consent of his curator for doing the following acts:

| | |
|------|---|
| (1) | Investing his property. |
| (2) | Accepting the return of the invested property, principal or other capital. |
| (3) | Contracting a loan or lending money, borrowing or leasing value movable. |
| (4) | Giving security by any means whatever that effects him to make a forced payment. |
| (5) | Hiring or letting property longer than six months if the property is movable or three years if the property is immovable. |
| (6) | Making a gift, except the gift made suitable for situation in his life, for philanthropy, social or moral obligations. |
| (7) | Accepting a gift encumbered with a charge or refusing a gift. |
| (8) | Doing any act whose object is the acquiring of, or parting with, a right in an immovable or a valuable movable. |
| (9) | Constructing, modifying building or other structures, or making extensive repairs. |
| (10) | Entering an action in Court or doing any legal proceedings except the application made under Section 35 and the application for removal of his curator. |

| | |
|------|--|
| (11) | Making a compromise or submitting a dispute to arbitration |
|------|--|

For acts other than those mentioned in paragraph one, the conduct of which by a quasi-incompetent may detriment to his own property or family, the Court is empowered, in giving and order effecting any person to be quasi-incompetent or upon the application made subsequently by the curator, to instruct the quasi-incompetent to obtain consent of the curator prior to conduct of such acts.

If the quasi-incompetent cannot do any act as mentioned in paragraph one or paragraph two by himself because of his physical or mental infirmity, the Court may give an order empowering the curator to act on behalf of the quasi incompetent, and the provisions relating to guardian shall apply *mutatis mutandis*.

The order of the Court under this Section shall be published in the Government Gazette. Any act contrary to the provisions of this Section is voidable.

Section 35. If the curator does not give consent to the quasi-incompetent for doing any acts under Section 34 with unreasonable ground, the Court may, upon the application of the quasi-incompetent, permit him to do the act without having to obtain consent of his curator, should the act will be beneficial to the quasi-incompetent.

Section 36. If the cause for the Court adjustment of the quasi-incompetent ceases to exist, the provisions of Section 33 shall apply, *mutatis mutandis*.

PART III

Domicile

Section 37. The domicile of a natural person is the place where he has his principal residence.

Section 38. If a natural person has several residences where he lives alternately, or various centers of habitual occupation, either one shall be considered his domicile.

Section 39. If the domicile is not known, the place of residence is deemed to be his domicile.

Section 40. The domicile of a natural person who has no habitual residence, or employs his life in voyages without a central place of business shall be held to be the place where is found.

Section 41. The domicile is changed by transferring the residences with manifest intention of changing.

Section 42. If a person selects any place with manifest intention of making it a special domicile for any act, which is deemed to be the domicile in respect to such act.

Section 43. The domicile of husband and wife is the place where husband and wife cohabit as a couple unless either husband or wife expresses his/her intention to have a separate domicile.

Section 44. The domicile of a minor is that of his legal representative who is the person exercising parental power or the guardian.

In the case where the minor is under parental power of his parents and the parents have separate domiciles, the minor shall have domicile of his father or mother with whom he lives.

Section 45. The domicile of an incompetent person is that of his guardian (</law-texts/thailand-civil-code-part-3.html#1585>).

Section 46. The domicile of a public official is the place where he exercises his function, provided that such function is not temporary, periodical or mere commission.

Section 47. The domicile of a convict by a final judgment of the court or by a lawful order is the prison or correctional institution where he is imprisoned until his release.

PART V

Disappearance

Section 48. If a person has left his domicile or residence without having appointed an agent with general authority and it is uncertain whether he is living or death, the Court may, on the application of any interested person or of the Public Prosecutor, order such provisional measures to be taken as may be necessary for the management of property of such person.

The Court may appoint a manager of the property after one year has elapsed from the day when he has left his domicile or residence if no news of him has ever been received, or from the day when he has last been seen or heard of.

Section 49. If an agent with general authority has been appointed by the absent person but his authority comes to an end, or it appears that his management is likely to cause injury to the absent person, the provisions of Section 48 shall apply *mutatis mutandis*.

Section 50. The court may, on the application of any interested person or of the public prosecutor, order an inventory of the property to be made by the agent with general authority, in compliance with an injunction to be given by the court.

Section 51. Subject to the provisions of Section 802, if it is necessary for the agent with general authority to do any act beyond the scope of his authority, he must apply for court's permission and may do so on obtaining such permission.

Section 52. The manager appointed by the court must finish making the inventory of the property of the absent person within three months as from the day on which the appointment order of the court comes to his knowledge.

However, the manager may apply to the court for the extension of the time.

Section 53. The inventory under Section 50 and Section 52 must be made in the presence of, and signed by two witnesses. Such two witnesses must be a spouse or a relative being of age of the absent person. If neither spouse nor relatives is found, or the spouses and relative refuse to be witnesses, other persons being of age may act as witnesses.

Section 54. The manager has such power of an agent with general authority as provided in Section 801 and Section 802. If the manager deems it necessary to do any acts beyond the scope of his authority, he must apply for the court's permission and may do so on obtaining such permission.

Section 55. If the absent person has appointed an agent with special authority, the manager cannot interfere with such special agency, but he can apply to the court for an order removing the agent if it appears that his management is likely to cause injury to the absent person.

Section 56. The court may, on the application of any interested person or of the public prosecutor or of its own motion;

- (1) Require the manager to give proper management security and return of the property entrusted to him.
- (2) Require him to give information as to the property condition of the absent person.
- (3) Remove him and appoint another manager in his stead.

Section 57. The court may, in the order appointing the property manager, determine a remuneration to be paid to the manager out of the property of the absent person; in default of which the manager may afterwards apply to the court for determining such remuneration.

The court may, on the application of the manager or of an interested person or the public prosecutor, or of its own motion when it appears that circumstances on the property management have changed, give an order effecting the determination, suspension, decrease or increase of the remuneration, or a new remuneration payment to be made to the manager.

Section 58. The authority of the manager comes to an end upon:

1. The return of the absent person.
2. No return of the absent person but the property having been managed or an agent for managing his property having been appointed.
3. The death of the absent person or adjudication of disappearance having been given.
4. The resignation or the death of the manager.
5. The manager becoming an incompetent or quasi-incompetent person.
6. The manager becoming bankrupt.
7. Removal of the manager by the court.

Section 59. When the authority of the manager comes to an end under Section 58 (4) (5) or (6), the manager or his heir, administrator, guardian, curator, official receiver of the person charged with the duty to take care of the property manager, as the case may be, must inform the court without delay of such ending for the court will give an order concerning the property manager as it deems proper.

During such period of time, the said person must take all reasonable steps compatible with circumstances to protect the interest of the absent person until the property of the absent person is delivered to any person as to be ordered by the court.

Section 60. The provisions concerning Agency of this Code shall be applied to the property management of the absent person mutatis mutandis .

Section 61. If a person has left his domicile or residence and it has been uncertain for five years whether he is living or dead, the court may, on the application of any interested person or of the public prosecutor, adjudge that such person has disappeared.

The period of time under paragraph one shall be reduced to two years;

1. As from the day when the battle or war comes to an end and the person who had been engaged in such battle or war has been disappeared therein;
2. As from the day when the vehicle on which the person had been traveling was lost or destroyed;

3. As from the day when any peril of his life other than those mentioned in (1) or (2) has passed and the person had been in such peril.

Section 62. A person against whom an adjudication of disappearance has been made is deemed to have died at the completion of the period specified in Section 61.

Section 63. If it is proved by the person adjudged disappearance, any interested person or of the public prosecutor that the person who disappeared is living, or that he died at a time different from that specified in Section 62, the court must, upon the application of the said person, revoke the adjudication; but this does not affect the validity of acts done in good faith between the adjudication and the revocation.

Section 64. The adjudication of disappearance and its revocation shall be published in the Government Gazette.

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CHAPTER II

JURISTIC PERSONS

PART I

General Provisions

Section 65. A juristic person can come into existence only by virtue of this Code or of other law.

Section 66. A juristic person has rights and duties conformity with the provisions of this Code or of other law within the scope of its power and duties, or its object as provided by or defined in the law, regulation or constitutive act.

Section 67. Subject to Section 66, a juristic person enjoys the same rights and is subject to the same duties as a natural person, by reason of their nature , may only be enjoyed or incurred only by a natural person.

Section 68. The domicile of a juristic person is the place where it has its principal office or establishment, or which has been selected as a special domicile in its regulation or constitutive.

Section 69. In the case where a juristic person has several establishments or has its branch office, the place of its branch office may also be considered its domicile as to acts there performed.

Section 70. A juristic person must have one or several representatives as prescribed by the law, regulations or its constitutive act, decisions as to the affairs of juristic persons are made by a majority of the representatives.

Section 71. In the case where a juristic person has several representatives, if it is not otherwise provided by the law, or defined in regulations or constitutive act, decisions as to the affairs of juristic person are made by a majority of representatives.

Section 72. The change of representatives of juristic person or of any restriction, or modification of the power of representatives shall be effective after having complied with the law, regulations or its constitutive act, but cannot be set up against third person acting in good faith.

Section 73. If a vacancy occurs among the representatives of juristic person, and there is reason to believe that damage might ensue from delay, the Court may, on the application of any interested person or of the Public Prosecutor, appoint a temporary representative.

Section 74. In a matter in which the interested of a juristic person conflict with those of the representative of juristic person, the latter has no representative power.

Section 75. If, in the case under Section 74, it causes a non-existence of the representatives of juristic person, or number of the remaining representatives cannot constitute quorum of the meeting or is sufficient to execute such matter, if it is not otherwise provided by the law, or defined in its regulations or constitutive act, the provisions of Section 73 shall apply to the appointment of special representatives, '*mutatis mutandis*'.

Section 76. A juristic person is bound to make compensation for any damage done to other persons by its representatives or the person empowered to act on behalf of the juristic person in the exercise of their functions, saving its right of recourse against the causers of the damage.

If damage is done to other persons by an act which is not within the scope of the object or power and duties of the juristic person, all the persons as mentioned in paragraph one who agreed such act or executed it, are jointly liable to make compensation.

Section 77. The provisions on Agency (Law-Texts/thailand-civil-code-part-2.html#770) of this Code shall apply to the relationship between the juristic persons and its representatives, and between the juristic person or its representative and third persons, '*mutatis mutandis*'.

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PART II

Association

Section 78. An association created for conducting any activity which, according to its nature, is to be done continuously and collectively by persons other than that of sharing profits or incomes earned, must have its regulations and must be registered according to the provisions of this Code

Section 79. The regulations must at least have the following particulars:

- | | |
|-----|------------------------------|
| (1) | The name of the association. |
| (2) | Its object. |

| | |
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| (3) | Address of its principal office and all its branches. |
| (4) | Rules for admission of its members and conclusion of membership. |
| (5) | Rates and member-fee. |
| (6) | Rules for the Committee of association, i.e. number of the directors, appointment of the directors, term of office of the directors, retirement of office of the directors and meetings of the Committee. |
| (7) | Rules for the management of the association, the keeping of accounts and the property of the association. |
| (8) | The association must have the word 'association' incorporated with its name. |

Section 81. The application for registration of an association must be filed jointly in writing by at least three of the would-be members of the association with the Registrar of the area where the principal office of the association is situated, and regulations of the association, list of names, addresses and occupations of at least ten would-be members of the association are to be attached to the application.

Section 82. When the application for registration together with the regulations are received by the Registrar and the application is found correct under Section 81 and the regulations are correct under Section 79, the object of the association is not contrary to the law or good moral or endangering public order or national security and all particulars contained in the application or in the regulations conform the object of the association, or the would-be directors of the association have status or conduct suitable for implementing the object of the association, the Registrar shall make registration and issue a certificate of registration to the association. The registration shall be published in the Government Gazette.

It is found that the application or the regulations are not in conformity with Section 81 or Section 79, the particulars contained in the application or in the regulations do not conform to the object of the association, or would-be directors of the association do not have the status and conduct suitable for implementing the object of the association, the Registrar shall instruct the applicant to make correction or alteration, and shall, after the correction or alteration having been made, make registration and issue a certificate of registration to the association.

If it is considered by the Registrar that the registration cannot be made because the object of the association is contrary to the law or good moral or likely to endanger public order or national security, or the applicant fails to make correction or alteration as such within thirty days from the day of which the instruction of the Registrar

came to his knowledge, the Registrar shall give and order refusing the registration and inform the applicant without delay of reasons for such refusal.

The applicant is entitled to appeal in writing against the order of refusal for registration to the Minister of Interior through the Registrar within thirty days from the date of receipt of the refusal order.

The Minister of Interior shall decide the appeal and inform the appellant of the decision within thirty days from the date of receipt of the written appeal by the Registrar. The decision of the Minister of Interior shall be final.

Section 83. The association so registered is a juristic person.

Section 84. No alterations of and additions to the regulations of an association may be made, except by a resolution of the general meeting. Such alterations and additions must be deposited for registration at the Registrar Office where the principal office of the association is situated within fourteen days from the date of the resolution, and the provisions of Section 82 shall apply, mutatis mutandis. It shall become effective after the registration thereof by the Registrar.

Section 85. The appointment of new directors of the association of the alteration thereof shall be made in accordance with the regulations of the association and must be registered by the Registrar at the Registrar Office where the principal office of the association is

situated within thirty days from the date of such appointment or alteration of the directors of the association.

If it is considered by the Registrar that any of the directors under paragraph one does not have status or conduct suitable for implementing the object of the association, the Registrar may refuse the registration of that director of the association. In case of refusal, the Registrar shall notify the association of reason for such refusal within sixty days from the date of application, and the provisions of Section 82 paragraph four and paragraph five shall apply, *mutatis mutandis*.

If the registration of new directors of the association has not yet been made, the old directors of the association shall further perform the functions of the directors of the association until the registration of the new directors of the association is made, unless otherwise provided in the regulations of the association.

Section 86. The directors of the association is to carry on the activities of the association under the law and the regulations of the association, and under supervision of the general meetings.

Section 87. An association is represented in its relations with third persons by its committee.

Section 88. All activities performed by the Committee of the association are valid even though it appears afterwards that there is any fault concerning the appointment or qualification of the directors of the association.

Section 89. A member of an association is entitled during working hours of the association inspect the business and property of the association.

Section 90. A member of the association has to pay total subscription on the day when he applies for being member or at the beginning of the period for payment of subscription, unless otherwise provided in the regulations.

Section 91. A member of the association is entitled to withdraw at any time from the association, unless otherwise provided in the regulations.

Section 92. Each member of an association is liable to the debt of the association for not more than the amount of the subscription due by him.

Section 93. A general meeting shall be called by the directors of the association at least once a year.

Section 94. The Committee of the association may summon extraordinary meetings as they think fit.

A requisition for summoning an extraordinary meeting may be made in writing by members of not less than one-fifth of the whole members of the association, or of not less than one hundred, or of not less than the number set forth in the regulations to the Committee of the association. The requisition must specify the object for which the meeting is required to be summoned.

When the Committee of the association have received the requisition for the summoning of an extraordinary meeting under paragraph two, they shall summon such meeting within thirty days from the date of receipt of the requisition.

If the meeting is not summoned within the period of time under paragraph three, the members who have made the requisition for summoning such extraordinary meeting or other members of not less than the number set forth in paragraph to may summon the meeting by themselves.

Section 95. In summoning a general meeting, a notice for the meeting shall be sent not later than seven days before the date fixed for the meeting to every member whose name appears in the register of the association, or may be published at least twice in a prevailing local paper, not less than seven days before the date of the meeting.

The notice must specify the place, the day and the hour of the meeting as well as its agenda, and closely relevant details and documents shall also be sent. As for a summoning of the extraordinary meeting through a publication, the said details and documents must be provided and ready for distributing to the member who request therefore at the place fixed by the person summoning such meeting.

Section 96. In a general meeting of the association, members present at the meeting of not less than one-half of the total number of members shall constitute a

quorum, unless provisions on a quorum of the meeting in the regulations of the association are otherwise provided.

If the quorum so provided is not present, the general meeting, if summoned upon requisition of members, shall be dissolved. But if the general meeting had not been summoned upon the requisition of members, another general meeting shall be summoned by the Committee within fourteen days from the date of the first summoned meeting and at such later meeting no quorum shall be necessary.

Section 97. Decision of the meeting shall be by majority of votes, except in the case where a particular majority of votes is specially provided in the regulations of the association.

Each member shall have one vote. In case of an equality of votes, the chairman of the meeting shall have an additional vote as casting vote.

Section 98. Any member may vote by proxy, unless otherwise provided in the regulations of the association.

Section 99. Any director or any member of an association who has in a resolution an interest in conflict with an interest of the association cannot vote in such resolution.

Section 100. If any general meeting has been summoned or held or a resolution passed contrary to the regulations of the association or the provisions of this Title, any such member or the public Prosecutor may apply to the Court

for cancellation of the resolution of such general meeting, provided that the application is entered within one month after the date of the resolution.

Section 101. An association is dissolve:

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| (1) | In the cases provided in its regulations, or |
| (2) | If formed for a definite period of time, by the expiration of such period, or |
| (3) | If formed for any undertaking, by the termination of such undertaking, or |
| (4) | By a resolution to dissolve passed in a general meeting, or |
| (5) | By the association becoming bankrupt, or |
| (6) | By having its name struck of the register by the Registrar under Section 102, or |
| (7) | By an order of the Court under Section 104. |

Section 102. The Registrar shall have the power to give an order to have the name of an association struck off the register in the following cases:

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| (1) | If appears after registration that the object of the association is contrary to the law or public moral or is likely to endanger the public peace or national security and an order for alteration of such object has been given by the Registrar, but the association fails to comply therewith within period of time fixed by the Registrar. |
| (2) | If appears that any activity conducted by the association is contrary to the law or public moral or is likely to endanger the public peace or national security. |
| (3) | The association has stopped doing business for more than two consecutive years. |
| (4) | It appears that the association allows or let other persons who are not members of the association to execute business of the association. |
| (5) | The number of members of the association has been less than ten for more than two consecutive years. |

Section 103. After the name of any association has been struck off the register by the order of the Registrar under Section 102, the Registrar shall send to order together with its reason to the association without delay, and shall publish such dissolution in the Government Gazette.

Any director or member of the association of not less than three in number are entitled to appeal against the order of the Registrar given under paragraph one to the

Minister of Interior. The appeal must be in writing and sent to the Registrar within thirty days from the date of being informed of the order, and provisions of Section 82 paragraph five shall apply, *mutatis mutandis*.

Section 104. When a case under Section 102 happens, an interested person may request the Registrar to have the name of the association struck off the register. If the Registrar fails to comply with the request and does not inform the person who made the request of the reasons within a reasonable period of time, or the reason given by the Registrar are not satisfied by the person having made the request, he may apply to the Court for dissolution of the association.

Section 105. When an association is to be dissolved under Section 101 (1) (2) (3) or (4), the Committee of the association that holds the office at the time of dissolution of the association shall inform the Registrar of the dissolution within fourteen days from the date of such dissolution.

In case where an association is declared bankrupt by a final judgment or order of the Court under Section 101 (5), or is dissolved by a final order under Section 104, the Court shall notify the Registrar of the said judgment or order.

The Registrar shall publish such dissolution in the Government Gazette.

Section 106. Upon dissolution of an association, the liquidation of the association shall be made, and the provisions in Book III, Title 22 on Liquidation of

Registered Partnerships, Limited Partnerships and Limited Companies shall apply to the liquidation of the association, *mutatis mutandis*.

Section 107. After liquidation, the remaining assets, if any, cannot be distributed among the members of the association. They shall be transferred to such other association or foundation, or any juristic person whose object is of charity purposes as may be designated in the regulations, by the resolution of the association in general meeting. If no transferee of the said assets has been designated, by the regulations or by the resolution of association in general meeting, or if designated but it is unable to comply therewith, the remaining assets shall belong to the State.

Section 108. Any person may, on application to the Registrar, inspect the documents relating to an association kept by the Registrar or request for certified copies of the said documents to be delivered to him by the Registrar, and Registrar, and the Registrar shall comply therewith after payment of such fee as may be prescribed by the Ministerial Regulations has been made.

Section 109. The Minister of Interior shall take charge and control of the execution of the provisions of this Part and have the power to appoint the Registrar and to issue Ministerial Regulations on:

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|-----|--|
| (1) | The application for registration and the making of registration. |
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| (2) | Fees for the registered, the inspection of documents and the copying of documents as well as the fee for any activities concerning the foundation to be performed by the Registrar, including the exemption of the said fees. |
| (3) | The conduct of business of the association and its register. |
| (4) | Any other matters for carrying out the provisions of this Title. |

Such Ministerial Regulations Shall become effective upon their publication in the Government Gazette.

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PART III

Foundation

Section 110. A foundation consists of property specially appropriated to public charity, religious, art, scientific, education or other purpose for the public benefit and not for sharing profit, and has been registered under the provisions of this Code.

The property of a foundation must be managed for implementing the objects of that foundation, and not for seeking interest for any person.

Section 111. A foundation must have its regulations and must have a Committee, consisting of at least three persons, to conduct business of the foundation

according to the law and regulations of the foundation.

Section 112. The regulations must have at least the following particulars:

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|-----|--|
| (1) | The name of the association |
| (2) | Its objects |
| (3) | Addresses of its principal office and all its branch offices. |
| (4) | Its property at the time of creation. |
| (5) | Rules for the Committee of the foundation, i.e. number of the directors, appointment of the directors, term of office of the directors, retirement of office of the directors and meetings of the Committee. |
| (6) | Rules for management of the foundation, the management of the property and keeping of accounts of the foundation. |

Section 113. The foundation must have a word 'foundation' incorporated with its name.

Section 114. The application for registration of a foundation must be filed in writing with the Registrar of the area where the principal office of the foundation is situated, and it must at least specify the owner of the property and the list of the property appropriated for the

foundation together with the list of names, addresses and occupation of all the would-be directors of the foundation, including the regulations of the foundation.

Section 115. When the application for registration together with the regulations are received by the registrar, and the application is found correct under Section 114 and the regulations correct under Section 112, the objects of the foundation are not contrary to the law or good moral or endangering public order or national security and all particulars contained in the application or in the regulations conform to the objects of the foundation, or the would-be directors of the foundation have status or conduct suitable for implementing the objects of the foundation, the registrar shall make registration and issue a certificate of registration to the foundation. The registration shall be published in the Government Gazette. If it is found that the application or the regulations are not in conformity with Section 114 or Section 112, the particulars contained in the application or in the regulations do not conform to the object of the foundation, or the would-be directors of the foundation do not have status and conduct suitable for implementing the object of the foundation, the registrar shall instruct the applicant to make correction or alteration, and shall, after the correction or alteration having been made, make registration and issue a certificate of registration to the foundation.

If it is considered by the registrar that the registration cannot be made because the objects of the foundation are contrary to the law or good moral or likely to endanger public order or national security, or the

applicant fails to make correction or alteration as such within thirty Thailand Civil and Commercial Code days counting from the day on which the instruction of the registrar came to his knowledge, the registrar shall give an order refusing the registration and inform the applicant without delay of reasons for such refusal.

The applicant is entitled to appeal in writing against the order of refusal for registration to the Minister of Interior through the registrar within thirty days from the date of receipt of the refusal order.

The Minister of Interior shall decide the appeal and inform the appellant of the decision within thirty days from the date of receipt of the written appeal by the registrar. The decision of the Minister of Interior shall be final.

Section 116. Before the registration of the foundation being made by the registrar, the applicant for creating a foundation is entitled to withdraw the application by submitting a written notice to the registrar. The right to withdraw the application does not devolve on the heirs. In the case where the application for establishment of the foundation is made by many persons, if it is withdrawn by any applicant, it shall become extinguished.

Section 117. If the applicant for creating the foundation dies before the registration by the registrar, and the deceased does not make a will revoking the application for creation of such foundation, the application shall be effective and be proceeded on with the creation of such

foundation by the heirs or administrator, or the person entrusted by the deceased. If the said person fails to proceed with the matter within one hundred and twenty days from the death of the applicant for creation of the foundation, any interested person or the public prosecutor may proceed with the matter in the capacity of the applicant.

If the foundation cannot be created in accordance with the objects set by the deceased and no testamentary disposition is provided otherwise, the provisions of Section 1679 paragraph two shall be applied *mutatis mutandis*.

If proceeding under Section 1679 paragraph two cannot be made or the foundation cannot be created under Section 115, the appropriated property shall be vested in the estate of the deceased.

Section 118. If there is a testamentary disposition to create a foundation under Section 1676, the person charged with the duty to create the foundation under Section 1677 paragraph one shall precede with the matter under Section 114 and under provisions of this Section.

If the person charged with the duty to create the foundation under paragraph one fails to apply for registration to effect the creation of the foundation within one hundred and twenty days from the date that the testamentary disposition to create the foundation

came to or should have come to knowledge of the said person, any interested person or the public prosecutor may apply for such registration.

If the applicant for registration of the foundation fails to make modifications or alterations in compliance with the instruction, any interested person or the public prosecutor may apply for such registration again.

If a protest is made to the registrar on the ground that the will does not provide for creating the foundation, the registrar shall notify the protestor to make a request to the court within sixty days counting from the date he has been notified by the registrar, and the registrar shall not consider the registration but wait for the judgment or order of the court and comply therewith. If the protester fails to make the request to the court within the time limit, the registrar shall further consider the registration of the foundation.

Section 119. If the will that contains the testamentary disposition does not have such particulars as provided in Section 112 (1) (3) (5) or (6), the applicant under Section 118 can stipulate the said particulars. If any interested person makes a protest against the applicant, the registrar shall give an order as he thinks fit and notify the applicant and the protester of the order, he can file a protest with the court within sixty days counting from the date of receipt of the notification from the registrar. The registrar shall not consider the registration but wait for the judgment or order of the court and comply

therewith. If no protest is filed within the time limit, the registrar shall consider the registration according to the order given.

Section 120. If there are many applicants for registration of the foundation under the will of the same de cujus, and the applications contradict each other, the registrar shall summon the applicants for making an agreement. If the applicants do not show up or cannot come to an agreement within a period of time fixed by the registrar, the registrar shall give an order as he thinks fit, and the provisions of Section 119 shall be applied *mutatis mutandis*.

Section 121. After registration of the foundation, if the applicant for creating the foundation is still alive, the property appropriated therefore shall vest in the foundation from the date of registration of the foundation by the registrar.

If the applicant for creating a foundation dies before the registration of the foundation by the registrar, the property appropriated therefore shall vest in the foundation from the death of the applicant after the registration.

Section 122. The foundation so registered is a juristic person.

Section 123. A foundation is represented in its relations with third persons by its committee.

Section 124. All activities performed by the committee of the foundation are valid even though it appears afterwards that there is any fault concerning the appointment or qualification of directors of the foundation.

Section 125. The appointment of new directors of the foundation or the alteration thereof shall be made in accordance with the regulations of the foundation and must be registered within thirty days counting from the date of such appointment or alteration of the directors of the foundation.

If it is considered by the registrar that any of the directors under paragraph one does not have status or conduct suitable for implementing the objects of the foundation, the registrar may refuse the registration of the director.

In case of refusal, the registrar shall notify reasons of the foundation for such refusal within sixty days counting from the date of application, and the provisions of Section 115 paragraph four and paragraph five shall be applied *mutatis mutandis*.

In the case where the directors of the foundation vacate their office and no director is remaining or the remaining directors are unable to perform their function, the director who has vacated his office shall, if no regulations of the foundation provides, perform further the function of director until the foundation is notified by the registrar of the registration of the new director.

The director who has vacated his office on dismissing account by the order of the court under Section 129 cannot perform his function under paragraph three.

Section 126. Subject to Section 127, the committee of the foundation is empowered to amend the regulations of the foundation.

If the rules and manners for the amendment have been provided in the regulations of the foundations, the amendment must be made according to those provided in the regulations and it shall be deposited for registration at the registrar office within thirty days counting from the date of amendment by the committee of the foundation, and the provision of Section 115 shall be applied *mutatis mutandis*.

Section 127. The amendment of any particulars in the regulations of the foundation under Section 112 (2) can be made only for the following purposes:

1. To make the implementation of the object of the foundation possible; or
2. The change of circumstance makes the object of the foundation become less benefit or makes it unable to carry on the activities to fulfill the object of the foundation, and the object of the foundation so amended are close to the original objects.

Section 128. The registrar shall have the power to inspect, control and supervise the carrying on of activities of the foundation to be in conformity with the law and the regulations of the foundation. For this purpose, the registrar or any competent officials entrusted by the registrar in writing shall have power;

1. To give and order in writing to a director, officer, employee or agent of the foundation for giving explanation and presenting facts concerning the business of the foundation, or to summon the said person for enquiry or to instruct him to send or produce accounting books and other documents of the foundation for inspection.
2. To enter the office of the foundation between sunrise and sunset for inspecting the business of the foundation.

In performing the duty under paragraph one, the registrar shall produce his identity card while the entrusted competent officials have to produce to any concerned person their identity cards and a letter of power of the registrar.

Section 129. Any director who causes an injury to the foundation through his wrongful performance of activities or performs the activities contrary to the law or the regulations of the foundation, may application of the registrar, the public prosecutor or of any interested person, be dismissed from being director of the foundation by the court.

If the performance of activities under paragraph one is of the committee of the foundation or the objects of the foundation are not implemented without reasonable causes by the committee, the court may, on application of the registrar, the public prosecutor or of any interested person, give an order dismissing the committee from the office.

In case of dismissal of any director or of the committee of the foundation by the court under paragraph one or paragraph two, the court may appoint order or a committee in place of a director or the committee of the foundation so dismissed and registrar shall make registration of the person who has been appointed as director of the foundation by the court.

Section 130. A foundation is dissolved;

1. Upon such cause as provided in the regulations, or
2. If formed for definite period of time, by the expiration of such period, or
3. If formed for any object, upon its object being fulfilled or becoming impossible, or
4. Upon the foundation becoming bankrupt, or
5. By an order of the court to dissolve the foundation under Section 131.

Section 131. On the application of the registrar, the public prosecutors or of any interested person, the court may order a foundation to be dissolved in the following cases;

(1) It appears that the objects of the foundation are contrary to the law.

(2) It appears that the foundation has done the business contrary to the law and good moral, or may endanger the public peace or national security.

(3) It appears that the foundation cannot proceed on its activities by any cause whatsoever or has stopped doing business for more than two years.

Section 132. When a case under Section 130 (1) (2) or (3) happens, the committee of the foundation that holds the office at the time of dissolution of the foundation shall notify the registrar of the dissolution within forty days counting from the date of its dissolution. If the court passes a final judgment or gives a final order to effect to foundation to become bankrupt under Section 130 (4), or gives a final order to dissolve the foundation under Section 131, the court shall also notify the registrar of the said judgment or order. The registrar shall publish the dissolution of the foundation in the Government Gazette.

Section 133. Upon dissolution of the foundation, the liquidation of the foundation shall be made, and the provisions in Book III, Title 22 on Liquidation of Registered Partnerships, Limited Partnerships and Limited Companies shall be applied to the liquidation of the foundation *mutatis mutandis*.

To this effect, the report on the liquidation shall be submitted to the registrar by the liquidator and it shall be approved by the registrar.

Section 134. After liquidation, the remaining assets shall be transferred to such foundation or juristic person whose object is in conformity with Section 110 as specified in the regulations, the public prosecutor, the liquidator or any interested person may apply to the court for appropriating the assets to other foundation or juristic person whose object is closely similar to that of such foundation.

If the foundation is dissolved by the order of the court under Section 131 (1) or (2) or the appropriation of the assets under paragraph one cannot be made, the assets of the foundation shall vest in the State.

Section 135. On the application to the registrar, any person may access to the documents relating to a foundation kept by the registrar or request for certified copies of the said documents and the registrar shall comply therewith after payment of such fee as prescribed by the Ministerial Regulations.

Section 136. The Minister of Interior shall take charge and control of the execution of the provisions of this Part and have the power to appoint the registrar and issue Ministerial Regulations on;

1. The application for registration and the making of registration.
2. Fees for the registration, the inspection of documents and the copying of documents as well as the fee for any activities concerning the foundation to be performed by the registrar including the exemption of the said fees.

3. Forms of the identity cards of the registrar and of a competent official.
4. The conduct of business of the foundation and its register.
5. Any other matters for carrying out the provisions of this Title.

Such Ministerial Regulations shall become effective upon their publication in the Government Gazette.

TITLE III

THINGS

Section 137. Things are corporeal objects.

Section 138. Property includes things as well as incorporeal objects, susceptible of having a value and of being appropriated.

Section 139. Immovable property denotes land and things fixed permanently to land or forming a body therewith. It includes real rights connected with the land or things fixed to or forming a body with land.

Section 140. Movable property denotes things other than immovable property. It includes rights connected therewith.

Section 141. Divisible things are those which can be separated into real and distinct portions, each forming a perfect whole.

Section 142. Indivisible things are those which cannot be separated without alteration in its substance as well as those which are considered indivisible by law.

Section 143. Things outside of commerce are things incapable of appropriation, and those legally inalienable.

Section 144. A component part of a thing is that which, according to its nature or local custom, is essential to its existence and cannot be separated without destroying, damaging or altering its form or nature.

The owner of a thing has ownership in all its component parts.

Section 145. Trees when planted for an unlimited period of time are deemed to be component parts of the land on which they stand.

Trees which grow only for a limited period of time and crops which may be harvested one or more times a year are not component parts of the land.

Section 146. Things temporarily fixed to land or to a building do not become component parts of the land or building. The same rule applies to a building or other structure which, in the exercise of a right over another person's land, has been fixed to the land by the person who has such right.

Section 147. Accessories are movable things, which are, according to the usual local conception or clear intention of the owner of the principal thing, attached to such thing permanently for its management, use or preservation, and, by connection, adjustment or otherwise, brought by the owner into the relation with the principal thing, in which it must serve the principal thing.

Even though an accessory is temporarily severed from the principal thing, it does not cease to be an accessory.

Saving special disposition to the contrary, the accessory follows the principal thing.

Section 148. By fruit of a thing is a natural fruit and legal fruit.

Natural fruit denotes that which is a natural offspring of and is obtained from a thing in the normal possession or in the use thereof; and it is capable of acquisition at the time when it is severed from the thing.

Legal fruit denotes a thing or other interest obtained periodically by the owner from another person for the use of the thing; it is calculated and may be acquired day by day or according to a period of time fixed.

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TITLE VI

JURISTIC ACTS

CHAPTER I

GENERAL PROVISIONS

Section 149. Juristic act are voluntary lawful acts, the immediate purpose of which is to establish between persons relations, to create, modify, transfer, preserve or extinguish rights.

Section 150. An act is void if its object is expressly prohibited by law or is impossible, or is contrary to public order or good morals.

Section 151. An act is not void on account of its differing from a provision of any law if such law does not relate to public order or good moral.

Section 152. An act which is not in the form prescribed by law is void.

Section 153. An act which does not comply with the requirements concerning capacity of person is voidable.

CHAPTER II

DECLARATION OF INTENTION

Section 154. A declaration of intention is not void on the ground that the declarant in the recesses of his mind does not intended to be bound by his expressed intention, unless this hidden intention was known to the other party.

Section 155. A declaration of intention made with the connivance of the other party which is fictitious is void; but its invalidity cannot be set up against third persons injured by the fictitious declaration of intention and acting in good faith.

If a declaration of fictitious intention under paragraph one is made to conceal another juristic act, the provisions of law relating to the concealed act shall apply.

Section 156. A declaration of intention is void if made under a mistake as to an essential element of the juristic act.

The mistake as to an essential element of the juristic act under paragraph one are for instance a mistake as to a character of the juristic act, a mistake as to a person to be a partner of the juristic act and a mistake as to a property being an object of the juristic act.

Section 157. A declaration of intention is voidable if made under a mistake as to a quality of the person.

Mistake under paragraph one must be a mistake as to the quality of the person which is considered as essential in the ordinary dealings, and without which such juristic act would have not been made.

Section 158. If the mistake under Section 156 or Section 157 was due to the gross negligence of the person making such declaration, he cannot avail himself of such invalidity.

Section 159. A declaration of intention produced by fraud is voidable.

An act under paragraph one is voidable on account of fraud only when it is such that without which such juristic act would not have been made.

When a party has made a declaration of intention owing to a fraud committed by a third person, the act is voidable only if the other party knew or ought to have known of the fraud.

Section 160. The avoidance of a declaration of intention produced by fraud cannot be set up against a third person acting in good faith.

Section 161. If the fraud is only incidental that is to say it has merely induced a party to accept more onerous terms than would otherwise have done, such party can only claim compensation for damage resulting from such fraud.

Section 162. In bilateral juristic acts, the intentional silence of one of the parties in respect to a fact or quality of which the other party is ignorant, is deemed to be a fraud if it is proved that, without it, the act would not have been made.

Section 163. If both parties acted with fraud, neither of them can allege it to void the act or to claim compensation.

Section 164. A declaration of intention is voidable if made under duress.

Duress, in order to make an act voidable, must be imminent and so severe that makes him fear and without it, the act would not have been made.

Section 165. The threat of the normal exercise of a right is not considered duress. Any act made owing to reverential fear is not considered an act made under duress.

Section 166. Duress vitiates the juristic act, even when it is exercised by a third person.

Section 167. In determining a case of mistake, fraud or duress, the sex, age, position health, temperament of the person made the intention and all other circumstances and environment which may relate to that act shall be taken into consideration.

Section 168. A declaration of intention made to a person in his presence takes effect from the time when it becomes known to the receiver of the intention. This also apply to the declaration of intention made by one person to the other through telephone, other communication devices, or other means through which similar communication can be made.

Section 169. A declaration of intention made to a person not in his presence takes effect from the time when it reached the receiver of the intention. If does not become effective if a revocation reaches him previously or simultaneously.

Even though the person who made a declaration of intention dies, becomes incompetent or quasi-incompetent by an order of the Court after it has been sent, the validity of declaration is not impaired thereby.

Section 170. If the declaration of intention is made to a minor or a person adjudged incompetent or quasi-incompetent, it cannot be set up against him unless his legal representative, guardian or curator, as the case may be, has knowledge of it or has given prior consent to it.

The provisions of paragraph one do not apply to the declaration of intention concerning any matter that the minor or the incompetent is required by law to make by himself.

Section 171. In the interpretation of a declaration of intention, the true intention is to be sought rather than the literal meaning of the words or expressions.

CHAPTER III

VOID AND VOIDABLE ACTS

Section 172. A void act cannot be ratified, and its nullity may be alledged at any time by any interested person.

The return of a property arising from a void act shall be governed by the provisions on Undue Enrichment of the Code.

Section 173. If any part of an act is void the whole act is void, unless it may be assumed under the circumstances of the case that the parties intended the valid part of the act to be separable from the invalid part.

Section 174. If a void act complies with the requirements of another act which is not void, it is valid as the other act, if it may be assumed that such validity would have been intended by the parties, had they known of the invalidity of the intended act.

Section 175. A voidable act may be avoided by:

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| (1) | The legal representative or the minor after becoming sui juris, but the avoidance can be made by the minor before his becoming sui juris if a consent thereto has been given by his legal representative, or |
| (2) | The person adjudged incompetent or quasi-incompetent after he has recovered his capacity, or by the guardian or curator, as the case may be, but the avoidance can be made by the quasi-incompetent before recovery of his capacity if a consent thereto has been given by his curator, or |
| (3) | The person who has made the declaration of intention owing to mistake, fraud or duress, or |
| (4) | The person of unsound mind who did the voidable juristic act under <u>Section 30</u> after he has recovered his capacity. |

If the person who did the voidable juristic act dies before making the avoidance, it may be avoided by his heir.

Section 176. When a voidable act is avoided, it is deemed to have been void from the beginning; and the parties shall be restored to the condition in which they were previously, and if it is not possible to so restore them, they be indemnified with an equivalent.

If any person knew or ought to have known that an act is voidable, he, after making the avoidance, is deemed to have known that the act is void since the voidable act became known or ought to become known to him.

The claim resulting from restoring them to the previous condition under paragraph one cannot be exercised later than one year from the date of avoidance of the voidable act.

Section 177. If any person entitled to avoid a voidable act under Section 175 ratifies a voidable act, it is deemed to have been valid from the beginning; but the right of third persons cannot be affected thereby.

Section 178. The avoidance of or ratification to a voidable act could be made by a declaration of intention made to the other party who is a determinate person.

Section 179. A ratification is valid only if it is made after the state of facts forming the ground of voidability has ceased to exist.

When a person adjudged incompetent or quasi-incompetent or a person of unsound mind who did a voidable juristic act under Section 30 acquires knowledge of such act after he has recovered his capacity, he can ratify it only after acquiring knowledge.

The heir of the person having done the voidable juristic act can ratify such act after the death of such person unless the right to avoid the voidable juristic act of the deceased has extinguished.

The provisions of paragraph one and paragraph two shall not apply to a ratification to the voidable juristic act made by the legal representative, guardian or curator.

Section 180. If after the time when ratification according to Section 179 could be made, any of the following facts takes place in regard to a voidable act by an act of the person entitled to avoid the voidable act under Section 175, it is deemed to be ratified, unless a reservation is expresses, such as:

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| (1) | The obligation has been fully or partially performed. |
| (2) | The performance of the obligation has been demanded . |
| (3) | A novation of the obligation has been effected. |
| (4) | Security has given for the obligation. |
| (5) | The whole or part of the right or liability has been transferred. |
| (6) | Any other acts done which indicate the ratification. |

Section 181. A voidable act cannot be avoided later than one year from the time when ratification could have been made, or later than ten years since the act was done.

CHAPTER IV

CONDITIONS AND TIME

Section 182. A clause which subordinates the effect or the end of the effect of a juristic act to a future and uncertain event, is considered a condition.

Section 183. A juristic act subject to a condition precedent takes effect when the condition is fulfilled.

A juristic act subject to a condition subsequent ceases to have effect when the condition is fulfilled.

If the parties to the act have declared an intention that the effect of the fulfillment of a condition shall relate back to a time before its fulfillment, such intention is to govern.

Section 184. Any party to a juristic act subject to a condition must not, while the condition is pending, do any thing by which the benefit which the other party might derive from the fulfillment of the condition is impaired.

Section 185. The rights and duties which the parties have, while the condition is pending, may be disposed of, inherited, protected or secured according to law.

Section 186. If the fulfillment of a condition is prevented not in good faith by the party to whose disadvantage it would operate, the condition is deemed to have been fulfilled.

If the fulfillment of a condition is brought about in bad faith by the party to whose advantage it would operate, the condition is deemed not to have been fulfilled.

Section 187. When the condition is already fulfilled at the time of the juristic act, the latter is unconditionally valid, if the condition is precedent, and is void, if the condition is subsequent.

When it is already certain at the time of the juristic act that the condition cannot be fulfilled, the act is void, if the condition is precedent, and unconditional valid, if the condition is subsequent.

The parties still have rights and duties according to Section 184 and Section 185 so long as they do not know whether the condition is fulfilled under paragraph one or cannot be fulfilled under paragraph two.

Section 188. A juristic act is void if it is subject to an unlawful condition, or a condition contrary to public order or good morals.

Section 189. A juristic act upon a condition precedent which is impossible is void.

A juristic act upon a condition subsequent which is impossible is unconditionally valid.

Section 190. A juristic act upon a condition precedent which depends upon the will of the debtor is void

Section 191. If a time of commencement is annexed to a juristic act, its performance cannot be demanded before such time arrives.

If a time of ending is annexed to a juristic act, its effect ceases when such time arrives.

Section 192. It is presumed that a time of commencement or ending is fixed for the benefit of the debtor, unless it appears from the tenor of the instrument or from the circumstances of the case that it was intended for the benefit of the creditor, or of both parties.

The benefit of such a time may be waived, but this will not affect any benefit which would accrue therefrom to the other party.

Section 193. In the following cases the debtor cannot take advantage of a time of commencement or ending:

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| (1) | If he has been ordered by the Court to place his assets under final custody and control according to the law on bankruptcy. |
| (2) | If he has not given security when he was bound to give it. |
| (3) | If he has destroyed or diminished any security given. |

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| (4) | If the debtor has produced as security a property of other person without the latter's consent. |
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TITLE V

PERIODS OF TIME

Section 193/1. The manner of computing all periods of time is governed by the provisions of this Title, unless it is otherwise provided by law, by juridical order, by rules and regulations or by a juristic act.

Section 193/2. A period of time is calculated by day. But if it is determined shorter than a day, it shall be calculated as such.

Section 193/3. If the period of time is determined shorter than a day, it begins to run at once.

When a period of time is determined in days, weeks, months or years, the first day of the period is not included in the calculation, unless the period begins to run on that day from the time which is customary to commence business.

Section 193/4. As far as the legal proceedings, official business or commercial and industrial business are concerned, a day means working hours determined by law, by a judicial order or by rules and regulations, or usual working hours of that business, as the case may be.

Section 193/5. The period determined in weeks, months or year are calculated according to the calendar.

If the period is not computed from the beginning of a week, month or year , it ends on the day preceding that day of the last week, month or year which corresponds to that on which it began. If a period measured in months or years there is no corresponding day in the last month, the last day of such month shall be the day of ending.

Section 193/6. If a period of time is determined in months and days, or in months and a part of a month, a full month shall be first measured and then a number of days or a part of a month measured in days.

If a period of time is determined in a part of a year, the part of a year shall be first measured in months and a part of a month, if any, shall be measured in days.

In calculating a part of a month under paragraph one and paragraph two, thirty days is regarded one month.

Section 193/7. If a period of time is extended and no beginning day of the extension is determined, the first day of the extension is the day following the last day of the original period.

Section 193/ 8. If the last day of a period is a holiday according to an official notification or a custom on which no business is done, the period includes the next working day.

TITLE VI

PRESCRIPTION

CHAPTER I

GENERAL PROVISIONS

Section 193/9. A claim is barred by prescription if it has not been enforced within the period of time fixed by law.

Section 193/10. After the lapse of the period of prescription for claims, the debtor is entitled to refuse performance.

Section 193/11. The periods for prescription fixed by law cannot be extended or reduced.

Section 193/12. Prescription begins and run from the moment when the claim can be enforced. If the claim is to a forbearance, prescription begins to run from the moment when the right is first infringed.

Section 193/13. If the creditor may not demand performance until he has given notice to the debtor, prescription begins to run from the moment when notice can be first given. If the debtor is not bound to perform until a given period has elapsed since the notice, prescription begins to run from the expiration of this period.

Section 193/14. Prescription is interrupted if:

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| (1) | The debtor has acknowledged the claim towards the creditor by written acknowledgement, by part payment, payment of interest, giving security, or by any unequivocal act which implies the acknowledgment of the claim. |
| (2) | The creditor enters an action for the establishment of the claim or for requiring performance. |
| (3) | The creditor applies for receiving a debt to arbitration. |
| (4) | The creditor submits the dispute to arbitration. |
| (5) | The creditor does any act which brings an effect equivalent to entering an action. |

Section 193/15. When prescription is interrupted , the period of time which has elapsed before interruption does not count for prescription.

A fresh period of prescription begins to run from the time when the interruption ceases.

Section 193/16. The creditor of an obligation for the payment of money periodically is entitled to require from the debtor, at any time before the completion of the period of prescription, a written acknowledgment of the obligation in order to obtain evidence of the interruption of prescription.

Section 193/17. In the case where prescription is interrupted due to the case under Section 193/ 14 (2), if the Court has passed a final judgment to dismiss the action, or the action has terminated and has been disposed of on the ground of being withdrawn or abandoned, the prescription shall be deemed to have never been interrupted.

In the case where the Court refuses to accept, return or dismisses the action on the ground of want of jurisdiction, or the action is dismissed with the right to re-enter the action in Court and the period of prescription expired pending proceedings, or would have expired within sixty days from the date of final judgment or order, the creditor shall be entitled to enter an action in Court for establishing his claim or for requiring performance of the obligation within sixty days from the date of final judgment or order.

Section 193/18. The provisions of Section 193/17 shall apply, *mutatis mutandis*, to interruption of prescription due to the case under Section 193/14 (3), (4) and (5).

Section 193/19. If at any time when the prescription would end, the creditor is prevented by *force majeure* from effecting a interruption, the prescription is not completed until thirty days after the time when such *force majeure* has ceased to exist.

Section 193/20. If prescription of claim of a minor, or a person of unsound mind whether adjudged incompetent or not, would have expired while the said person does not acquire full capacity, or within one year from the day

when the said person is without a legal representative or a guardian, if is not completed until the expiration of one year after he has acquired full capacity or has a legal representative or guardian, as the case may be. If the period of prescription of the claim is shorter than one year, the shorter period of time shall apply in place of the said period of one year.

Section 193/21. If prescription of claim of a minor, an incompetent or a quasi-incompetent against his legal representative, guardian or curator would have expired while the said person does not acquire full capacity, or within one year from the day when the said person is without legal representative, guardian or curator, if is not completed until the expiration of one year after he has acquired full capacity or has a legal representative, guardian or curator, as the case may be. If the period of prescription of the claim is shorter than one year, the shorter period of time shall apply in place of the said period of one year.

Section 193/22. If prescription of claims between spouses would have expired before within one year after dissolution of marriage, it is not completed until the expiration of one year after dissolution of marriage.

Section 193/23. If prescription of a claim existing in favour of or against a deceased would have expired within one year after the date of the death, the period of prescription is not completed until the expiration of one year after death.

Section 193/24. The benefit of prescription can be waived only after it has been completed, but such waiver does not prejudice the right of third persons, or the surety.

Section 193/25. When prescription is completed, its effect relates back to the day when it began to run.

Section 193/26. With the principal claim the claims for accessory acts of performance dependent upon it are also barred by prescription, even if the particular prescription applying to the accessory claim is not yet complete.

Section 193/27. The barring of the principal claim by prescription does not prevent a mortgagee, a pledge, holder of a right of retention or a creditor who has preferential right on property of the debtor detained by him, to enforce his right out of the mortgaged, pledged or detained property. But in exercising the right the creditor cannot obtain more than five years for arrears of interest.

Section 193/28. If any act of performance is done in satisfaction of a claim barred by prescription, the value of such performance may not be demanded back, even if the performance has been effected in ignorance of the prescription.

The provisions of paragraph one shall apply to a contractual acknowledgment of liability in writing and to the giving of security by the debtor, but it cannot be referred against the former surety.

Section 193/29. When prescription has not been set up as a defense, the Court cannot dismiss the claim on the ground of prescription.

CHAPTER II

PERIOD OF PRESCRIPTION

Section 193/30. The period of prescription for which no other period is provided by law is ten years.

Section 193/31. The period of prescription for claims of the Government for taxes and rates is ten years. As to other claims of the Government relating to obligations, the provisions of this title shall apply.

Section 193/32. The period of prescription for a claim established by a final judgment, or by a contract of compromise is ten years, even if the claim itself is subject to any period of prescription.

Section 193/33. The period of prescription is five years for the following claims:

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| (1) | Arrears of interest |
| (2) | Sums payable for the purpose of paying off the principal by installments. |
| (3) | Arrears of rent or hire of property except the rent of movables under Section 193/34 (6). |
| (4) | Arrears of salaries, annuities, pensions, allowances for maintenance and all other periodical payments. |

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| (5) | Claims under Section 193/34 (1) (2) and (5), so far as they are not subject to the period of two years. |
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Section 193/34. The period of prescription is two years for the following claims:

- | | |
|-----|---|
| (1) | Arrears of interest |
| (2) | Sums payable for the purpose of paying off the principal by installments. |
| (3) | Arrears of rent or hire of property except the rent of movables under Section 193/34 (6). |
| (4) | Arrears of salaries, annuities, pensions, allowances for maintenance and all other periodical payments. |
| (5) | Claims under Section 193/34 (1) (2) and (5), so far as they are not subject to the period of two years. |

Section 193/34. The period of prescription is two years for the following claims:

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| (1) | Claims of merchants, industrialists manufactures, artisans and those who practice industrial arts, for delivery of goods, performance of work and care of others' affairs, including disbursements, unless the service was rendered for the business of the debtor. |
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| (2) | Claims of those who engage to agriculture or forestry, for delivery of agricultural or forest products, so far as the delivery is for the domestic use of the debtor |
| (3) | Claims of carriers for passengers or goods, or if messengers, for fare, freight, hire and fees, including disbursements. |
| (4) | Claims of innkeepers or hostel keepers and those who make a business of providing food and drink, or those who make a business of rendering entertainment service according to the law on places of entertainment services, for supplying lodging and food or other services rendered to the guests, including disbursements. |
| (5) | Claims of those who sell lottery tickets, racket or similar tickets for the sale of the tickets, unless the tickets are delivered for further sale. |
| (6) | Claims of those who make a business of letting movables, for the rent. |
| (7) | Claims of those who, without belonging to the classes specified in (1), make business of the care of others' affairs or the rendering of service, for the remuneration due to them from the business, including disbursements. |

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| (8) | Claims of those who are in private service, for the wages, or other remuneration for services, including disbursements; also claims of the employers for advances made upon such claims. |
| (9) | Claims of employees, whether they be permanent, temporary or day labourers, and apprentices, for the wages or other remuneration, including disbursements, or claims of the employers for advances made upon such claims. |
| (10) | Claims of masters of apprentices, for the premium and other expenses agreed upon in the contract of apprenticeship and disbursements. |
| (11) | Claims of owners of educational institutions or nursing home, for instruction fees and other fees, or medical fees and other expenses, including disbursements. |
| (12) | Claims of those who receive persons to be maintained or educated, for services including disbursements. |
| (13) | Claims of those who receive animals to be maintained or trained, for services, including disbursements. |
| (14) | Claims of teachers, for their fees. |

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| (15) | Claims of practitioners in medicine , dentist, nurses, midwives, veterinary surgeons or those who practice in other related fields of medicine, for their services, including disbursements. |
| (16) | Claims of lawyers or those engaged in legal profession including expert witnesses for their services, including disbursements, or claims of the parties for advances made upon such claims. |
| (17) | Claims of engineers, architects, auditors or those engaged in other independent professions, for services including disbursements, or claims of the employers for advances made upon such claims. |

Section 193 /35. Subject to Section 193/27, prescription of claims arising from the acknowledgment of liabilities by the debtor in writing or in giving of security under Section 193/28 paragraph two is two year from the date of acknowledgment of liabilities or of giving of security.

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BOOK II

OBLIGATIONS

TITLE I

GENERAL PROVISIONS

CHAPTER I

SUBJECT OF OBLIGATIONS

Section 194. by virtue of an obligation the creditor is entitled to claim performance from the debtor. The performance may consist in a forbearance.

Section 195. When the thing which forms the subject of an obligation is described only in kind, if its quality cannot be determined by the nature of the juristic act or the intention of the parties, the debtor must deliver a thing of medium quality.

If the debtor has done every thing required on his part for the delivery of such thing, or if he on obtaining the consent of the creditor has designated a thing for delivery, such thing becomes from that time the subject of the obligation.

Section 196. If a money debt is expressed in a foreign currency, payment may be made in Thai currency.

The commutation is made according to the rate of exchange current in the place of payment at the time of payment.

Section 197. If a money debt is payable in a specific kind of money which is no longer current at the time of payment, the payment shall be as if the kind of money were not specified.

Section 198. If several acts of performance are due in such manner that only one of them is to be done, the right to elect belongs to the debtor unless otherwise stipulated.

Section 199. The election is made by a declaration of intention to the other party. The performance elected is deemed to be the only one due from the beginning.

Section 200. If the election is to be made within a period of time, and the party who has the right of election does not exercise it within such period, the right of election passes to the other party.

If no period of time was fixed, when the obligation becomes due, the party who has not the right of election can notify the other party to exercise his right of election within a reasonable time to be fixed in such notice.

Section 201. If a third person is to make the election, it is done by a declaration of intention made to the debtor, who must inform the creditor.

If such third person cannot make the election or is unwilling to do so, the right of election passes to the debtor.

Section 202. If one of the acts of performance is impossible from the beginning, or if it subsequently becomes impossible, the obligation is limited to the other act of performance. This limitation does not arise if the performance becomes impossible in consequence of a circumstance for which the party not entitled to elect is responsible.

CHAPTER II

EFFECT OF OBLIGATIONS

PART I

Non-Performance

Section 203. If a time for performance is neither fixed nor to be inferred from the circumstances, the creditor may demand the performance forthwith, and the debtor may perform his part forthwith.

If a time is fixed, it is to be presumed, in case of doubt, that the creditor may not demand the performance before that time; the debtor, however, may perform earlier.

Section 204. If the debtor does not perform after warning given by the creditor after maturity, he is in default through the warning.

If a time by calendar is fixed for the performance, the debtor is in default without warning if he does not perform at the fixed time. The same rule applies if a notice is required to precede the performance, and the time is fixed in such manner that it may be reckoned by the calendar from the time of notice.

Section 205. The debtor is not in default so long as the performance is not effected in consequence of a circumstance of a circumstance for which he is not responsible.

Section 206. In obligations arising from an unlawful act, the debtor is in default from the time when he committed it.

Section 207. a creditor is in default if, without legal ground, he does not accept the performance tendered to him.

Section 208. The performance must be actually tendered to the creditor in the manner which it is to be effected.

But if the creditor has declared to the debtor that he will not accept performance, or if for effecting the performance an act of the creditor is necessary, it is sufficient for the debtor to give him notice that all preparations for performance have been made and that it is for him to accept it. In such cases the notice by the debtor is equivalent to a tender.

Section 209. If a time certain is fixed for the act to be done by the creditor, tender is required only if the creditor does the act in due time.

Section 210. If the debtor is bound to perform his part only upon counter performance by the creditor, the creditor is in default if, though prepared to accept the performance tendered, he does not offer the required counter-performance.

Section 211. A creditor is not in default if the debtor is not in a position to effect the performance at the time of tender, or, in the case provided by Section 209, at the time fixed for the act of the creditor.

Section 212. If the time of performance is not fixed, or if the debtor is entitled to perform before the fixed time, the creditor is not in default by reason of the fact that he is temporarily prevented from accepting the tendered performance, unless the debtor has given him notice of this intended performance a reasonable time beforehand.

Section 213. If a debtor fails to perform his obligation, the creditor may make a demand to the Court for compulsory performance, except where the nature of the obligation does not permit it.

When the nature of an obligation does not permit of compulsory performance, if the subject of the obligation is the doing of an act, the creditor may apply to the court to have it done by a third person at the debtor's expense; but if the subject of the obligation is doing of a juristic act, a judgment may be substituted for a declaration of intention by the debtor.

As to an obligation whose subject is the performance from an act , the creditor may demand the removal of what has been done at the expense of the debtor and have proper measures adopted for the future.

The provisions of the foregoing paragraphs do not affect the right to claim damages.

Section 214. Subject to the provisions of [Section 733 \(/index.php/translation-lthailand-civil-and-commercial-code-part-2.html#732\)](/index.php/translation-lthailand-civil-and-commercial-code-part-2.html#732), the creditor is entitled to have his

obligation performed out of the whole of the property of his debtor including any money and other property due to the debtor by third person.

Section 215. When the debtor does not perform the obligation in accordance with the true intent and purpose of the same, the creditor may claim compensation for any damages caused thereby.

Section 216. If by a reason of default, the performance becomes useless to the creditor, he may refuse to accept it and claim compensation for non-performance.

Section 217. A debtor is responsible for all negligence during his default. He is also responsible for impossibility of performance arising accidentally during the default, unless the injury would have arisen even if he had performed in due time.

Section 218. When the performance becomes impossible in consequence of a circumstance for which the debtor is responsible, the debtor shall compensate the creditor for any damage arising from the non-performance.

In case of partial impossibility the creditor may, by declining the still possible part of the performance, demand compensation for non-performance of the entire obligation, if the still possible part of performance is useless to him.

Section 219. The debtor is relieved from his obligation to perform if the performance becomes impossible in consequence of a circumstance, for which he is not

responsible, occurring after the creation of the obligation.

If the debtor, after the creation of the obligation, becomes unable to perform, it is equivalent to a circumstance rendering the performance impossible.

Section 220. A debtor is responsible for the fault of his agent, and of person whom he employs in performing his obligation, to the same extent as for his own fault. In such case the provisions of Section 373 have no application.

Section 221. A money debt bearing interest ceases to bear interest during the default of the creditor.

Section 222. The claim of damages is for compensation for all such damage as usually arises from non performance.

The creditor may demand compensation even for such damage as has arisen from special circumstances, if the party concerned foresaw or ought to have foreseen such circumstances.

Section 223. If any fault of the injured party has continued in causing the injury, the obligation to compensate the injured party and the extent of the compensation to be made depends upon the circumstances, especially upon how far the injury has been caused chiefly by the one or the other party.

This applies also even if the fault of the injured party consisted only in an omission to call the attention of the debtor to the danger of an unusually serious injury which the debtor neither knew nor ought to have known, or in an omission to avert or mitigate the injury. The provisions of Section 220 apply *mutatis mutandis*.

Section 224. A money debt bears interest during default seven and half percent per annum. If the creditor can demand higher interest on any other legitimate ground, this shall continue to be paid.

Interest for default shall not be paid upon interest.

Proof of further damage is admissible.

Section 225. If the debtor is bound to make compensation for the value of an object which has perished during the default, or which cannot be delivered for a reason which has arisen during the default, the creditor may demand interest on the amount to be paid as compensation, from the time which serves as the basis for the estimate of the value. The same rule applies if the debtor is bound to make compensation for the diminution in value of an object which has deteriorated during the default.

PART II

Subrogation

Section 226. A person is subrogated to the rights of a creditor is entitled to exercise in his own name all the rights which the creditor had in respect of the obligation

including any security for it.

By real subrogation, a property is substituted for another property in the same juristic position as the previous one.

Section 227. When a creditor has received as compensation for damage the full value of the thing or right which is the subject of the obligation, the debtor is, by operation of law, subrogated into the position of the creditor with regard to such thing or right.

Section 228. If, in consequence of the circumstance which makes the performance impossible, the debtor acquires a substitute or a claim for compensation for the object owed, the creditor may demand delivery of the substitute received or may claim for compensation by himself.

If the creditor has a claim for compensation on account of non-performance, the compensation to be made to him is diminished, if he exercises the right specified in the foregoing paragraph, by the value of the substitute received or of the claim for compensation.

Section 229. Subrogation takes place by operation of law and ensues to the benefit of the following persons:

1. The person who, being himself a creditor, pays another creditor who has priority to him owing to such other creditor having a preferential right, pledge or mortgage.
2. When acquires an immovable property, the person who uses the purchase price in paying off the persons who have mortgages thereon.

3. The person who, being bound with other or for others to pay a debt and was interested in paying the same, has paid it.

Section 230. If the creditor levies compulsory execution upon an object belonging to the debtor, any person who through the execution incurs danger of losing a right in the object is entitled to satisfying the creditor. The same right belongs to the possessor of a thing if he incurs danger of losing possession through the execution.

If a third person satisfies the creditor he is subrogated of the claim of the latter. Such claim may not be enforced to the detriment of the creditor.

Section 231. If properties mortgaged, pledged or otherwise subject to a preferential right, are insured, the mortgage, pledge or other preferential right extends to the claim against the insurer.

In case of immovable property, the insurer shall not pay the indemnity to the assured until he has given notice of his intention to do so to the mortgagee or other preferred creditor, and has not within one month from such notice received any objection to the payment, provided always that the insurer knew or ought to have known of the mortgage or other preferential right; however, any right registered in the Land Registry is deemed to be known to the insurer.

The same rule shall apply to mortgage of movables allowed by law. In case of movable property, the insurer may pay the indemnity to the assured directly, unless he

knew or ought to have known of the pledge or other preferential right.

The insurer is not liable to the creditor if the insured property is restored or a substitute for it is provided.

The same rule shall be applied mutatis mutandis in case of expropriation as well as in case of indemnity due to the owner of the property for destruction or damage.

Section 232. If under the foregoing section a sum of money is being substituted for the property destroyed or damaged, such sum shall in no case be delivered to the mortgage, pledge or other preferred creditor before the obligation secured is due, and if the parties cannot come to an agreement with the debtor, each of them is entitled to demand that the said sum be deposited at the Deposit Office their common benefit unless the debtor gives proper security.

PART III

Exercising Debtor's Claims

Section 233. If, to the prejudice of the creditor, the debtor refuses or neglects to exercise a claim the creditor may, in order to protect his obligation, exercise such claim in his own name of behalf of the debtor, except those which are purely personal to the debtor.

Section 234. The creditor who exercises a claim belonging to his debtor must summon the debtor to appear in the action.

Section 235. A creditor may exercise a claim belonging to the debtor for the whole amount due to the debtor, without regard to the amount due to him. But the defendant may satisfy the creditor by paying the amount due to him alone, provided that if the original debtor has joined as a plaintiff he may proceed to judgment for the balance.

In any case the creditor cannot obtain more than what is due to him.

Section 236. The defendant may set up against the creditor all defenses which he may have against the debtor, excepting those which arose after the entry of the action.

PART IV

Cancellation of fraudulent acts

Section 237. The creditor is entitled to claim cancellation by the Court of any juristic act done by the debtor with knowledge that it would prejudice his creditor; but this does not apply if the person enriched by such act did not know, at the time of the act, or the facts which could make it prejudicial to the creditor, provided, however, that in case of gratuitous act the knowledge on the part of the debtor alone is sufficient.

The provisions of the foregoing paragraph do not apply to a juristic act whose subject is not a property right.

Section 238. The cancellation under the foregoing section cannot affect the right of a third person acquired in good faith.

The foregoing paragraph does not apply if the right is acquired gratuitously.

Section 239. Cancellation operates in favour of all the creditors.

Section 240. A claim for cancellation cannot be brought later than one year from the time when the creditor knew of the cause of cancellation, or later than ten years since the act was done.

PART V

Right of Retention

Section 241. If the possessor of a property belonging to another has an obligation in his favour relating to the property possessed, he may retain the property until the obligation is performed; but this does not apply, if the obligation is not yet due.

The provisions of the foregoing paragraph do not apply, if the possession begins by an unlawful act.

Section 242. The right of retention does not exist if it is incompatible with the obligation assumed by the creditor, or with the instructions given by the debtor before or at the time of delivery of the property or if it is against public order.

Section 243. In case of insolvency of the debtor, the creditor has the right of retention even if his claim is not yet due. If the insolvency has occurred or become known to the creditor after the delivery of the property, he can exercise the right of retention even if an obligation previously assumed by him or the instruction given by the debtor, opposes it.

Section 244. The holder of a right of retention may exercise his right against the whole of the property retained until the obligation is wholly performed.

Section 245. The holder of a right of retention may take the fruits of the property retained and appropriate them to the performance of the obligation in preference to other creditors.

Such fruits must first be appropriated to the interest on the obligation, and if there is any surplus must be appropriated to the principal.

Section 246. The holder of a right of retention is bound to take such appropriate care of the property retained as might be expected from him in his situation.

The holder of a right of retention cannot use or let the property retained or give it as security, without the consent of the debtor; but this does not apply to such use as is necessary for the preservation of the property.

If the holder of a right of retention acts contrary to any provision of the foregoing paragraphs, the debtor may claim the extinction of the right.

Section 247. If the holder of a right of retention incurs necessary expenses in respect to the property retained he may require the owner to reimburse him.

Section 248. Subject to the provisions of Section 193/27, the exercise of a right of retention does not prevent the running of prescription against the obligation.

Section 249. The debtor may claim the extinction of the right of retention on giving proper security.

Section 250. A right of retention is extinguished by the loss of possession of the property; but this does not apply to the case where the property retained is let or pledged with the consent of the debtor.

PART VI

Preferential Rights

Section 251. A holder of a preferential right has, according to the provisions of this Code or other laws, a right as to the property of his debtor to receive therefrom performance of an obligation due to him in preference to other creditors.

Section 252. The provisions of Section 244 apply correspondingly to preferential rights.

1. General Preferential Rights

Section 253. A person in whose favour an obligation exist based upon any of the following grounds has a preferential right in the whole property of the debtor.

- (1) Expenses for the common benefit
- (2) Funeral expenses
- (3) Taxes and duties, and money to which an employee entitled for the service rendered to the debtor who is his employer.
- (4) Supplies of daily necessities.

Section 254. The preferential right on account of expenses for the common benefit is for expenses incurred for the common benefit of all the creditors in regard to preservation , liquidation or distribution of the debtor's property.

If any such expense was not incurred for the benefit of all the creditors, the preferential right only exist against those creditors for whose benefit it was incurred.

Section 255. The preferential right on account of funeral expenses is for such funeral expenses as are accordant to the station in life of the debtor.

Section 256. The preferential right on account of taxes and rates is for all land, property or other taxes or local rates due from the debtor for the current year and the preceding year.

Section 257. The preferential right on account of money, to which an employee is entitled for services rendered to the debtor who is his employer, is for basic pay, overtime pay, holiday pay, holiday overtime pay, severance pay, special severance pay, and other money to which the employee is entitled for services rendered to, for four months back not exceeding one hundred thousand baht for each employee.

Section 258. The preferential right on account of supplies of the daily necessities is for supplies for six months back of food, drink, light, firewood and charcoal, necessary for the living of the debtor, of members of his family, who live with him and whom he is bound to support, and of his servants.

2. Special Preferential Rights

(a) PREFERENTIAL RIGHTS IN MOVABLES

Section 259. A person in whose favour an obligation exists based upon any of the following grounds has a preferential right in particular movables of the debtor:

- (1) Hiring of an immovable.
- (2) Lodging in an inn.
- (3) Carriage of passengers or goods.
- (4) Preservation of movables.
- (5) Sale of movables.
- (6) Supply of seeds, young plants or manure.
- (7) Agricultural or industrial services.

Section 260. The preferential right on account of the hiring of an immovable is for the hire of the immovable and for other obligations of the hired arising from the relation of hiring, and is in the movables of the hirer which are in or on the immovable.

Section 261. The preferential right of the letter of land is in such movables as have been brought by the hirer upon the land hired or into buildings subservient to the use of

such land, in such movables as are destined for the use of such land and in such fruits of the land as are in the possession of the hirer.

The preferential right of the letter or a building is in such movables as have been brought into the building by the hirer.

Section 262. If a hirer of immovable property is transferred or sublet, the preferential right of the original letter extends to the movables brought by the transferee or sub-hirer into the property. The same applies to the money which the transferor or the sub-letter is to receive from the transferee or sub-hirer.

Section 263. In case of a general liquidation of the property of the hirer, the preferential right of the letter is only for the rent and other obligations of the last preceding, the current and the next following rent period and for such damages as have arisen during the last preceding and the current rent period.

Section 264. If the letter has received security money, he has a preferential right only with regard to that part of his claim which is not covered by the security money.

Section 265. The preferential right on account of lodging in an inn is for what is due to the proprietor for lodging and other services afforded to the traveler or guest in satisfaction of his needs, including disbursements, and is in the luggage or other property of the traveler or guest which is in the inn, hotel or other such place.

Section 266. The letter of an immovable property or the proprietor of an inn, hotel or other such place may enforce his preferential right in the same manner as a pledgee. The provisions of this Code concerning Enforcement of Pledge apply *mutatis mutandis*.

Section 267. The preferential right on account of carriage is for charges for the carriage of a passenger or goods and for accessory expenses, and is in all goods and luggage in the hands of the carrier.

Section 268. The letter of an immovable, the proprietor of an inn, or the carrier may enforce his preferential right against movables belonging to a third person in the case contemplated in the preceding eight sections, unless he knew in due time that they belong to the third person.

If such movables have been stolen or lost the provisions of the law concerning recovery of possession shall apply.

Sections 269. The preferential right on account of the preservation of a movable is for the expense of the preservation of movable, and is in such movable.

The preferential right exists also for necessary expenses incurred for the purpose of having a right relating to a movable preserved, acknowledged or enforced.

Section 270. The preferential right on account of the sale of a movable is for the price and interest thereon, and is in such movable.

Section 271. The preferential right on account of the supply of seeds, young plants or manure is for the price of seeds, young plants or manure and interest thereon, and is in the fruits which have grown on the land for which those things have been used within one year after their use.

Section 272. The preferential right on account of agricultural and industrial services is as to the person who rendered agricultural service for wages for one year back, and as to a person who rendered industrial services for wages for three months back, and is in the fruits or manufactured things produced by his service.

(b) PREFERENTIAL RIGHTS IN IMMOVABLES

Section 273. A person in whose favor an obligation exists based upon any of the following grounds has a preferential right in a particular immovable of the debtor:

- (1) Preservation of an immovable
- (2) Work done upon an immovable
- (3) Sale of an immovable

Section 274. The preferential right on account of the preservation of an immovable is for the expense of preservation of an immovable, and is in such immovable.

In case of the foregoing paragraph the provisions of Section 269 paragraph 2 apply correspondingly.

Section 275. The preferential right on account of work done upon an immovable is for charges for the work done upon an immovable of the debtor by a builder an

architect or a contractor, and is in such immovable.

This preferential right exist only if there is a present increase of the value of such immovable due to such work, and is only in such increased value.

Section 276. The preferential right on account of the sale of an immovable is for the price and interest thereon, and is in such immovable.

3. Rank of Preferential Rights

Section 277. When general preferential rights conflict, the rank of their precedence is according to the order in Section 253.

When a preferential right conflicts with a special preferential right, the latter takes precedence, but the preferential rights on account of expenses for the common benefit takes precedence as against all creditors who are benefited thereby.

Section 278. When preferential rights in the same movable conflict, the rank of their precedence is as follows.

- (1) The preferential right on account of the hiring of an immovable, of lodging in an inn and of carriage.
- (2) The preferential right on account of the preservation of a movable, but if there are several persons entitled as preserves, a later preserves takes precedence of an earlier one.

(3) The preferential right on account of the sale of a movable, of the supply of seeds, young plants or manure, and of agriculture and industrial services.

If a person who has a preferential right of the first rank knew at the time when he acquired his obligation that other persons have preferential rights of the second or third rank, he cannot exercise his right of precedence against them. The same applies as against a person who has preserved a thing for the benefit of a person having a preferential right of the first rank.

As to fruits, a person who rendered agricultural services has the first rank, a supplier of seeds, young plants or manure the second, and the letter of the land third.

Section 279. When special preferential rights in the same immovable conflict, the rank of their precedence is according to the order in Section 273.

In successive sales have been made of the same immovable, the rank of precedence of the seller as between themselves is according to the priority of the sales.

Section 280. When several persons have preferential rights of the same rank in the same thing, each is to receive performance in proportion to the amount of his obligation.

4. Effect of Preferential rights

Section 281. A preferential right in a movable cannot be exercised after the debtor has delivered the thing to a third person who has acquired it from him.

Section 282. When a preferential right conflicts with a pledge of a movable, the pledgee has the same rights as the holder of a preferential right of the first rank mentioned in Section 278.

Section 283. A person who has a general preferential right must receive performance first out of the movable property of the debtor, and only in case that is insufficient he can receive performance out of immovables.

As to immovables, he must receive performance first out of such immovables as are not subject to a special security.

If a person who has a general preferential right negligently omits to intervene in a distribution according to the provisions of the foregoing two paragraphs, he cannot exercise his preferential right against a third person whose right is registered, to the extent of what he would have received through such intervention.

The provisions of the foregoing three paragraphs do not apply, if the proceeds of an immovable are to be distributed before those of other property, or if the proceeds of an immovable which is the subject of a special security are to be distributed before the proceeds of other immovables.

Section 284. A general preferential right, even though not registered in respect to an immovable, may be set up against any creditor who has no special security, but this does not apply against a third person who made registration.

Section 285. A preferential right on account of the preservation of an immovable retains its effect by being registered immediately after the act of preservation is completed.

Section 286. A preferential right on account of work done upon an immovable retains its effect by a provisional estimate of the cost being registered before the work has begun. If, however, the costs of the work exceeds the provisional estimate, there is no preferential right for the excess.

The increase of value of an immovable arising from the work done upon it is to be estimated by experts appointed by the Court at the time of the intervention in the distribution.

Section 287. A preferential right registered in accordance with the provisions of the preceding two sections can be exercised in preference to a mortgage.

Section 288. A preferential right on account of the sale of an immovable retains its effect by registering at the same time with the contract of sale the fact that the price or the interest thereon has not been paid.

Section 289. As to the effect of a preferential right, in addition to provisions of Sections 281 to 288 inclusive, the provisions as to Mortgage (</index.php/translation-lthailand-civil-and-commercial-code-part-2.html#656>) apply correspondingly.

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CHAPTER III

PLURALITY OF DEBTORS AND CREDITORS

Section 290. If several persons owe a divisible performance, or if a divisible performance is owed to several persons, each debtor is, in case of doubt liable only for an equal share, and each creditor is entitled to an equal share.

Section 291. If several persons owe an act of performance in such manner that each is bound to effect the whole performance, though the creditor is entitled to obtain the whole performance only once (i.e. joint debtors), the creditor may demand the performance at his option from any one of the debtors, in the whole or in part. Untill the whole performance has been effected all of the debtors remain bound.

Section 292. Performance of the obligation by one joint debtors operates in favour of the other debtors. The same rule applies to any act in lieu of performance, to the deposit of lieu of performance and to set off.

A claim belonging to one of the joint debtors may not be set off by the other debtors.

Section 293. A release of the obligation granted to one of the joint debtors avails for the benefit of the other debtors only in respect of the share of the debtor who has been released unless otherwise agreed.

Section 294. The default of the creditor towards one joint debtor avails also in favour of the other debtors.

Section 295. Facts other than those specified in Sections 292 to 294 avail, unless the contrary appears from the nature of the obligation, in favour of and as against only the joint debtor to whom they particularly refer.

This applies, in particular, to the giving of notice, default, imputability of fault, impossibility of performance on the part of one joint debtor, prescription or its interruption, and merger of the claim in debt.

Section 296. As between themselves joint debtors are liable in equal shares, unless it is otherwise provided. If from one of the joint debtors the contribution due from him cannot be obtained, the deficiency shall be borne by the other debtors who are bound to make contribution; provided that one of the joint debtors has been released from joint obligation, the creditor takes upon himself that share which the debtor released by him ought to have borne.

Section 297. If in a contract several persons bind themselves in common to effect a performance, they are liable, in case of doubt, as joint debtors even in the case

of a divisible performance.

Section 298. If several persons are entitled to demand an act of performance in such manner that each can demand the whole performance, though the debtor is bound to effect the whole performance only once (i.e. joint creditors), the debtor may at his option perform in favour of any one of the creditors. This applies even if one of the creditors has already brought an action for the performance.

Section 299. Default on the part of one joint creditor avails also against the other creditors.

If a claim and a debt become merged in one joint creditor, the rights of the other creditors against the debtor are extinguished.

For the rest the provisions of Sections 292, 293 and 295 apply *mutatis mutandis*. In particular, if one joint creditor transfers his claim to another person, the rights of the other creditors remain unaffected.

Section 300. Joint creditors are, as between themselves, entitled to equal shares, unless it is otherwise provided.

Section 301. If several person owe an indivisible performance, they are liable as joint debtors.

Section 302. If an indivisible performance is owed to several persons, and if they are not joint creditors, the debtor may only perform in favour of all in common, and each creditor may only demand the performance in favour of all. Each creditor may demand that the debtor

deposits the thing owed for the benefit of all the creditors, or if the thing is not suitable to be deposited, that it be consigned to a custodian appointed by the Court.

For the rest a fact which refers only to one creditor does not avail in favour of nor as against the other creditors.

CHAPTER IV

TRANSFER OF CLAIMS

Section 303. A claim may be transferred , unless its nature does not admit of it.

The provisions of the foregoing paragraph do not apply, if the parties have declared a contrary intention. Such declaration of intention, however, cannot be set up against a third person acting in good faith.

Section 304. A claim is not transferable if it is not subject to judicial attachment.

Section 305. With the transferred claim the rights of mortgage or pledge existing on its account and the rights, arising from a suretyship established for it, pass to the transferee.

The transferee may also enforce any preferential right connected with the claim in case of compulsory execution or bankruptcy.

Section 306. The transfer of an obligation performable to a specific creditor is not valid unless it is made in writing. It can be set up against the debtor or third person only if

a notice thereof has been given to the debtor, or if the debtor has consented to the transfer. Such notice or consent be in writing.

The debtor is discharged if he satisfies the transferor by way of payment or otherwise before he has received notice of, or has agreed to, the transfer.

Section 307. If a right is claimed under different transfers, the first transfer notified, or agreed to, shall be preferred.

Section 308. If a debtor has given the consent mentioned in Section 306 without reservation, he cannot set up against the transferee a defense which he might have made against the transferor. If, however, in order to extinguish the obligation, the debtor has made any payment to the transferor, he may recover it, or if for such purpose he has assumed an obligation to the transferor, he may treat it as if it did not exist.

If the debtor has only received a notice of the transfer, he may set up against the transferee any defense which he had against the transferor before he received such notice. If the debtor had against the transferor a claim not yet due at the time of the notice, he can set off such claim provided that the same would become due not later than the claim transferred.

Section 309. The transfer of an obligation performable to order can be set up against the debtor or other third person only if the transfer is indorsed on the instrument, and the instrument itself is delivered to the transferee.

Section 310. The debtor of an obligation performable to order has the right, but is not bound, to verify the identity of the holder of the instrument or the genuineness of his signature or seal; but if the debtor acts in bad faith or with gross negligence, his performance is invalid.

Section 311. The provisions of the foregoing section apply correspondingly, if a creditor is designated in the instrument, but it is added that performance shall be made to the holder of such instrument.

Section 312. The debtor of an obligation performable to order cannot set up against any transferee in good faith defences which he might have set up against the original creditor, except such as appear on the face of the instrument or result naturally from its character.

Section 313. The provisions of the foregoing section apply correspondingly to obligations performance to bearer.

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CHAPTER V

EXTINCTION OF OBLIGATION

PART I

Performance

Section 314. Performance of an obligation may be made by any third person, unless its nature does not admit of it, or the parties concerned have declared a contrary intention.

A person who has no interest in the performance, cannot make performance against the will of the debtor.

Section 315. Performance must be made to the creditor or a person having authority to receive performance on his behalf. A performance made to a person who has no authority to receive is valid if the creditor ratifies it.

Section 316. If performance is made to the apparent possessor of an obligation, it is valid only if the person making performance acted in good faith.

Section 317. Except in the case mentioned in the foregoing section, a performance made to a person who is not entitled to receive it, is valid only to the extent to which the creditor has been enriched thereby.

Section 318. A person who holds a receipt is deemed to have a right to receive performance; but this does not apply, if the person making performance knows that such right does not exist or is ignorant thereof by reason of his negligence.

Section 319. When a third debtor who has been ordered by a Court to refrain from making performance, has made the same to his own creditor, the seizing creditor may, in so far as he has sustained damage, demand another performance from the third debtor.

The provisions of the foregoing paragraph do not prevent the third debtor from exercising the right to recourse against his own creditor.

Section 320. The creditor cannot be compelled to receive part performance or any other performance than that which due to him.

Section 321. An obligation is extinguished if the creditor accepts in lieu of performance another performance than agreed upon.

If the debtor, for the purpose of satisfying the creditor, assumes a new obligation towards him, is not to be presumed, in case of doubt, that he assumes the obligation in lieu of performance.

If performance is made by making, transferring, or endorsing a bill or warrant, the obligation is extinguished only if such bill or warrant is paid.

Section 322. If a thing, a claim against a third person or any other right is given in lieu of performance, the debtor shall be liable for defect and for eviction in the same manner as the seller.

Section 323. If the subject of an obligation is the delivery of a specific thing, the person making performance must deliver the thing in connection in which it is at the same time when delivery is to be made.

The debtor must, until he delivers it, keep the thing with such care as a person of ordinary prudence would take of his own property.

Section 324. When there is no special declaration of intention as to the place of performance, if a specific thing is to be delivered, the delivery is to be made at the

place where the thing was at the time when the obligation arose; other kinds of performance must be made at the place of the creditor's present domicile.

Section 325. When there is no declaration of intention as to the expenses of performance, such expenses are to be borne by the debtor; if, however, because of the creditor's transfer of his domicile or any other act of his the expenses are increased, such increase must be borne by the creditor.

Section 326. The person making performance is entitled to a receipt from the person who receives performance, and if the performance is wholly performed, he is entitled to have the document embodying the obligation surrendered to him or cancelled. If such document is declared to be lost, he is entitled to have the extinction of the obligation mentioned in the receipt or in a separate document.

If the obligation is partly performed or if the document gives the creditor any other right, the debtor is only entitled to a receipt and to have the performance noted in the document.

Section 327. In case of interest or other periodical performance, if the creditor gives a receipt for one term without any reservation, it is presumed that he has received performance for the previous terms.

If he gives receipt for the capital, it is presumed that he has received the interest.

If the document embodying the obligation has been surrendered, it is presumed that the obligation has been extinguished.

Section 328. If a debtor is bound to the creditor to do similar acts of performance by virtue of several obligations, and if the performance effected by him is insufficient for the discharge of all debts, that debt is discharged which he specifies on effecting the performance.

If the debtor makes no specification, then that debt which is due is first discharged; among several debts due that one is first discharged which affords the creditor least security; among several equal secured debts the one most burdensome to the debtor; among several equally burdensome debts the oldest debt; and where several are equally old every debt proportionately.

Section 329. If the debtor, besides the principal performance, has to pay interest and costs, the value of an act of performance sufficient to discharge the whole debt is applied first to the costs, then to the interest, and lastly to the principal performance.

Section 330. By proper tender of performance a discharge is effected, from the time of the tender, from all responsibilities arising out of non-performance.

Section 331. If the creditor refuses or is unable to accept performance, the person performing may be discharged from the obligation by depositing for the creditor's benefit the thing forming the subject of the obligation.

The same applies, if the person performing without fault on his part, cannot ascertain the right or identity of the creditor.

Section 332. If the debtor is bound to perform only after the counter-performance has been effected by the creditor, he may make the right of the creditor to receive the thing deposited dependent upon counter-performance by the creditor.

Section 333. A deposit must be made to the deposit office or the place where the obligation is to be performed.

If there are no special provisions by law or regulations as to the deposit offices, the Court must, on application of the person performing, designate a deposit office and appoint a custodian of the thing deposited.

The depositor must without delay give notice of the deposit to the creditor.

Section 334. The debtor has the right to withdraw the thing deposited. If he withdraws it, the deposit is deemed never to have been made.

The right of withdrawal is barred:

- (1) If the debtor declares to the deposit office that he waives his right of withdrawal.
- (2) If the creditor declares his acceptance to the deposit office.

(3) If the deposit has been ordered or confirmed by the Court and the fact is notified to the deposit office.

Section 335. The right of withdrawal is not subject to judicial attachment.

If bankruptcy proceedings are instituted against the property of the debtor, the right of withdrawal cannot be exercised during the bankruptcy proceedings.

Section 336. If the thing forming the subject of performance is not suitable for deposit, or if in regard to the thing there is an apprehension that it may perish or be destroyed or damaged, the person performing may, with the permission of the Court, sell it at auction and deposit the proceeds. The same applies, if the keeping of the thing would be unreasonably expensive.

Section 337. The auction is not permissible until after the creditor has been warned of it. The warning may be dispensed with if the thing is liable to deterioration, and there is danger in delaying the auction.

The debtor shall without delay notify the creditor of the auction; if the debtor fails to do so, he is liable for compensation.

The warning and the notice may be dispensed with if they are impracticable.

The time and place of the auction, with a general description of the thing, shall be publicly advertised.

Section 338. The cost of the deposit or of the auction shall be borne by the creditor, unless the deposit be withdrawn by the debtor.

Section 339. The right of the creditor to the deposit is extinguished after the lapse of ten years since receipt of notice of the deposit.

After the right of the creditor is extinguished the debtor is entitled to withdraw even if he has waived the right of withdrawal.

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PART II

Release

Section 340. If the creditor declares to the debtor an intention to release the obligation, it is extinguished.

When an obligation has been evidenced by writing, the release must also be in writing or the document embodying the obligation be surrendered to the debtor or cancelled.

PART III

Set-off

Section 341. If two persons are bound to each other by obligations whose subject is of the same kind and both of which are due, either debtor may be discharged from

his obligation by set-off to the extent to which the amounts of the obligations correspond, unless the nature of one of the obligations does not admit of it.

The provisions of the foregoing paragraph do not apply, if the parties have declared a contrary intention; but such intention cannot be set up against a third person acting in good faith.

Section 342. Set-off is made by a declaration of intention by one party to another. A condition or time commencement or ending cannot be added to such declaration.

The declaration of intention mentioned in the foregoing paragraph relates back in its effect to the time when both obligations could first have been set-off.

Section 343. A set-off may be made even though the place of performance of the two obligations is different; but the party who makes the set-off must indemnify the other party for any damage caused thereby.

Section 344. A claim against which there is a defense may not be set-off. Prescription does not exclude set-off, if the claim barred by prescription was not barred at the time at which it could have been set-off against the other claim.

Section 345. If an obligation arises from an unlawful act, the debtor cannot avail himself of a set-off against the creditor.

Section 346. If a claim is not subject to judicial attachment, it is not subject to set-off.

Section 347. A third debtor who has received from the Court an order of prohibition of payment cannot set up against the seizing creditor an obligation subsequently acquired by him.

Section 348. If either party has several claims suitable for set-off, the party making the set-off may specify the claims which are to be set-off against each other. If the set-off is declared without such specification, or if the other party objects without delay, provisions of Section 328 paragraph 2 apply *mutatis mutandis*.

If the party making the set-off owes the other party interest and costs in addition to the principal performance, the provisions of Section 329 apply *mutatis mutandis*.

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PART IV

Novation

Section 349. When the parties concerned have concluded a contract changing the essential elements of an obligation, such obligation is extinguished by novation.

If a conditional obligation is made unconditional, or a condition is added to an unconditional obligation, or if a condition is changed, it is regarded as a change of an essential element of such obligation.

A novation by a change of the creditor is governed by the provisions of this Code concerning transfer of claims.

Section 350. A novation by a change of the debtor may be effected by a contract between the creditor and the new debtor, but this cannot be done against the will of the original debtor.

Section 351. If the obligation resulting from a novation does not come into existence, or is annulled, because of an illegality in its ground or because of some reason unknown to the parties, the original obligation is not extinguished.

Section 352. The parties to a novation may, to the extent of the subject of the original obligation, transfer a right of pledge or mortgage given as security for it to the new obligation; but if such security was given by a third person, his consent is necessary.

PART V

Merger

Section 353. If rights and liabilities in an obligation become vested in the same person, the obligation is extinguished, except when it has become the subject of the right of a third person, or when a bill has been re-indorsed according [Section 917](/index.php/translation-lthailand-civil-and-commercial-code-part-2.html#917) paragraph 3.

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TITLE II

CONTRACT

CHAPTER I

FORMATION OF CONTRACT

Section 354. An offer to make a contract in which a period for acceptance is specified cannot be withdrawn within such period.

Section 355. A person who, without specifying a period for acceptance, makes an offer to another at a distance cannot withdraw his offer within a time which notice of acceptance might reasonably be expected.

Section 356. An offer made to a person who is present without specifying a period for acceptance may be accepted only there and then. This applies also to an offer made by one person to another on the telephone.

Section 357. An offer ceases to be binding if it is refused to the offeror, or if it is not accepted in due time according to the three foregoing sections.

Section 358. If the notice of acceptance arrives out of time, but it is apparent that it was sent in such manner that in the ordinary course of things it ought to have arrived in due time, the offeror, unless he has already done so, must without delay give notice to the other party of the delayed arrival.

If the offeror fails to give notice mentioned in the foregoing paragraph, the notice of the acceptance is deemed not to have been out of time.

Section 359. If the acceptance of an offer arrives out of time, it is deemed to be a new offer.

An acceptance with additions, restrictions or other modifications is deemed to be a refusal coupled with a new offer.

Section 360. The provisions of Section 169 paragraph 2 do not apply, if the offeror has declared a contrary intention, or if before accepting the other party had notice of the fact of his death or loss of capacity.

Section 361. A contract between persons at a distance comes into existence at the time when the notice of acceptance reaches the offeror.

In accordance to the declared intention of the offeror or to ordinary usage no notice of acceptance is necessary, the contract comes into existence at the time of the occurrence of fact which is considered as a declaration to accept.

Section 362. A person who by advertisement promises that he will give a reward to whoever shall de a certain act is bound to give such reward to any person who does the act, even if such person did not act with a view to the reward.

Section 363. In the case of the foregoing section the promisor may so long as there is no person who has completed the specific act, withdraw his promise by the same means which used for advertising, unless he declared in the advertisement that he would not withdraw it.

If a promise cannot be withdrawn by the means of the aforesaid, withdraw may be made by other means, but in such case it is valid only against those persons who know of it.

If the promisor has fixed a period within which the specified act must be done, he is presumed to have renounced his right of withdrawal.

Section 364. If there are several persons who have done the act specified in the advertisement, only that one who does it first has a right to receive an equal share of the reward.

If several persons do such act at the same time, each one has a right to receive an equal share of the reward. But if the reward is in its nature indivisible, or if by the terms of the promise only one person is to receive the reward, it is decided by lot.

The provisions of the foregoing two paragraphs do not apply, if in the advertisement a different intention is declared.

Section 365. A promise of reward which has a prize competition is valid only if a period of time is fixed in the advertisement.

The decision whether any competitor fulfils the conditions of the promise within the period, or which one among several competitors deserves the preference, shall be made by the umpire named in the advertisement, or in the absence of any such, by the promisor of the reward. The decision is binding upon the parties concerned.

In case of equality of merit the provisions of Section 364 paragraph 3 apply correspondingly.

The transfer of ownership of the thing produced may be demanded by the promisor only if he has specified in the advertisement that such transfer shall be made.

Section 366. So long as the parties have not agreed upon all points of a contract upon which, according to the declaration of even one party, agreement is essential, the contract is, in case of doubt, not concluded. An understanding concerning particular points is not binding, even if they have been noted down.

If it is agreed that the contemplated contract shall be put into writing, in case of doubt, the contract is not concluded until it is put in writing.

Section 367. If the parties to a contract, which they regarded as concluded, have in fact not agreed as to one point upon which an agreement was to be settled, those parts which were agreed upon are valid in so far as it may be inferred that the contract would have been concluded even without a settlement of this point.

Section 368. Contracts shall be interpreted according to the requirements of good faith, ordinary usage being taken into consideration.

CHAPTER II

EFFECT OF CONTRACT

Section 369. A party to a reciprocal contract may refuse to perform his obligation until the other party performs or tenders performance of his obligation. But this does not apply, if the other party's obligation is not yet due.

Section 370. If the object of a reciprocal contract is the creation or transfer of a real right in a specific thing, and such thing is lost or damaged by a cause which is not attributable to the debtor, the loss or damage falls upon the creditor.

To a non-specific thing the provisions of the foregoing paragraph apply from the time when the thing has become specific in accordance with the provisions of Section 195 paragraph 2.

Section 371. The provision of the foregoing section do not apply, if the thing which forms the subject of a reciprocal contra depending upon a condition precedent is lost or destroyed while the condition is pending.

If the thing is damaged by a cause not attributable to the creditor, the latter, when the condition is fulfilled, may at his option either demand performance with reduction of his counter performance or rescind the contract,

provided that in the case where the cause of the damage is attributable to the debtor, the creditor's right to compensate is not affected thereby.

Section 372. Except in the cases mentioned in the two foregoing sections, if an obligation becomes impossible of performance by a cause not attributable to either party, the debtor has no right to receive the counter performance.

If performance becomes impossible by a cause attributable to the creditor, the debtor does not lose his right to the counter performance. He must however, deduct what he saves in consequence of release from the performance, or what he acquires or maliciously omits to acquire by a different application of his faculties. The same rule applies in the performance due from one party becomes impossible, in consequence of a circumstance for which he is not responsible, at the time when the other party is in default to acceptance.

Section 373. An agreement made in advance exonerating a debtor from his own fraud or gross negligence is void.

Section 374. If a party by a contract agrees to make a performance to a third person, the latter has a right to claim such performance directly from the debtor.

In the case of the foregoing paragraph the right of the third person comes into existence at the time when he declares to the debtor his intention to take the benefit of the contract.

Section 375. After the right of the third person has come into existence in accordance with the provisions of the foregoing section, it cannot be charged or extinguished by the parties to the contract.

Section 378. Defences arising from the contract mentioned in Section 374 can be set up by the debtor against the third person who receive the benefit of the contract.

CHAPTER III

EARNEST AND STIPULATED PENALTY

Section 377. If, on entering into a contract, something is given as earnest, this is deemed to be proof of the conclusion of the contract. It also serves as a security that the contract shall be performed.

Section 378. In the absence of agreement to the contrary, earnest is:

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| (1) | To be returned or treated as part-payment upon performance |
| (2) | To be forfeited, if the party giving it fails to perform, or if the performance becomes impossible in consequence of the circumstance for which he is responsible or if the rescission of the contract is due to his fault. |

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| (3) | To be returned, if the party receiving it fails to perform, or, if the performance becomes impossible in consequence of a circumstance for which he is responsible. |
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Section 379. If the debtor promises the creditor the payment of a sum of money as penalty in case he does not perform it in the proper manner, the penalty is forfeited if he is in default. If the performance due consist in a forbearance, the penalty is forfeited as soon as any act in contravention of the obligation is committed.

Section 380. If the debtor has promised the penalty for the case of his not performing his obligation, his creditor may demand the forfeited penalty in lieu of performance. If the creditor declares to the debtor that he demands the penalty, the claim for performance is barred.

If the creditor has a claim for compensation for non-performance, he may demand the forfeited penalty as the minimum amount of the damage. Proof of further damage is admissible.

Section 381. If the debtor has promised the penalty for the case of his not performing the obligation in the proper manner, such as, not at the fixed time, the creditor may demand the forfeited penalty in addition to the performance.

If the creditor has a claim for compensation on account of improper performance, the Section 380 paragraph 2 apply.

If the creditor accepts the performance he may demand the penalty only if on acceptance he reserves the right to do so.

Section 382. If another performance than the payment of a sum of money is promised as penalty, the provisions of Sections 379 to 381 apply; the claim for compensation is barred if the creditor demands the penalty.

Section 383. If a forfeited penalty is disproportionately high, it may be reduced to a reasonable amount by the Court. In determination of reasonableness every legitimate interest of the creditor, not merely his property interest, shall be taken into consideration. After payment of the penalty the claim for reduction is barred.

The same rule applies also, apart from the cases provided for by Sections 379 and 382, if a person promises a penalty for the case of his doing or forbearing to do some act.

Section 384. If the promises performance is invalid, an agreement made for a penalty for non-performance of the promise is also invalid, even if the parties knew of the invalidity of the promise.

Section 385. If the debtor contests the forfeiture of the penalty on the ground of having performed his obligation, he must prove the performance, unless the performance due from him consisted in a forbearance.

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CHAPTER IV

RESCISSION OF CONTRACT

Section 386. If by contract or by the provisions of law one party has the right of rescission, such rescission is made by a declaration of intention to the other party.

The declaration of intention in the foregoing paragraph cannot be revoked.

Section 387. If one part does not perform the obligation, the other party may fix a reasonable period and notify him to perform within that period. If he does not perform within that period, the other party may rescind the contract.

Section 388. If the object of a contract according to its nature or to an intention declared by the parties can be accomplished only by performance at a fixed time or within a fixed period, and such time or period has passed without one of the parties having performed, the other party may rescind the contract without the notification mentioned in the foregoing section.

Section 389. If performance becomes wholly or partly impossible by a cause attributable to the debtor, the creditor may rescind the contract.

Section 390. If in a contract there are several persons on the one or the other side, the right of rescission may be exercised only by all and against all. If the right of rescission is extinguished in respect of one of those persons entitled, also in respect of the others.

Section 391. If one party has exercised his right of rescission, each party is bound to restore the other to his former condition; but the rights of third persons cannot be impaired.

To money which is to be repaid in the case of the foregoing paragraph interest is to be paid from the time when it was received.

For services rendered and for allowing the use of a thing the restitution shall be made by paying the value, or, if in the contract a counter-payment in money is stipulated for, this shall be paid.

The exercise of the right of rescission does not affect a claim for damages.

Section 392. The obligations of the parties resulting from rescission shall be performed according to the provisions of Section 369.

Section 393. If no period is fixed for the exercise of the right of rescission, the other party may fix a reasonable period and notify the party having a right of rescission to declare within such period whether he will rescind or not. If notice of rescission is not received within such period, the right of rescission is extinguished.

Section 394. The right of rescission is extinguished when the person entitled has, by his own act or fault, essentially damaged the thing which is the subject of a contract or has rendered the restitution thereof impossible or has charged into a thing of a different kind by working it up or remodeling it.

If without the act or fault of the person who has the right of rescission the thing which is the subject of the contract of the contract has been lost or damaged, the right of rescission is not extinguished.

TITLE III

MANAGEMENT OF AFFAIRS WITHOUT MANDATE

Section 395. A person who takes charge of an affair for another without having received mandate from him or being otherwise entitled to do so in respect of him, shall manage the affair in such manner as the interest of the principal requires, having regard to his actual or presumptive wishes.

Section 396. If the undertaking of the management of the affair is opposed to the actual or presumptive wishes of the principal, and if the manager must have recognized this, he is bound to compensate the principal for any damages arising from his management of the affair, even if no fault otherwise imputable to him.

Section 397. The fact that the management of the affair is opposed to the wishes of the principal is not taken into consideration if, without the management of the affair, a duty of the principal the fulfillment of which is of public interest or a legal duty to furnish maintenance to others by the principal would not be fulfilled in due time.

Section 398. If the management of the affair has for its object the averting of an imminent danger which threatens the person, reputation or property of the

principal, the manager is responsible only for willful default and gross negligence.

Section 399. The manager shall notify to the principal, as soon as practicable, the undertaking of the management of the affair, and await his decision, unless there is danger in delay. For the rest the provisions of Sections 809 to 811 (</index.php/translation-lthailand-civil-and-commercial-code-part-2.html#806>) applicable to an agent apply *mutatis mutandis* to the obligation of the manager.

Section 400. If the manager is incapacitated, he is responsible only under the provisions relating to compensation for wrongful acts, and relating tot the return for undue enrichment.

Section 401. If the undertaking of management of the affair is in accordance with the interest and the actual or presumptive wishes of the principal, the manager may demand reimbursement of his outlay as an agent. The provisions of Section 816 (</index.php/translation-lthailand-civil-and-commercial-code-part-2.html#814>) paragraph 2 apply *mutatis mutandis*.

In the case provided for by Section 397 this claim belongs to the manager even if the undertaking of the management of the affair is opposed to the wishes of the principal.

Section 402. If the conditions of the foregoing section do not exist, the principal is bound to return to the manager all that he acquires through the management of the affair

under the provisions relating to the return for undue enrichment.

If the principal ratifies the management of the affair, the provisions of this Code concerning Agency (</index.php/translation-lthailand-civil-and-commercial-code-part-2.html#770>), apply *mutatis mutandis*.

Section 403. The manager has no claim if he had not the intention to demand reimbursement from the principal.

If parents or grandparents furnish maintenance to their descendants, or *vice versa*, it is to be presumed, in case of doubt, that there is no intention to demand reimbursement from the recipient.

Section 404. If the manager acts for one person, believing that he is acting for another person, only the former has the right and duties arising out of the management.

Section 405. The provisions of the ten foregoing sections do not apply, if a person takes charge of the affair of another in the belief that it is his own.

If a person treats the affair of another as his own, although knowing that he is not entitled to do so, the principal may enforce the claims based on Sections 395, 396, 399 and 400. If he does enforce them, he is liable to the manager as provided for in Section 402 paragraph 1.

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TITLE IV

UNDUE ENRICHMENT

Section 406. Any person who, through an act of performance made by another person or in any other manner, obtains something to the prejudice of such other person without legal ground, must return it to the latter. The acknowledgment of the existence or non-existence of a debt is deemed to be an act of performance.

The same provision shall apply if something has been obtained on account of a cause which has not been realized or of a ceased to exist.

Section 407. A person who has freely done an act as if in performance of an obligation, knowing that he was not bound to effect the performance, is not entitled to restitution.

Section 408. The following persons are not entitled to restitution:

A person who performs an obligation subject to a time clause before the time has arrived

A person who performs an obligation which has been barred by prescription

A person who performs an obligation in compliance with a moral duty or with the requirements of social propriety.

Section 409. When a person who is not a debtor has performed an obligation by mistake and the creditor, in consequence thereof, has in good faith destroyed or

obliterated the documentary evidence of the obligation or given up any security or lost his right by prescription, the creditor is not bound to make restitution.

The provisions of the foregoing paragraph do not prevent the person who has performed from exercising a right of recourse against the debtor and his surety, if any

Section 410. A person who had made a performance for an intended result which is not produced is not entitled to restitution, if, from the beginning, it was known to him that the production of the result was impossible or if he was prevented the result in violation of good faith.

Section 411. A person who has made an act of performance, the purpose of which is contrary to legal prohibition or good morals, cannot claim restitution.

Section 412. If the property which was unduly received is a sum of money, restitution must be made in full, unless the person who received it was in good faith in which case he is only bound to return such part of his enrichment as still exists at the time when restitution is demanded.

Section 413. When the property which must be returned is other than a sum of money and the person who received it was in good faith, such person is only bound to return it in such condition as it is and is not responsible for loss or damage to such thing, but he must return whatever he has acquired as compensation for such loss or damage. If the person who received the property was in bad faith he is fully responsible for the

loss or damage even caused by *force majeure*, unless he proves that the loss or damage would have happened in any case.

Section 414. If restitution is impossible on account of the nature of the property received or for any other reason, and the person who received the property was in good faith, such person is bound only to return such part of his enrichment as still exists at the time when restitution is demanded.

If a person who received the property was in bad faith, he is bound to pay the full value of the property.

Section 415. A person who has received the property in good faith acquires the fruits thereon as long as such good faith continues.

In case where he has to return such thing, he is deemed to be in bad faith from the time when restitution is demanded.

Section 416. Expenses which were necessary for the preservation of the property or for its maintenance or repair must be reimbursed in full to the person who returns such property.

However such person cannot claim reimbursement of the ordinary expenses for maintenance, repairs or charges made within the time during which he has acquired the fruits.

Section 417. For expenses other than those provided in paragraph 1 of the foregoing section the person who returns the property can claim reimbursement only if they were made while he was in good faith and if the value of the property is increased by such expenses at the time of restitution, and only to the extent of such increase.

The provisions of Section 415 paragraph 2 apply correspondingly.

Section 418. If the person who has in bad faith unduly received a property has made alternations in, or additions to it, he must return the property after having put it in its former condition at his own expense, unless the owner of the property chooses to have it returned in its present condition, in which case the owner must pay at his option either the cost of alterations or additions, or a sum representing the increased value of the property.

When restitution is to be made, if it is impossible to put it in its former condition or the property would be damaged thereby, the person who received the property must return it in such condition as it is and he is not entitled to compensation for any increase of value accruing to the property from such alterations or additions.

Section 419. No action on account of undue enrichment can be entered later than one year from the time when the injured party became aware of his right to restitution or later than 10 years from the time when the right accrued.

TITLE V

WRONGFUL ACTS

CHAPTER I

LIABILITY FOR WRONGFUL ACTS

Section 420. A person who, willfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore.

Section 421. The exercise of a right which can only have the purpose of causing injury to another person is unlawful.

Section 422. If damage results from an infringement of a statutory provision intended for the protection of others, the person who so infringes is presumed to be in fault.

Section 423. A person who, contrary to the truth, asserts or circulates as a fact that which injurious to the reputation or the credit of another or his earnings or prosperity in any other manner, shall compensate the other for any damage arising therefrom, even if he does not know of its untruth, provided he ought to know it.

A person who makes a communication the untruth of which is unknown to him, does not thereby render himself liable to make compensation, if he or the receiver of the communication has a rightful interest in it.

Section 424. The Court, when given judgment as to the liability for wrongful act and the amount of compensation, shall not be bound by the provisions of the criminal law concerning liability to punishment or by the conviction or non-conviction of the wrongdoer for a criminal offence.

Section 425. An employer is jointly liable with his employee for the consequences of a wrongful act committed by such an employee in the course of his employment.

Section 426. The employer who has made compensation to a third person for a wrongful act committed by his employee is entitled to reimbursement from such employee.

Section 427. The two foregoing sections shall apply *mutatis mutandis* to principal and agent.

Section 428. An employer is not liable for damage done by the contractor to a third person in the course of the work, unless the employer was at fault in regard to the work ordered or to his instructions or to the selection of the contractor.

Section 429. A person, even though incapacitated, on account of minority or unsoundness of mind is liable for the consequences of his wrongful act. The parents of such person are, or his guardian is, jointly liable with him, unless they or he can prove that proper care in performing their or his duty of supervision has been extended.

Section 430. A teacher, employer or other person who undertakes the supervision of an incapacitated person either permanently or temporarily, is jointly liable with such person for any wrongful act committed by the latter whilst under his supervision, provided that it can be proved that he has not exercised proper care.

Section 431. In case falling under the two forgoing sections the provisions of Section 426 apply *mutatis mutandis*.

Section 432. If several persons by a joint wrongful act cause damage to another person, they are jointly bound to make compensation for the damage. The same applies if, among several joint doers of an act, the one who caused the damage cannot be ascertained.

Persons who instigate or assist in a wrongful act are deemed to be joint actors.

As between themselves the persons jointly bound to make compensation are liable in equal shares unless, under the circumstances, the Court otherwise decides.

Section 433. If damage is caused by an animal, the owner, or the person who undertakes to keep the animal on behalf of the owner, is bound to compensate the injured party for any damage arising therefrom, unless he can prove that he has exercised proper care in keeping it according to its species and nature or other circumstances, or that the damage would have been occasioned notwithstanding the exercise of such care.

The person responsible under the foregoing paragraph may exercise a right of recourse against the person who has wrongfully excited or provoked the animal or against the owner of another animal which has caused the excitement or provocation.

Section 434. If damage is caused by reason of the defective construction or insufficient maintenance of a building or other structure, the possessor of such building or structure is bound to make compensation, but if the possessor has used proper care to prevent the happening of the damage, the owner is bound to make compensation.

The provisions of the foregoing paragraph apply correspondingly to defects in the planting or propping of trees or bamboos.

If in cases of the foregoing two paragraphs there is also some other person who is responsible for the cause of the damage, the possessor or owner may exercise a right of recourse against such person.

Section 435. A person who is threatened with an injury from a building or other structure belonging to another is entitled to require the latter to make necessary measures for averting the danger.

Section 436. An occupier of a building is responsible for damage arising from things which fall from it or are thrown into an improper place.

Section 437. A person is responsible for injury caused by any conveyance propelled by mechanism which is in his possession or control, unless he proves that the injury results from force majeure or fault of the injured person.

The same applies to the person who has in his possession things dangerous by nature of destination or on account of their mechanical action.

CHAPTER II

COMPENSATION FOR WRONGFUL ACTS

Section 438. The Court shall determine the manner and the extent of the compensation according to the circumstances and the gravity of the wrongful act.

Compensation may include restitution of the property of which the injured person has been wrongfully deprived or its value as well as damages for any injury caused.

Section 439. A person who is bound to return a thing of which he has deprived another by a wrongful act is also responsible for the accidental destruction of the thing, or for accidental impossibility of returning it arising from any other cause, or for its accidental deterioration, unless destruction or the impossibility of returning it or the deterioration would have happened even if the wrongful act had not been committed.

Section 440. If on account of the taking of a thing its value, or, on account of damage to a thing, its diminution in value is to be made good, the injured party may

demand interest on the amount to be made good from the time which serves as the basis for the estimate of the value.

Section 441. If a person bound to make compensation for any damage on account of the taking or damaging of a movable compensates the person whose possession the thing was at the time of taking or damage, he is discharged by so doing even if a third party was the owner of the thing, or had some other right in the thing, unless the right of the third party is known to him or remains unknown in consequence of gross negligence.

Section 442. If any fault of the injured party has contributed in causing the injury, the provisions of Section 223 shall apply mutatis mutandis.

Section 443. In the cause of causing death, compensation shall include funeral and other necessary expenses.

If death did not ensue immediately, compensation shall include in particular expenses for medical treatment and damages for the loss of earning on account of disability to work.

If on account of the death any person has been deprived of his legal support, he is entitled to compensation therefore.

Section 444. In the case of an injury to the body or health, the injured person is entitled to receive reimbursement of his expenses and damages for total or partial disability to work, for the present as well as for the future.

If at the time of giving judgment it is impossible to ascertain the actual consequences of the injury, the Court may reserve in the judgment the right to revise such judgment for a period not exceeding two years.

Section 445. In the case of causing death, or of causing injury to the body or health of another, or in the case of deprivation of liberty, if the injured person was bound by law to perform service in favour of a third person in his household or industry, the person bound to make compensation shall compensate the third person for the loss of such service.

Section 446. In the case of injury to the body or health of another, or in the case of deprivation of liberty, the injured person may also claim compensation for the damage which is not pecuniary loss. The claim is not transferable, and does not pass to the heirs, unless it has been acknowledged by contract, or on action on it has been commenced.

Section 447. Against a person who has injured the reputation of another, the Court may, on the application of the injured person, or order proper measures to be taken for the rehabilitation of the latter's reputation, instead of, or together with, compensation damages.

Section 448. The claim for damages arising from wrongful act is barred by prescription after one year from the day when the wrongful act and the person bound to make compensation became known to the injured person, or ten years from the day when the wrongful act was committed.

However if the damages are claimed on account of an act punishable under the criminal law for which a longer prescription is provided such longer prescription shall apply.

CHAPTER III

JUSTIFIABLE ACTS

Section 449. A person who, acting in lawful defence or under a lawful command, has caused injury to any other person is not liable to make compensation.

The injured person can claim compensation from the person against whom the lawful defence was directed, or from the person who wrongfully gave the command, as the case may be.

Section 450. If a person damages or destroys a thing in order to avert an immediate common danger, he is not liable to make compensation, provided the damage done is not out of proportion to the danger.

If a person damages or destroys a thing in order to avert an immediate individual danger, he shall make restitution therefore.

If a person damages or destroys a thing in order to protect the rights of himself or of a third person against immediate danger threatened by the thing itself, such person is not liable to make compensation, provided the damage done is not out of proportion to the danger. If the danger was caused by such person's fault he is liable to make compensation.

Section 451. A person who uses force for protecting his right is not liable to make compensation if under the circumstances the help the Court or of the proper authorities is not obtainable in due time and there is danger that, if he does not act immediately, the realization of his right will be frustrated or seriously impeded.

The using of force according to the foregoing paragraph must be strictly limited to that which is necessary for averting the danger.

If any person does the act specified in the first paragraph under the erroneous assumption that the necessary conditions exist to render his act lawful, he is liable to make compensation to the other person, even if the error was not due to his negligence.

Section 452. A possessor of an immovable property is entitled to seize animals belonging to another person which cause injury on such property and retain them as security from any compensation which may be due to him, he is even entitled to kill them if it is necessary under the circumstances.

However he must give notice without delay to the owner of the animals. If the owner could not be found the person seizing must take proper measures to seek him out.

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BOOK III

SPECIFIC CONTRACTS

TITLE I

SALE

CHAPTER I

NATURE AND ESSENTIALS OF THE CONTRACT OF SALE

PART I

General Provisions

Section 453. Sale is a contract whereby a person, called the seller, transfers to another person, called the buyer, the ownership of property, and the buyer agrees to pay to the seller a price for it.

Section 454. A previous promise of sale made by one party has the effect of a sale only when the other party has given notice of his intention to complete the sale and such notice has reached the person who made the promise.

If no time has been fixed in the promise for such notification, the person who made the promise may fix a reasonable time and notify the other party to give a definite answer within that time whether he will complete the sale or not. If within that time he does not give a definite answer, the previous promise loses its effect.

Section 455. The time of the completion of the contract of sale is referred to hereafter as the time of sale.

Section 456. A sale of immovable property is void unless it is made in writing and registered by the competent official. The same rule applies to ships or vessels of six tons and over, to steam launches or motor boats of five tons and over, to floating houses and to beasts of burden.

An agreement to sell or to buy any of the aforesaid property, or a promise of sale of such property is not enforceable by action unless there is some written evidence signed by the party liable or unless earnest is given, or there is part performance.

The provisions of the foregoing paragraph shall apply to a contract of sale of movable property where the agreed price is five hundred baht or upwards.

Section 457. The costs of a contract of sale are borne by both parties equally.

PART II

Transfer of Ownership

Section 458. The ownership of the property sold is transferred to the buyer from the moment when the contract of sale is entered into.

Section 459. If a contract of sale is subject to a condition or to a time clause', the ownership of the property is not transferred until the condition is fulfilled, or the time has

arrived.

Section 460. In case of sale of unascertained property, the ownership is not transferred until the property has been numbered, counted, weighed, measured or selected, or its identity has been otherwise rendered certain.

In case of sale of specific property, if the seller is bound to count, weigh, measure or do some other act or thing with reference to the property for the purpose of ascertaining the price, the ownership is not transferred to the buyer until such act or thing be done.

CHAPTER 11

DUTIES AND LIABILITIES OF THE SELLER

PART I

Delivery.

Section 461. The seller is bound to deliver to the buyer the property sold.

Section 462. Delivery may be made by doing anything which has the effect of putting the property at the disposal of the buyer.

Section 463. If the contract provides that the property sold shall be sent from one place to another, delivery takes place at the moment when the property is delivered to the carrier.

Section 464. The costs of transportation of the property sold to a place other than the place of performance are to be borne by the buyer.

Section 465. In a sale of movable property:

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| (1) | Where the seller delivers the property less than he contracted for, the buyer may reject it; but if the buyer accepts it, he must pay the proportionate price. |
| (2) | Where the seller delivers the property more than he contracted for, the buyer may accept the property according to the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the property so delivered, he must pay the proportionate price. |
| (3) | Where the seller delivers the property he contracted for mixed with the property of a different description not included in the contract, the buyer may accept the property according to the contract and reject the rest, or he may reject the whole. |

Section 466. In a sale of immovable property where the total area is specified and the seller delivers the property less or more than he contracted for, the buyer has the option either to reject or accept it and pay the proportionate price.

If the deficiency or excess does not exceed five per cent of the total area so specified the buyer is bound to accept it and pay the proportionate price, provided that the buyer can rescind the contract if the deficiency or excess is such that had he known of it he would not have entered into the contract.

Section 467. No action for liability on account of deficiency or excess can be entered later than one year after delivery.

Section 468. When there is no time clause for payment of the price, the seller is entitled to retain the property sold until the price is paid.

Section 469. Even though there is a time clause for payment, if the buyer becomes bankrupt before delivery, or was bankrupt at the time of sale without the knowledge of the seller, or impairs or reduces security given for payment, the seller is entitled to retain the property sold, unless the buyer gives proper security.

Section 470. When the buyer is in default, the seller who retains the property under the foregoing sections can, instead of using the ordinary remedies for non-performance, notify the buyer in writing to pay the price and incidental charges, within a reasonable time to be fixed in the notice.

If the buyer fails to comply with the notice, the seller can sell the property by public auction.

Section 471. The seller shall deduct from the net proceeds of the public auction what is due to him for the price and incidental charges and deliver forthwith any surplus to the buyer.

PART II

Liability for Defect

Section 472. In case of any defect in the property sold which impairs either its value or its fitness for ordinary purposes, or for the purposes of the contract, the seller is liable.

The foregoing provision applies whether the seller knew or did not know of the existence of the defect.

Section 473. The seller is not liable in the following cases:

| | |
|-----|---|
| (1) | If the buyer knew of the defect at the time of sale, or would have known of it if he had exercised such care as might be expected from a person of ordinary prudence. |
| (2) | If the defect was apparent at the time of the delivery, and the buyer accepts the property without reservation. |
| (3) | If the property was sold by public auction. |

Section 474. No action for liability for defect can be entered later than one year after the discovery of the defect.

PART III

Liability for Eviction

Section 475. The seller is liable for the consequences of any disturbance caused to the peaceful possession of the buyer by any person having over the property sold a right existing at the time of sale or by the fault of the seller.

Section 476. The seller is not liable for a disturbance caused by a person whose rights were known to the buyer at the time of sale.

Section 477. In any case of disturbance where an action arises between the buyer and a third person, the buyer is entitled to summon the seller to appear in the action to be joint defendant or joint plaintiff with the buyer, in order to enable the Court to settle disputes between all the parties to them in one action.

Section 478. The seller is also entitled, if he thinks proper, to intervene in the action in order to deny the claim of the third person.

Section 479. The seller is liable if, by reason of eviction, the buyer is deprived of the whole or part of the property sold or if the property is subject to a right, the existence of which impairs its value, fitness, use or benefit and of which the buyer had no knowledge at the time of sale.

Section 480. If an immovable property is declared to be subject to a servitude established by law, the seller is not liable unless he has expressly guaranteed that the

property was free from servitudes, or from that particular servitude.

Section 481. If the seller was not a party to the original action, or if the buyer has made a compromise with the third person, or has yielded to his claim, no action for liability on account of eviction can be entered later than three months after final judgment in the original action, or after the date of the compromise, or of the yielding to the third person.

Section 482. The seller is not liable for eviction in the following cases:

| | |
|-----|--|
| (1) | If no action was entered, and the seller proves that the rights of the buyer were lost on account of the fault of the buyer, or |
| (2) | If the buyer did not summon the seller to appear in the action, and the seller proves that he would have succeeded in the action if summoned to appear, or |
| (3) | If the seller appeared in the action, but the claim of the buyer was dismissed on account of the fault of the buyer. |

In any case the seller is liable whenever he is summoned to appear in the action and refuses to take the part of the buyer as joint defendant or joint plaintiff.

PART IV

Clause for Non-Liability

Section 483. The parties to a contract of sale may agree that the seller shall not incur any liability for defects or eviction.

Section 484. Unless the non-liability clause specifies otherwise, such clause does not exempt the seller from the repayment of the price.

Section 485. A non-liability clause cannot exempt the seller from the consequences of his own acts or of facts which he knew and concealed.

CHAPTER III

DUTIES OF THE BUYER

Section 486. The buyer is bound to take delivery of the property sold and to pay the price in accordance with the terms of the contract of sale.

Section 487. The price of the property sold may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties.

When the price is not determined as aforesaid, the buyer must pay a reasonable price.

Section 488. If the buyer has discovered defects in the property sold, he is entitled to withhold the price or part of it still unpaid, unless the seller gives proper security.

Section 489. The buyer is also entitled to withhold the price wholly or partly, if he is threatened, or has good reason to believe that he is about to be threatened, with an action by a mortgagee or by a person claiming the property sold, until the seller has caused the danger with which he is threatened to cease, or until the seller has given proper security.

Section 490. If a time is fixed for the delivery of the property sold, it is presumed that the same time is fixed for the payment of the price.

CHAPTER IV

SOME PARTICULAR KINDS OF SALES

PART I

Sale with Right of Redemption

Section 491. Sale with right of redemption is a contract of sale whereby the ownership of the property sold passes to the buyer subject to an agreement that the seller can redeem that property.

Section 492. Where the property sold is redeemed within the period fixed by the contract or by law, or where the person who redeems deposits the price of redemption to a deposit office within the period by waiving the right to withdraw the price, the ownership of the property shall be vested in the person who redeems from the time of payment or deposit of the price, as the case may be.

In the case of deposit under paragraph one, an official of the deposit office shall immediately give notice of it to the redeemed person, whereby the person who redeems does not have to comply with Section 333 paragraph three.

Section 493. The parties may agree that the buyer shall not dispose of the property sold. If he disposes of it contrary to his agreement, he shall be liable to the seller for any injury resulting thereby.

Section 494. The right of redemption cannot be exercised later than:

(1) Ten years after the time of the sale in case of immovable property.

(2) Three years after the time of sale in case of movable property.

Section 495. If a longer period is provided in the contract, it shall be reduced to ten years and three years respectively.

Section 496. The period of redemption may be afterward extended by a contract, but if the total period is in excess of the period under Section 494, it shall be reduced to the period under Section 494.

The extension of the period under paragraph one must, at least, have some written evidence signed by the redeemed person. In case of the property whose sale must be made in writing and registered by the competent official, the extension can not be set up against a third

person who has, for value and in good faith, acquired and registered his right unless such writing or written evidence is registered or recorded by the competent official.

Section 497. The right of redemption may be exercised only by:

- (1) The original seller or his heirs, or
- (2) The transferee of the right, or
- (3) Any person expressly allowed to redeem by a contract.

Section 498. The right of redemption may be exercised only against:

| | |
|-----|--|
| (1) | The original buyer |
| (2) | The transferee of the property or of a right on the property, provided that, in case of movable property, he knew at the time of the transfer that such property was subject to a right of redemption. |

Section 499. If no price of redemption is fixed, the property may be redeemed by reimbursing the price of the sale.

If the price of redemption or the price of the sale, at the time of redemption, is higher than the real price of the sale more than fifteen percent per year, it shall be

redeemed at a real price including fifteen percent per year of profit.

Section 500. Costs of the sale borne by the buyer must be reimbursed together with the price.

Costs of redemption are borne by the person who redeems.

Section 501. The property must be returned in the condition in which it is at the time of redemption, provided that if the property has been destroyed or deteriorated through the fault of the buyer he must pay compensation therefore.

Section 502. The person who redeems the property recovers it free from any rights created by the original buyer or his heirs or transferee before redemption.

If a hire of property held subject to a right of redemption is registered by the competent official, it shall be valid for not more than one year of its remaining duration, provided that it is not made for the purpose of injuring the seller.

PART II

Sale by Sample; Sale by Description; Sale on Approval

Section 503. In a sale by sample, the seller is bound to deliver property or properties corresponding to the sample.

In a sale by description, the seller is bound to deliver property corresponding to the description.

Section 504. No action for liability on account of non-correspondence to the sample or description can be entered later than one year after delivery.

Section 505. A sale on approval is the selling contract that the buyer having an option to buy when verifying the buying property.

Section 506. To verify the property, if there is no buying deadline, the seller may specify the reasonable deadline period and give a notice to the buyer to accept or reject the buying or not.

Section 507. The property that the buyer having option to verify before delivery, if the buyer does not accept it within the deadline stated in the contract or commercial practice or deadline setting by the seller, the selling contract is unbound.

Section 508. When the property is delivered to the buyer for verifying, the selling and the buying shall be absolutely completed in the following cases:

- (1) If the buyer does not reject the purchasing within deadline specified in the contract or by commercial practice or setting by the seller; or
- (2) If the buyer does not return the property to the seller within the said deadline; or
- (3) If the buyer fully uses all the property or in some parts; or
- (4) If the buyer sells the property or makes any buying signals.

Section 509. The auction shall be completed when the auctioneer accepts the final price by knocking the wood hammer or any practical acts in auction; otherwise the bidder can withdraw his bid in anytime.

Section 510. During bidding process, the bidder must comply with the bidding procedure that the auctioneer has announced in each bidding.

Section 511. The auctioneer cannot make a bid or let any person to make a bid for his own benefit that he is control the bidding process.

Section 512. The seller cannot make a bid or let any person to make a bid, except specified in the bidding terms and conditions that the seller has the right to bid.

Section 513. If the auctioneer thinks that the bidding price is not high enough, he may withdraw the said property auction.

Section 514. The bidder shall be unbound from his bid when other person offers a higher bidding price, even though the said bidding is complete or not, or when the auctioneer withdraws the said property auction.

Section 515. Bidder who offers the highest bidding price must pay in cash when the auction is complete or the deadline specified in the bidding advertising.

Section 516. If the bidder who offers the highest bidding price does not pay the money, the auctioneer may renew the auction. If the renew bidding price is lower than the

previous one, such default bidder must liable for the short.

Section 517. If some or all of the proceed from auction is unpaid that the cause comes from the ignorance of the auctioneer under Section 515 or Section 516, the auctioneer has to liable for the unpaid amount.

TITLE II

EXCHANGE

Section 518. Exchange is the contract that both parties transfer the right of ownership to each other.

Section 519. In any provisions of the laws relating to the selling and buying, the exchange is also included in such provision by implying that both parties are seller and buyer for such transfer of such properties.

Section 520. If any exchanging party accepts to add money with the exchange of property to anther, the selling price shall include such additional cash payment too.

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TITLE III

GIFT

Section 521. A gift is a contract whereby a person. Called the donor, transfers gratuitously a property of his own to another person, called the donee, and the donee accepts

such property.

Section 522. A gift may be made by granting to the donee the release of an obligation or by performing an obligation due from the donee.

Section 523. A gift is valid only on delivery of the property given.

Section 524. If a right represented by a written instrument is given, the gift is not valid unless such instrument is delivered to the donee and the gift is notified in writing to the debtor of the right.

Section 525. The gift of a property the sale of which must be made in writing and registered by such competent official is valid only when so made and registered by the competent official. In such case it is valid without delivery.

Section 526. If a gift or a promise for a gift has been made in writing and registered by the competent official and the donor does not deliver to the donee the property given, the donee is entitled to claim the delivery of it or its value, but he is not entitled to any additional compensation.

Section 527. If a donor binds himself to make periodical performance the obligation is extinguished on the death either of the donor or the donee unless a contrary intention appears from the obligation.

Section 528. If the gift is encumbered with a charge and the donee fails to perform the charge, the donor may, under the conditions specified for the right of rescission in the case of reciprocal contracts, demand the return of the gift under the provisions relating to the return of undue enrichment in so far as the gift ought to have been applied to the performance of the charge.

This claim is barred if a third party is entitled to require the performance of the charge.

Section 529. If the property given is not sufficient to satisfy the charge, the donee has to perform only to the extent of the value of the property.

Section 530. If the gift encumbered with a charge, the donor is liable for defect or eviction in the same manner as the seller but only to the extent of the charge.

Section 531. The donor can claim revocation of a gift for an act of ingratitude only in the following cases.

| | |
|-----|---|
| (1) | If the donee committed a serious criminal offence punishable under the Penal Code (/law-texts/thailand-penal-code.html) against the donor, or |
| (2) | If the donee seriously defamed or insulted the donor, or |
| (3) | If the donee refused the donor who is in need of the necessities of life while he was able to supply them. |

Section. 532. The heir of the donor can claim revocation only if the donee has intentionally and unlawfully killed the donor or prevented him from revoking the gift.

However, the heir may continue an action which has been duly entered by the donor.

Section 533. A gift cannot be revoked if the donor has forgiven the donee, or if six months have elapsed since the time when the act of ingratitude came to knowledge of the person entitled to claim revocation.

No action can be claimed later than ten years after such act.

Section 534. If the gift is revoked, the property shall be returned under the provisions of this Code concerning Undue Enrichment.

Section 535. The following gifts are not revocable for ingratitude:

- (1) Gifts purely remuneratory
- (2) Gifts encumbered with a charge
- (3) Gifts made in compliance with a moral duty
- (4) Gifts made in consideration of marriage

Section 536. A gift to take effect at the death of the donor is governed by the provisions of Law concerning Inheritance and Wills.

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Thailand Civil and Commercial Code (part II)

Thailand Civil and Commercial Code (part II)

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Hire of property

Chapter I

General provisions

Section 537. A hire of property is a contract whereby a person, called the letter, agrees to let another person, called the hirer, have the use or benefit of a property for a limited period of time and the hirer agrees to pay rent therefore.

Section 538. A hire of immovable property is not enforceable by action unless there be some written evidence signed by the party liable. If the hire is for more than three years or for the life of the letter or hirer, it is enforceable only for three years unless it is made in writing and registered by the competent official.

Section 539. Costs of a contract of hire are borne by both parties equally.

Section 540. The duration of a hire of immovable property cannot exceed thirty years. If it is made for a longer period, such period shall be reduced to thirty years. The aforesaid period may be renewed, but it must not exceed thirty years from the time of renewal.

Section 541. Contract of hire may be made for the duration of the life of the letter or of the hirer

Section 542. When several persons claim the same movable property under different contracts of hire, the hirer who has first taken possession of the property by virtue of his contract shall be preferred.

Section 543. When several persons claim the same immovable property under different contracts of hire:

| | |
|-----|--|
| (1) | If none of the contracts is required by law to be registered, the hirer who has first taken possession of the property by virtue of his contract shall be preferred. |
| (2) | If all the contracts are required by law to be registered, the hirer whose contract was first registered shall be preferred. |
| (3) | If there is a conflict between a contract which is required by law, and a contract which is not required by law, to be registered, the hirer whose contract has been registered shall be preferred, unless the other hirer has taken possession of the property by virtue of his contract before the date of registration. |

Section 544. Unless otherwise provided by the contract of hire, a hirer cannot sublet or transfer his rights in the whole or part of the property hired to a third person.

Section 545. If the hirer rightfully sublets the property hired, the subhirer is directly liable to the letter. In such case a payment of rent made in advance by the subhirer to the hirer who sublets cannot be set up against the letter.

The provisions does not prevent the letter from exercising his rights against the hirer.

Chapter II

Duties and liabilities of the letter

Section 546. The letter is bound to deliver the property hired in a good state of repair.

Section 547. The letter is bound to reimburse to the hirer any necessary and reasonable expenses incurred by him for the preservation of the property hired, except expenses for ordinary maintenance and petty repairs

Section 548. In case of delivery of the property hired in a condition not suitable for the purpose for which it is let, the hirer may terminate the contract.

Section 549. The delivery of the property hired, the liability of the letter in case of defects and eviction and the effects of a non-liability clause are governed by the provisions of this Code concerning sale, mutatis mutandis.

Section 550. The letter is liable for any defects which arise during the continuance of the contract and he must make all the repairs which may become necessary, except those which are by law or custom to be done by the hirer.

Section 551. If the defect is not such as would deprive the hirer of the use and benefit of the property hired, and can be remedied by the letter, the hirer must first notify the letter to make it good. If the defect is not made good within a reasonable time, the hirer may terminate the contract provided the defect is serious enough to justify this course.

Chapter III

Duties and liabilities of the hirer

Section 552. The hirer cannot use the property hired for the purpose other than those which are ordinary and usual, or which have been provided in the contract.

Section 553. The hirer is bound to take as much care of the property hired as a person of ordinary prudence would take of his own property, and to do ordinary maintenance and petty repairs.

Section 554. If the hirer act contrary to the provision of Sections 552, 553 or contrary to the terms of the contract, the letter may notify the hirer to comply with such provisions or terms, and if the hirer fails to comply, the letter may terminate the contract.

Section 555. The hirer is bound to allow the letter or his agents to inspect the property hired at reasonable times.

Section 556. If the property hired requires urgent repairs during the continuance of the contract, and if the letter desires to do an act necessary for such repairs, the hirer cannot refuse permission to have such act done, though it may cause him inconvenience. However, if the repairs are of such nature as would take unreasonable length of time and thereby cause the property unsuitable for the purpose for which it is let, the hirer may terminate the contract.

Section 557. In any of the following cases:

- If the property hired is in need of repairs by the letter, or
- If a preventive measure is required for avoiding a danger, or
- If a third person encroaches on the property hired or claims a right over it, the hirer shall forthwith inform the letter of occurrence, unless the letter already has knowledge of it

If the hirer fails to comply with this provision, he is liable to the letter for any injury resulting from the delay occasioned by such failure.

Section 558. The hirer may not make alterations in, or addition to, the property hired without the permission of the letter. If he does so without such permission, he must, on request of the letter, restore the property to its former condition, and he is liable to the letter for any loss or damage that may result from such alteration or addition

Section 559. If no time for payment of rent is fixed by the contract or by custom, the rent must be paid at the end of each period for which it is stipulated, that is to say: if a property is hired at so much per year, the rent is payable at the end of each year, if a property is hired at so much per month, the rent is payable at the end of each month.

Section 560. In case of non-payment of rent, the letter may terminate the contract. But, if the rent is payable at monthly or longer intervals, the letter must first notify the hirer that payment is required within a period not less than fifteen days.

Section 561. If no written description of the condition of the property hired has been made and signed by both parties, the hirer is presumed to have received the property in good state of repair and he must return the property in such condition at the termination or extinction of the contract, unless he can prove that it was out of repair at the time of delivery.

Section 562. The hirer is liable for any loss or damage caused to the property hired by his own fault or by the fault of persons living with him or being his subhirer.

But he is not liable for loss or damage resulting from proper use.

Section 563. No action by the letter against the hirer in connection with the contract of hire can be entered later than six months after the return of the property hired.

Chapter IV

Extinction of Contract of Hire

Section 564. A contract of hire is extinguished at the end of the agreed period without notice.

Section 565. A hire of garden land is presumed to be made for one year. A hire of paddy land is presumed to be made for the agricultural year.

Section 566. If no period is agreed upon or presumed, either party may terminate the contract of hire at the end of each period for the payment of rent, provided that notice of at least one rent period is given, but no more than two months notice need be given.

Section 567. If the whole of the property hired is lost, the contract is extinguished.

Section 568. If part only of the property hired is lost without the fault of the hirer, he may claim that the rent be reduced in portion to the part lost.

If in such case the hirer cannot with the remaining part accomplish the purpose for which he entered the contract of hire, he may terminate.

Section 569. A contract of hire of immovable property is not extinguished by the transfer of ownership of the property hired.

The transferee is entitled to the rights and is subjected to the duties of the transferor towards the hirer.

Section 570. If, at the end of the agreed period, the hirer remains in possession of the property and the lessor knowing thereof does not object, the parties are deemed to have renewed the contract for an indefinite period.

Section 571. If a contract of hire of paddy land is terminated or extinguished after the hirer has planted the paddy, the hirer is entitled to remain in the possession till the harvest is finished, but he must pay rent.

TITLE V

HIRE-PURCHASE

Section 572. A hire-purchase is a contract whereby an owner of a property lets it out on hire and promises to sell it to, or that it shall become the property of, the hirer, conditionally on his making a certain number of payments.

The contract of hire-purchase is void unless made in writing.

Section 573. The hirer may at any time terminate the contract by redelivering the property at his own expense to the owner.

Section 574. The owner may also terminate the contract in case of default of two successive payments, or breach of any material part of the contract; in which case all previous payments are forfeited to the owner who is entitled to resume possession of the property.

In case of breach of contract by default of the last payment, the owner is entitled to forfeit previous payment and resume possession of the property only after the expiration of one installment period.

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TITLE VI

HIRE OF SERVICES

Section 575. A hire of services is a contract whereby a person, called the employee, agrees to render services to another person, called the employer, who agrees to pay remuneration for the duration of the services.

Section 576. The promise to pay a remuneration is implied, if, under the circumstances it cannot be expected that the services are to be rendered gratuitously.

Section 577. The employer may transfer his right to a third person with the consent of the employee.

The employee may have a third person render the services in his place with the consent of the employer.

If either party acts contrary to this provision, the other party may terminate the contract.

Section 578. If the employee either expressly or impliedly warrants special skill on his part, the absence of such skill entitles the employer to terminate the contract.

Section 579. Absence of the employee from service for a reasonable cause and during a reasonably short period does not entitle the employer to terminate the contract.

Section 580. If no time for payment of remuneration is fixed by the contract or by custom, the remuneration is payable after the services have been rendered; if fixed by periods, the remuneration is payable at the end of each period.

Section 581. If after the end of the agreed period the employee continues to render services and the employer knowing thereof does not object, the parties are presumed to have made a new contract of hire on the same terms, but either party can terminate the contract by giving notice in accordance with the following section.

Section 582. If the parties have not fixed the duration of the contract, either party can terminate it by giving notice at or before any time of payment to take effect at the following time of payment. But no more than three-month notice need be given.

The employer can, on giving such notice, immediately dispense with the services of the employee by paying him his remuneration up to the expiration of the notice.

Section 583. If the employee willfully disobeys or habitually neglects the lawful commands of his employer, absents himself for services, is guilty of gross misconduct, or otherwise acts in a manner incompatible with the due and faithful discharge of his duty, he may be dismissed by the employer without notice or compensation.

Section 584. If a hire of services is one in which the personality of the employer forms an essential part such contract is extinguished by the death of the employer.

Section 585. If a hire of services comes to an end, the employee is entitled to a certificate as to the length and nature of his services .

Section 586. If the employee has been brought from elsewhere at the expense of the employer, the employer is bound, when the hire of service comes to an end, unless otherwise provided in the contract, to pay the cost of the return journey, provided that:

- (1) The contract has not been terminated or extinguished by reason of the act or fault of the employee, and
- (2)The employee returns within a reasonable time to the place from which he has been brought.

TITLE VII

HIRE OF WORK

Section 587. The hire of work is a contract whereby a person, called contractor, agrees to accomplish a definite work for another person, called employer, who agrees to pay him a remuneration of the result of the work.

Section 588. Tools or instruments which are necessary for the execution of the work are to be supplied by the contractor.

Section 589. If the materials for the work are to be supplied by the contractor, the contractor shall supply material in good quality.

Section 590. If the materials are to be supplied by the employer, the contractor shall use them carefully and without waste. He shall return the surplus after work is completed.

Section 591. If the defect or the delay of the work originates from the nature of the material supplied by the employer, or from instruction given by him, the contractor is not liable, unless the contractor knew of the unfitness of the materials or the impropriety of instructions, and did not give notice of it.

Section 592. The contractor is bound to allow the employer or his agents to inspect the work during its execution.

Section 593. If the contractor does not begin to work in a proper time or delays in proceeding with it contrary to the terms of the contract, or if, without the fault of the employer, he delays to proceed with it in a such a manner that it can be foreseen that the work will not be finished

within the agreed period. The employer is entitled to cancel the contract without waiting for the time agreed upon for delivery.

Section 594. When it is possible to foresee with certainty, whilst the work is proceeding, that by the fault of the contractor, the work will be executed in a defective manner or contrary to the terms of the contract, the employer may notify the contractor to make good the defect or to comply with the terms of the contract within a reasonable time to be fixed in the notice, failing which the employer is entitled to have the work repaired or continued by a third person at the risks and expenses of the contractor.

Section 595. If the materials have been supplied by the contractor, his liability for defects is governed by the provisions of this code concerning sale.

Section 596. If the work is delivered after the time fixed in the contract, or if no time was fixed, after reasonable time has elapsed, the employer is entitled to a reduction of remuneration or when time is of the essence of the contract to rescission.

Section 597. If the employer has accepted the work without reservation, the contractor is not liable for the delay in delivery.

Section 598. If the employer has accepted a defective work either expressly or impliedly, the contractor is not liable unless the defect was such as could not be discovered when the work was accepted, or it had been concealed by the contractor.

Section 599. In case of delay in delivery or of delivery of a defective work, the employer is entitled to withhold the remuneration unless the contractor gives proper security.

Section 600. Unless otherwise provided in the contract, the contractor is only liable for defect appearing within one year after delivery of the work, or within five years if the work is for a structure on land other than a wooden building.

This limitation shall not apply if the contractor has concealed the defect.

Section 601. No action against the contractor can be entered later than one year after the defect appeared.

Section 602. The remuneration is payable on taking delivery of the work. If the work is to be accepted in parts and the remuneration has been specified for the several parts, the remuneration for each part is payable at the time of its acceptance.

Section 603. If the materials have been supplied by the contractor, and the work is destroyed or damaged before due delivery, the contractor bears the loss provided that such loss is not caused by any act of the employer.

In such case no remuneration is payable.

Section 604. If the materials have been supplied by the employer and the work is destroyed or damaged before due delivery, the employer bears the loss provided that such loss is caused by any act of the contractor.

In such case, no remuneration is payable unless the loss is caused by any act of the employer.

Section 605. As long as the work is not finished, the employer can terminate the contract on making compensation to the contractor for any injury resulting from the termination of the contract.

Section 606. If the personal qualification of the contractor is of the essence of the contract and the contractor dies, or without his fault becomes incapable to carry on the work the contract comes to an end.

If any part of the work already done is useful to the employer, he is bound to accept it and pay a reasonable remuneration.

Section 607. The contractor may appoint sub-contractor to work for him in all or in part, except in the major part of contract that required the ability of the contractor. The contractor is still responsible for the work and any mistake of the sub-contractor.

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CARRIAGE

Section 608 A carrier, within the meaning of this Title, is a person who in the usual course of business undertakes to transport goods or passengers for remuneration.

Section 609 The carriage of goods or passengers by the Royal State Railways Department of Siam or of postan articles by the Post and Telegraph Department are

governed by the Laws and Regulations concerning such Department. The carriage of goods by sea is governed by the Laws and Regulations relating thereto.

CHAPTER I

CARRIAGE OF GOODS

Section 610 The person making an agreement with a carrier for the transportation of goods is called the sender or consignor. The person whom the goods are forwarded is called the consignee. The remuneration to be paid for the transportation of the goods is called the freight.

Section 611 The accessories of the freight comprise any customary expenses duly incurred by the carrier in course of transportation.

Section 612 If required by the carrier, the sender must supply him with a way-bill. The way-bill must show the following particulars:

1. The nature of the goods sent, their weight or bulk and the nature, number and marking of the packages
2. The place of destination
3. The name or trade-name and address of the consignee
4. The place where and time when the way-bill is made out

The way-bill must be signed by the sender.

Section 613 If required by the sender, the carrier must supply him with a consignment note. The consignment note must show the following particulars:

1. Those mentioned in 612, subsections 1,2,and 3
2. The name or trade-name of the sender
3. The amount of freight
4. The place where and the time when the consignment note is made out

The consignment note must be signed by the carrier.

Section 614 Even though a consignment note has been made out to a named person, it can be transferred by indorsement, unless the indorsement is forbidden in the consignment note.

Section 615 If a consignment note has been made, delivery can be obtained only on its surrender or on proper security being given by the consignee.

Section 616 The carrier is liable for any loss, damage or delay in delivery of the goods entrusted to him, unless he proves that the loss, damage or delay is caused by force majeure or by the fault of the sender or consignee.

Section 617 The carrier is liable for loss, damage or delay caused by the fault of the other carries or persons to whom he entrusted the goods.

Section 618 If the goods were transported by several carriers, they are jointly liable for loss, damage or delay.

Section 619 If the goods are of a dangerous nature or are likely to cause injury to persons or property, the sender must declare their nature before making the contract of carriage, failing which he shall be liable for any injury caused by them.

Section 620 The carrier is not liable for specie, currency notes, bank notes, bills, bonds, shares, debentures, warrants, jewels, and other valuables, unless he is given notice of the value or nature of such goods when they are delivered to him. If their value is declared, the liability of the carrier is limited to such declared value.

Section 621 Compensation in case of delay in delivery cannot exceed the amount which could be awarded in case of total loss of goods.

Section 622 The carrier must notify the consignee as soon as the goods arrive.

Section 623

Section 633 If the goods were transported by several carriers, the last of them can exercise the rights described in Section 630, 631, 632 for the amounts due to them all for freight and accessories.

CHAPTER II

CARRIAGE OF PASSENGERS

Section 634 The carrier of passengers is liable to a passenger for personal injuries and for the damages immediately resulting from delay suffered by reason of the

transportation, unless the injury or delay is caused by force majeure or by the fault of such passenger.

Section 635 Luggage entrusted to the carrier in time must be delivered on the arrival of the passenger.

Section 636 If the passenger does not take delivery of the luggage within one month after its arrival, the carrier can sell it by public auction. If the luggage is of a perishable nature, the carrier can sell it by public auction twenty-four hours after its arrival. The provisions of section 632 apply *mutatis mutandis*.

Section 637 The rights and liabilities of the carrier for the luggage which has been entrusted to him are governed by Chapter I, even though the carrier did not make a separate charge for it.

Section 638 No liability is incurred by the carrier for the luggage which has not been entrusted to him, unless such luggage is lost or damaged by the fault of the carrier or of his employees.

Section 639 A provision in a ticket, receipt or such other document delivered by the carrier to the passenger excluding or limiting liability of the carrier is void, unless the passenger expressly agreed to such exclusion or limitation of liability.

LOAN

CHAPTER I

LOAN FOR USE

Section 640. A loan for use is a contract whereby a person, called the lender, lets another person, called the borrower, have gratuitously the use of a property, and the borrower agrees to return it after having made use thereof.

Section 641. A loan for use is complete only on delivery of the property lent.

Section 642. Costs of the contract, costs of delivery of the property lent and costs of return are born by the borrower.

Section 643. If the borrower uses the property lent for purposes other than ordinary purposes or purposes appearing from the contract, or lets a third person have the use of it, or keeps it longer than ought to, he is liable for any loss or damage to the property caused by force majeure unless he proves that the loss or damage would have happened in any case.

Section 644. The borrower is bound to take as much care of the property lent as a person of ordinary prudence would take of his own property.

Section 645. In any cases provided in Section 643, or if the borrower acts according to Section 644, the lender may terminate the contract.

Section 646. If no time is fixed, the property shall be returned after the borrower has made the use of it for the purpose appearing from the contract. The lender may claim the return of the property earlier, if so much time has elapsed that the borrower might have made the use of it.

If no time is fixed and no purpose appears from the contract, the lender may claim the return at any time.

Section 647. Expenses for ordinary maintenance of the property lent must be borne by the borrower.

Section 648. A loan for use is extinguished by the death of the borrower.

Section 649. No action for compensation in connection with a loan for use can be entered later than six months after the extinction of the contract.

CHAPTER II

LOAN FOR CONSUMPTION

Section 650. A loan for consumption is a contract whereby the lender transfers to the borrower the ownership of a certain quantity of property which is consumed in the user, and the borrower agrees to return a property of the same kind, quality and quantity.

The contract is complete only on delivery of the property.

Section 651. Costs of the contract, costs of delivery of the property lent and costs of return are borne by the borrower.

Section 652. If no time for return of the property lent has been fixed, the lender may give notice to the borrower to return the property within a reasonable time to be fixed in the notice.

Section 653. A loan of money for a sum exceeding two thousand baht in capital is not enforceable by action unless there be some written evidence of the loan signed by the borrower.

No repayment of a loan of money evidenced by writing may be proved unless there be some written evidence signed by the lender, or the document evidencing the loan has been surrendered to the borrower or cancelled.

Section 654. Interest shall not exceed 15% per year; when a higher rate of interest is fixed by the contract, it shall be reduced to 15% per year.

Section 655. Interest shall not bear interest. The parties to a loan of money may, however, agree that the interest due for not less than one year shall be added to the capital, and that the whole shall bear interest, but such agreement must be made in writing.

Commercial usage for the calculation of compound interest in current accounts, as well as in similar commercial transactions, are not governed by the forgoing paragraph.

Section 656. If a loan is made for a sum of money, and the borrower accepts goods or other property instead of such sum, the amount of the debt due shall be considered as equal to the market value of the goods or property at the time and place of delivery.

If a loan is made for a sum of money, and the lender accepts goods or other property for the repayment of the loan, the amount of the debt extinguished thereby shall be considered as equal to the market value of the goods or property at the time and place of delivery.

Any agreement to the contrary is void.

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TITLE X

Deposit

Chapter I

General Provisions

Section 657 A deposit is a contract whereby a person, called the depositor, delivers a property to another person, called the depositary, and the depositary agrees to keep it in his custody and return it.

Section 658 Remuneration for the deposit is deemed to have been impliedly agreed upon. If under the circumstances the undertaking of the deposit is to be expected only for the remuneration.

Section 659 If the deposit is undertaken gratuitously the depositary is bound to exercise as much care of the property deposited as he is accustomed to exercising in his own affairs.

If the deposit is undertaken with remuneration the depositary is bound to exercise such care and skill as a person of ordinary prudence would exercise in the circumstances. This includes the exercise of special skill where such skill is required.

If the depositary professes a particular trade, business or calling, he is bound to exercise the degree of care and skill usual and requisite in such trade, business or calling.

Section 660 If without the permission of the depositor the depositary uses the property deposited or lets a third person have the use or custody of it, he is liable for any loss or damage to the property, even caused by force majeure, unless he proves that the loss or damage would have happened in any case.

Section 661 If a third person claims rights over the property deposited and enters an action against the depositary, or attaches the property, the depositary must forthwith give notice thereof to the depositor.

Section 662 If a time for return of the property deposited has been fixed, the depositary has no right to return the property before such time, except in case of unavoidable necessity.

Section 663 Although the parties have fixed a time for the return of the property deposited, the depositary must return it at any time on demand made by the depositor. **Section 664** If the parties have fixed no time for the return of the property deposited, the depositary can return it at any time.

Section 665 The depositary is bound to return the property deposited to the depositor, or to the person in whose name it was deposited, or to the person to whom he has been duly directed to return it.

Provided that if the depositor dies the property deposited shall be returned to his heir. **Section 666** The depositary is bound to deliver with the property any fruits which may have accrued from it.

Section 667 Costs of returning the property deposited shall be borne by the depositor. **Section 668** The depositor is bound to reimburse the depositary for any expenses which were necessary for the preservation or maintenance of the property deposited, unless such expenses were incumbent upon the depositary under the contract of deposit.

Section 669 If no time for payment of remuneration is fixed by the contract or by custom, the remuneration is payable when the property deposited is returned. If fixed by periods the remuneration is payable at the end of each period.

Section 670 The depositary is entitled to retain the property deposited until he has been paid all that is due to him on account of the deposit.

Section 671 No action for remuneration, reimbursement of expenses or compensation in connection with a deposit can be entered later than six months after the extinction of the contract.

Chapter II

Special rules for the deposit of money

Section 672 If the deposited is one of money, it is presumed that the depositary is not to return the same specie, but only the same amount.

The depositary may use the money deposited and is only bound to return an equivalent amount. He is bound to return such amount even though the money deposited has been lost by force majeure.

Section 673 When the depositary is bound only to return the same amount of money, the depositor may not demand the return of the money before agreed time, nor may the depositary return it before such time.

Chapter III

Special rules for innkeepers

Section 674 The proprietor of an inn, hotel or other such place is liable for any loss or damage to the property which the traveller or guest lodging with him may have brought.

Section 675 The proprietor is liable for loss or damage to the property of the traveller or guest, even caused by strangers going to and from the inn, hotel or other such place.

His liability is limited to the sum of five thousand baht if the property is specie, currency notes, bills, bonds, shares, debentures, warrants, jewels or other valuables, unless it has been deposited with him and its value clearly stated.

But he is not liable for loss or damage caused by force majeure or by the nature of the property or by the fault of the traveller or guest or of his attendant or of a person

whom he has received.

Section 676 On discovery of the loss or damage to the property not expressly deposited, the traveller or guest must communicate the fact to the proprietor of the inn, hotel or any such place at once, failing which the proprietor shall be relieved of the responsibility provided in Sections 674 and 675.

Section 677 A notice posted in the inn, hotel or other such place excluding or limiting the liability of the proprietor is void unless the traveller or guest expressly agreed to such exclusion or limitation of liability.

Section 678 No action for compensation for loss or damage caused to the property of the traveller or guest can be entered later than six months after the departure of the traveller or guest.

Section 679 The proprietor is entitled to retain the luggage or other property of the traveller or guest which is in the inn, hotel or other such place until he has been paid all that is due to him for lodging and other services afforded to the traveller or guest in satisfaction of his needs, including disbursements.

He may sell by public auction properties so retained and pay himself out of the proceeds of such sale the amount which is due to him, together with the cost and expenses of such sale. But he cannot exercise such right unless:

- 1 The properties have been left for six weeks without the debt being paid, and
- 2 At least one month before such sale he has caused to be

inserted in one local newspaper and advertisement containing notice of the intended sale, together with a short description of the properties to be sold and the name of the owner, if known.

The surplus (*if any*) remaining after such payment must be paid to the owner of such properties or deposited at the Deposit Office according to the provisions of Sections 331 and 333.

TITLE XI

Suretyship

Chapter I

General Provisions

Section 680 Suretyship is a contract whereby a third person, called the surety, binds himself to a creditor to satisfy an obligation in the event that the debtor fails to perform it.

A contract of suretyship is not enforceable by action unless there is some written evidence signed by the surety.

Section 681 Suretyship can be given only for a valid obligation.

A future or conditional obligation may be secured for the event in which it would have effect.

An obligation, resulting from a contract which under mistake or incapacity does not bind the debtor, can be validly secured if the surety at the time when he binds himself knows such mistake or incapacity.

Section 682 A person may agree to be surety for another surety.

If several persons make themselves sureties for the same obligation they are liable as joint debtors, even though they do not assume the suretyship in common.

Section 683 The suretyship without limitation covers interest and compensation due by the debtor on account of the obligation and all charges accessory to it.

Section 684 The surety is liable for the costs of action to be paid by the debtor to the creditor, but he is not liable for such costs if the action was entered without first demanding performance from him.

Section 685 If, on enforcement of the contract of suretyship, the surety does not perform the whole of the obligation of the debtor, together with interest, compensation and accessories, the debtor remains liable to the creditor for the balance.

Chapter II

Effects before performance

Section 686 As soon as the debtor is in default, the creditor is entitled to demand performance of the obligation for the surety.

Section 687 The surety is not bound to perform the obligation before the time fixed for performance, although the debtor can no longer take advantage of a time of commencement or ending.

Section 688 When the creditor demands performance of the obligation from the surety, the latter may require that the debtor be first called upon to perform unless the debtor has been adjudged bankrupt, or his whereabouts in Thailand in unknown.

Section 689 Even after the debtor has been called upon as provided in the forgoing section, if the surety can prove that the debtor has the means to perform and that execution would not be difficult, the creditor must first make execution against the property of the debtor.

Section 690 If the creditor holds real security belonging to the debtor, he must, on request of the surety, have the obligation performed first out of the real security.

Section 691 If the surety is bound jointly with the debtor, he has not the rights mentioned in Sections 688, 689 and 690.

Section 692 An interruption of prescription against the debtor is also an interruption against the surety.

Chapter III

Effects after performance

Section 693The surety who has performed the obligation has a right of recourse against the debtor for the principal and interest, and for the losses or damages which he may suffer by reason of the suretyship.

He is subrogated to the rights of the creditor against the debtor.

Section 694 In addition to the defences which the surety has against the creditor, he can also set up defences which the debtor has against the creditor.

Section 695 The surety who neglects to set up against the creditor defences of the debtor loses his right of recourse against the debtor to the extent of these defences, unless he proves that he did not know of such defences and that his ignorance was not due to his fault.

Section 696 The surety has no right of recourse against the debtor, if he performs the obligation without informing the debtor who, in ignorance of the fact, performs it. In such case, the surety may have only an action for undue enrichment against the creditor.

Section 697 If, owing to the creditor's own acts, the surety cannot be subrogated wholly or partially into the creditor's rights, mortgages, pledges and preferential rights which have been given before or at the time of suretyship for the performance of the obligation, the surety is discharged to the extent of the injury suffered by him thereby.

Chapter V

Extinction of Suretyship

Section 698 The surety is discharged as soon as the obligation of the debtor is extinguished by any cause whatsoever.

Section 699 The suretyship for a series of transactions without limit or time in favour of the creditor can be terminated by the surety for the future by giving notice to

the creditor to that effect.

In such case the surety is not liable for transactions done by the debtor after the notice has reached the creditor.

Section 700 If suretyship has been given for an obligation which is to be performed at a definite time, and the creditor grants to the debtor an extension time, the surety is discharged.

The surety is not discharged if he agreed to the extension of time.

Section 701 The surety may tender performance of the obligation to the creditor from the time when performance is due.

If the creditor refuses to accept performance, the surety is discharged.

TITLE XII

MORTGAGE

CHAPTER I

GENERAL PROVISIONS

Section 702. A mortgage is a contract whereby a person, called the mortgagor, assigns a property to another person, called the mortgagee, as security for the performance of an obligation, without delivering the property to the mortgagee.

The mortgagee is entitled to be paid out of the mortgaged property in preference to ordinary creditors regardless as to whether or not the ownership of the property has been transferred to a third person.

Section 703. Immovables of any kind can be mortgaged.

The following movables can also be mortgaged provided they are registered according to law:

| | |
|-----|--|
| (1) | Ships of five tons and over |
| (2) | Floating houses. |
| (3) | Beast of burden |
| (4) | Any other movables with regard to which the law may provide registration for that purpose. |

Section 704. A contract of mortgage must specify the property mortgaged.

Section 705. No property can be mortgaged except by the owner for the time being.

Section 706. A person whose right of ownership over a property is subject to a condition may mortgage such property only subject to such condition.

Section 707. The provisions of Section 681 concerning Suretyship apply *mutatis mutandis*.

Section 708. A contract of mortgage must contain, in Thai currency, either the sum certain or a maximum amount for which the mortgaged property is assigned as security.

Section 709. A person may mortgage his property as security for the performance of an obligation by another person.

Section 710. The performance of one and the same obligation may be secured by the mortgage of several properties belonging either to one or to several owners.

The parties may agree:

| | |
|-----|--|
| (1) | That the mortgagee shall enforce his right against the mortgaged properties on a specific order. |
| (2) | That each property is security only for a specified part of the obligation. |

Section 711. Before the obligation is due, any agreement that the mortgagee shall, in case of non-performance, become the owner of the mortgaged property or dispose of it otherwise than in accordance with the provisions concerning Enforcement of Mortgage, shall be invalid.

Section 712. Notwithstanding any clause in the contract to the contrary, a property mortgaged to one person may be mortgaged to another person during the continuance of the previous contract.

Section. 713. Unless otherwise agreed in the contract of mortgage, the mortgagor may pay off the mortgage by installments.

Section 714. A contract of mortgage must be made in writing and registered by the competent official.

CHAPTER II

EXTENT OF MORTGAGE

Section 715. A mortgaged property is security for the performance of the obligation and for the following accessories:

- (1) Interest.
- (2) Compensation in case of non-performance of the obligation
- (3) Costs of enforcement of the mortgage.

Section 716. A mortgage, even part performance, extend to all the properties mortgaged and the whole of each of them.

Section 717. If a mortgaged property is divided into parcels, the mortgage continues notwithstanding to extend to each and all of such parcels.

Section 718. A mortgage extends to all things which are connected with the mortgaged property, subject, however to the restrictions contained in the following sections.

Section 719. A mortgage over land does not extend to the buildings erected by the mortgagor upon such land after the date of the mortgage, unless there is in the contract a special clause to that effect.

However, in any case, the mortgagee can have such buildings sold with the land, but he can exercise his preferential right only against the price obtained for the land.

Section 720. A mortgage over buildings erected or constructed made upon or under the land of another person does not extend to such land, and *vice versa*.

Section 721. A mortgage does not extend to the fruits of the mortgaged property except after the mortgagee has notified the mortgagor or the transferee of his intention to enforce the mortgage.

CHAPTER III

RIGHTS AND DUTIES OF THE MORTGAGEE AND MORTGAGOR

Section 722. When a property has been mortgaged and a servitude or other real right is registered after the registration of the mortgage without the consent of the mortgagee, the mortgage has priority over the servitude or other real right and the latter will be erased from the register where its existence prejudice the right of the mortgagee on the enforcement of the mortgage.

Section 723. If the mortgaged property is damaged, or if one of the mortgaged properties is lost or damaged, so that the security becomes insufficient, the mortgagee may enforce the mortgage at once, unless the mortgagor has not been at fault and offers either to mortgage another property of sufficient value or to repair the damage within a reasonable time.

Section 724. A mortgagor, who has mortgaged his property as security for the performance of an obligation by another person and performs the obligation on behalf of the debtor

to prevent the enforcement of the mortgage, is entitled to recover from the debtor the amount of the performance.

If the mortgage is enforced, the mortgagor is entitled to recover from the debtor the amount by which the mortgagee has been satisfied by such performance

Section 725. When two or more persons have separately mortgaged their properties as security for the performance of one and the same obligation by another person and no order has been specified, the mortgagor who has performed the obligation, or on whose property the mortgage has been enforced, has no right of recourse against the other mortgagors.

Section 726. When several persons have separately mortgaged their properties as security for the performance of one and the same obligation by another person and an order has been specified, the release granted by the mortgagee to one of the mortgagors discharges the subsequent mortgagors to the extent of the injury suffered by them thereby.

Section 727. If a person has mortgaged his property as security for the performance of an obligation by another person, the provisions of Sections 697, 700 and 701 concerning Suretyship shall apply *mutatis mutandis*.

CHAPTER IV

ENFORCEMENT OF MORTGAGE

Section 728. For enforcement of mortgage the mortgagee must notify the debtor on writing to perform his obligation within a reasonable time to be fixed in the notice. If the debtor fails to comply with such notice, the mortgagee may enter an action in Court for a judgment ordering the mortgaged property to be seized and sold by public auction.

Section 729.

In addition to the remedy provided in the foregoing section, the mortgagee is entitled to claim foreclosure of the mortgage, subject to the following conditions:

| | |
|-----|--|
| (1) | The debtor has failed to pay interest for five years; |
| (2) | The mortgagor has not satisfied the Court that the value of the property is greater than the amount due; and |
| (3) | There are no other registered mortgages or preferential rights on the same property. |

Section 730. When one and the same property is mortgaged to several mortgagees, they rank according to the respective dates and hours of registration, and the earlier mortgagee shall be satisfied before the later one.

Section 731. A later mortgage cannot enforce his right to the injury of an earlier one.

Section 732. The net proceeds of the auction shall be distributed to the mortgagees according to their ranks, and the surplus, if any, shall be delivered to the mortgagor.

Section 733. If the estimated value of the property, in case of foreclosure, is or the net proceeds, in case of auction, are less than the amount due, the debtor of the obligation is not liable for the difference.

Section 734. When several properties have been mortgaged to secure one and the same obligation and no order has been specified, the mortgagee may enforce his right against all or any of the properties; provided that he does not do so upon more properties than is necessary for the satisfaction of his right.

If the mortgagee enforces his right against all properties at the same time, the burden of the obligation is divided according to the respective value of the properties, except where the amounts of the mortgages have been specified for each property, in which case the division is made according to the respective amounts of the mortgages on such properties.

If, however, the mortgagee enforces his right against one of the properties, the mortgagee may receive performance of his entire obligation from such property. In that case the mortgagee who is next in rank shall be considered as being subrogated to the prior mortgagee and may enforce the mortgage in his stead to the amount which the prior mortgagee would have received from the other properties according to the provisions of the foregoing paragraph.

Section 735. When the mortgagee intends to enforce the mortgage against the transferee of a mortgaged property, the latter must be served with a written notice one month before the enforcement of the mortgage.

CHAPTER V

RIGHTS AND DUTIES OF THE TRANSFEREE OF A MORTGAGED PROPERTY

Section 736. The transferee of a mortgaged property may remove the mortgage, provided that he is not the principal debtor, a surety or an heir of either of them.

Section 737. The transferee may remove

the mortgage at any time, but if he has been notified by the mortgagee of the mortgagee's intention to enforce the mortgage, he must do so within one month thereafter.

Section 738. The transferee who wishes to remove the mortgage must notify the principal debtor and make an offer to every registered creditor whether by way of mortgage or otherwise pay a reasonable amount corresponding to the value of the property.

The offer shall contain the following particulars:

| | |
|-----|--|
| (1) | The place and the description of the mortgaged property. |
| (2) | The date of transfer of ownership. |
| (3) | The name of the former owner. |
| (4) | The name and domicile of the transferee. |
| (5) | The sum offered. |

| | |
|-----|---|
| (6) | A calculation of the total amount due to each of the creditors including accessories, and the sum which would be distributed to them according to their respective ranks. |
|-----|---|

A certifies copy of the entries in the official registered to the mortgaged property shall be enclosed.

Section 739. If any creditor refuses the offer, he must enter an action in Court within one month from the date of the offer for a judgment ordering the mortgaged property to be sold by public auction, provided that:

| | |
|-----|---|
| (1) | He advances the cost of sale; |
| (2) | He binds himself to make a bid or have a bid made above the sum offered by the transferee, and |
| (3) | He notifies his refusal to the transferee, other registered creditors, the former owner and the principal debtor. |

Section 740. If the net proceeds of the auction are more than the sum offered by the transferee, the costs of the auction shall be borne by him; otherwise, the creditor demanding the sale shall bear the costs of the auction.

Section 741. When all the creditors have accepted the offer, either expressly or implied, the mortgage and preferential rights are removed by the transferee paying or depositing in lieu of performance the sum offered.

Section 742. When, by the enforcement or the removal of the mortgage, a person who has previously acquired the mortgaged property is deprived of the property, such deprivation has no retrospective effect, and the preferential rights registered by his own creditors of the mortgagor or other former owner.

In such case, if any rights over the mortgaged property existing in favour of or against the person who has so previously acquired the mortgaged property have been extinguished by merger at the time of his acquisition, they shall revive in his favour or against him after he has been deprived of the mortgaged property.

Section 743. The transferee is liable to damages if the property has been made less valuable by his act or negligence, and loss has thereby been suffered by the creditors having mortgages or preferential rights over the same. The transferee cannot, however, claim any sum spent by him, or reimbursement of his expenses for improvements, except so far as he has increased the value of the property, and only up to the amount of the increase of value at the time of auction.

CHAPTER VI

EXTINCTION OF MORTGAGE

Section 744. A mortgage is extinguished:

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| (1) | By extinction of the obligation secured, otherwise than by prescription. |
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| (2) | By release of the mortgage granted in writing to the mortgagor |
| (3) | By the mortgagor being discharged. |
| (4) | By the mortgage being removed. |
| (5) | By action sale of the mortgaged property by order of the Court as a result of enforcement or removal of mortgage. |
| (6) | By foreclosure of the mortgage. |

Section 745. The mortgagee may enforce the mortgage even after the obligation secured has been barred by prescription, but arrears of interest on the mortgage cannot be enforced for more than five years.

Section 746. Any performance, either wholly or partly, or any extinction, or any agreement modifying the mortgage or the obligation secured, must be registered by the competent official on the request of the interested party, failing which it cannot be set up against a third person.

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TITLE XIII

PLEDGE

CHAPTER I

GENERAL PROVISIONS

Section 747. A pledge is a contract whereby a person, called the pledgor, delivers to another person, called the pledgee, a movable property as a security for the performance of an obligation.

Section 748. The pledge is a security for the performance of the obligation and for the following accessories:

- (1) Interest.
- (2) Compensation in case of non-performance of the obligation.
- (3) Costs of enforcement of the pledge.
- (4) Expenses for the preservation of the pledged property.
- (5) Compensation for injury caused by non-apparent defects of the pledged property.

Section 749. The parties to a pledge may agree that the pledged property shall be kept by a third person.

Section 750. If the pledged property is a right represented by a written instrument, the pledge is void unless such instrument is delivered to the pledgee and the pledgee is notified in writing to the debtor of the right.

Section 751. If an instrument to order is pledged, such pledge cannot be set up against third persons unless its creation is endorsed upon the instrument.

No notification to the debtor under such instrument is necessary.

Section 752. If an instrument issued to a named person and not transferable by indorsement is pledged, the pledge must be stated on such instrument, and cannot be set up against the debtor under such instrument or third persons, unless it is notified to such debtor.

Section 753. If a named certificate for share or debenture is pledged, such pledge cannot be set up against the company or other third person, unless the creation of the pledge is entered in the company's book in accordance with the provisions of Title XXII relating to the transfer of shares or debentures.

Section 754. If the pledged right becomes due before the obligation for which it is security is due, the debtor of such right must deliver to the pledge the property which is the subject of the right and it becomes pledged in lieu of the pledged right.

If the pledged right is an obligation to pay a sum of money and becomes due before the obligation secured, the payment must be made jointly to the pledge and pledgor; if they cannot come to an agreement, each of them is entitled to demand that such sum be deposited in Deposited Office for their common benefit.

Section 755. If a right is pledged, it cannot be extinguished or modified to the injury of the pledge without the consent of the pledgee.

Section 756. Before the obligation is due, any agreement that the pledge shall, in case of non-performance, become the owner of the pledged property or disposed of it

otherwise than in accordance with the provisions concerning Enforcement of Pledge, shall be invalid.

Section 757. The provisions of this Title XIII apply to contracts of pledge entered into with licensed pawnbrokers only in so far as they are not contrary to the Laws or Regulations concerning Pawnbrokers.

CHAPTER II

RIGHTS AND DUTIES OF PLEDGOR AND PLEDGEE

Section 758. The pledge is entitled to retain all the pledged property until he has received full performance of the obligation and accessories.

Section 759. The pledge is bound to keep the pledged property in safe custody and take as much care of it as a person of ordinary prudence would take of his own property.

Section 760. If, without the consent of the pledgor, the pledgee uses the pledged property or lets a third person have custody over it, he is liable for any loss or damage to the pledged property, even caused by *force majeure*, unless he proves that the loss or damage would have happened in any case.

Section 761. Unless otherwise provided by the contract, if the pledged property procures legal fruits, the pledgee shall appropriate them in payment of any interest that may be due to him, and, if no interest is due, in payment of the principal of the obligation secured.

Section 762. The pledgor is bound to reimburse the pledgee for any expenses which were necessary for the preservation or maintenance of the pledged property unless otherwise provided in the contract.

Section 763. The following actions cannot be entered later than six months after the return or sale by auction of the pledged property:

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|-----|---|
| (1) | An action for compensation for damage caused to the pledged property by the pledge. |
| (2) | An action for reimbursement of expenses incurred for the preservation or maintenance of the pledged property. |
| (3) | An action for compensation for injury caused to the pledge by non-apparent defects in the pledged property. |

CHAPTER III

ENFORCEMENT OF PLEDGE

Section 764. On enforcement of the pledge the pledgee must first notify the debtor in writing to perform the obligation and accessories within a reasonable time to be fixed in the notice.

The pledgee must notify the pledgor in writing of the time and place of the auction.

Section 765. If notification is impracticable, the pledge may sell the pledged property by public auction after one month from the time the obligation became due.

Section 766. The pledgee of a bill shall, without previous notification being necessary, collect it on the day of its maturity.

Section 767. On enforcement of the pledge the pledgee must appropriate the net proceeds to extinction of the obligation and accessories and must return the surplus to the pledgor or any person entitled to it.

If the proceeds are less than amount due, the debtor of the obligation remains liable for the difference.

Section 768. If several properties are pledged as security for one obligation, the pledgee may sell such of them as he may select, but he may not sell more than is necessary for the satisfaction of his right.

CHAPTER IV

EXTINCTION OF PLEDGE

Section 769. A pledge is extinguished:

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| (1) | When the obligation secured is extinguished otherwise than by prescription, or |
| (2) | When the pledgee allows the pledged property to return into the possession of the pledgor. |

TITLE XIV

WAREHOUSING

CHAPTER I

GENERAL PROVISIONS

Section 770. A warehouseman is a person who, in the usual course of his business, undertakes the storage and custody of goods for remuneration.....

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TITLE XV

AGENCY

CHAPTER I

GENERAL PROVISIONS

Section 797. Agency is a contract whereby a person, called the agent, has authority to act for another person, called the principal, and agrees so to act.

Agency may be express or implied.

Section 798. If a transaction is by law required to be made in writing, the appointment of an agent for such transaction must also be made in writing.

If the transaction is required to be evidenced by writing, the appointment of an agent for such transaction must also be evidenced by writing.

Section 799. The principal who employs an incapable person as an agent is bound by the act of that agent.

Section 800. The agent who has a special authority may do on behalf of his principal whatever is necessary for the due execution of the matters entrusted to him.

Section 801. The agent who has a general authority may do all acts of management on behalf of his principal.

He cannot do such acts as:

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| (1) | Selling or mortgaging immovable property. |
| (2) | Letting immovable property for more than three years. |
| (3) | Making a gift. |
| (4) | Making a compromise. |
| (5) | Entering an action in Court. |
| (6) | Submitting a dispute to arbitration. |

Section 802. In case of an emergency, the agent is presumed to have an authority to do, in order to protect his principal from loss, all such acts as would be done by a person of ordinary prudence.

Section 803. The agent is not entitled to receive remuneration unless it is provided by the contract, or may be implied from the course of dealing between the parties or by usage.

Section 804. If several agents have been appointed in one contract by the same principal for the same matters, it is presumed that they cannot act separately.

Section 805. An agent may not without his principal's consent enter into a juristic act in the name of his principal with himself in his own name, or as agent of a third party, unless the juristic act consists exclusively in the performance of an obligation.

Section 806. An undisclosed principal may declare himself and assume any contract entered into on his behalf. But the principal who allows his agent to act as a principal cannot prejudice the rights of the third person against the agent acquired before notice of agency.

CHAPTER II

DUTIES AND LIABILITIES OF THE AGENT TO THE PRINCIPAL

Section 807. The agent must act according to the express or implied directions of the principal. In the absence of such directions, he must pursue the accustomed course of business in which he is employed.

The provisions of Section 659 concerning Deposit apply *mutatis mutandis* .

Section 808. The agent must act personally, unless he has authority to act by subagent.

Section 809. If required by principal, the agent must at all reasonable times give information as to the conditions of the matter entrusted to him. He must render an account

after the agency has come to an end.

Section 810. The agent must hand over to the principal all the moneys and other properties which he receives in connection with the agency.

Section 811. If the agent has used for his own benefit money which ought to have handed over to the principal or to have used for the principal, he must pay interest thereon from the day when he used it for his own benefit.

Section 812. The agent is liable for any injury resulting from his negligence or non-execution of agency, or from an act done without or in excess of authority.

Section 813. The agent who appoints a subagent designated by the principal is liable only in case he knew his unfitness or untrustworthiness and omitted to inform the principal thereof or to revoke the subagency.

Section 814. The subagent is directly liable to the principal and *vice versa*.

CHAPTER III

DUTIES AND LIABILITIES OF THE PRINCIPAL TO THE AGENT

Section 815. The principal must, if so required, advance to the agent such sums as are necessary for the execution of the matters entrusted to him.

Section 816. If the agent in executing the matters entrusted to him has made advances or expenses which could reasonably be regarded as necessary, he may claim from

the principal reimbursement with interest from the day when they were made.

If the agent in executing the matters entrusted to him has assumed an obligation which could reasonably be regarded as necessary, he may require the principal to perform in his place or if the time of its maturity has not yet arrived, to give proper security.

If the agent by reason of the execution of the matters entrusted to him has suffered damage without fault on his part he may claim compensation from the principal.

Section 817. In case remuneration is to be paid, it is payable, unless otherwise agreed, only after the agency has come to an end.

Section 818. The agent is not entitled to remuneration in respect of that part of his agency which he has misconducted.

Section 819. The agent is entitled to retain any property of the principal in his possession by reason of agency until he has been paid all that is due to him on account of agency.

CHAPTER IV

LIABILITY OF PRINCIPAL AND AGENT TO THIRD PERSONS

Section 820. The principal is bound to third persons by the acts which the agent or the subagent has done within the scope of his authority by virtue of his agency.

Section 821. A person who holds out another person as his agent or knowingly allows another person to hold himself out as his agent, is liable to third persons in good faith in the same way as such person was his agent.

Section 822. If an agent does an act in excess of his authority, but the third person has reasonable grounds, arising from the act of the principal, to believe that it was within his authority, the provisions of the foregoing section apply correspondingly.

Section 823. If an agent does an act without authority or beyond the scope of his authority, such act does not bind the principal unless he ratifies it.

If the principal does not ratify, the agent is personally liable to third persons, unless he proves that such third persons knew he was acting without authority or beyond the scope of the authority.

Section 824. An agent who makes a contract on behalf of a principal who is, and has his domicile, in a foreign country is personally liable on the contract although the name of the principal has been disclosed, unless the terms of the contract are inconsistent with his liability.

Section 825. A principal is not bound by a contract entered into by his agent with a third person, if the contract was entered into by the agent in consideration of any property or other advantage privately given or promised to him by such third person, unless the principal has given his consent.

EXTINCTION OF AGENCY

Section 826. Agency is extinguished by the principal revoking or by the agent renouncing the agency.

It is also extinguished when either party dies or becomes incapacitated or bankrupt, unless the contrary appears from the terms of the agreement or the nature of the business.

Section 827. The principal may revoke the authority and the agent may renounce the agency at any time.

Except in case of unavoidable necessity, the party who revokes or renounces the agency at a time which is inconvenient to the other party is liable to such party for any injury resulting therefrom.

Section 828. When agency is extinguished by the death of the principal or by the principal becoming incapacitated or bankrupt, the agent must take all reasonable steps to protect the interest entrusted to him until the heirs or representatives of the principal can protect such interest.

Section 829. When agency is extinguished by the death of the agent or the agent becoming incapacitated or bankrupt, the heir or the person having lawful charge of the agent's estate must notify the principal and take steps to protect the interest of the principal as may be reasonable under the circumstances until the principal can protect such interest.

Section 830. The causes for extinction of agency, whether arising from the principal or agent, cannot be set up against the other party, until they have been notified to the other

party or the latter has knowledge of them.

Section 831. The extinction of agency cannot be set up against a third person acting in good faith, unless the third person is ignorant of the fact through his own negligence.

Section 832. On extinction of agency, the principal is entitled to demand the surrender of any written authority given to the agent.

CHAPTER VI

COMMISSION AGENCY

Section 833. A commission agent is a person who, in the course of his business undertakes to buy sell property or undertakes any other commercial transaction in his own name on account of the principal.

Section 834. Unless otherwise agreed, a commission agent is entitled to a usual rate of remuneration on every transaction concluded by him.

Section 835. The provisions of this Code concerning Agency apply to Commission Agency in so far as they are not contrary to the provisions of this Chapter.

Section 836. An incapacitated person cannot act as commission agent unless duly authorized to that effect.

Section 837. The commission agent, by a sale or purchase or any other transaction made on account of the principal, acquires rights against the other party to such transaction and becomes bound to him.

Section 838. If the other party to the transaction does not perform his obligation, the commission agent is not himself liable to the principal for the performance unless it is provided by the contract, or may be implied from the course of dealing between the principal an agent, or by local usage.

The commission agent who undertakes to guarantee the execution of a contract upon the terms mentioned in the foregoing paragraph is a *del credere* agent and is entitled to a special remuneration.

Section 839. When a commission agent has made a sale for a lower price or a purchase for a higher price than that designated by the principal, if the agent takes upon himself the difference, such sale or purchase takes effect against the principal.

Section 840. When a commission agent has made a sale for a higher price or purchase for a lower price than that designated by the principal, he cannot take the benefit on such transaction and must account it to the principal.

Section 841. The commission agent shall report his activities to the principal, and upon execution of the commission, shall inform the principal without delay.

Section 842. Where a property has been entrusted to a commission agent the provisions of this Code concerning Deposit apply mutatis mutandis.

In case of unavoidable necessity the commission agent may dispose of the property in a manner provided in Section 631 concerning Carriage.

Section 843. A commission agent who has been ordered to sell or buy a property which has an exchange quotation may himself be the buyer or seller, unless he is expressly forbidden by the contract. In such a case the price to be paid is determined by the quotation of such property on the exchange at the time when the commission agent gives notice of his being the buyer or seller.

On receiving such notice the principal is deemed to have accepted the transaction, unless he refuses it at once.

A commission agent may even in such case charge remuneration.

Section 844. Between the principal and the commission agent, a transaction concluded by the latter shall have the same effect as if it had been concluded directly in the name of the principal.

TITLE XVI

BROKERAGE

Section 845. A person who agrees to pay remuneration to a broker for indicating the opportunity for the conclusion of a contract, or for procuring a contract, is liable to pay the remuneration only if the contract is concluded in consequence of the indication or of the procurement by the broker. If the contract is concluded subject to a condition precedent, the broker's remuneration may not be claimed until the condition is fulfilled.

The broker is entitled to be reimbursed for expenses incurred only if it has been agreed upon. This applies even if a contract is not concluded.

Section 846. A broker's remuneration is deemed to have been impliedly agreed upon, if the business entrusted to the broker is, under the circumstances, only to be expected for remuneration.

If the amount of the remuneration is not fixed, the usual remuneration is deemed to have been agreed upon.

Section 847. A broker is not entitled to remuneration or to reimbursement of his expenses if, contrary to his engagement, he has acted also for the third party or has been promised by such third party a remuneration which is not consistent with the broker acting in good faith.

Section 848. A broker is not personally liable for the performance of the contracts entered into through his mediation, unless he has not communicated the name of a party to the other party.

Section 849. A broker is presumed to have no authority to receive on behalf of the parties payments or other performances due under the contract.

TITLE XVII

COMPROMISE

Section 850. A compromise is a contract whereby the parties settle a dispute, whether actual or contemplated by mutual concessions.

Section 851. A contract of compromise is not enforceable by action unless there be some written evidence signed by the party liable or his agent.

Section 852. The effect of the compromise is to extinguish the claims abandoned by each party and to secure to each party the rights which are declared to belong to him.

TITLE XVIII

GAMBLING AND BETTING

Section 853. No obligation is created by gambling or betting. What has been given by reason of the gambling or betting may not be demanded back on the ground that no obligation existed.

These provisions apply also to an agreement whereby the losing party, for the purpose of satisfying a gambling debt or a bet, incurs an obligation towards the other party.

Section 854. A lottery contract or a raffle contract is binding if the lottery or the raffle is specially authorized or ratified by the Government. In all other cases the provisions of Section shall apply.

Section 855. Subject to the provisions of Sections 312 and 916, every bill or other given in whole or in part for any money won by gambling or betting, or for repaying money lent for such gambling or betting shall be invalid.

For the purpose of this provision, any money lent to a person while gambling or betting the time or place of such play shall be presumed to have been lent for such gambling or betting.

Section 917. Every bill of exchange, even if not expressly drawn to order, may be transferred by means of an indorsement and delivery.

When the drawer has written on the face of a bill of exchange the words 'not negotiable' or any equivalent expression, the bill can be transferred only according to the form, and with the effects of an ordinary transfer.

The bill may be endorsed to the drawee, whether he has accepted or not, or the drawer, or to any other party to the bill. These persons may indorse the bill afresh.

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TITLE XXII

PARTNERSHIPS AND COMPANIES

CHAPTER I

GENERAL PROVISIONS

Section 1012. A contract for the organization of a partnership or company is a contract whereby two or more persons agree to unite for a common undertaking, with a view of sharing profit the profits which may be derived therefrom.

Section 1013. There are three kinds of partnerships or companies, that is to say:

1. Ordinary partnerships
2. Limited partnerships
3. Limited companies

Section 1014. Offices for the registration of partnerships and companies shall be established by regulations issued by the Minister responsible for the registration of partnerships and companies.

Section 1015. A partnership or company, upon registration being made according to the provisions of this Title, continues a juristic person distinct from the partners or shareholders of whom it is composed.

Section 1016. The registration must be made at the Registration Office of that part of the kingdom where the principal business office of the partnership or company is situated.

Any alterations subsequently made in the registered particulars, as well as any other matters ordered or allowed to be registered by this Title must be registered at the same place.

Section 1017. If a fact to be registered or published happens in a foreign country, the period for its registration or publication shall be computed from the time when notice thereof arrives at the place of registration or publication.

Section 1018. There shall be paid in respect of registration such fees as may be provided by the regulations issued by the competent Minister.

Section 1019. If an applicant for registration or a document subject to registration does not contain all the particulars required by this Title to be mentioned in it, or if any of the particulars mentioned in such application or document are contrary to law, or if any of the documents prescribed to be deposited with it are not produced , or if any other condition imposed by law is not complied with, the Registrar may decline to make any entry in his register till the application or documents has been completed or modified or till the prescribed documents are produced, or till the condition is fulfilled.

Section 1020. Every person is entitled to inspect the documents kept by the Registrar, or to require a certificate of the registration of any partnership or company, or a certified copy or extract of any other document, to be delivered to him by the Registrar, on payment of such fee as may be prescribed by the regulations issued by the competent Minister.

Section 1021. Every Registrar shall cause to be published periodically in the Government Gazette, in the form provided by the competent Minister, a summary of the entries made in his register.

Section 1022. On such publication being made, the registered documents or matters referred to in the summary shall be deemed to be known to all persons whether connected with the partnership or company or not

Section 1023. Until such publication has been made, no advantage may be taken by the partners, the partnership or the company against third persons of the existence of the

agreements, documents or particulars required by this Title to be registered, but third persons may take advantage of such existence.

However, the partners or shareholders who, and the partnership or company which has, before such publication, received performance of an obligation is ,

Section 1024. As between the partners of shareholders , the partners and the partnership, the shareholders and the company, all books, accounts and documents of any partnership or company or of the liquidators of any partnership or company are presumed to be correct evidence of all matters therein recorded.

CHAPTER II

ORDINARY PARTNERSHIPS

PART I

Definition

Section 1025. The ordinary partnership is that kind of partnership in which all the partners are jointly and unlimitedly liable for all the obligations of the partnership.

PART II

Relation of Partners between Themselves

Section 1026. Each partner must bring a contribution to the partnership.

Such contribution may consist of money or other properties or of service.

Section 1027. In case of doubt, contributions are presumed to be of equal value.

Section 1028. If the contribution of the partner consist merely of his personal service and the contract of partnership does not fix the value of such services, the share of such partner in the profits is equivalent to the average of the shares of the partners whose contributions are in money or other properties.

Section 1029. If a partner brings as contribution the use of a property, relations between such partners and the partnership with regard to;

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| • delivery and repair, | |
| • liability for defects , | |
| • liability for eviction, | |
| • clause of non-liability, | |

are governed by the provisions of this Code concerning the Hire of Property.

Section 1030. If the contribution of a partner consist of the ownership of a property, the relations between such partners and partnership with regard to:

| | |
|-----------------------------|--|
| • delivery and repair, | |
| • liability for defects, | |
| • liability for eviction , | |
| • clause for non-liability, | |

are governed by the provisions of this Code concerning Sale

Section 1031. If a partner wholly fails to deliver his contribution, a written notice must be given him by a registered letter to deliver it within a reasonable time, failing which he may be excluded from the partnership by a decision of all the other partners, or of such majority as provided in the contract.

Section 1032. No change in the original partnership or in the nature of the business may be made except by the consent of all the partners, unless the be an agreement

providing otherwise.

Section 1033. If nothing has been agreed between the partners as to the management of the business of the partnership, such business may be managed by each of the partners, provided that no partner may enter into a contract to which another partner objects.

In such case, each partner is the managing partner.

Section 1034. If it is agreed that matters relating to the business of the partnership shall be decided by a majority of partners, each partner shall have one vote, irrespective the amount of his contribution.

Section 1035. If it is agreed that the business of the partnership shall be managed by several managing partners, such business may be managed by each of the managing partners, provided that no managing partner may do anything to which another managing partner objects.

Section 1036. Managing partners may be removed from their position only by the consent of all the other partners, unless there be an agreement providing otherwise.

Section 1037. Even if partners have agreed that the business of the partnership shall be managed by one or more managing partners, each non-managing partner has the right to enquire at any time into the management of the business and to inspect and copy any of the partnerships books and documents.

Section 1038. No partner may either on his own account or on account of another person carry on, without the consent of the other partners, any business of the same nature as and competing with that of the partnership.

If a partner acts contrary to the provisions of this section, the other partners are entitled to claim from him all the profits which he has made or compensation for the injury which the partnership has suffered thereby, but such claim cannot be entered later than one year after the date of contravention.

Section 1039. A partner is bound to manage the business of the partnership with as much care as he would take of his own business.

Section 1040. No person may be introduced as partner in the partnership without the consent of all partners, unless there be an agreement providing otherwise.

Section 1041. If a partner, without the consent of the other partners, transfers to a third person the whole or part of his share in the profits of the partnership, such third person does not become partner.

Section 1042. The relations of the managing partners with the other partners are governed by the provisions of this Code concerning Agency.

Section 1043. If a non-managing partner manages the business of the partnership or a managing partner acts beyond the scope of his authority, the provisions of this

Code concerning Management of Affairs (</law-texts/thailand-civil-code-part-1.html#394>), without Mandate shall apply.

Section 1044. The share of each partner in the profits or losses is in proportion to his contribution.

Section 1045. If the share of a partner is fixed only as to profits or only as to losses, the proportion is presumed to be the same for profits and losses.

Section 1046. No partner is entitled to remuneration for having managed the business of the partnership, unless there be an agreement providing otherwise.

Section 1047. If the name of a partner whose membership has ceased is used in the firm name, he is entitled to demand that such use shall cease.

Section 1048. A partner may claim from the other partners a share even in a transaction where his own name did not appear.

PART III

Relation of Partners with Third Persons

Section 1049. No partner can acquire any right against third persons by a transaction where his own name did not appear.

Section 1150. All the partners are bound by the acts done by any of them in the ordinary course of the business of the partnership and are jointly and unlimitedly liable for the

performance of the obligations incurred in such management.

Section 1151. A partner whose membership has ceased continues to be liable in respect of obligations incurred by the partnership before he became a partner.

Section 1152. A person who becomes member of a partnership is liable for any obligations incurred by the partnership before he became a partner.

Section 1153. No restrictions of the power of a member of a non-registered partnership to bind the other partners can have effect with respect to third persons.

Section 1054. A person who by words spoken or written, or by conduct, or by consenting to the use of his name in the firm name of the partnership, represents himself, or who knowingly suffers himself to be represented as a member of a partnership becomes liable to third persons as a partner for all the obligations of the partnership.

If after the death of a partner the partnership business is continued in the old firm name, the continued use of that name or of the deceased partner, as part thereof, does not in itself make his estate liable for any obligations incurred by the partnership after his death.

PART IV

Dissolution and Liquidation of Ordinary Partnerships

Section 1055. An ordinary partnership is dissolved:

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|-----|---|
| (1) | In the cases, if any, provided by the contract of partnership . |
| (2) | If made for a definite period of time, by the expiration of such period. |
| (3) | If made for a single undertaking, by the termination of such undertaking. |
| (4) | By any of the partners giving to the other partners due notice as provided by section 1056. |
| (5) | By the death of any partner or by any partner becoming bankrupt or incapacitated. |

Section 1056. If a partnership is entered upon for any indefinite period, it can only be terminated by a partner at the end of a financial year of the partnership; and such partner must give at least six month's notice of his intention to terminate.

Section 1057. An ordinary partnership may also be dissolved by the Court on application by a partner in any of the following cases:

| | |
|-----|---|
| (1) | When a partner, other than the partner suing willfully or by gross negligence violates any essential obligation imposed upon him by the partnership contract. |
| (2) | When the business of the partnership can only be carried on at a loss and there is no prospect of its fortunes being retrieved. |

- | | |
|-----|---|
| (3) | When there is any other cause making the continuance of the partnership an impossibility. |
|-----|---|

Section 1058. Upon the occurrence of any event connected with one partner which according to Section 1057 or Section 1067 entitles the remaining partners to demand the dissolution of the partnership, the Court may upon the application of the remaining partners instead of such dissolution order the expulsion of the partner in question.

For the purpose of the division of property between the partnership and the expelled partner, the partnership property must be assessed and valued at which it stood at the time when the application for the expulsion was first made.

Section 1059. If at the expiration of the period agreed upon, the business of the partnership is continued by the partners or by such of them as habitually managed it during the said period, without any settlement or liquidation accounts, the partners are deemed to have agreed to continue the partnership for an indefinite period of time.

Section 1060. In any case under Section 1055, sub-section (4) or (5), if the subsisting partners buy the share of the partner whose membership has ceased, the contract of partnership continues between the subsisting partners.

Section 1061. After the dissolution of a partnership the liquidation shall take place, unless some other method of adjustment of property between the partners has been agreed upon or unless the partnership is adjudicated bankrupt.

If the dissolution is brought about by notice given by a creditor of one of the partners or by the bankruptcy of one of the partners, the liquidation can only be dispensed with the consent of the creditor or of the official receiver.

Liquidation shall be carried on by all the partners or by persons appointed by them.

The appointment of liquidators is decided by a majority of votes of the partners.

Section 1062. The liquidation must be made in the following order:

| | |
|-----|---|
| (1) | Performance of the obligation incurred towards third persons . |
| (2) | Reimbursement of advances made and expenses incurred by the partners in managing the business of the partnership. |
| (3) | Return of the contributions made by each partners. |

The balance, if any, must be distributed as profit between the partners.

Section 1063. If, after the performance of the obligations incurred towards third persons and reimbursement of advances and expenses, the assets are insufficient to return the whole amount of contributions to the partners, the deficiency constitutes a loss and must be divided as such.

PART V

Registration of Ordinary Partnership

Section 1064. An ordinary partnership may be registered.

The entry in the register must contain the following particulars:

| | |
|-----|---|
| (1) | The firm name of the partnership . |
| (2) | Its object. |
| (3) | The address of the principal business office and of all branch offices. |
| (4) | The full names, addresses and occupations of every partner: if a partner has a trade name the entry in the register must contain his name and his trade name. |
| (5) | The names of the managing partners, in case fewer than all of the partners have been appointed as such. |
| (6) | The restrictions, if any, imposed upon the powers of the managing partners. |
| (7) | The seal or seals which are binding on the partnership. |

The entry may contain any other particulars which the parties may deem expedient to make known to the public.

The entry must be signed by every member of the partnership, and must also be sealed with the common seal of the partnership.

A certificate of registration shall be delivered to the partnership.

Section 1064/1. A managing partner of a registered partnership who wishes to resign from his post shall tender his tender his resignation letter to any other managing partner. The resignation in writing shall take effect from the date the registration letter reaches the said other managing partner.

In the case where a registered partnership has only one managing partner, the managing partner who wishes to resign from his post shall notify any other partner of his intention in writing, together with the letter of resignation, so that a meeting could be held with a view to appoint a new managing partner. The resignation shall take effect from the date the resignation reaches the said partner.

The managing partner who resigns under paragraph one or paragraph two hereof may notify the Registrar of his resignation.

Section 1064/2. When there is a change of managing partner, the registered partnership shall effect the registration thereof within fourteen days from the date of such a change.

Section 1065. A partner can take advantage against third persons of any right acquired by the registered partnership, even though his name did not appear in the transaction.

Section 1066. No partner of a registered partnership may, either on his own account or on account of another person, carry on without the consent of all the other partners any

business of the same nature as and competing with that of the partnership or without such consent be member with unlimited liability in another partnership carrying on a business of the same nature as and competing with that of the registered partnership.

Such prohibition does not apply if it was already known to the partners at the time of registration of the partnership that one of them was engaged in a business or in other partnership having the same object, and if his withdrawal was not stipulated in the contract of partnership.

Section 1067. If a partner acts contrary to the provisions of the foregoing section, the registered partnership is entitled to claim from him all the profits which he had made or compensation for the injury which the registered partnership has suffered thereby.

Such claim cannot be entered later than one year after the date of contravention.

The provisions of this section are without prejudice to the rights of the remaining partners to demand the dissolution of the partnership.

Section 1068. The liability of a partner in a partnership in respect to obligations incurred by the partnership before he ceased to be a member of such partnership, is limited to a period of two years after the ceased to be a member.

Section 1069. In addition to the cases provided by Section 1055, a registered partnership is dissolved if it becomes bankrupt.

Section 1070. The creditor of an obligation due by a registered partnership is entitled, as soon as the partnership is in default, to demand performance of the obligation from any of the partners.

Section 1071. In the case provide by Section 1070, if the partner proves:

| | |
|-----|---|
| (1) | That the assets of the partnership are sufficient to perform the whole or part of the obligation, and |
| (2) | That enforcement against the partnership would not be difficult. |

The Court may, in its discretion, order that the obligation be enforced first against the assets of the partnership.

Section 1072. As long as a registered partnership is not dissolved the creditors of a partner may exercise their rights only on the profits or other sums due by the partnership to such partner. After dissolution they may exercise their rights on the share of such partner in the assets of the partnership.

PART VI

Amalgamation of Registered Partnerships

Section 1073. A registered partnership may amalgamate with another registered partnership with the consent of all the partners, unless there be an agreement providing otherwise.

Section 1074. When a registered partnership has decided to amalgamate, the partnership must publish twice at least in a local paper and send to all creditors known to the partnership a notice of the proposed amalgamation requiring the creditors to present within three months from the date of notice any objection the may have to it.

If no objection is raised during such period, non is deemed to exist.

If an objection is raised, the partnership may not proceed with the amalgamation unless it has satisfied the claim given a security for it.

Section 1075. When the amalgamation has been made it shall be the duty of each of the partnership to cause the amalgamation to be registered as a new partnership.

Section 1076. The new partnership is entitled to the rights and subject to the liabilities of the amalgamated partnership.

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CHAPTER III

LIMITED PARTNERSHIPS

Section 1077. A limited partnership is that kind of partnership in which there are:

| | |
|-----|---|
| (1) | One or more partners whose liability is limited to such amount as they may respectively undertake to contribute to the partnership. |
|-----|---|

| | |
|-----|---|
| (2) | One or more partners who are jointly and unlimitedly liable for all the obligations of the partnership. |
|-----|---|

Section 1078. A limited partnership must be registered.

The entry in the register must contain the following particulars:

| | |
|-----|---|
| (1) | The firm name of the partnership |
| (2) | A statement that the partnership is a limited partnership, and the object of such partnership. |
| (3) | The address of the principal business office and of all branch offices. |
| (4) | The full names, trade names, addresses and occupations of the partners with limited liability, and the amount of their respective contributions of the partnership. |
| (5) | The full names, trade names, addresses and occupations of the partners with unlimited liability. |
| (6) | The names of the managing partners. |
| (7) | The restrictions, if any, imposed upon the posers of the managing partners to bind the partnership. |

The entry may contain any other particulars which the parties may deem expedient to made known to the public.

The entry must be signed by every member of the partnership, and must also be sealed with the common seal of the partnership.

A certificate of registration shall be delivered to the partnership.

Section 1078/1. A managing partner who wishes to resign from his post shall tender his resignation letter to any managing partner. The resignation shall take effect from the date the resignation letter reaches the said partner.

In the case where the limited partnership has only one managing partner, who wishes to resign from his post shall notify any other partner of his intention in writing, together with the letter of resignation, so that a meeting could be held with a view to appointing a new managing partner. The resignation shall take effect from the date the resignation letter reaches the said partner.

The managing partner who has resigned under paragraph one or paragraph two hereof may notify the Registrar of his resignation.

Section 1078/2. When there is a change of the managing partner, the limited partnership shall effect the registration thereof within fourteen days from the date of such a change.

Section 1079. Until registration a limited partnership is deemed an ordinary partnership in which all the partners are jointly and unlimitedly liable for all the obligations of the partnership.

Section 1080. The provisions concerning Ordinary Partnerships apply to Limited Partnerships in so far as they are not excluded or modified by the provisions of this Chapter III.

If there are several partnerships with unlimited liability, the rules of the ordinary partnership apply to their relations to one another and to the partnership.

Section 1081. The firm name shall not contain any of the names of the partners with limited liability.

Section 1082. A partner with limited liability who expressly or impliedly consents to the use of his name in the firm name is liable to third persons in the same manner as if he was a partner with unlimited liability.

As between the partners themselves, the liability of such partner remains governed by the contact of partnership.

Section 1083. The contributors of the partners with limited liability must be in money or other properties.

Section 1084. No dividend or interest may be distributed to partners with limited liability except out of the profits made by the partnerships.

If the capital of the partnership has been reduced by losses, no dividend or interest may be distributed to partners with limited liability until the said losses have been made good.

Provided that a partner with limited liability cannot be obliged to return the dividend or interest which he has received in good faith.

Section 1085. If a partner with limited liability has, by letter, circular or otherwise, informed third persons that his contribution is greater than the registered amount, he becomes liable for such greater amount.

Section 1086. Agreements entered into between the partners for altering the nature or reducing the amount of the contribution of a partner with limited liability have no effect as regards to third persons until registered.

When registered, they have effect only as to obligations incurred by the partnership after their registration.

Section 1087. A limited partnership must be managed only by the partners with unlimited liability.

Section 1088. If a partner with limited liability interferes with the management of the partnership, he becomes jointly and unlimited liable for all the obligations of the partnership.

Options and advice, votes given for the appointment or dismissal of managers in cases provided by the contract of partnership, are not considered as interference with the management of the partnership.

Section 1089. A partner with limited liability may be appointed a liquidator of the partnership.

Section 1090. Partners with limited liability may carry on any business, either on their own account or on the account of third persons, even if such business is of the same nature as that of the partnership.

Section 1091. Partners with limited liability may transfer their shares without the consent of the other partners.

Section 1092. Unless otherwise provided by the contract, a limited partnership is not dissolved by the death of one of the partners with limited liability or by his becoming bankrupt or incapacitated.

Section 1093. If a partner with limited liability dies, his heirs become partners in place, unless otherwise provided by the contract.

Section 1094. If a partner with limited liability becomes bankrupt, his share in the partnership must be sold as an asset of the bankruptcy.

Section 1095. The creditors of a limited partnership have no action against the partners with limited liability as long as the partnership is not dissolved.

After the dissolution of the partnership, the can enter actions against every partner with limited liability up to the following amounts:

| | |
|-----|--|
| (1) | The part of contributions of such partner which has not been delivered to the partnership. |
| (2) | Such part of the contribution as the partner may have withdraw from the asset of the partnership. |
| (3) | Dividends and interest with the partner may have received in bad faith and contrary to the provisions of Section <u>1084</u> . |

CHAPTER IV

LIMITED COMPANIES

PART I

Nature and Formation of Limited Companies

Section 1096. A limited company is that kind of which is formed with the Capital divided into shares, and the liability of the shareholders is limited to the amount, if any, unpaid on the shares respectively held by them.

Section 1096 bis. *(Repealed)*

Section 1097. Any **three** or more persons may, by subscribing their names to a memorandum and otherwise complying with the provisions of this Code, promote and form a limited company.

Section 1098. The memorandum must contain the following particulars:

- (1) The name of the proposed company, which must always end with the word "limited".
- (2) The part of the Kingdom in which the registered office of the company shall be situated.
- (3) The objects of the company.

(4) A declaration that the liability of the shareholders shall be limited

(5) The amount of share capital with which the company proposes to be registered, and the divisions thereof into shares of a fixed amount.

(6) The names, addresses, occupations and signatures of the promoters, and the number of shares subscribed by each of them.

Section 1099. The memorandum must be made in two original copies at least and signed by the promoters, and the signatures shall be certified by two witnesses.

One of the copies of the memorandum must be deposited and registered at the Registration Office of that part of the Kingdom in which the registered office of the company is declared to be situated.

Section 1100. Every promoter must subscribe at least one share.

Section 1101. The liability of the directors of a limited company may be unlimited.

In such case, a statement to that effect must be inserted in the memorandum.

The unlimited liability of a director terminates at the expiration of two years after the date at which he ceased to hold office.

Section 1102. No invitation to subscribe for shares shall be made to the public.

Section 1103. *(Repealed)*

Section 1104. The whole number of shares with which the company proposes to be registered must be subscribed or allotted before registration of the company.

Section 1105. Shares may not be issued at a lower price than their nominal amount.

The issue of shares at a higher price than their nominal amount is permissible, if sanctioned by the memorandum. In such case the excess amount must be paid together with the first payment.

The first payment on the shares must not be less than twenty-five per cent of their nominal amount.

Section 1106. A person by subscribing for shares bind himself, on condition that the company be formed, to pay to the company the amount of such shares in conformity with the prospectus and regulations.

Section 1107. When all the shares to be paid in money have been subscribed, the promoters must without delay hold a general meeting of subscribers which shall be called the statutory meeting.

The promoters shall, at least seven days before the day on which the meeting is to be held, forward to every subscriber a statutory report, duly certified by them, containing the particulars of the business to be transacted at the statutory meeting under the following section.

The promoters shall cause a copy of the statutory report, certified as by this section required , to be filed with the Registrar of companies forthwith after sending thereof to the subscribers.

The promoters shall also cause a list showing the names, descriptions and addresses of the subscribers, and the number of shares subscribed by them respectively, to be produced at the meeting.

The provisions of Section 1176, 1187, 1188, 1189, 1191, 1192 and 1195 shall apply *mutatis mutandis* to statutory meeting.

Section 1108. The business to be transacted at the statutory meeting:

- (1) The adoption of the regulations of the company, if any.
- (2) The ratification of any contracts entered into and any expenses incurred by the promoters in promoting the company.
- (3) The fixing of the amount, if any, to be paid to the promoters.
- (4) The fixing of the number of preference shares, if any, to be issued, and the nature and extent of the preferential rights accruing to them.
- (5) The fixing of the number of ordinary shares or preference shares to be allotted as fully or partly paid-up otherwise than in money, if any, and the amount up to which they shall be considered as paid-up.

The description of the service or property in return for which such ordinary shares or preference shares shall be allotted as paid-up shall be expressly laid down before the meeting.

(6) The appointment of the first directors and auditors and the fixing of their respective powers.

Section 1109. A promoter or a subscriber who has a special interest in a resolution cannot exercise the right of voting.

No resolution of the statutory meeting are valid unless passed by a majority including at least one half of the total number of subscribers entitled to vote, and representing at least one half of the total number of shares of such subscribers.

Section 1110. After the statutory meeting is held, the promoters shall hand over the business to the directors.

The directors shall thereupon cause the promoters and subscribers to pay forthwith upon each share payable in money such amount, not less than twenty-five per cent, as provided by the prospectus, notice, advertisement or invitation.

Section 1111. When the amount mentioned in Section 1110 has been paid, the directors must apply for the registration of the company.

The application and entry in the register must contain, in conformity with the decisions of the statutory meeting, the following particulars:

1. The total number of shares subscribed or allotted, distinguishing ordinary shares and preference shares.
2. The number of ordinary shares or preference shares allotted as fully or partly paid-up otherwise than in money, and in the latter case, the extent to which they are so paid up.
3. The amount already paid in money on each share.
4. The total amount of money received in respect of shares.
5. The names, occupations and addresses of the directors.
6. If the directors have power to act separately, their respective powers and the number or names of the directors whose signature is binding on the company.
7. The period, if any has been fixed, for which the company is formed.
8. The address of the principal of business office and of all branch offices.

The entry may contain any other particulars which the directors may deem expedient to make to the public. The application must be accompanied by the copy of the regulations, if any, and of the proceedings of the statutory meeting, both certified by the signature of at least one director. The directors must at the same time deposit with the Registration Office ten printed copies of the memorandum and of the regulations, if any, of the company.

A certificate of registration shall be delivered to the company.

Sections 1111/1 In forming a company, the directors may, upon completing all the following steps on the day the memorandum of association is made by the promoters; apply for registration of the memorandum of association and registration of the company on the same day.

1. Have all shares to be registered by the company subscribed;
2. Hold a statutory meeting to consider the business as provided in Section 1108, the meeting being attended by all promoters and subscribers and the business to be transacted at the meeting being approved by all promoters and subscribers;
3. Have the promoters hand over the business to the directors; and
4. Have the directors cause the subscribers to pay the amount for each share as provided in Section 1110 paragraph two and the amount is actually paid.

Section 1112. If registration does not take place within three months after the statutory meeting, the company is not formed, and all the money received from the applicants must be repaid without deduction.

If any such money has not been so repaid within three months after the statutory meeting, the directors of the company are jointly liable to repay that money with interest from the expiration of the three months.

Provided that a director shall not be liable for repayment of interest if he proves that the loss of money or delay was not due to his fault.

Section 1113. The promoters of the company are jointly and unlimitedly liable for all obligations and disbursement not approved by the statutory meeting; even if approved they remain so liable until the registration of the company.

Section 1114. After a company is registered, a subscriber of shares cannot enter a claim for cancellation by the Court of his subscription on the ground of, mistake, duress or fraud.

Section 1115. If the name inserted in a memorandum is identical with the name of an existing registered company or with the name inserted in a registered memorandum, or so nearly resembling the same as to be likely to deceive the public, any interested person can enter a claim for compensation against the promoters of the company and can ask for an order from the Court that the name be changed.

Upon such order being made, the new name must be registered in the place of the former name and the certificate of registration must be altered accordingly.

Section 1116. Any interested person is entitled to obtain from any company a copy of its memorandum and registration, for which a sum not exceeding one baht per copy may be charged by the company.

PART II

Shares and Shareholders

Section 1117. The amount of a share may not be less than five baht.

Section 1118. Shares are indivisible.

If a share is held by two or more persons in common, they must appoint one of them to exercise their rights as shareholders.

Persons holding a share in common are jointly liable to the company for payment of the amount of the share.

Section 1119. The whole amount of every share must be paid in money, except shares allotted under Section 1108 sub-section 5, or under Section 1221.

A shareholder cannot avail himself of a set-off against the company as to payments on shares.

Section 1120. Unless otherwise decided by a general meeting, the directors may make calls upon the shareholders in respect of all money being due on their shares.

Section 1121. Twenty-one days notice at least must be given by registered letter of each call and each shareholder must pay the amount of such call to the person and at the time and place fixed by the directors.

Section 1122. If the call payable in respect of any share has not been paid on the day fixed for payment thereof, the holder of such share is bound to pay interest from the day fixed for payment to the time of the actual payment.

Section 1123. If a shareholder fails to pay a call on the day fixed for payment thereof, the directors may give him notice by registered letter to pay such call with interest.

The notice must fix a reasonable time within which such call and interest must be paid.

It must also fix the place where payment must be made. The notice may also state that in the case of non-payment the share in respect of which such call was made may be forfeited.

Section 1124. If a statement as to forfeiture has been made in the notice the directors may, as long as the call and interest remain unpaid, declare the shares to be forfeited.

Section 1125. Shares forfeited must be sold without delay by public auction. The proceeds must be applied to the payment of the call and interest due. The surplus, if any must be returned to the shareholder.

Section 1126. The title of the purchaser of the forfeited share is not affected by any irregularity in the proceedings of such forfeiture and sale.

Section 1127. A certificate or certificates shall be delivered to each shareholder for the shares held by him.

The delivery of a certificate may be subject to the payment of such fee, not exceeding fifty satang, as the directors may decide.

Section 1128. Every certificate of shares shall be signed by one of the directors at least, and shall bear the seal of the company.

It must contain the following particulars:

| | |
|-----|---|
| (1) | The name of the company. |
| (2) | The numbers of the shares to which it applies. |
| (3) | The amount of each share. |
| (4) | In the case the shares are not fully paid up, the amount paid on each share. |
| (5) | The name of the shareholder or a statement that the certificate is to bearer. |

Section 1129. Shares are transferable without the assets of the company unless, in case of shares entered in a name certificate, it is otherwise provided in the regulations of the company

The transfer of shares entered in a name certificate is void unless made in writing and signed by the transferor and the transferee whose signatures shall be certified by one witness at least.

Such transfer is invalid as against the company and third person until the fact of the transfer and the name and address of the transferee are entered in the register of shareholders.

Section 1130. The company may decline to register a transfer of shares on which a call is due.

Section 1131. The transfer book may be closed during fourteen days immediately preceding the ordinary general meeting.

Section 1132. If by some event such as the death or bankruptcy of any shareholder, another person becomes entitled to a share, the company shall, on surrender of the share certificate when possible, and on proper evidence being produced, register such other person as a shareholder.

Section 1133. The transferor of a share not fully paid up continues to be liable for the full amount unpaid thereon, provided that:

- (1) No transferor shall be liable in respect to any obligation of the company incurred after the transfer.
- (2) No transferor shall be liable to continue unless it appears to the Court that the existing shareholders are unable to satisfy the contributions required to be made by them.

No action against the transferor for such liability can be entered later than two years after the transfer has been entered in the register of shareholders.

Section 1134. Certificates to bearer may be issued only if authorized by the regulations of the company and for shares which are fully paid up. In such case the holder of a name certificate is entitled to receive certificate to bearer on surrendering the name certificate for cancellation.

Section 1135. Shares entered in a certificate to bearer are transferred by the mere delivery of certificate.

Section 1136. The holder of a certificate to bearer is entitled to receive a name certificate on surrendering the certificate to bearer for cancellation.

Section 1137. If it is prescribed by the regulations of the company that a director must hold a certain number of shares of the company as a qualification for such office, such shares must be shares entered in a name certificate.

Section 1138. Every limited company must keep a register of shareholders containing the following particulars:

| | |
|-----|---|
| (1) | The names and addresses, and occupations, if any, of the shareholders, a statement of the shares held by each shareholder, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each shareholder . |
| (2) | The date at which each person was entered in the register as a shareholder . |
| (3) | The date at which each shareholder ceased to be a shareholder. |
| (4) | The numbers and date of certificates issued to bearer, and the respective numbers of shares entered in each such certificate. |
| (5) | The date of cancellation of any name certificate or certificate bearer. |

Section 1139. The register of shareholders commencing from the date of the registration of the company shall be kept at the registered office of the company. It shall be gratuitously open to inspection by the shareholders, during business hours, subjected to such reasonable restrictions as the directors may impose, but not less than 2 hours a day.

It shall be the duty of the directors to send once at least in every year to the Registrar, and not later than on the fourteenth day after the ordinary meeting, a copy of the list of all shareholders at the time such meeting and those who have ceased to be shareholders since the date of the last ordinary meeting. Such list shall include all particulars specified in the foregoing section.

Section 1140. Any shareholders is entitled to require a copy of such register or of any part thereof to be delivered to him on payment of fifty satang for every hundred words required to be copied.

Section 1141. The register of shareholders is presumed to be correct evidence of any matters directed or authorized by law to be inserted therein.

Section 1142. If preference shares have been issued, the preferential rights attributed to such shares cannot be altered.

Section 1143. A limited company may not own its own shares or take them in pledge.

PART III

Management of Limited Companies

1. GENERAL PROVISIONS

Section 1144. Every limited company shall be managed by a director or directors under the control of the general meeting of shareholder and according to the regulations of the company.

Section 1145. After registration of the company, no regulations may be made and no additions to or alterations of the regulations or of the contents of the memorandum may be adopted except by passing a special resolution.

Section 1146. It shall be the duty of the company to cause to be registered every new regulation, addition or alteration within fourteen days after the date of the special resolution.

Section 1147. *Repealed*

Section 1148. Every limited company may have a registered office to which all communications and notices may be addressed.

Notice of the situation of the registered office and of any change therein, shall be given to the Registrar of companies, who shall record the same.

Section 1149. As long as the shares have not been fully paid up, the company may not print or mention the capital of the company in any notice, advertisement, bills, invoices, letters or other documents, without clearly mentioning at the same time what proportion of such capital has been paid up.

2. DIRECTORS

Section 1150. The number and remuneration of the directors shall be fixed by a general meeting.

Section 1151. A director can be appointed or removed only by a general meeting.

Section 1152. At the first ordinary meeting after the registration of the company and at the first ordinary meeting in every subsequent year one-third of the directors, or, if their number is not a multiple of three, then the number nearest to one-third must retire from office.

Section 1153. Any director who wishes to resign from his post shall tender his resignation letter to the company. The resignation shall take effect from the date of resignation letter reaches the company.

The director who resigns under paragraph one here of may notify the Registrar of his resignation.

Section 1154. If a director becomes bankrupt or incapacitated, his office is vacated.

Section 1155. Any vacancy occurring in the board of directors otherwise than by rotation may be filled up by the directors, but any person so appointed shall retain his office during such time only as the vacating director was entitled to retain the same.

Section 1156. If a general meeting removes a director before the expiration of his period of office, and appoints another person in his stead, the person so appointed shall

retain his office during such time only as the removed director was entitled to retain the same.

Section 1157. When there is a change of a director or directors, the company shall effect the registration thereof within fourteen days from the date of such change.

Section 1158. Unless otherwise provided by the regulations of the company, the directors have the powers described in the six following sections.

Section 1159. The subsisting directors may act notwithstanding any vacancy among them but, if and so long as their number is reduced below the number necessary to form a quorum, the subsisting directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company but for no other purpose.

Section 1160. The directors may fix the quorum necessary for the transaction of business at their meetings and unless so fixed the quorum shall (when the number of directors exceeds three) be three.

Section 1161. Questions arising at any meeting of directors are decided by a majority of votes, in case of an equality of votes the chairman has a casting vote.

Section 1162. A director may at any time summon a meeting of directors.

Section 1163. The directors may elect a chairman of their meetings, and fix the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the

chairman is not present at the time appointed for holding the same, the directors present may choose one of their members to be chairman of such meeting.

Section 1164. The directors may delegate any of their powers to managers or to committees consisting of members of their body. Every manager or committee shall, in the exercise of the power so delegated, conform to any order or regulation that may be imposed on them by the directors.

Section 1165. Unless otherwise provided by the delegation, questions arising at any meeting of a committee shall be decided by a majority of votes of the members; in case of an equality of votes the chairman has a casting vote.

Section 1166. All acts done by a director shall, notwithstanding that it be afterwards discovered that there was some defect in his appointment, or that he was disqualified, be as valid as if such person had been duly appointed and was qualified to be a director.

Section 1167. The relations between the directors, the company and third persons are governed by the provisions of this Code concerning Agency.

Section 1168. The directors must in their conduct of the business apply the diligence of a careful business man.

In particular they are jointly responsible:

(1) For the payment of shares by the shareholders being actually made;

(2) For the existence and regular keeping of the books and documents prescribed by law;

(3) For the proper distribution of the dividend or interest as prescribed by law;

(4) For the proper enforcement of resolutions of the general meetings.

A director must not without the consent of the general meeting of shareholders, undertake commercial transactions of the same nature as and competing with that of the company, either on his own account or that of a third person, nor may he be a partner with unlimited liability in another concern carrying on business of the same nature as and competing with that of the company.

Section 1169. Claims against the directors for compensation for injury caused by them to the company may be entered by the company or, in case the company refuses to act, by any of the shareholders.

Such claims may also be enforced by the creditors of the company in so far as their claims against the company remain unsatisfied.

Section 1170. When the acts of a director have been approved by a general meeting, such director is no longer liable for the said acts to the shareholders who have approved them, or to the company.

Shareholders who did not approve of such acts cannot enter their action later than six months after the date of the general meeting on which such acts were approved.

3. GENERAL MEETINGS

Section 1171. A general meeting of shareholders shall be held within six months after the registration, and shall subsequently be held at least every 12 months. Such meeting is called an ordinary meeting.

All other general meetings are called extraordinary meetings.

Section 1172. The directors may summon extraordinary meeting whenever they think fit.

They must without delay summon such meeting when the company has lost half the amount of its capital, in order to inform the shareholders of such loss.

Section 1173. Extraordinary meetings must be summoned if a requisition to that effect is made in writing by shareholders holding not less than one-fifth of the shares of the company. The requisition must specify the object for which the meeting is required to be summoned.

Section 1174. Whenever a requisition for the summoning of an extraordinary meeting is made by the shareholders according to the last preceding section, the directors shall forthwith summon such meeting.

If the meeting is not summoned within thirty days after the date of the requisition, the requisitioner, or any other shareholder amounting to the required number, may themselves summon it.

Section 1175 Notice of the summoning of every general meeting shall be published at least once in a local paper not later than seven days before the date fixed for the meeting, and sent by post with acknowledgement of receipt to every shareholder whose name appears in the register of shareholders not later than seven days or, in case the notice is for a special resolution to be made by the general meeting, fourteen days before the date fixed for the meeting.

The notice of the summoning of a general meeting shall specify the place, the day and the hour of meeting and the nature of the business to be transacted. In case the notice is for a special resolution to be made in the general meeting, the substance of the proposed resolution shall also be included in the notice.

Section 1176. Every shareholder has the right to be present at any general meeting.

Section 1177. Unless there are provisions to the contrary in the regulations of the company, the rules provided by the following sections shall apply to general meetings.

Section 1178. A general meeting may not transact any business unless shareholders representing at least one-fourth of the capital of the company are present.

Section 1179. If within an hour from the time appointment for the general meeting the quorum prescribed by Section 1178 is not present, the meeting, if summoned upon the requisition of shareholders, shall be dissolved.

If the general meeting had not been summoned upon the requisition of shareholders, another general meeting shall be summoned within fourteen days and at such meeting no quorum shall be necessary.

Section 1180. The chairman of the board of directors shall preside at every general meeting of shareholders.

If there is no such chairman, or of at any general meeting he is not present within fifteen minutes after the time appointed for the holding the meeting, the shareholders present may elect one of their members to be chairman.

Section 1181. The chairman may, with the consent of meeting, adjourn any general meeting, but no business may be transacted at any adjourned meeting other than the business left unfinished at the original meeting.

Section 1182. On a show of hands every shareholder present in person or represented by proxy shall have one vote. On a poll every shareholder shall have one vote for each share of which he is the holder.

Section 1183. If the regulations of the company provide that no shareholder is entitled to vote unless he is in possession of a certain number of shares, the shareholder who do not possess such number of shares have the right to join in order to form the said number and appoint one of them as proxy to represent them and vote at any general meeting.

Section 1184. No shareholder is entitled to vote unless all calls due by him have been paid.

Section 1185. A shareholder who has in a resolution, a special interest cannot vote on such resolution.

Section 1186. Holders of certificates to bearer may not vote unless they have deposited their certificate with the company before the meeting.

Section 1187. Any shareholder may vote by proxy, provided the power given to such proxy is in writing.

Section 1188. The instrument appointing a proxy shall be dated and signed by the shareholder and shall contain the following particulars:

| | |
|-----|---|
| (1) | The number of shares held by the shareholder |
| (2) | The name of the proxy |
| (3) | The meeting or meetings or the period for which the proxy is appointed. |

Section 1189. The instrument appointing a proxy must be deposited with the chairman at or before the beginning or the meeting at which the proxy named in such instrument proposed to vote.

Section 1190. At any general meeting, a resolution put to the vote shall be decided on a show of hands, unless a poll is, before or on the declaration of the result of the show of hands, demanded by at least two shareholders.

Section 1191. At any general meeting, a declaration by the chairman that a resolution has on a show of hands, been passed or lost, and an entry to that effect in the books of

the proceedings of the company shall be sufficient evidence of the fact.

If a poll is demanded, the result of the poll shall be deemed to be the resolution of the meeting.

Section 1192. If a poll is duly demanded, it shall be taken in such manner as the chairman directs.

Section 1193. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting shall be entitled to a second or casting vote.

ection 1194 * Any resolution to carry out a business required by law to be passed as a special resolution shall be passed by a majority of not less than three-fourths of the votes of the present shareholders who are eligible to vote.**Section 1194.** A resolution is deemed to be a special resolution if passed by two successive general meetings in the following way.

The substance of the proposed resolution has been included in the notice for summoning the first general meeting.

The resolution has been passed in the first meeting by a majority of not less than three-fourths of the votes.

The subsequent general meeting has been summoned and has been held not less than fourteen days and not more than six weeks after the former meeting.

The full text of the resolution passed in the first meeting has been included in the notice summoning the special meeting.

The resolution passed in the former meeting has been confirmed in the subsequent meeting by a majority of not less than two-thirds of the votes.

Section 1195. If a general meeting has been summoned or held or a resolution passed contrary to the provisions of this Title or contrary to the regulations of the company, the Court shall on application of any director or shareholder, cancel any such resolution or any resolutions passed at such irregular general meeting, provided that the application is entered within one month after the date of resolution.

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4. BALANCE SHEET

Section 1196. A balance-sheet must be made at least once every twelve months, at the end of such twelve months as constitute the financial year of the company.

It must contain a summary of the assets and liabilities of the company and a profit and loss account.

Section 1197. The balance-sheet must be examined by one or more auditors and submitted for adoption to a general meeting within four months after its date.

A copy of it must be sent to every person entered in the register of shareholders at least three days before the general meeting.

Copies must also be kept open at the offices of the company during the same period for inspection by the holders of certificates to bearer.

Section 1198. On submitting the balance-sheet, the directors must lay before the general meeting a report showing how the business of the company was conducted during the year under review.

Section 1199. Any person is entitled to obtain from any company a copy of its latest balance-sheet on payment of a sum not exceeding twenty baht.

It shall be the duty of the directors to send to the Registrar a copy of every balance sheet not later than one month after it has been adopted by the general meeting.

5. DIVIDEND AND RESERVE

Section 1200. The distribution of dividend must be made in proportion to the amount paid upon each share, unless otherwise decided with regards to preference shares.

Section 1201. No dividend may be declared except by a resolution passed in a general meeting.

The directors may from time to time pay to the shareholders such interim dividends as appeared to the directors to be justified by the profits of the company.

No dividend shall be paid otherwise than out of profits. If the company has incurred losses, no dividend may be paid unless such losses have been made good.

Section 1202. The company must appropriate to a reserve fund, at each distribution of dividend, at least one-twentieth of the profits arising from the business of the company,

until the reserve fund reaches one-tenth part of the capital of the company or such higher proportion thereof as may be stipulated in the regulations of the company.

If shares have been issued at a value higher than the face value, the excess must be added to the reserve fund until the latter has reached the amount mentioned in the forgoing paragraph.

Section 1203. If dividend has been paid contrary to the provisions of the last two proceeding sections, the creditors of the company are entitled to have the amount so distributed returned to the company, provided that a shareholder cannot be obliged to return dividend which he has received in good faith.

ection 1204 * Notice of any dividend that may have been declared shall be given by letter to each shareholder whose name appears on the register of shareholders. If the company has any share represented by a certificate issued to bearer, the notice shall also be published once at least in a local paper.**Section 1204.** Notice of any dividend that may have been declared shall be either published twice at least in a local paper or given by letter to each shareholder whose name appears on the register of shareholders.

Section 1205. No dividend can bear interest against the company.

6. BOOKS AND ACCOUNTS

Section 1206. The directors must cause true accounts to be kept:

(1) Of the sums received and expended by the company and of the matters in respect of which each receipt or expenditure takes place.

(2) Of the assets and liabilities of the company.

Section 1207. The directors may cause minutes of all proceedings and resolutions of meetings of shareholders and directors to be duly entered in the books which shall be kept at the registered office of the company. Any such minutes signed by the chairman of the meeting at which such resolution were passed or proceedings had, or by the chairman of the next succeeding meeting, are presumed correct evidence of the matters therein contained, and all resolutions and proceedings of which minutes have been made are presumed to have been duly passed.

Any shareholder may at any time during business hours demand inspection of the above documents.

PART IV

Audit

Section. 1208. The auditors may be shareholders of the company; but no person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the company, and no director or other agent or employee of the company is eligible as an auditor during his continuance in office.

Section 1209. The auditors shall be elected every year at an ordinary meeting.

A retiring auditor is eligible for re-election.

Section 1210. The remuneration of the auditors shall be fixed in any general meeting.

Section 1211. If any casual vacancy occurs among the auditors, the directors shall forthwith summon an extraordinary meeting for the purpose of filling the vacancy.

Section 1212. If no election of auditors is made in a manner aforesaid, the Court shall, on the application of not less than five shareholders, appoint an auditor for the current year and fix his remuneration.

Section 1213. Every auditor shall at all reasonable time have access to the books and accounts of the company, and with regard to such books and accounts he may examine the directors or any other agents or employees of the company.

Section 1214. The auditors must make a report to the ordinary meeting on the balance-sheet and accounts.

They must state in such report whether in their opinion the balance-sheet is properly drawn up so as to exhibit and correct view of the state of the affairs of the company.

PART V

Inspection

Section 1215. Upon the application of shareholders holding not less than one-fifth part of the shares of the company, the competent Minister shall appoint one or more competent inspectors to examine into the affairs of any limited company and to report thereon.

The Minister, before appointing any such inspector, may require the applicants to give security for payment of expenses of the inspection.

Section 1216. The directors, employees and agents of the company are bound to produce to the inspectors all books and documents in their custody or power.

Any inspector may examine upon oath the directors, employees and agents of the company in relation to its business

Section 1217. The inspectors must make a report to be written or printed as the competent Minister directs. Copies must be forwarded by the Minister to the registered office of the company and to the shareholders upon whose application the inspection was made.

Section 1218. All expenses of such inspection must be repaid by the applicants, unless the company, in the first general meeting after such inspection is finished, consents that the same shall be paid out of the assets of the company.

Section 1220. The competent Minister may also, of his own motion, appoint inspectors to report to the Government on the affairs of the company. Such appointment lies entirely within the discretion of the Minister.

PART VI

Increase and Reductions of Capital

Section 1220. A limited company can by special resolution increase its capital by issuing new shares.

Section 1221. No new shares of a limited company may be allotted as fully or partly paid-up otherwise than in money, except in execution of a special resolution.

Section 1222. All new shares must be offered to the shareholders in proportion to the shares held by them.

Such offer must be made by notice specifying the number of shares to which the shareholder is entitled, and fixing a date after which the offer, if not accepted, shall be deemed to be declined.

After such date or on the receipt of an intimation from the shareholder that he declined to accept the shares offered, the director may offer such shares for subscription to other shareholders or may subscribe the shares to himself.

Section 1223. A notice to any shareholder to subscribe for New Shares must be dated and Signed to the directors.

Section 1224. A limited company may, by special resolution, reduce its capital either by lowering the amount of each share or by reducing the number of shares.

Section 1225. The capital of the company may not be reduced to less than one-fourth of its total amounts.

ection 1226 * When a company proposes to reduce its capital, it must publish once at least in a local paper and send to all creditors known to the company a notice of the particulars of the proposed reduction, requiring the creditors to present w ithin thirty days from the date of such notice any objection they may have to such reduction. If no objection is raised within the period of thirty days,

none is deemed to exist. If an objection is raised, the company cannot proceed with the reduction of its capital unless it has satisfied the claim or given security for it. **Section 1226.** When a company proposes to reduce its capital, it must be published seven times at least in a local paper and send to all creditors known to the company a notice of the particulars of the proposed reduction, requiring the creditors to present within three months from the date of such notice any objection they may have to such reduction.

If no objection is raised within the period of three months, none is deemed to exist.

If no objection is raised, the company cannot proceed with the reduction of its capital unless it has satisfied the claim or given security for it.

Section 1227. If a creditor has, in consequence of his ignorance of the proposed reduction of capital, failed to give notice of his objection thereto, and such ignorance was in no way due to his fault, those shareholders of the company to whom has been refunded or remitted a portion of their shares remain, for a period of two years from the date of registration of such reduction, personally liable to such creditor to the extent of the amount refunded or remitted.

Section 1228. The special resolution by which any increase or reduction of capital has been authorized must be registered by the company within fourteen days after its date.

Debentures

Section 1229. Debentures may not be issued.

Section 1230 to 1235 (Repealed)

PART VIII

Dissolution

Section 1236. A limited company is dissolved:

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| (1) | In the case, if any, provided by its regulations. |
| (2) | If formed for a period of time, by the expiration of such period. |
| (3) | If formed for a single undertaking, by the termination of such undertaking. |
| (4) | By a special resolution to dissolve. |
| (5) | By the company becoming bankrupt |

Section 1237. A limited company may also be dissolved by the Court on the following grounds:

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| (1) | If default is made in filing the statutory report or in holding the statutory meeting. |
| (2) | If the company does not commence business within a year from the date of registration or suspends its business for a whole year. |

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| (3) | If the business of the company can only be carried on at a loss and there is no prospect of its fortunes, being retrieved. |
| (4) | If the number of the shareholders is reduced to less than seven. |

However, in the case of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of dissolving the company, direct that the statutory report be filed or the statutory meeting be held as it may think fit.

PART IX

Amalgamation of Limited Companies

Section 1238. A limited company may not amalgamate with another limited company Except by special resolution.

Section 1239. The special resolution by which an amalgamation is decided must be registered by the company within fourteen days from its date.

Section 1240. The company must publish seven times at least in a local paper and send to all creditors known to the company by registered letter a notice of the particulars of the proposed amalgamation requiring the creditors to present within six months after the date of the notice any objections they may have to it.

If no objection is raised during such period, none is deemed to exist.

If an objection is raised, the company cannot proceed with the amalgamation unless it has satisfied the claim or given security for it.

Section 1241. When the amalgamation has been made, it must be registered within fourteen days by each amalgamated company and the limited company formed by the amalgamation must be registered as a new company.

Section 1242. The share capital of the new company must be equivalent to the total share capital of the amalgamated companies.

Section 1243. The new company is entitled to the rights and subject to the liabilities of the amalgamated companies.

PART X

Notices

Section 1244. A notice is deemed to be duly served by the company to a shareholder if it is delivered personally or sent by post to such shareholder at the address appearing in the register of shareholders.

Section 1245. Any notice sent by post in a letter properly addressed is deemed to have been served at the time when such letter would have been delivered in the ordinary course of post.

PART XI

Removal of Defunct Companies from Register

Section 1246 (Repealed)

PART XII

Transformation of a Registered Partnership and a Limited Partnership to a Limited Company

Section 1246/1 A registered partnership or limited partnership consisting of at least three partners may be converted into a limited company by consent of all partners and performance of the following:

1. Notification of the consent of partners to convert the partnership into a limited company to the Registrar in writing within fourteen days from the date of consent by all partners; and
2. Publication at least once in a local paper and sending to all creditors known to the partnership a notice of the particulars of the proposed conversion, requiring the creditors to present within thirty days from the date of such notice, any objection they may have to such conversion. If an objection is raised, the partnership cannot proceed with the conversion unless it has satisfied the claim or given security for it.

Section 1246/2 If no objection is raised or an objection is raised but the claim has been satisfied or security has been given, all partners shall hold a meeting to consent to and proceed with the following:

1. Prepare the memorandum of association and the articles of association of the company (if any);
2. Fix the amount of share capital of the company, which shall be equivalent to the amount of total contributions of all partners, and fix the number of shares of the company to be vested with each partner;
3. Fix the amount already paid in money on each share, which shall be at least twenty- five percent of the stated value of each share;
4. Fix the number of ordinary shares or preference shares to be issued and allotted to the partners and the nature and extent of the preferential rights accruing to the preference shares;
5. Appoint directors and fix their respective powers;
6. Appoint auditors; and
7. Carry out other activities as necessary for the conversion. In proceeding with the actions under the first paragraph, the provisions relating to a limited company regarding such respective actions shall apply *mutatis mutandis*.

Section 1246/3 The former managing partners shall deliver the businesses, property, accounts, documents and evidence of the partnership to the board of directors of the company within fourteen days after the consent by partners and the completion of actions under Section 1246/2. If any partner has not paid in at least twenty-five percent of the price of any share or has not transferred ownership of any property or produced any document or evidence of exercise of rights to the board of directors, the board of directors of

the company shall issue a letter demanding that the partner pay in the share price, transfer the ownership, or produce the document or evidence of exercise of rights, as the case may be, for the board of directors within thirty days from the date of receipt of the demand letter.

Section 1246/4 The board of directors of the company shall file with the Registrar an application to register the conversion into a limited company within fourteen days from the date of full compliance with Section 1246/3. In applying for registration of the conversion, the board of directors shall also submit to the Registrar, together with the application for registration, the minutes of partners' meeting on consideration of consenting to and proceeding with the conversion of the partnership into a limited company under Section 1246/2, the memorandum of association, the articles of association, and the list of shareholders.

Section 1246/5 After the conversion of the registered partnership or limited partnership into a limited company has been accepted for registration by the Registrar, the former registered partnership or limited partnership shall lose its status as a registered partnership or limited partnership under the Civil and Commercial Code and the Registrar shall make a note of such loss on the register.

Section 1246/6 After the registration for conversion of the registered partnership or limited partnership into a limited company, the company shall be vested with all the property, obligations, rights and responsibilities of the former registered partnership or limited partnership.

Section 1246/7 If after the registration for conversion into a limited company, the company is unable to perform any obligation as vested from the converted partnership, the creditor of such obligation may enforce the performance of the obligation on the partners of the converted partnership to the extent that each partner is liable for the obligations of the partnership.

CHAPTER V

LIQUIDATION OF REGISTERED PARTNERSHIP, LIMITED PARTNERSHIPS AND LIMITED COMPANIES

Section 1247. The liquidation of a bankrupt registered partnership, limited partnership or limited company shall be made, as far as practicable, in accordance with the provisions of the Law of Bankruptcy for the time being in force.

The competent Minister shall issue Ministerial Regulations governing the liquidation of partnership and companies and determining the rate of fees for this purpose.

Section 1248. When a general meeting is prescribed in this Chapter, it means:

(1) As to registered partnerships and limited partnerships, a meeting of all the partners, in which a majority of votes decides.

(2) As to limited companies, the general meeting provided by Section 1171.

Section 1249. A partnership or company is deemed to continue after its dissolution as far as it is necessary for the purpose of liquidation.

Section 1250. The duties of the liquidators are to settle the affairs of the partnership or company, to pay its debts and to distributes its assets.

Section 1251. Upon dissolution of a partnership or company for any other cause than bankruptcy, the managing partners or directors become liquidators unless otherwise provided by the contract of partnership or by the regulations of the company.

If there are no persons to be liquidators under the foregoing provision, a liquidator or liquidators shall be appointed by the Court upon the application of the Public Prosecutor or any other interested person.

Section 1252. The managing partners of directors retain as liquidators the same respective powers which they had as managing partners or directors.

Section 1253. when fourteen days after the date of dissolution or in case of liquidators appointed by the Court, after the date of appointment, the liquidators must:

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| (1) | Notify the public by two successive advertisement at least in a local paper that the partnership or company is dissolved and that its creditors must apply for payment to the liquidators, and |
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| (2) | Send a similar notice by registered letter to each creditors whose name appears in the books or documents of the partnership or company. |
|-----|--|

Section 1254. The dissolution of the partnership or company and the names of the liquidators must be registered within fourteen days after the date of dissolution by the liquidators.

Section 1255. The liquidators must, as soon as possible, make a balance-sheet and have it examined and certified by the auditors, and must summon a general meeting.

Section 1256. The business of the general meeting is:

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| (1) | To confirm the directors or managing partners as liquidators, or appoint other liquidators in their stead, and |
| (2) | To adopt the balance-sheet. |

The general meeting may direct the liquidators to make an inventory or to do whatever the meeting may deem advisable for the settlement of the affairs of the partnership or company.

Section 1257. Liquidators not appointed by the Court may be removed and superseded by a unanimous vote of the partners or by a general meeting of the shareholders. Liquidators, whether appointed by the Court or not, may be removed and superseded by the Court on the request of one of the partners or of the shareholders representing one-twentieth part of the paid-up capital of the company.

Section 1258. Any change amongst the liquidators must be registered, within fourteen days after the date of change, by the liquidators.

Section 1259. The liquidators have power:

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| (1) | To bring or defend any legal proceeding, civil or criminal, and to make compromise, in the name of the partnership or company. |
| (2) | To carry on the business of the partnership or company, as far as may necessary for a beneficial settlement of the affairs. |
| (3) | To sell the property of the partnership or company. |
| (4) | To do all other acts as may be necessary for a beneficial settlement of the liquidation. |

Section 1260. No limitation of the power of the liquidators is valid as against third persons.

Section 1261. Unless otherwise fixed by the general meeting or by the Court at the time of the appointment of the liquidators, no act of the liquidators is valid unless done by them jointly.

Section 1262. A resolution of a general meeting or a decision of the Court authorizing a liquidator or liquidators to act separately must be registered within fourteen days from its date.

Section 1263. All costs, charges and expenses property incurred in the liquidation must be paid by the liquidators in preference to other debts.

Section 1264. If a creditor does not apply for payment, the liquidators must deposit the amount due to him as described by the provisions of the Code concerning Deposit in lieu of performance.

Section 1265. The liquidators may require the partners or shareholders to pay such part of their contributions or shares as may be still unpaid and such part must be paid at once, even if it was previously agreed by the contracts of partnership or the regulations of the company that it would be called for at a later period.

Section 1266. If the liquidators find that after the whole of the contributions or shares has been paid up, the assets insufficient to meet the liabilities, they must apply at once to the Court to have the partnership or company declared bankrupt.

Section 1267. The liquidators must deposit every three months at the Registration Office a report of their activities, showing the situation of the accounts of the liquidation. Such report shall be upon gratuitously for inspection to the partners, shareholders or creditors.

Section 1268. If the liquidators continues for more that one year, the liquidators must summon a general meeting at the end of each year from the beginning of the liquidation and must lay before this meeting a report of their activities and detailed account of the situation.

Section 1269. Only so much of the property of the partnership or company may be divided amongst the partners or shareholders as is not required for performing all the obligations of the partnership or company.

Section 1270. As soon as the affairs of the partnership or company are fully liquidated, the liquidators shall make up an account of the liquidation showing how the liquidation has been conducted and the property of the partnership or company has been disposed of; and thereupon shall call a general meeting for the purpose of laying before it the account and giving any explanation thereof.

After the account is approved, the proceedings of the meeting must be registered within fourteen days from its date by the liquidators. Such registration is taken as being the end of the liquidation.

Section 1271. After the liquidation, the books, accounts and documents of the liquidated partnership or company shall be deposited within fourteen days provided by the foregoing section at the Registrar's Office where they shall be kept for ten years after the end of the liquidation.

All such books, accounts and documents shall be gratuitously open for inspection by any interested person.

Section 1272. No action for payment of debts due from the partnership or company or from the partners, shareholders or liquidators as such can be entered later than two years after the end of the liquidation.

Section 1273. The provisions of Sections 1172 to 1193 and 1207 apply to general meetings held during liquidation *mutatis mutandis*.

CHAPTER VI

Removal of Registered Partnerships, Limited Partnerships and Limited Companies from the Register Sections

Section 1273/1 Where the Registrar has reasonable cause to believe that a registered partnership, a limited partnership or a company is not carrying on business or in operation, he shall send to the partnership or company by post with acknowledgement of receipt a letter inquiring whether the partnership or company is carrying on business or in operation and informing it that if an answer is not received within thirty days from the sending date thereof, a notice will be published in a newspaper with a view to striking the name of the partnership or company off the register. If the Registrar either receives an answer from the partnership or company to the effect that it is not carrying on business or in operation, or does not within thirty days after sending the letter receive any answer, he may publish once at least in one of the local newspapers, and send to the partnership or company by post with acknowledgement of receipt, a notice that at the expiration of ninety days from the sending date of that notice the name of the partnership or company mentioned therein will, unless cause is shown to the contrary, be struck off the register.

Section 1273/2 If, in any case where a partnership or company has been dissolved and is in the process of liquidation, the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the partnership or company are fully wound up, and the liquidation returns have not been made by the liquidator or the registration of completion of liquidation process has not been applied for by the liquidator, the Registrar may send a letter by post with acknowledgement of receipt to the partnership or company and to the liquidator at his last known place of business demanding the appointment of an acting liquidator, submission of the returns or registration of the completion of liquidation, as the case may be, and informing them that if the action is not carried out within one hundred and eighty days from the sending date thereof, a notice will be published in a newspaper with a view to striking the name of the partnership or company off the register. If the partnership or company or the liquidator fails to take the action within the period of time prescribed in the foregoing paragraph, the Registrar shall publish once at least in a local newspaper and send by post with acknowledgement of receipt to the partnership or company and the liquidator notice that at the expiration of ninety days from the date of sending of that notice the name of the partnership or company mentioned therein will, unless cause is shown to the contrary, be struck off the register.

Section 1273/3 At the expiration of the time mentioned in the notice under Section 1273/1 or Section 1273/2, the Registrar may, unless cause to the contrary is previously shown by the partnership or company or the liquidator, strike the name of the partnership or company off the

register, and on the strike of its name off the register the partnership or company shall lose its status as a juristic person: provided that the liability of every managing partner, partner, director, managing officer and shareholders shall continue and may be enforced as if the partnership or company had not lost its status as a juristic person.

Section 1273/4 If a partnership, a partner, a company or any shareholder or creditor thereof feels unfairly aggrieved by the partnership or company having been struck off the register, the Court on the application of the partnership, partner, company or shareholder or creditor may, if satisfied that the partnership or company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the partnership or company be restored to the register, order the name of the company to be restored to the register, and thereupon the partnership or company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the partnership or company and all other persons in the same position as nearly as may be as if the name of the partnership or company had not been struck off. Any request for restoration of the name of the partnership or company to the register may not be made after the expiration of ten years from the day the name is struck off by the Registrar."

TITLE XXIII

ASSOCIATIONS

Section 1274 - 1297 (Repealed) Provisions of Associations are inserted in Book I (Part II) of the Civil and Commercial Code ([Sections 78 - 109 \(/law-texts/thailand-civil-code-part-1.html#77\)](#)).

[Back to part 1 \(/law-texts/thailand-civil-code-part-1.html\)](#).

[Continue to part 3 \(/law-texts/thailand-civil-code-part-3.html\)](#).

[up \(/law-texts/thailand-civil-code-part-1.html#top\)](#).

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BOOK IV

PROPERTY

TITLE I

GENERAL PROVISIONS

Section 1298. Real rights (~~/real-rights/~~), may be created only by the virtue of this Code or other laws.

Section 1299. Subject to a provision of this Code or other laws, no acquisition by juristic act of immovable or of real right appertaining thereto is complete unless the juristic act is made in writing and the acquisition is registered by the competent official.

Where immovable property or real right appertaining thereto is acquired otherwise than by juristic act, the acquirer's right cannot be dealt with through the register unless it has been registered, nor can it, without registration, be set against a third person who has, for value and in good faith, acquired it and registered his right.

Section 1300. Where a transfer of immovable property or real right appertaining thereto has been registered to the prejudice of a person who was previously in a position to have his right registered, he may claim cancellation of such registration, provided that in no case cancellation be claimed against a transferee for value in good faith.

Section 1301. The provisions of the two foregoing sections shall apply *mutatis mutandis* to modification, extinction and revival of real rights appertaining to immovable property.

Section 1302. The provisions of the three foregoing sections shall apply *mutatis mutandis* to ships or vessels of six tons and over, to steam-launches or motor-boats of

five tons and over, to floating houses and to beasts of burden.

Section 1303. Where several persons claim to have acquired the same movable property under different titles, the person who is in possession of the property is preferred that he has acquired it for value and has obtained the possession in good faith.

This section does not apply to movable property specified in the foregoing section nor to lost property or property acquired through an offence.

Section 1304. The domaine public of State includes every kind of State property which is in use for public interest or reserved for the common benefit, such as:

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| (1) | waste land and land surrendered , abandoned or otherwise reverted to the State according to the land law; |
| (2) | property for the common use of the people e.g., foreshores, water-ways, highways, lakes; |
| (3) | property for special use to the State e.g., a fortress or other military buildings, public offices, warships, arms and ammunition. |

Section 1305. Any property which forms part of the domaine public of State is in-alienable except by virtue of a special law or Royal Decree.

Section 1306. No prescription can be set up against the State with regard to any property which forms part of its *domaine public*.

Section 1307. No seizure of State property can be effected, whether such property forms part of its *domaine public* or not.

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TITLE II

OWNERSHIP

CHAPTER I

ACQUISITION OF OWNERSHIP

Section 1308. Where land is formed by alluvion, it becomes the property of the riparian owner.

Section 1309. Islands formed in a lake or water-way of in territorial waters, and beds of water-ways left dry, are the property of the State

Section 1310. If a person has, in good faith, constructed a building upon another person's land, the owner of the land becomes the owner of the building, but he must pay the constructor for any increase of value accruing to the land by reason of the building.

However, if the owner of the land can show that there was negligence on his part, he may refuse to take the building and require that it be removed by the constructor and the land put in its former condition, unless this cannot be done

at reasonable costs, in which case he may require the constructor to buy the whole or part of the land at the market price.

Section 1311. If a person has, in bad faith, constructed a building upon another person's land, he must return the land after having put it in its former condition, unless the owner of the land chooses to have it returned in its present condition, in which case the owner of the land must pay at his option the price of the building or a sum representing the increased value of the land.

Section 1312. If a person has, in good faith, constructed a building encroaching on another person's land, the constructor is the owner of the building, subject to his paying the owner of the land for the use of such land and having his rights on the encroached land registered as servitude. The owner of the land may demand cancellation of the registration if subsequently the building is totally destroyed.

If the constructor of the building is in bad faith, the owner of the land may require that it be removed by the constructor and the land put in its former condition, at the expense of the latter.

Section 1313. If the conditional owner of a piece of land has constructed a building on it and the land becomes afterwards the property of another person by effect of the condition, the provisions of this Code concerning Undue Enrichment shall apply.

Section 1314. The provisions of Sections 1310, 1311 and 1313 apply *mutatis mutandis* to any kind of work which is fixed to land, and to the planting of trees or crops.

However, in case of paddy or other crops harvested one or more times a year, the owner of the land must either allow the person in good faith or the conditional owner who has made the planting to remain in the possession of the land till after the harvest on payment of a sum of money based on the rental value of the land, or take immediate possession of the land on payment of compensation to the other party.

Section 1315. When a person has constructed buildings, or has made any other work which is fixed to land, or has planted trees or crops, on his land with materials belonging to another person, he becomes the owner of the materials, but he must pay for their value.

Section 1316. If several movables belonging to different persons have been joined in such matter that they become component parts or indivisible, the different persons become co-owners of the composite thing, each person's share being proportionate to the value of his thing at the time of its being joined with the other things.

If one of the things could be regarded as the principal thing, the owner becomes the sole owner of the composite thing, but he must pay the value of the other things to their respective owners.

Section 1317. If a person uses materials belonging to another person to make a new thing, the latter person becomes the owner of such thing, irrespective of the

question whether the materials can or cannot assume their former condition, but he must pay for the work.

However, if the value of the work greatly exceeds the value of the materials used, the worker shall become the owner of the thing which is the result of his work, but he must pay the value of the materials.

Section 1318. A person may acquire the ownership of an ownerless movable by occupation, unless the occupation is forbidden by law or is in violation of another person's right to occupation of such movable.

Section 1319. A movable becomes ownerless if the owner gives up its possession with the intention of renouncing its ownership.

Section 1320. Subject to special laws and regulations relating thereto, wild animals are ownerless so long as they have their freedom. Wild animals in zoological gardens and fishes in pounds or other enclosed private waters are not ownerless.

A captured wild animal becomes ownerless if it regains its freedom and the owners does not pursue it without delay or gives up the pursuit.

A tamed animal becomes ownerless if it gives up the habit of returning.

Section 1321. Subject to special laws and regulations relating thereto, a person who catches a wild animal on waste lands or in public waters, or, without opposition of

the owner, on private lands or in private waters, becomes its owner.

Section 1322. If a wild animal which is wounded and pursued by one person is caught by another person or falls dead on another person's land, the first person becomes its owner.

Section 1323. A person who finds lost property is bound:

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| (1) | to deliver it to the loser, the owner or any other person entitled to receive it, or |
| (2) | to inform without delay to the loser, the owner or any other person entitled to receive it, or |
| (3) | to deliver it within three days to the police or other competent official and inform them of all circumstances within his knowledge which may be material for the person who is entitled to receive it. |

However, the procedure provided in sub-section 3 must be followed if the loser, owner or other person entitled to receive the property is unknown or does not take delivery of it.

In any case the property found must be kept with reasonable care until delivery.

Section 1324. A finder of lost property may claim from the person entitled to receive it a reward of ten per cent of the value of the property up to thirty thousand baht, and five per cent on the additional value. However, if he delivers the property to the police or other competent official, two and a

half per cent of the value of the property shall, in addition to the reward, be paid as a fee to the Government service concerned, but, in no case, shall such fee exceed one thousand baht.

The finder is not entitled to any reward if he does not comply with the provisions of the foregoing section.

Section 1325. If the finder of lost property has complied with the provisions of Section 1323 and the person entitled to receive it has not claimed it within one year from the day of find, the ownership vested in the finder.

However, if the unclaimed property is an antique object, the ownership vested in the State, but the finder is entitled to receive a reward of ten per cent of its value.

Section 1326. The finding of property thrown into the sea or water-ways or washed ashore is governed by the laws and regulations relations thereto.

Section 1327. Subject to the provisions of the criminal law, the ownership of anything which has been used for committing, or has been acquired through, or is otherwise connected with, an offence, and placed under the care of a Government Department, is vested in the State if it has not been claimed by the owner within one year from the day of its being so placed or, in case of a criminal action having been entered in Court, from the day of final judgment. However, if the owner is unknown, the period shall be extended to five years.

If the property is perishable, on delay involves risks or expenses out of proportion to its value, the Government Department may, before the expiration of the periods, cause the property to be sold by public auction, provided that before the sale proper measures are taken for recording all such particulars as may enable the person entitled to receive the property to identify it and prove his rights thereto. After the sale, the net proceeds shall be substituted for the property.

Section 1328. Where a movable of value which has been hidden or buried is found under such circumstances that no person can claim to be its owner, the ownership is vested in the State. The finder is bound to deliver it to the police or other competent official, in which case he is entitled to receive a reward of one-third of its value.

Section 1329. The right of a person who has acquired property from the value in good faith is not affected even if the act under which his transferor acquired the property was voidable and has been subsequently avoided.

Section 1330. The right of a person who has in good faith purchased property at a sale by public auction under an order of the Court or of the Official Receiver in bankruptcy is not affected even if it is subsequently proved that the property did not belong to the defendant, judgment debtor or bankrupt.

Section 1331. The right of a person who has acquired money in good faith is not affected even if it is subsequently proved that it did not belong to the person from whom he acquired it.

Section 1332. When a person has in good faith purchased property at a sale by public auction or in open market or from a trader dealing in such things, he shall not be bound to return it to the true owner unless the latter reimburses the purchase price.

Section 1333. Ownership may be acquired by prescription under the rules provided in Title III of this Book.

Section 1334. Waste land and land surrendered, abandoned or otherwise reverted to the State according to the land law may be acquired according to the said law.

CHAPTER II

EXTENT AND EXERCISE OF OWNERSHIP

Section 1335. Subject to the provisions of this Code or other laws, the ownership of land extends above and below the surface.

Section 1336. Within the limits of law, the owner of property has the right to use and dispose of it and acquires its fruits; he has the right to follow and recover it from any person not entitled to detain it, and has the right to prevent unlawful interference with it.

Section 1337. If a person in the exercise of his right causes to the owner of an immovable property greater injury or inconvenience than should naturally and reasonably be expected or anticipated, having regard to the nature and situation of such property, the owner is entitled, without prejudice to any claim for compensation, to have such injury or inconvenience abated.

Section 1338. Restrictions imposed by law on the rights of an owner of immovable property need not be registered.

Such restrictions imposed by law on the rights of an owner of immovable property need not be registered.

Restrictions imposed in the public interest can neither be removed nor modified.

Section 1339. The owner of a piece of land is bound to take the water that flows naturally on to it from higher land.

Water that flows naturally on to lower land and is necessary to such land may be retained by the owner of the higher land only to such extent as is indispensable to his land.

Section 1340. The owner of a piece of land is bound to take water coming to it from the higher land in consequence of the artificial drainage of the higher land, if before the drainage the water flowed naturally on to his land.

If any damage is suffered by reason of such artificial drainage, the owners of the lower lands may, without prejudice to any claim for compensation, require the owner of the higher land, at the latter's expense, to carry the drainage right through the lower lands to a public waterway or drain.

Section 1341. The owner of an immovable property must not construct roofs or other structures which cause rain water to fall upon the adjoining property.

Section 1342. No well, pond, cesspool or receptacle for manure or refuse may be dug within two meters of the boundary line.

No ditch or excavation for laying underground water-pipes or similar installations may be made nearer to the boundary line than one half of the depth of such ditch or excavation provided always that it may be made at a distance of one meter or more.

In any case when the works mentioned in the foregoing paragraphs are carried out near the boundary line, due care must be taken to prevent earth or sand from falling in, or water or filth from percolating through.

Section 1343. Land may not be excavated or overloaded in such manner as to endanger the stay of soil of an adjoining piece of land unless adequate measures are provided for preventing and injury.

Section 1344. Fences walls, hedges or ditches, which serve as a boundary, are presumed to belong to the owners of the adjoining properties in common.

Section 1345. When a hedge, or ditch which is not used as a drain, belongs to the owners of two adjoining pieces of land in common, each of the owners is entitled to cut down the hedge or fill up the ditch to the boundary line provided he builds a wall or erects a fence along the boundary line.

Section 1346. A tree which stands upon a boundary line is presumed to belong to the owners of the adjoining pieces of land in common. Its fruits belong to such owners in equal shares as well as the timber itself if the tree is felled.

Either owner may require the removal of the tree, the cost of removal being borne by them equally. However, the neighbour who requires the removal shall bear the cost

alone if the other waives his right to the tree. Removal may not be required if the tree serves as a boundary mark and cannot be replaced by any appropriate boundary mark.

Section 1347. The owner of a piece of land may cut off and keep roots of a tree or bush which have penetrated from the adjoining piece of land. He may also cut off and keep overhanging branches after giving the possessor of the adjoining piece of land reasonable notice to remove them, such notice not having been complied with.

Section 1348. Fruits falling naturally upon adjoining land are presumed to be fruits of such land.

Section 1349. If a piece of land is so surrounded by other pieces of land that it has no access to the public ways, the owner may pass over the surrounding land to reach a public way.

The same applies, if passage can only be had over a pond, marsh, or sea, or if there is a steep slope with a considerable difference of level between the land and the public way.

The place and the manner of the passage must be chosen as to meet the needs of the person entitled to passage and at the same time to cause as little damage as possible to the surrounding land. The person entitled to passage may, if necessary, construct a road for passage.

The person entitled to passage must pay compensation for any damage suffered by the land owner on account of the passage being established. Such compensation, except for

damages arising from the construction of a road, may be made by annual payments

Section 1350. Where land has been so partitioned or partially transferred that a plot is left without access to a public way, the owner of such plot may claim right of way under the forgoing section only over the land which has been so partitioned or partially transferred.

In such case no compensation need to be paid

Section 1351. The owner of a piece of land may, after reasonable notice, make use of adjoining land so far as necessary for the purpose of erection, or repairing, a fence, wall or building on or near his boundary line, but he may not enter the dwelling house or a neighbour without the latter's consent.

If damage is caused, the neighbour may claim compensation.

Section 1352. The owner of a piece of land is bound, subject to reasonable compensation being paid him, to allow the laying through his land of water-pipes, drainage pipes, electric wires or similar installations for use of the adjoining land if, without making use of his land they could not be laid or could be laid only at an excessive cost; but he may require that his interest be taken into consideration.

In exceptional cases where the installations are to be above ground, he may require that a reasonable proportion of his land, over which such installations are to be laid, shall be bought from him at a price which will cover the value of the land and compensation for any damage arising from sale.

Where circumstances are changed, he may require that the installations be removed to such different part of his land as may be suitable to his interests.

The cost of removal must be borne by the owner of the adjoining land. However, if the special circumstances of the case so require, the other land owner may be held liable for a reasonable proportion of the cost.

Section 1353. A person may lead his cattle into or through another person's unenclosed land for grazing and watering; he may fetch water from a well or pound within such land; provided always that it is not a plantation and is not prepared for cultivation, sown or covered with a crop. The owner may however forbid such action.

Section 1354. A person may, if permitted by local custom, enter a wood, forest or pasture land owned by another person to collect fuel or gather wild fruits, vegetables, mushrooms and the like, provided that the owner does not prohibit it

Section 1355. The owner of a piece of land along or through which a water-way passes is not entitled to draw more water than necessary for his reasonable needs to the prejudice of any other piece of land on the water-way.

([up \(/law-texts/thailand-civil-code-part-1.html\)](http://law-texts/thailand-civil-code-part-1.html))

CHAPTER III

CO-OWNERSHIP

Section 1356. If a property belongs to several persons in common the provisions of this chapter apply unless otherwise provided by law.

Section 1357. Co-owners are presumed to have equal shares.

Section 1358. Co-owners are presumed to have the right to manage the property in common.

Matters of ordinary management are decided by the majority of the co-owners. However, each co-owner may do an act of ordinary management unless the majority has decided otherwise; but, in any case he may do acts of preservation.

All important matters of management must be decided by a majority of co-owners who must also represent at least half of the value of the property.

A change of object may be decided upon only by the consent of all the co-owners.

Section 1359. Each co-owner may exercise, as against third persons, any right arising from ownership in respect of the whole property, subject however, in case of a claim for the recovery of the property, to the conditions specified in Section 302 (</law-texts/thailand-civil-code-part-1.html#289>) of this Code.

Section 1360. Each co-owner is entitled to use the property in so far as such use is not incompatible with the rights of the other co-owners.

Section 1361. Each co-owner may dispose of, mortgage, or create a charge on, his share.

The property itself may be disposed of, pledged, mortgaged or made subject to a charge only with the consent of all the co-owners.

However, if a co-owner has disposed of, pledged, mortgaged or created a charge on, the property without the consent of all the other co-owners, and he subsequently becomes the sole owner of it, such act shall become valid.

Section 1362. Each co-owner is under the obligation to the other co-owners to bear in proportion to his share the costs of management, taxation and expenses for the preservation of the property as well as for its common use.

Section 1363. Each co-owner is entitled to demand partition of the property, unless he is debarred from doing so by a juristic act or in consequence of the permanent character of the purpose of the co-ownership.

The right to demand partition may not be excluded by a juristic act for a period exceeding ten years at a time.

A co-owner may not demand partition at an unreasonable moment.

Section 1364. Partition is effected by actually dividing the property, or by selling it and dividing the proceeds of sale, between the co-owners.

If the co-owners cannot agree as to the manner of effecting partition, the Court may, on the application of any of them, order the actual division of the property, and any inequality

there may be in the shares allotted may be rectified by compensation in money. If such division is not possible or is likely to cause serious loss, the Court may order the sale of the property by private auction among the co-owners or by public auction.

Section 1365. If the co-owners are jointly liable to a third person for an obligation in respect of the common property, or for another obligation incurred for the purpose of fulfilling such obligation, each may, at the time of partition, require that performance be made out of the common property or secured therefrom.

If a co-owner is liable to another co-owner for an obligation arising out of co-ownership or for another obligation incurred for the purpose of fulfilling such obligation, the latter may, at the time of partition, require that performance be made out of the share of the common property allotted to his debtor or secured therefrom.

The above rights may be exercised against a transferee of a co-owner's share or a successor to the same.

If sale of the common property is necessary, the provisions of the foregoing section shall apply.

Section 1366. Each co-owner has, in proportion to his share, the same liabilities as a seller in respect of the property which the other co-owners have received under the partition.

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TITLE III

POSSESSION

Section 1367. A person acquires possessory right by holding a property with the intention of holding it for himself

Section 1368. A persn may acquire possessory right through another person holding for him.

Section 1369. A person who holds a property is presumed to hold it for himself.

Section 1370. A possessor is presumed to possess in good faith, peacefully and openly.

Section 1371. If it is proved that a person possessed the same property at two different times, it is presumed that his possession continued during the interval.

Section 1372. It is presumed that a possessor has, in law, the right which he exercises over the property possessed.

Section 1373. Where property is an immovable entered in the land registered, the person whose name is on the register is presumed to have possessory right over it.

Section 1374. Where a possessor is disturbed in his possession by unlawful interference, he is entitled to have the disturbance removed. If further disturbance is to be apprehended, the possessor may apply for an injunction.

An action for removal of disturbance must ne entered within one year from the time of the disturbance.

Section 1375. Where a possessor is unlawfully deprived of possession, he is entitled to have it returned, unless the other party has over the property a better right which would entitle him to claim it back from the possessor.

An action for recovery of possession must be entered within one year from the time of dispossession.

Section 1376. Where property is to be returned to the person entitled to recover it, the provisions of Section 412 to 418 (</law-texts/thailand-civil-code-part-1.html#405>) of this Code concerning Undue Enrichment shall apply *mutatis mutandis*.

Section 1377. Possession comes to an end if the possessor abandons the intention to possess or no longer holds the property.

Possession does not come to an end if the possessor is prevented from holding the property by some cause which is temporary in its nature.

Section 1378. Transfer of possession is effected by delivery of the property possessed.

Section 1379. Where property is already held by the transferee or his representative, the transfer of possession may be effected by a declaration of intention.

Section 1380. Transfer of possession is effected when the transferor, while continuing to hold the property, declares an intention to hold it thenceforward on behalf of the transferee.

If the property is held by his representative, the transfer of possession may be effected by the transferor directing such representative thenceforward to hold the property on behalf of the transferee.

Section 1381. Where a person holds property as representative of the possessor, he may change the nature of his holding only by a notice to the possessor that he no longer intends to hold the property for such possessor or by becoming in good faith, through the act of a third person, possessor under a new title.

Section 1382. Where a person has, for an uninterrupted period of ten years in case of an immovable, or five years in case of a movable, peacefully and openly possessed a property belonging to another, with the intention to be its owner, he acquires the ownership of it.

Section 1383. The ownership of property obtained through an offence may be acquired by the offender or a transferee in bad faith by prescription only after the expiration of the period provided for prescription of the offence or of the period fixed by the foregoing section whichever is longer.

Section 1384. Possession shall not be deemed interrupted if the possessor involuntarily loses the holding of the property, and recovers it within one year from the date of the loss or by means of an action instituted with that time.

Section 1385. Where possession is transferred, the transferee may add the period of the transferor's possession to that of his own; in which case any defect in the possession of the transferor may be set up against the transferee.

Section 1386. The provisions of this Code concerning Prescription shall apply *mutatis mutandis* to acquisitive prescription to this Title.

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TITLE IV

SERVITUDE

Section 1387. An immovable property may be subjected to a servitude by virtue of which the owner of such property is bound, for the benefit of another immovable property, to suffer certain act affecting his property or to refrain from exercising certain rights inherent in his ownership.

Section 1388. The owner of the dominant property is not entitled to make any change, either on the servient or on the dominant property, which increases the burden of the servient property.

Section 1389. Changes in the requirements of the owner of the dominant property do not entitle him to impose an additional burden on the servient property.

Section 1390. The owner of the servient property must refrain from any act which will tend to diminish the utility of the servitude or to make it less convenient.

Section 1391. The owner of the dominant property is entitled, at his own expense, to do all that is necessary to preserve and make use of the servitude. He must, in doing so, cause as little damage as possible to the servient property.

He must at his own expense keep the work done in a state of good maintenance and repair. However, if the owner of the servient property benefits by the work, he must bear a share of the expenses in proportion to the benefit which he receives.

Section 1392. Where servitude affects one part only of the servient property, the owner of that property may, by showing that the charge would be for his benefit and by undertaking to bear the cost of it, require that the servitude be removed to another part of his property, provided this would not be less convenient to the owner of the dominant property.

Section 1393. Unless otherwise provided in the act creating it, a servitude follows the dominant property when the latter is disposed of or made subject to other rights.

A servitude cannot be disposed of or made subject to other rights apart from the dominant property.

Section 1394. In case of a division of servient property, the servitude continues to be a burden on each part. However, if the servitude is not, and from nature of the case could not be, exercised over any particular part, the owner of such part may demand to be relieved from it.

Section. 1395. In case of a division of dominant property property, the servitude continues to exist for the benefit of each part. However, if the servitude is not, and from the nature of the case could not be, exercised for the benefit of any particular part, the owner of the servient property may demand to be relieved from servitude with respect to such part.

Section 1396. Servitudes acquired or exercised by one of the co-owners of the dominant property is deemed to have been acquired or exercised by all co-owners.

Section 1397. Servitude is extinguished by the total destruction of the servient or dominant property.

Section 1398. If servient and dominant properties are vested in one and the same owner, such owner may have the registration of servitude cancelled; until such cancellation the servitude continues to exist as regards to third persons.

Section 1399. Servitude is extinguished by non-usage for ten years.

Section 1400. Servitude is extinguished if it has ceased to benefit the dominant property; but it revives if the condition of things becomes such that the servitude can be enjoyed again, provided that the period of prescription specified in the foregoing section has not elapsed.

Where the servitude is still of some benefit to the dominant property, but the benefit is of little importance as compared with the burden on the servient property, the owner of the servient property may, by payment of compensation, obtain a total or partial relief from the servitude.

Section 1401. Servitude may be acquired by prescription, the provisions concerning acquisitive prescription as described in Title III of this book shall apply *mutatis mutandis*.

TITLE V

HABITATION (arsai)

Section 1402. A person who has been granted a right of habitation (arsai) in a building is entitled to occupy such building as a dwelling place without paying rent.

Section 1403. A right of habitation may be created either for a period of time or for the life of the grantee.

If no time has been fixed, such right may be terminated at any time by giving reasonable notice to the grantee.

If it is granted for a period of time, the period may not exceed thirty years; if a longer period is stipulated, it shall be reduced to thirty years. The grant may be renewed for a period not exceeding thirty years from the time of renewal.

Section 1404. The right of habitation is not transferable even by way of inheritance.

Section 1405. Unless the right of habitation is expressly limited to be for the benefit of the grantee personally, the members of his family and his household may dwell with him.

Section 1406. Unless expressly forbidden by the grantor, the grantee may take such natural fruits or products of the land as are necessary for the needs of his household.

Section 1407. The grantor is not bound to maintain the property in a good state of repair.

The grantee cannot claim reimbursement of expenses made by him for improvements to the property.

Section 1408. When the right of habitation comes to an end the grantee must return the property to the grantor.

Section 1409. The provisions of this Code concerning Duties and Liabilities of the Hirer, as specified in Sections 552 (</law-texts/thailand-civil-code-part-2.html#574>), 555, 558, 562 and 563 shall apply *mutatis mutandis*.

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TITLE VI

SUPERFICIES

Section 1410. The owner of a piece of land may create a right of superficies in favour of another person by giving him the right to own, upon or under the land, buildings, structures or plantations.

Section 1411. Unless otherwise provided in the act creating it, the right of superficies is transferable and transmissible by way of inheritance.

Section 1412. A right of superficies may be created either for a period of time or for life of the owner of the land or the superfiary.

If it is created for a period of time, the provisions of Section 1403 paragraph 3 shall apply *mutatis mutandis*.

Section 1413. If no period of time has been fixed, the right of superficies may be terminated at any time by any partner giving reasonable notice to the other. But when rent is to be paid, either one year's previous notice must be given or rent for one year paid.

Section 1414. If the superficiary fails to comply with essential conditions specified in the act creating superficies or, when rent is to be paid, he fails to pay it for two consecutive years, his right of superficies may be terminated.

Section 1415. The right of superficies is not extinguished by destruction of the buildings, structures or plantations even if caused by force majeure.

Section 1416. When the right of superficies is extinguished, the superficiary may take away his buildings, structures or plantations, provided he restores the land to its former condition.

If instead of permitting the removal of the buildings, structures or plantations, the owner of the land notifies his intention to buy the at a market value, the superficiary may not refuse the offer except on reasonable ground.

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TITLE VII

[USUFRUCT \(/real-rights/usufruct-property-rights.html\)](/real-rights/usufruct-property-rights.html)

Section 1417. An immovable property may be subjected to a usufruct by virtue of which the usufructuary is entitled to the possession, use and enjoyment of the property.

He has the right of management of the property.

The usufruct of a forest, mine or quarry entitles the usufructuary to the exploitation of the forest, mine or quarry.

Section 1418. A usufruct may be created either for a period of time or for the life of the usufructuary. If no time has been fixed, it is presumed that the usufruct is for the life of the usufructuary.

Section 1419. If property is destroyed without compensation being paid, the owner is not bound to restore it; but, if he does so to any extent, the usufruct revives to that extent.

If any compensation is paid, the owner or the usufructuary must restore the property so far as it is impossible to do so, having regard to the amount of the compensation received, and the usufruct revives to that extent; but, if restoration is impossible, the usufruct come to an end and the compensation must be divided between the owner and the usufructuary in proportion to the damages suffered by them respectively.

The same rules apply *mutatis mutandis* in case of expropriation as well as in case of partial destruction of the property or of partial impossibility to restore the property.

Section 1420. When usufruct comes to an end, the usufructuary must return the property to the owner.

The usufructuary is liable for the destruction or depreciation in value of the property, unless he proves that the damage was not caused by his fault.

He must replace anything which he has wrongfully consumed.

He is not bound to give compensation for depreciation in value caused by reasonable use.

Section 1421. The usufructuary must, in the exercise of his rights, take as much care of the property as a person of ordinary prudence would take of his own property.

Section 1422. Unless otherwise provided in the act creating the usufruct, the usufructuary may transfer the exercise of his right to the third person. In such case the owner of the property may sue the transferee directly.

Section 1423. The owner may object to any unlawful or unreasonable use of the property.

If the owner proves that his rights are in peril, he may demand security from the usufructuary, except in the case of donor who has reserved to himself the usufruct of the property given.

If the usufructuary fails to give security within a reasonable time fixed for the purpose, or if, in spite of the owner's objection he continues to make use of the property unlawfully or unreasonably, the Court may appoint a Receiver to manage the property in his stead. Upon security being given the Court may release the Receiver so appointed.

Section 1424. The usufructuary is bound to keep the substance of the property unaltered, and is responsible for ordinary maintenance and pretty repairs.

If important repairs or measures are necessary for the preservation of the property, the usufructuary must forthwith inform the owner thereof and permit them to be carried out. In case of default by the owner, the usufructuary may have the work carried out at the owner's expense.

Section 1425. All extraordinary expense must be borne by the owner, but in order to meet these or expenses coming under the foregoing section he may realize part of the property unless the usufructuary is willing to advance the necessary funds without charging interest.

Section 1426. The usufructuary shall, for the duration of the usufruct, bear expenses for the management of the property, pay taxes and duties, and be responsible for interests payable on debts charged upon it.

Section 1427. If required by the owner, the usufructuary is bound to ensure the property against loss for the benefit of the owner; and if the property is already insured he is bound to renew such insurance when due. He must pay the premiums of the insurance for the duration of his usufruct.

Section 1428. No action by the owner against the usufructuary or his transferee in connection with the usufruct or vice versa may be entered later than one year after the usufruct comes to an end. But in an action by the

owner who could not have known of the end of the usufruct, the prescription of one year shall run from the time when he knew or ought to have known of it.

TITLE VIII

CHARGE ON IMMOVABLE PROPERTY

Section 1429. An immovable property may be subject to a charge entitling the beneficiary to a periodical performance out of such property or to a specified use and enjoyment thereof.

Section 1430. A charge on immovable property may be created either for a period of time or for the life of the beneficiary.

If no time has been fixed, it is presumed that the charge is for the life of the beneficiary.

If it is created for a period of time, the provisions of Section 1403 paragraph 3 shall apply *mutatis mutandis*.

Section 1431. Unless otherwise provided in the act creating it, a charge on immovable property is not transferable even by way of inheritance.

Section 1432. If the beneficiary fails to comply with any essential condition specified in the act creating the charge, his his right may be terminated.

Section 1433. If the owner of the property does not perform his obligations under the charge, the beneficiary may, in addition to the remedies for non-performance, apply to the Court to appoint a Receiver to manage the property and

perform the obligations for the owner, or order the property to be sold by auction and the beneficiary be paid out of the owner together with the value of the charge.

The Court may, upon security being given by the owner, refuse to make an order for the appointment of a receiver or for an auction, or release a Receiver already appointed.

Section 1434. Sections 1388 to 1395 and 1397 to 1400 shall apply *mutatis mutandis* to the charge on immovable property.

[\(up \(/law-texts/thailand-civil-code-part-1.html#top\)\)](#)

TITLE I

MARRIAGE

CHAPTER I

BETROTHAL

Section 1435. A betrothal can be effected only when the man and the women have completed there seventeenth year of age.

The betrothal contrary to the provision of paragraph one is void.

Section 1436. If a minor will conclude a betrothal, the consent of the following persons is required:

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| (1) | his or her parents, in case booth of his her father and mother are still alive; |
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| (2) | his or her parent, in case his or her father or mother died, or is in condition of state of being unable to give consent, or is under the circumstances that make the minor unable to ask for such consent; |
| (3) | his or her adopter, in case the minor is and adopted child |
| (4) | his or her guardian, in case there is no person giving consent under (1), (2) and (3), or such person is deprived of parental power. |
| | |

A betrothal concluded by the minor without the said consent is voidable.

Section 1437. Betrothal is not valid until the man gives or transfers the property which is **Khongman** to the woman as evidence that the woman after the betrothal has taken place.

The **Khongman** shall become the property of the woman after the betrothal has taken place.

Sinsod is property given on the part of the man to the parents, adopter of guardian of the woman, as the case may be, in return of the woman agreeing to marry. If the marriage does not take place causing mainly from the woman or on account of any circumstances that make the woman responsible therefore and make the marriage unsuitable for the man or make the man unable to marry that woman, the man may claim the return of the **Sinsod**.

The provisions of [Section 412](/law-texts/thailand-civil-code-part-1.html#412) to Section 418 of this Code on undue enrichment shall apply to the return of the **Khongman** or **Sinsod** under this Chapter, *mutatis mutandis*.

Section 1438 Betrothal does not give rise to an action for compulsory performance of the marriage. An agreement to pay a penalty in case of breach of the betrothal agreement is void.

Section 1439. After the betrothal has taken place if either party commits a breach of the betrothal agreement, such party shall be liable to make compensation. In case the woman commits a breach of the betrothal agreement, the **Khongman** shall also be returned to the man.

Section 1440. Compensation may be claimed as follows:

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| (1) | for injury caused to the body or reputation of the man or woman; |
| (2) | for appropriate expenses or debt incurred in good faith by the betrothed , his or her parents or a person acting in the capacity of his or her parents in preparation for the marriage; |
| (3) | for damage suffered by the man or woman through having take appropriate measures affecting his or her property or other affairs relating to his or her occupation or earning in expectation of the marriage. |

In case where the woman is entitled to the compensation, the Court may decide that the **Khongman** which has become her property is the whole or a part of compensation she will receive, or the Court may order for payment of the compensation without regard to **Khongman** that has become property of the woman.

Section 1441. Where one of the betrothal dies before the marriage, there shall be no claim for compensation. As for the **Khongman** or **Sinsod**, it need not be returned by the woman or on the part of the woman, irrespective if the death of either party.

Section 1442. In case where there is an essential event happening to the betrothed woman that make the marriage to the woman unsuitable, the man is entitled to renounce the betrothal agreement and the woman shall return the **Khongman** to the man.

Section 1443. In case where there is an essential event happening to the betrothed man that makes marriage to the man unsuitable, the woman is entitled to renounce the betrothal agreement and the **Khongman** need not to be returned to the man.

Section 1444. If the ground that makes the one betrothed renounce the betrothal agreement in the gross misconduct if the other taken place after the conclusion of betrothal, the betrothed who had committed the gross misconduct shall be liable to make compensation to the other who has exercised his or her right to renounce the betrothal agreement as if the former had committed a breach of the betrothal agreement.

Section 1445. A man who is betrothed to a woman may, after the betrothal agreement having been renounced under the Section 1442, claim compensation from any man who has sexual intercourse with the woman and has known or should have known of her betrothal.

Section 1446. A man who is betrothed may, without requiring him to renounce the betrothal agreement, claim compensation from any man who has had sexual intercourse or attempted to have sexual intercourse with the woman against her will, and the fact that the woman had been betrothed has been known or ought to have known to him.

Section 1447. The Court shall determine the compensation claimed under this Chapter according to the circumstances.

The claim under this Chapter, except to one in Section 1440 (2), cannot be transferred or inherited unless such claim has been acknowledged in writing or the action for compensation has been entered by the injured person.

Section 1447/1. The prescription for the claim for compensation under Section 1439 shall be six months from the date of the breach of the betrothal agreement.

The prescription for the claim for compensation under Section 1444 shall be six months from the day when the commission of gross misconduct which is the cause of renunciation of the betrothal agreement is known or should have known to the other betrothed, but no later than five years from the date of the said commission.

The prescription for the claim for compensation under Section 1445 and Section 1446 shall be six months from the day when the betrothed man knows or should have known the commission of any other man which is the cause of the claim and the person bound to make the compensation is known, but not later than five years from the date of such commission.

Section 1447/2. The prescription for the claim for return of the **Khongman** under section 1439 shall be six months from the date of the breach of the betrothal agreement.

The prescription for the return of the **Khongman** under Section 1442 shall be six months from the date of denunciation of the betrothal agreement.

CHAPTER II

CONDITIONS OF MARRIAGE

Section 1448. A marriage can take place only when the man and woman have completed their seventeenth year of age. But the Court may, in case of having appropriate reason, allow them to marry before attaining such age.

Section 1449. A marriage cannot take place if either the man or the woman is an insane person or adjudged incompetent.

Section 1450. A marriage cannot take place if the man and woman are blood relations in the direct ascendant or descendant line, or brother or sister of full or half blood. The said relationship shall be in accordance with blood relation without regard to its legitimacy.

Section 1451. An adopter cannot marry the adopted.

Section 1452. A marriage cannot take place if the man or woman is already the spouse of another person.

Section 1453. In case of the woman whose husband died or whose marriage has become terminated, the marriage can only take place if not less than three hundred and ten days have elapsed since the termination of her previous marriage; unless

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| (1) | a child has been born during such period; |
| (2) | the divorced couple remarry; |
| (3) | there is a certificate issued by a qualified doctor who is a lawful physical practitioner in medicine showing that the woman is not pregnant; |
| (4) | there is an order of the Court allowing the woman to marry. |
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Section 1454. In case of marriage of a minor, the provisions of Section 1436 shall apply *mutatis mutandis*.

Section 1455. Giving consent to the marriage may be made:

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| (1) | by affixing signature of the person giving consent in the Register at the time of registration of the marriage; |
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| (2) | by a consent document stating the names of the parties to the marriage and signed by the person giving consent; |
| (3) | by verbal declaration before at least two witnesses in case of necessity. |
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The consent having been given cannot be revoked.

Section 1456. In case where there is no person having the power to give consent under Section 1454, or if the person refuses to give consent or is in the position of being unable to give consent, or the minor cannot, in such circumstances, ask for the consent, the minor may file an application with the Court for giving consent to the marriage.

Section 1457. Marriage under this Code shall be effected only on registration being made.

Section 1458. A marriage can take place only if the man and woman agree to take each other as husband and wife, and such agreement must be declared publicly before the Registrar in order to have it recorded by the Registrar.

Section 1459. A marriage in foreign country between Thai people or between a Thai people and a foreigner may be effected according to the form prescribed by Thai law or by the law of the country where it takes place.

If the spouses desire to have the marriage registered according to Thai law, the registration shall be effected by a

Thai Diplomatic or Consular Officer.

Section 1460. In case where there exists special circumstances that make the marriage registration by the Registrar unable because either or both of the man and woman were in imminent danger of death or in the state of armed conflict or war, if a declaration of intention to marry has been made by the man and woman before a person of sui juris living there, who would have noted down as an evidence such intention, and if the registration of marriage between the man and woman was effected thereafter not later than ninety days as from the date of first possible opportunity to apply for registration of marriage with production of the evidence of the intention in order to have the date and place of declaration of intention to marry and the special circumstances recorded by the Registrar in the Marriage Register, the day on which declaration of intention to marry has been made to the said person shall be deemed as the date of registration of marriage.

The provisions of this Section shall not apply to the marriage that is void if it should take place on the date of declaration of intention.

CHAPTER III

RELATIONSHIP OF HUSBAND AND WIFE

Section 1461. Husband and wife shall cohabit as husband and wife.

Husband and wife shall maintain and support each other according to his or her ability and condition in life.

Section 1462. Where the physical or mental health or happiness of either spouse is greatly imperiled by continuance of cohabitation, the spouse so imperiled may apply to the Court for authorization to live apart while the danger persists; and in such case, the Court may order such amount of maintenance to be furnished by one of the spouses to the other as may be proper according to the circumstances.

Section 1463. If one of the spouses is adjudged incompetent or quasi-incompetent, the other becomes guardian or curator by operation of law. But on application of any interested person or of Public Prosecutor, the Court may on substantial grounds, appoint another person as guardian or curator.

Section 1464. If one of the spouse becomes insane, irrespective of whether he or she has been adjudged incompetent or not, and the other fails to give proper maintenance to the insane spouse under Section 1461 paragraph two, does or fails to do any thing to the extent that it plunges the insane spouse into the position which is likely endangering the latter's body or mind, or causing any undue loss to the latter's property, the persons as specified in [Section 28 \(/law-texts/thailand-civil-code-part-1.html#28\)](/law-texts/thailand-civil-code-part-1.html#28) or the guardian may enter an action against the other claiming maintenance for the insane spouse, or apply for any order of the Court to protect the insane spouse.

If, in case of entering the action for maintenance under paragraph one, no order has yet been given to effect the insane spouse to become incapacitated person, an

application shall be made to the Court in the same case for an order effecting such insane spouse to be an incapacitated person and to appoint the applicant himself or herself as the guardian. If such order effecting the incapacitated person on the insane spouse has been given, an application for removal of the old guardian and appointment of a new one may be made.

In applying for any order of the Court for protecting the insane spouse without claiming maintenance, the applicant may not request the Court to order effecting the insane spouse to be an incapacitated person or to change the guardian. If the measures for protection as requested, in the opinion of the Court, requires an appointment or change of the guardian, the Court shall firstly give an order effecting the carrying out of the similar activities as provided in paragraph two, and then give a protection order as it is deemed suitable.

Section 1464/1 During the Court trial under Section 1464, the Court may, upon request, determine any temporary measures concerning the maintenance or protection of the insane spouse as it is deemed suitable. If it is a case of emergency, the provisions on the request in case of emergency under the Civil Procedure Code shall apply.

[\(up \(/law-texts/thailand-civil-code-part-1.html#top\)\)](#)

CHAPTER IV

PROPERTY OF HUSBAND AND WIFE

Section 1465. Where the husband and wife have not, previous to their marriage, concluded a special agreement (/view_document/7-prenuptial-agreement-for-thailand.html) concerning their properties, the relations between them as regards to their properties shall be governed by the provisions of this Chapter.

Any clause in the anti-nuptial (also called prenuptial) agreement contrary to public order or good morals, or provided that the relations between them as regards such properties are to be governed by foreign law shall be void.

Section 1466. The ante-nuptial agreement is void if not entered in the Marriage Register at the time of marriage registration terms of the ante-nuptial; or if not made in writing and signed by both spouses and by at least two witnesses and entered in the Marriage Register at the time of marriage registration stating that the ante-nuptial is thereto annexed.

Section 1467. After marriage the ante-nuptial agreement cannot be altered except by authorization of the Court.

When there is final order of the Court to effect the alteration of cancellation of the ante-nuptial agreement, the Court shall notify the Marriage Registrar of the matter in order to have it entered in the Marriage Register.

Section 1468. Clauses in the ante-prenuptial agreement shall have no effect as regards the rights of third persons acting in good faith irrespective of whether they be altered or cancelled by the order of the Court.

Section 1469. Any agreement concluded between husband and wife during marriage may be avoided by either of them at any time during marriage or within one year from the day of dissolution of marriage; provided that the right of third persons acting in good faith are not affected thereby.

Section 1470. Properties of husband and wife except in so far as they are set aside as **Sin Suan Tua**, are **Sin Somros**.

Section 1471. Sin Suan Tua consists of:

- (1) property belonging to either spouse before marriage
- (2) property for personal use, dress or ornament suitable for station in life, or tools necessary for carrying on the profession of either spouse
- (3) property acquired by either spouse during marriage through a will or gift
- (4) **Khongman**.

Section 1472. As regards to **Sin Suan Tua**, if it has been exchanged to other property, other property has been bought or money has been acquired from selling it, such other property or money acquired shall be **Sin Suan Tua**.

Where the **Sin Suan Tua** has been totally or partly destroyed but replaced by other property or the money, such other property shall be **Sin Suan Tua**.

Section 1473. Each spouse is manager of his or her **Sin Suan Tua**.

Section 1474. Sin Somros consists of:

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| (1) | property acquired during marriage; |
| (2) | property acquired by either spouse during marriage through a will of gift made in writing if it is declared by such will or document of gift to be Sin Somros ; |
| (3) | fruits of Sin Suan Tua . |

In case of doubt as to whether a property in **Sin Somros** or not shall be presumed to be **Sin Somros**.

Section 1475. Where any **Sin Somros** is property of the kind mentioned in Section 456 of this Code or has documentary title, either husband or wife may apply for having his or her name entered in the documents as co-owners.

Section 1476. In managing the **Sin Somros** in the following cases, the husband and wife have to be joint manager, or one spouse has to obtain consent from the other:

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| (1) | Selling, exchanging, sale with the right of redemption, letting out property on hire-purchase, mortgaging, releasing mortgage to mortgagor or transferring the right of mortgage on immovable property or on mortgageable movable property. |
| (2) | Creating or distinguishing the whole or a part of the servitude, right of inhabitation, right of superficies, usufruct or charge on immovable property. |
| (3) | Letting immovable property for more than three years. |

| | |
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| (4) | Lending money |
| (5) | Making a gift unless it is a gift for charitable, social or moral purposes and is available to the family condition. |
| (6) | Making a compromise. |
| (7) | Submitting a dispute to arbitration. |
| (8) | Putting up the property as guarantee or security with a competent official or the Court. |

The management of the Sin Somros in any case other than those provided in paragraph one can be made only by one spouse without having to obtain consent from the other.

Section 1476/1. The husband and wife can manage the **Sin Somros**, differently, in whole or in part, from provisions of Section 1476, provided that the ante-nuptial agreement under Section 1465 and Section 1466 has been made. In such case, the management of the **Sin Somros** shall be made in accordance with the ante-nuptial agreement.

In case the specifications of the management of the **Sin Somros** in the ante-nuptial agreement are only part in difference to the provisions of Section 1476, the management of the Sin Somros other than those specified in the ante-nuptial contract shall be made in accordance with Section 1476.

Section 1477. Either spouse is entitled to litigate, defend, take legal proceedings concerning maintenance of the **Sin Somros** or for the benefit of the **Sin Somros**. Debts incurred by the said litigation, defense and legal proceedings shall be regarded as the obligation to be performed jointly by the spouses.

Section 1478. Where one spouse has to give consent or to affix a signature together with the other in the management of the property, but unreasonably refuses to give such consent or to affix such signature, or is not in a position to give such consent, the latter may apply to the Court for an order granting the necessary permission.

Section 1479. Where an act by either spouse requires the consent of the other spouse, and if such act is required by law to be made in writing or registered by the competent official, such consent must be given in writing.

Section 1480. In the management of the **Sin Somros** which has to be made jointly or has to obtain the consent from the other spouse under Section 1476, if either spouse has entered into any juristic act alone or without consent of the other, the latter may apply in Court for revoking such juristic act , unless it has been ratified by the other spouse, or the third person was at the time of entering into such juristic act, acting in good faith and make the counter-payment.

The litigation for revocation of the juristic act by the Court under paragraph one cannot be made later than one year from the day when such cause as being the ground for the revocation is known, or later than ten years since the juristic act was done.

Section 1481. Neither spouse is entitled to dispose of the **Sin Somros** by will in favour of the other persons to an extent exceeding his or her own portion thereof.

Section 1482. In case either spouse is the sole manager of the **Sin Somros**, the other spouse is nevertheless entitled to manage household affairs or provide for the necessaries of the family, and the expenses therefore would bind the **Sin Somros** and **Sin Suan Tua** of both parties.

If such management of household affairs or provision for the necessaries of the family by the husband or wife results in the undue loss, the other spouse may apply to the Court to forbid or limit his or her power.

Section 1483. In case either spouse is the sole manager of the **Sin Somros**, if the manager is going to commit or is committing any act in the management of the **Sin Somros** which would appear to result in undue loss, the other spouse may apply to the Court for an order forbidding commission of such act.

Section 1484. If either spouse who is the manager of **Sin Somros**:

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| (1) | causes undue loss to it; |
| (2) | fails to support the other spouse; |
| (3) | becomes insolvent or incurs debts to an amount exceeding one half of the Sin Somros ; |
| (4) | hinders the management of Sin Somros by the other spouse without reasonable ground; |

(5) is found to have circumstances that will ruin the **Sin Somros**;

the other spouse may apply to the Court for an order authorizing him or her to be the sole manager or dividing the **Sin Somros**.

In case there is an application is made under paragraph one, the Court may determine temporary protective measures in the management of the **Sin Somros**. If that is the case of emergency, the provisions on the request in case of emergency under the Civil Procedure Code shall apply.

Section 1484/1. In case where has been an order of the Court forbidding or limiting the power of either spouse to manage the **Sin Somros**, if the cause which was the ground for the Court order or the circumstances have later changed, either spouse may apply to the Court revocation or change of the order forbidding or limiting the power to manage the **Sin Somros**. The Court in this effect may give any order which is deemed suitable.

Section 1485. The husband or wife may apply to the Court for authorizing him or her to be the manager of any particular **Sin Somros** or participate in the management, if such management or participation will bring about more benefit.

Section 1486. When the Court has pronounced a final judgment or given an order under Section 1482 paragraph two, Section 1483, Section 1484, Section 1484/1 or Section 1485 in favour of the applicant, or Section 1491, Section

1492/2 or Section 1598/17, or the husband and wife has been relieved of becoming bankrupt, the Court shall notify the marriage Registrar of the matter in order to have it entered in the Marriage Registrar.

Section 1487. No spouse can seize attach any property of the other during the marriage, except the seizure or attachment made in the case which has entered for the purpose of exercising his or her duty or for maintaining rights between husband and wife as specially provided in this Code or as specially provided by this Code allowing one spouse to sue the other, or for allowance due for maintenance and cost under the judgment of the Court.

Section 1488. Where either spouse is personally liable to perform an obligation incurred before or during marriage, such performance shall be first made out of his or her **Sin Suan Tua**; if the obligation is not performed in full, it shall be satisfied out of his or her portion of the **Sin Somros**.

Section 1489. Where both spouses are common debtors, the performance shall be made out of the **Sin Somros** and the **Sin Suan Tua** of both spouses.

Section 1490. Debts that both spouses are jointly liable to perform, shall include the following debts incurred by either spouse during marriage:

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| (1) | debts incurred in connection with management of household affairs and providing for the necessities of the family, or maintenance, medical expenses of the household and for proper education of the children; |
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| (2) | debts incurred in connection with the Sin Somros ; |
| (3) | debts incurred in connection with a business carried on by the spouses in common; |
| (4) | debts incurred by either spouse only for his or her own benefit but ratified by the other. |

Section 1491. If either spouse is adjudged bankrupt, the **Sin Somros** is divided by operation of law as from the date of adjudication.

Section 1492. After the **Sin Somros** has been divided under Section 1484 paragraph two, Section 1491 or Section 1598/17 paragraph two, the portion so divided becomes **Sin Suan Tua** of each spouse. Any property obtained after the division by either spouse shall be **Sin Suan Tua** of that spouse and not be regarded as **Sin Somros**. And the property acquired thereafter by the spouse through a will or gift made in writing under Section 1474 (2) shall become **Sin Suan Tua** of the husband and wife equally.

Fruits of the **Sin Suan Tua** accrued after the division of the **Sin Somros** shall be **Sin Suan Tua**.

Section 1492/1. In case the division of the **Sin Somros** is made by the order of the Court, the revocation of the division shall be made upon the request of either spouse and the Court has given the order to that effect. If either spouse raises an objection to such request, the Court cannot give an order for the revocation of the division of the **Sin Somros** unless the cause for division of the **Sin Somros** has ceased to exist.

After the division of the **Sin Somros** under paragraph one having been revoked, or suspended due to the husband or wife having been relieved from being bankrupt, the property which is the **Sin Suan Tua** on the date of the order of the Court, or on the date of his or her relieving from being bankrupt shall remain the same as **Sin Suan Tua**.

Section 1493. In case where the **Sin Somros** has been disposed of, both spouses are liable to pay for the household expenses in proportion to the amount of their respectation **Sin Suan Tua**.

([up \(/law-texts/thailand-civil-code-part-1.html\)](#))

CHAPTER V

VOID OF MARRIAGE

Section 1494. The marriage will be void only as provided in this Chapter.

Section 1495. The marriage which is made against Section 1449, Section 1450, Section 1452 and Section 1458 shall be void.

Section 1496. It is only a judgment of the Court that effects the void of the marriage which is made against Section 1449, Section 1450 and Section 1458.

The spouses, parents or descendants of the spouse may apply for a judgment of the Court effecting the void of the marriage. If there is none of the said persons, any interested person may request the Public Prosecutor to apply to the Court for such judgment.

Section 1497. Any interested person may allege or apply for a judgment of the Court effecting that the marriage made against Section 1452 is void .

Section 1497/1. In case there is a final judgment of the Court effecting the void of any marriage, the Court shall notify the Marriage Registrar of the matter in order to have it entered in the Marriage Register.

Section 1498. The void of marriage will not create property relation between husband and wife.

In case of marriage has been adjudged void, the property possessed or acquired by either party before or after the marriage as well as the fruits thereof remain as that party's property. As for the property jointly earned, they shall divided equally unless the Court deems it proper and order otherwise by taking into consideration the obligation in the family and earnings of both parties as well as their station in life, including all other circumstances.

Section 1499. The marriage adjudged void as being against Section 1449, Section 1450 or Section 1458 shall not prejudice the right acquired through such marriage before pronouncing the final judgment effecting the void of the marriage by the party who has married in good faith.

The marriage adjudged void as being against Section 1452 shall not prejudice the right acquired through such marriage before the cause that the maker the marriage void is known to the man or woman. But the said marriage shall not make one spouse become statutory heir of the other and have the right of inheritance to the other spouse.

In case of the marriage adjudged void as being against Section 1449, Section 1450, Section 1458 or Section 1452, if one party only acted in good faith, such party may claim compensation. However, if such marriage makes the party in good faith become destitute deriving insufficient income out of his or her property or business which used to be carried on before pronouncing the final judgment to effect the void of the marriage, or before the void of his or her marriage becoming known, as the case may be, that party can also claim living allowance, and the provisions of Section 1526 paragraph one and Section 1528 shall apply to the claim for living allowances in this case, *mutatis mutandis*.

The prescription for claiming compensation or living allowances under paragraph three shall be two years from the date of pronouncing the final judgment to effect the void of the marriage in case of the marriage made against Section 1449, Section 1450 or Section 1448, or from the day when the void of his or her marriage becoming known in the case of the marriage made against Section 1452.

Section 1499/1. In case of the marriage adjudged void, the agreement between the spouses as to which party to exercise the parental power over any child, or either party or both of them to be responsible for the amount of contribution of the maintenance of the child shall be made in writing. If the agreement cannot be reached, the Court shall make decision on the matter. In making such decision, if the are grounds for depriving that spouse of parental power under Section 1582, the Court may give an order depriving that spouse of the same and appoint a third person as a guardian by taking into consideration the

happiness and interest of the child, and the provisions of

Section 1521

(file:///D:/tumb/sfs/web/Civil_Code_text_English_III.html#1521).

shall apply, *mutatis mutandis*.

Section 1500. The marriage adjudged is void shall not prejudice the rights acquired by third person acting in good faith before entering the void of the marriage into the Marriage Register under Section 1497/1.

CHAPTER VI

TERMINATION OF MARRIAGE

Section 1501. Marriage is terminated by death, divorce or being cancelled by the Court.

Section 1502. A voidable marriage terminates upon cancellation decided by judgment of the Court.

Section 1503. An application to the Court for cancellation of marriage on the ground of its avoidable shall be made only in the case where the spouses have not complied with Section 1448, Section 1505, Section 1506, Section 1507, and Section 1509.

Section 1504. An interested person other than the parents or guardian who have given their consent to the marriage is entitled to apply for cancellation of the marriage on the ground of its voidability.

If the court has not cancelled the marriage until both man and woman have completed the age required under Section 1448 or if the woman has become pregnant before such

completion, the marriage shall be deemed to be valid from the time it was made.

Section 1505. A marriage which is made on account of mistake as to the identity of the other spouse shall be deemed to be voidable.

The right to apply for cancellation of the marriage on account of mistake as to the identity of the spouse shall be terminated after the lapse of ninety days from the date of marriage.

Section 1506. A marriage is voidable if it is made by the spouses on account of fraud to such an extent that without it the marriage would not have been made.

The provisions of paragraph one shall not apply to the case not apply to the case where the other spouse has not known the fraud committed by a third person.

The right to apply for cancellation of the marriage on account of fraud shall be terminated after the lapse of ninety days from the day on which the spouse has known or should have known of the fraud, or after the lapse of one year from the date marriage.

Section 1507. A marriage is voidable if it is made by the spouses on account of duress to such an extent that without it the marriage would not have been made.

The right to apply for cancellation of the marriage on account of duress shall be terminated after the lapse of one year from the day on which the spouse is free from duress.

Section 1508. Where the marriage is voidable on account of mistake as to the identity of the spouse, fraud or duress, only the spouse who mistook the identity of the other, or was induced by fraud or duress to contract the marriage may apply for the cancellation of such marriage.

In case where the person entitled to apply for the cancellation of the marriage has been adjudged incompetent, the person who may apply to the Court for an order effecting an insane person to be an incapacitated person under [Section 29 \(/law-texts/thailand-civil-code-part-1.html#28\)](/law-texts/thailand-civil-code-part-1.html#28), may also apply for the cancellation of such marriage. Where the person entitled to apply for the cancellation of the marriage is an insane person not yet adjudged incompetent, the said person may apply for the cancellation of such marriage but must apply concurrently to the Court for an order effecting him to be an incapacitated person. If the Court gives an order revoking the application for an order effecting him to be an incapacitated person, the Court shall also order revoking the application made by the said person for the cancellation of the marriage.

The order of the Court revoking the application made by the person for cancellation of the marriage under paragraph two does not effect the right of the spouse to apply for the cancellation of the marriage; provided that the spouse exercise his or her right within the remaining period of time. If the remaining period of time is less than six months as from the day on which the order of the Court revoking the application made by the said person for cancellation of the marriage is given, or if there remains no such period, the period of time shall correspondingly be extended to the

completion of six months as from the day on which the order of the Court revoking the application made by the said person for the cancellation of the marriage is given.

Section 1509. The marriage made without consent of the persons mentioned in Section 1454 is voidable.

Section 1510. Where the marriage is voidable on account of having been made without consent of the persons mentioned in Section 1454, only the person who can give the consent under Section 1454 may apply for the cancellation of the marriage.

The right to apply for the cancellation of the marriage under this Section is extinguished when the spouse has completed the age of twentieth year or when the woman has become pregnant.

The action for the cancellation of the marriage under this Section is barred by prescription after one year from the day where the marriage is known.

Section 1511. The marriage which is cancelled by judgment of the Court shall be deemed to have terminated on the day when the judgment becomes final; provided, however, that it may not be set up to the prejudice of the rights of third persons acting in good faith unless the cancellation of the marriage has been registered.

Section 1512. The provisions concerning the result of divorce by judgment of the Court shall apply to the result of cancellation of the marriage mutatis mutandis [Ed. Latin, the necessary changes having been made].

Section 1513. If it appears that the spouse sued on cancellation of the marriage has known of the ground of the avoidability, such spouse is required to make compensation for the damage to the body, reputation or property of the other arising from such marriage, and the provisions of Section 1525 shall apply *mutatis mutandis*.

If the other spouse becomes destitute due to the cancellation of the marriage under paragraph one and derives insufficient income out of his or her property of business which used to be carried on during the marriage, the spouse against whom the action has been brought is also required to be liable to living allowances as provided in section 1526.

Section 1514. Divorce may be effected only by mutual consent or by judgment of the Court.

Divorce effected by mutual consent must be made in writing and certified by the signatures of at least two witnesses.

Section 1515. Where marriage has been registered as provided by this Code, divorce by mutual consent is valid only if the registration thereof is effected by both the husband and wife.

Section 1516. Grounds of action for divorce are as follows:

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| (1) | one spouse has given maintenance to or honored another person as wife or husband, committed adultery or had regular sexual intercourse with such other person, such other spouse may enter an action for divorce; |
| (2) | one spouse is guilty of misconduct, notwithstanding whether such misconduct is a criminal offence or not, if it causes the other: |
| (a) | to be seriously ashamed; |
| (b) | to be insulted or hated or account of continuance of being husband or wife of the spouse having committed the misconduct; or |
| (c) | to sustain excessive injury or trouble where the condition, position and cohabitation as husband and wife are taken into consideration; the latter may enter a claim for divorce; |
| (3) | one spouse has caused serious harm or torture to the body or mind of the other, or has seriously insulted the other or his or her ascendants, the latter may enter a claim for divorce; |
| (4) | one spouse has deserted the other for more than one year, the latter may enter a claim for divorce; |

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| (4/1) | one spouse had been sentenced by a final judgment of the Court and has been imprisoned for more than one year in the offence committed without any participation, consent or in the knowledge of the other, and the cohabitation as husband and wife will cause the other party sustain excessive injury or trouble, the latter may enter a claim for divorce; |
| (4/2) | The husband and wife voluntarily live separately because of being unable to cohabit peacefully for more than three years, or live separately for more than three years by the order of the Court, either spouse may enter a claim for divorce; |
| (5) | one spouse has been adjudged to have disappeared, or as left his or her domicile or residence for more than three years and being uncertain whether he or she is living or dead; |
| (6) | one spouse has failed to give proper maintenance and support to the other, or committed acts seriously adverse to the relationship of husband and wife to such an extent that the other has been in excessive trouble where the condition, position and cohabitation as husband and wife are taking into consideration, the latter may enter a claim for divorce; |

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| (7) | one spouse has been an insane person for more than three years continuously and such insanity is hardly curable so that the continuance of marriage cannot be expected, the other may enter a claim for divorce; |
| (8) | one spouse has broken a bond of good behavior executed by him or her, the other spouse may enter a claim for divorce; |
| (9) | one spouse is suffering from a communicable and dangerous disease which is incurable and may cause injury to the other, the latter may file a claim for divorce; |
| (10) | one spouse has a physical disadvantage so as to be permanently unable to cohabit as husband and wife, the other may enter a claim for divorce. |

Section 1517. No action for divorce may be instituted by the husband or wife, as the case may be if such spouse has consented to or connived at the acts under Section 1516 (1) and (2) upon which the actio for divorce is based.

If the ground of action for divorce under Section 1516 (10) has resulted from the act of the other spouse, the action for divorce based upon such ground may not be instituted by such other spouse.

Where the action for divorce based upon the ground under section 1516 (8) has been instituted, the Court may not pronounce judgment to effect the divorce if the behavior of

the husband or wife that causes the bond to have been executed is a minor cause or of no importance in relation to peaceful cohabitation as husband and wife.

Section 1518. The right to institute an action for divorce would be terminated if the spouse entitled thereto has committed any act showing his or her forgiveness to the act done by the other that has caused the right to institute the action for divorce.

Section 1519. In case where one spouse is an insane person and if there gives rise to the ground of action for divorce irrespective of whether it arises before or after the insanity, the person entitled to apply to the Court for an order effecting the insane person to be an incapacitated person under [Section 28 \(/law-texts/thailand-civil-code-part-1.html#28\)](/law-texts/thailand-civil-code-part-1.html#28)* shall have the power to enter an action against the other spouse for divorce and liquidation of the property. In such a case if no order of the Court effecting the insane spouse to be an incapacitated person has yet been given, the said person shall apply to the Court in the same case for an order effecting the insane spouse to be an incapacitated person.

The said person may, if deemed suitable, also apply to the Court for giving the order under Section 1526 and Section 1530.

In case where the spouse alleged to be an insane person has not yet been adjudged incompetent, and if the Court deems that such spouse should not be judged incompetent, the case shall then be dismissed. If the spouse is deemed suitable to be adjudged incompetent but an order to effect

the divorce should not yet be given as yet, the Court shall adjudge the spouse to be an incapacitated person and may not give order concerning the guardian or appointing other person to be guardian under Section 1463 while the application for divorce will be dismissed, and the Court may in this connection give an order determining living allowances. In case where the spouse is deemed to be insane and should be adjudged incompetent by the Court and the application for divorce should also be granted, the Court shall issue an order in the judgment effecting such spouse to be an incapacitated person, appointing a guardian and allowing the divorce.

In case there the Court deems that the ground upon which the claim for divorce is based is not proper to the condition of the incapacitated spouse who is going to divorce the other spouse, if it is not proper under such circumstances that divorce should be allowed, the Court may not pronounce the judgment to effect the divorce.

Section 1520. In case of divorce by mutual consent, the spouses shall make an agreement in writing for the exercise of parental power over each of the children. In the absence of such agreement or an agreement thereon cannot be reached, the matter shall be decided by the Court.

In case of divorce by judgment of the Court, the Court trying the divorce case shall also order that the parental power over each of the children belongs to any party. If, in such trial, it is deemed proper to deprive that spouse of the parental power under Section 1582, the Court may give an

order depriving that spouse of the same and appointing a third person as a guardian, by taking into consideration the happiness and interest of the child.

Section 1521. If it appears that the person exercising parental power of the guardian under Section 1520 behaves himself or herself improperly or there is a change of circumstances after the appointment, the Court has the power to give an order appointing a new guardian by taking into consideration the happiness and interest of the child.

Section 1522. In case of divorce by mutual consent, an arrangement shall be made and contained in the agreement of divorce as to who, both of the spouses or either spouse, will contribute to the maintenance of the children and how much is the contribution.

In case of divorce by judgment of the Court or in case the agreement of divorce contains no provisions concerning the maintenance of the children, the Court shall determine it.

Section 1523. In case of divorce by judgment of the Court on the ground as provided in Section 1516 (1), the husband or wife is entitled to compensation from the husband or wife and other woman or adulterer, as the case may be.

The husband is entitled to claim compensation from any person who has wrongfully taken liberties with his wife in an adulterous manner, and the wife is entitled to claim compensation from other woman who has openly shown her adulterous relations with the former's husband. However, the husband or wife is not entitled to claim

compensation if he or she has consented to or connived at the act done by other party under Section 1516 (1) or allowed other person to act as provided in paragraph two.

Section 1524. If the ground of action for divorce under Section 1516 (3), (4) or (6) has arisen through an act of the party at fault with the intention to make the other party so intolerable that action for divorce has to be entered, the other party is entitled to compensation from the party at fault.

Section 1525. The compensation under Section 1523 and Section 1524 shall be decided by the Court according to the circumstances, and the Court may give an order for a single payment thereof or payment in installments as may be deemed suitable by the Court.

In case where the person who has to make the Compensation is a spouse of the other party, the share of the property received by the former from the liquidation of the **Sin Somros** on account of divorce shall also be taken into consideration.

Section 1526. In a case of divorce, if the ground for divorce has derived from the guilt of only one party, and the divorce will make the other become destitute deriving insufficient income out of his or her property or business which used to be carried on during the marriage, the latter is entitled to apply for the living allowances to be paid by the party at fault. The Court may decide whether the living allowances be granted or not by taking the ability of the grantor and the condition in life of the receiver into consideration, and the provisions of Section 1598/39, Section 1598/40 and

Section 1598/41 shall apply *mutatis mutandis*.

The right to claim the living allowances is extinguished if it is not raised in the plaint or counter-claim in the action for divorce.

Section 1527. If a divorce is effected on the ground of insanity under Section 1516 (7) or on the ground of suffering from a communicable and dangerous disease under Section 1516 (9), the other spouse shall furnish living allowances to the spouse who is insane or is suffering from the disease, according to Section 1526, *mutatis mutandis*.

Section 1528. If the party receiving living allowances remarries, the right to receive living allowances is extinguished.

Section 1529. Rights of action based upon any of the grounds provided in Section 1516 (1), (2), (3) or (6), or Section 1523 are extinguished after one year when the fact which can be alleged by the claimant has been known or should have been known to him or her.
Grounds upon which a claim for divorce can no longer be based may still be proved in support of another claim for divorce based upon other grounds.

Section 1530. Where an action for divorce is pending, the Court may, on application of either party, make any provisional order which it thinks proper such as those concerning the Sin Somros, the lodging, the maintenance of the spouses and the custody and maintenance of children.

Section 1531. In case where a marriage has been registered according to law, divorce by mutual consent takes effect from the time of registration.

Divorce by judgment of the Court takes effect on and from the time when the judgment becomes final; however, such judgment may not be set up to the prejudice to the rights of third persons acting in good faith unless the divorce has been registered.

Section 1532. After divorce, the property of the husband and wife shall be subject to liquidation.

But as between the spouses,

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| (a) | in case of divorce by mutual consent, the liquidation shall apply to the property of the husband and wife as it was on the date of registration of divorce; |
| (b) | in case of divorce by judgment, the liquidation shall apply to the property of the husband and wife as it was on the day when the action for divorce was entered in Court. |

Section 1533. Upon divorce, the **Sin Somros** shall be divided equally between man and woman.

Section 1534. Where either spouse has made disposal of the **Sin Somros** for his or her exclusive benefit, or has made disposal thereof with an intention to cause injury to the other, or has made disposal thereof without the consent of the other in the case where such disposal is required by law to have consent of the other, or has wilfully destroyed it, it shall, for the purpose of division of the **Sin Somros** under Section 1533, be regarded as if such property had still remained. If the share of the **Sin Somros** that the other will

receive is not complete to what he or she should have received, the party at fault is required to make up for the arrears from his or her share of the **Sin Somros** or his or her **Sin Suan Tua**.

Section 1535. Upon termination of the marriage, the man and woman shall be liable for common debts equally.

Samuiforsale

TITLE II

PARENT AND CHILD

CHAPTER I

PARENTAGE

Section 1536. A child born of a woman during wedlock or within three hundred and ten days after the termination of the marriage is presumed to be the legitimate child of the husband or the man who used to be the husband, as the case may be.

The provisions of paragraph one shall apply to a child born of a woman before the marriage has been announced void by the final judgment of the Court, or within three hundred and ten days as from the date of such final judgment.

Section 1537. In case where the woman had made the new marriage and gave birth to a child within three hundred and ten days as from the day of termination of the marriage, the child shall be presumed to be the legitimate child of the new husband, and no presumption under Section 1536 saying that the child is the legitimate child of the former

husband shall apply; provided that there is a judgment pronouncing that the child is not the legitimate child of the new husband.

Section 1538. In case where the man or woman had made the marriage against Section 1452, a child born during such marriage shall be presumed to be the legitimate child of the husband who has last marriage entered into the Marriage Register.

In case where the woman had made the marriage against Section 1452, the presumption in Section 1536 shall apply; provided that there is a final judgment pronouncing that the child is not legitimate child of the husband who has the last marriage entered into the Marriage Register.

The provisions of paragraph one shall apply to the child born within three hundred and ten days from the date of the final judgment pronouncing the void of the marriage made against Section 1452.

Section 1539. In case where the child is presumed to be the legitimate child of the husband or the man who used to be the husband under Section 1536, Section 1537 or Section 1537 or Section 1537 or Section 1538, the husband or the man who used to be the husband may repudiate the child by entering an action in Court against the child and the mother jointly, and providing that he did not cohabit with the mother of the child during the period of conception, that is to say, the period extending from the one hundred and eightieth day to the three hundred and ten day

inclusive, prior to the birth of the child, or that he could not have been the father of the child on other grounds of impossibility.

The action may be brought against only the child if at the time of entering the action the mother of the child is not alive. Where the child is not alive irrespective of whether the mother of the child is alive or not, the Court may be requested to declare that the child is not his legitimate child. In case where the mother of the child or the heir of the child is still alive, the Court shall send a copy of the request to the said person and may, if it thinks proper, send also a copy of the request to the Public Prosecutor for consideration of proceeding the case on behalf of the child.

Section 1540. *(Repealed)*

Section 1541. An action for repudiation of a child cannot be entered by the husband or the man used to be the husband if it appears that the latter causes to have the birth of the child entered in the Birth Register as his legitimate child or arranges or agrees to have it entered in the Birth Register.

Section 1542. An action for repudiation of a child shall be entered by the man who is or used to be the husband within one year after the birth of the child. In any case no such action can be entered later than ten years after the birth of the child.

In case where there is a judgment pronouncing that the child is not the legitimate child of the new husband under Section 1537 or of the husband in the last marriage under Section 1538, if the husband of the man who used to be the

husband and is presumed by Section 1536 to be the father of the child, he shall enter the action within one year since the final judgment became known to him.

Section 1543. In case where the man being or used to be the husband who has entered an action for repudiation of the child, died before the case becoming final, a person who has the right of inheritance together with the child or a person whose right of inheritance would be deprived on account of the birth of the child, may file a motion to substitute himself or may be summoned to substitute for the deceased.

Section 1544. An action for repudiation of a child can be entered by a person who has the right of inheritance together with the child or by a person whose right of inheritance would be deprived on account of the birth of the child in the following cases:

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| (1) | the man who is or used to be the husband died before the expiration of the period within which the action could have been entered by him; |
| (2) | the child was born after the death of the man who is or used to be the husband. The action for repudiation of the child under (1) must be entered within six months since the death of the man being or having ever been the husband becoming known to that person. In any case no such action can be entered later than ten years after the birth of the child. |

The provisions of Section 1539 shall apply to the entering of an action for repudiation of the child, *mutatis mutandis*.

Section 1545. A child may request the Public Prosecutor to enter an action under Section 1536 for repudiation to be legitimate child of the husband of his or her mother if it becomes known to the child that he or she is not an inherited child of the husband of the mother.

In entering the action under paragraph one, if it becomes known to the child before he or she becoming *sui juris* that he or she is not the legitimate child of the husband of his or her mother, no action can be entered by the Public Prosecutor after one year as from the date of his or her becoming *sui juris*. If it becomes known to the child after his or her becoming *sui juris*, no action can be entered by the Public Prosecutor later than one year since the day when the facts come to his or her knowledge.

Section 1546. A child born of a woman who is not married to a man is deemed to be the legitimate child of such woman.

Section 1547. A child born of the parents who are not married to each other is legitimate by the subsequent marriage of the parents, or by the registration made on application by the father, or by a judgment of the Court.

Section 1548. When legitimation is applied for by the father, the child and the mother must give consent to the applicant.

In case where the child and the mother do not appear before the Registrar for giving the consent, the Registrar shall notify the child and the mother of the father's application for registration. If the child or the mother raises no objection or does not give the consent within sixty days after the acceptance of the notification by the child or mother, it is presumed that the child or the mother does not give consent. The period of time shall be extended to one hundred and eighty days in case where the child or the mother has been outside Thailand.

In case where the child or the mother raises an objection that the applicant is not the father, or does not give the consent, or is unable to give the consent, the registration for legitimation must be effected by a judgment of the Court.

After the Court had pronounced a judgment effecting the registration of the legitimation and the judgment has been produced to the registrar for registration, the Registrar shall effect the registration.

Section 1549. When the registrar has notified the child and the mother of the application of legitimation under Section 1548, notwithstanding whether the child and the mother will object to the application under Section 1548 or not, the child or the mother may, within a period of not more than ninety days since the notification reached the child or mother, notify the Registrar to make a record that the applicant is not a suitable person for exercising partly or wholly the parental power.

Although the registration of legitimation under Section 1548 had been made, if there has been a notification of the child and the mother under paragraph one, the child's father will not be able to exercise partly or wholly such parental power as had been notified by the child or the mother until the court will pronounce a judgment effecting the child's father to exercise partly or wholly the parental power, or a period of ninety days had elapsed since the registrar was notified by the Child or the mother of the unsuitability on the part of the applicant for registration of legitimation to be the person unsuitable for exercising a part of the whole of the parental power.

In case the court pronounces a judgment that the applicant for registration of legitimation is not the suitable person for exercising a part or the whole of the parental power or be the guardian.

Section 1550. *(Repealed)*

Section 1551. In case where there is an objection to the applicant for registration of legitimation on account of not being the child's father, if the applicant for registration of legitimation has brought an action to the court for a judgment effecting him to be the child's father. The child or mother may apply to the court in the same case for an order to the effect that the applicant for registration of legitimation is not a suitable person for exercising a part or the whole of the parental power even though he is the real father of the child. In such case, the provisions of paragraph three of Section 1599 shall be applied *mutatis mutandis*.

Section 1552. In case the child has no mother or has mother but the latter has been deprived partly or wholly of her parental power and the other person has been appointed by the Court to be guardian partly or wholly before the registration of legitimation.

The father who causes the registration of legitimation having been entered may, if he thinks that for the benefit of the child, he should be the person exercising the parental power partly or wholly, apply to the court for an order effecting the deprivation of a part of the whole of guardianship from the guardian opinion of the court, exercise the parental power for bring about more happiness and interest to the child. The court may give an order effecting the deprivation of a part or the whole of guardianship from the guardian and making the father to be the person exercising the parental power.

Section 1553. *(Repealed)*

Section 1554. Any interested person may, within three months from the time when the registration of legitimation comes to his knowledge, apply to the court for cancellation of the registration on the ground that the person at whose instance the legitimation has been registered is not the father of the child. In any case, no such action may be entered after the lapse of ten years since the date of registration.

Section 1555. An action for legitimation may be entered only in the following cases:

1. Where there is a rape, abduction or illegal confinement of the mother during the period when conception could have taken place;
2. Where there has been elopement or seduction of the mother during the period where conception could have been taken place;
3. Where there is a document emanation from the father and acknowledging the child as his own;
4. Where it appears in the birth register that the child is a son or daughter of the man who notified of the birth, or such notification was made with the knowledge of the man;
5. Where there has been open cohabitation of the father and the mother during the period where conception could have been taken place;
6. Where the father had sexual intercourse with the mother during the period when conception could have been taken, and there are grounds to believe that he or she is not the child of another man;
7. Where there has been a continuous common repute of being a legitimate child. There status resulting from continuous common repute of being a legitimate child is established by means of facts showing the relationship of father and child, as evidenced by the child's connection with the family to which he claims to belong, such as the fact that the father has provided the child's education or maintenance, or that he has allowed the child to use his family name or other facts.

In any case, if the man is found unable to be a father, the case shall be dismissed.

Section 1556. The action for legitimation may be brought by the legal representative of the child if the child is a minor of not yet completed his fifteenth years of age. In case there is no legal representative or the legal representative cannot perform his duties, a closed relative or the public prosecutor may apply to the court for appointing a representative ad litem to bring the action on behalf of the child.

After attaining the age of fifteenth years old complete, the child has to bring the action himself and need not obtain consent of the legal representative.

After attaining the age of sui juris, the action has to be entered within one year from the day of becoming *sui juris*.

In case the child is dead during the time has right to bring an action for legitimation, his descendant may enter an action for legitimation. Should the descendant know the ground of the action for legitimation before the death of the child, the action would have to be entered by the former within one year from the death of the child should the ground of the action for legitimation become known to the descendant after the death of the child. However, the action would have to be entered within one year as from the day; the said ground came to his knowledge; provided that is cannot be entered after ten years have elapsed since the death of the child.

The provision of paragraph one and paragraph two shall apply to the action of legitimation entered by the minor descendant *mutatis mutandis*.

Section 1557. Legitimation under Section 1547 shall take effect:

1. From the day of marriage in case of subsequent marriage of the parents;
2. From the day of registration in case where the registration of legitimation is made by the father;
3. From the day of final judgment in case of legitimation pronounced by the court, provided that it may be set up to the prejudice of the rights of third persons acting in good faith, unless it has been registered according to the judgment.

Section 1558. As regards the action for legitimation of the deceased having been entered within the period of prescription for claim for inheritance, if the court adjudges the child to be legitimate he is entitled to inheritance as a statutory heir. In case where the estate has been divided the provisions of this Code concerning Undue Enrichment (</law-texts/thailand-civil-code-part-1.html#405>) shall be applied *mutatis mutandis*.

Section 1559. After registration of legitimation has been made, it cannot be revoked.

Section 1560. The child born during marriage is deemed to be legitimate, even though the marriage has been subsequently cancelled.

CHAPTER II

RIGHTS AND DUTIES OF PARENT AND CHILD

Section 1561. A child has the right to use the family name of the father. In case the father is unknown, a child has the right to use the family name of the mother.

Section 1562. No person can enter an action, either civil or criminal, against his ascendants, unless the case is taken up by the Public Prosecutor upon application of such person or a close relative of such person.

Section 1563. Children are bound to maintain their parents.

Section 1564. Parents are bound to maintain their children and to provide proper education for them during their minority.

When the children are *sui juris*, parents are bound to maintain them only when they are infirm and unable to earn their living.

Section 1565. As regards the applications for maintenance of the children or for any other form of maintenances to be given to children, it may be taken up by the father or the mother except the case to be taken up by the Public Prosecutor according to Section 1562.

Section 1566. A child is subject to parental power as long as he is not *sui juris*.

The parental power is exercised by the father or the mother in any of the following cases;

1. the mother or the father is dead;
2. It is uncertain whether the mother or the father is living or dead;

3. the mother or the father has been adjudged incompetent or quasi-incompetent;
4. the mother or the father is placed in a hospital by reason of mental infirmity;
5. the parental power has been granted to the mother or the father by an order of the court;
6. the mother or the father have come to such agreement as provided by the law that it can be made.

Section 1567. A person exercising parental power (natural guardian) has the right:

1. to determine the child's place of residence;
2. to punish the child in a reasonable manner for disciplinary purposes;
3. to require the child to do such work as may be reasonable to his ability and condition in life;
4. to demand the return of the child from any person who unlawfully detains him.

Section 1568. Where a person who already has a child marries another person the parental power over such child is exercised by the former person.

Section 1569. A person exercising parental power is the legal representative of the child. If the child is adjudged incompetent or quasi-incompetent, the person exercising parental power shall be the custodian or curator, as the case may be.

Section 1569/1. In case where the minor has been adjudged incompetent or quasi-incompetent and other person who is not the one exercising the parental power or the guardian has been appointed as the guardian by the order of the Court, such order shall effect the revocation of the person exercising the parental power or guardian, at the moment.

In case where the person being *sui juris* and having no spouse has been adjudged incompetent or quasi-incompetent, the parents or the father or the mother shall be the guardian or curator, as the case may be, unless the Court shall order otherwise.

Section 1570. Notifications made by or to the person exercising parental power according to Section 1566 or Section 1568 are deemed to notifications made by or to the child.

Section 1571. Parental power includes the management of the property of the child and such management shall be exercised with the same care as that of a person of ordinary prudence.

Section 1572. A person exercising parental power cannot, without the consent of the child, create an obligation the subject of which is personal to the child.

Section 1573. If the child has an income, it shall in the first place be used for his maintenance and education; any residue thereof shall be kept by the person exercising parental power and be returned to the child. But, if the person exercising parental power has no income sufficient for living to his condition in life, that income may be

expended in a reasonable measure by the person exercising parental power, unless it is an income derived from gift or legacy subject to the condition that it shall not be for the benefit of the person exercising parental power.

Section 1574. A person exercising parental power cannot enter into any of the following juristic acts with regard to the property of the minor except with permission of the Court;

1. selling, exchanging, sale with right of redemption, letting out property on hire-purchase, mortgaging, releasing mortgage to mortgagor or transferring the right of mortgage on immovable property or on mortgageable movable property;
2. extinguishing the whole or a part of real right of the minor on immovable property;
3. creating servitude, right of inhabitation, right of superficies, usufruct or any charge on immovable property;
4. disposing of the whole or a part of the claim the purpose of which is to create real right on immovable property or on mortgageable property, or the claim the purpose of which is to have a real right on such property of the minor relieved;
5. letting immovable property for more than three years;
6. creating any commitments the purpose of which is to achieve the objective as provided in (1), (2) and (3);
7. making a loan of money;
8. making a gift, except out of the income of the minor on the minor's behalf for charitable, social or moral purposes, and suitable to the minor's condition in life;

9. accepting a gift subject to any condition or charge, or refusing a gift;
10. giving guarantee by any means whatsoever which may cause the minor to be compelled to perform an obligation or to enter into other juristic act, as requiring the minor to perform an obligation to other person or on behalf of other person;
11. making benefit out of the property other than those provided in Section 1598/4 (1), (2) or (3)
12. making a compromise;
13. submitting a dispute to arbitration.

Section 1575. Where in regard to any act, the interests of a person exercising parental power or the interests of a spouse or children of a person exercising parental power conflict with those of the minor, the former must obtain the permission of the court in order to perform such act, failing such act shall be void.

Section 1576. The interests of a person exercising parental power or the interests of a spouse or children of a person exercising parental power in Section 1575 shall include interest in the following businesses:

1. Interests in the business that the said person performs with an ordinary partnership of which that person is a partner.
2. Interests in the business that the said person performs with a limited partnership of which that person is a partner with unlimited liability.

Section 1577. A person may transfer by legacy or gift a property to a minor, subject to its being managed, up to the time of majority, by a person other than the person exercising parental power.

Such manager must be named by the transferor, in default, or by court and his management shall be subjected to Section 56, Section 57 and Section 60.

Section 1578. When parental power ceases as the minor is sui juris, the person who exercised parental power must hand over to the child for certification, without delay, the property so managed and render to him a written account thereof, and if there is any document relating thereto, it shall be handed over at the same time as the account.

If the parental power ceases other than those mentioned in paragraph one, the property, account and document relating to management of the property shall be handed over to the person exercising parental power, if any, or to the guardian, as the case may be, for certification.

Section 1579. In case where one spouse is dead and the other who has a child born within wedlock intends to make a new marriage, if the latter has possessed the property properly separated for the child, the property may be handed over to the child when the child can manage it, or the property may be kept and handed over to the child at the proper time. If it is the property specified in Section 456 or has a documentary title, the child's name shall be

entered in the document as the co-owner, and that the marriage cannot take place unless the aforesaid management has been completed.

If there is reasonable ground, the Court may give an order allowing the said spouse to make the marriage first. But the Court must specify in the order that the spouse must complete the separation of the property and a making of an inventory as provided in paragraph one within a specified period of time after the marriage.

In case the marriage is made in contravention of paragraph one, or in case the spouse does not comply with the order of the Court given under paragraph two, the Court may on its knowledge of the fact or on application of the minor's relative or of the Public Prosecutor, give an order depriving the spouse of the parental power or directing any person to make the inventory and to have the child's name entered as co-owner in the said document instead, and any expenses incurred thereby shall be borne by the spouse.

For the purpose of this Section, the adopted of the deceased spouse and of the living spouse shall be deemed to be a child borne of the spouse.

Section 1580. The minor having been *sui juris*, the person exercising the parental right or the guardian can make a certificate to the management of the minor's property after the property, account and documents as provided in Section 1587 have been obtained.

Section 1581. An action relating to the management of property between the minor and the person exercising parental power cannot be entered later than one year from

the time of the cessation of the right of management.

If the parental power ceases while the child is a minor, the period mentioned in paragraph one is computed from the time when the child becomes *sui juris* or has a new legal representative.

Section 1582. When the person exercising parental power is adjudged incompetent or quasi-incompetent, or abuses his or her parental power as regards the child's person, or is guilty of gross misconduct, the Court may, of its own motion or on the application of a close relative of the child or of the Public Prosecutor, order the deprivation of the parental power either partly or wholly.

If the person exercising parental power is bankrupt or likely to endanger the minor's property by mismanagement, the Court may, upon the same proceedings as mentioned in the paragraph one, order the deprivation of the right of management.

Section 1583. If the causes mentioned in the forgoing Section have ceased to exist, a person who has been partly or wholly deprived of parental power may recover it by permission of the Court on application made by him or by a relative of the minor.

Section 1584. A person who has been deprived partly or wholly of parental power is not thereby relieved from the duty to furnish maintenance to the minor according to law.

Section 1585. The father or mother would be entitled to contact his or her child, as may be suitable to the circumstances, irrespective of whether who is the person

exercising the parental power or the guardian.

CHAPTER III GUARDIANSHIP

Section 1585. A person who is not *sui juris* and has no parents, or whose parents are deprived of their parental power, may be provided with a guardian during minority.

In case where the person exercising the parental power has been deprived of a part of the parental power under paragraph one of Section 1582, the Court may appoint a guardian to exercise the part of the parental power, or may, in case of the deprivation of the right of management from the person exercising the parental power having been effected under paragraph two of Section 1582, appoint the guardian for management of the property.

Section 1586. The guardian under Section 1585 shall be appointed by the order of the Court on application of a relative of the minor, the Public Prosecutor or of the person whose name has been specified in the will by the last surviving parent.

Subject to Section 1590, the Court shall, in case there is a testamentary disposition on the appointment of a guardian, appoint the guardian accordingly unless the will is not effective or the person specified in the will is prohibited to be guardian under Section 1587.

Section 1587. Any person *sui juris* may be appointed a guardian, except the following:

1. person adjudged incompetent or quasi incompetent;
2. person who is bankrupt;
3. person who is unfit to take charge of the person or property of the minor;
4. person having or having had a lawsuit against the minor, ascendants or brothers and sisters of full blood or brothers and sisters of half blood of the minor;
5. person having been excluded by name in writing from guardianship by the deceased parent.

Section 1588. If it appears that the person appointed as the guardian by the Court at the time of appointment a prohibited person under Section 1587, the Court shall, upon the Court's own knowledge or on application of an interested person or of the Public Prosecutor, revoke the order of appointment of that person and shall give such order concerning the guardian as the Court thinks fit.

The revocation of the order of appointment of the guardian under paragraph one does not affect the right of the third person acting in good faith unless in the case of revocation of the order of appointment the prohibited person under Section 1587(1) or (2), the act done by the guardian are not binding the minor whether the third person acted in good faith or not.

Section 1589. *(Repealed)*

Section 1590. There can be only one guardian at the time; however, in case where there is a testamentary desposition directing that several guardians be appointed or there is an

application by the person with proper reasons, several guardians may be appointed as the Court considers necessary. In case several guardians are appointed, the Court may order the guardians to act either jointly or in accordance with the power specially conferred upon each of them.

Section 1591. The status of guardian commences from the day when the notification of his appointment by the Court is known to him.

Section 1592. The guardian must without delay make an inventory of the ward's property within three months from the date when the appointment by the Court is known to him, but this period of time may be extended on application made by the guardian to the Court before the expiration of the three months.

The inventory shall be made in presence of at least two witnesses who must be *sui juris* and be relatives of the ward, but if no relative can be found, other persons may be witnesses thereto.

Section 1593. Within ten days after the completion of the inventory, the guardian shall submit one certified copy thereof to the Court, and the Court may require him to give supplementary information or to produce documents in order to show that the inventory is correct.

If the Court does not give an order otherwise within fifteen days after delivery of the inventory or the day of producing of supplementary information or documents, as the case may be, the inventory is deemed acceptable by the Court.

Section 1594. If the guardian does not comply with the provisions concerning the making of the inventory or the submission of a complete and correct inventory as described in Section 1592 or Section 1593, or does not comply with the order of the Court given under Section 1593, or the Court is dissatisfied with such inventory on the grounds of gross negligence, dishonesty or obvious inefficiency of the guardian, the Court may discharge the guardian.

Section 1595. Before the inventory has been Section 1595. Before the inventory has been accepted by the Court, a guardian may do nothing but urgent necessary acts, but such acts cannot be set up against third persons acting in good faith and for value.

Section 1596. If an obligation exist in favour of the guardian against the ward or in favour of the ward against the guardian, the guardian must give notice thereof to the Court before commencing the inventory.

If the guardian knows that an obligation exists in his favour against the ward and does not give notice thereof to the Court, such obligation is extinguished.

If the guardian knows that an obligation exists against him in favour of the ward and does not give notice thereof to the Court, the Court may discharge him.

Section 1597. The Court may, of its own motion or on application of any interested person or of the Public Prosecutor, order a guardian

1. To furnish proper security for the management as well as for the return of the ward's property
2. To give information as to the condition of the ward's property.

Section 1598. Where, during the guardianship the ward acquires a valuable property by succession or gift, Section 1592 to Section 1597 shall apply *mutatis mutandis*.

Section 1598/1. The guardian shall render account to the Court concerning the property once a year as from the day when he becomes guardian. However, the Court may, after the account of the first year has been rendered, order that the account be rendered at a longer interval than one year.

Section 1598/2. The guardian has the same rights and duties as a person exercising parental power as provided in Section 1564 paragraph one and Section 1567.

Section 1598/3. A guardian is the legal representative of the ward, Section 1570, Section 1571, Section 1572, Section 1574, Section 1575, Section 1576 and 1577 shall apply to the guardian and ward *mutatis mutandis*.

Section 1598/4. A guardian may dispose only of such part of the income of the ward as is necessary for the maintenance and education of the latter, The residue shall be invested only;

1. in bonds issued by the Thai Government or in bonds guaranteed by the Thai Government;

2. in taking sale with the right of redemption or in mortgage of immovable property of first rank, the amount of which must not exceed half of the market value of such property;
3. in fixed deposit in a bank established by law or authorized to carry in business in the Kingdom;
4. in any other investment which may specially authorized by the Court.

Section 1598/5. After the ward has reached discretion and his age is not less than fifteen years complete, the guardian must, in all important transactions, consult him first, so far as it is possible to do so. The fact that the ward has give consent does not exonerate the guardian from liability.

Section 1598/6. Guardianship is terminated by death of the ward or by the ward becoming *sui juris*.

Section 1598/7. The functions of the guardian are terminated when the guardian

1. is death
2. resigns by permission of the Court
3. becomes incompetent or quasi incompetent
4. becomes bankrupt
5. is revoked by the order of the Court.

1598/ 8. The guardian shall be discharged by the Court on the following grounds:

1. The guardian fails to perform his duties.
2. The guardian is guilty of gross negligence in performing his duties.
3. The guardian abuses his functions.
4. The guardian is guilty of such misconduct as to make unworthy of the post.
5. The guardian is so inefficient in his duties that the ward's interest is likely to be imperiled.
6. There as an occurrence as provided in Sections 1587 (3), (4) or (5).

Section 1598/9. An application for discharge of a guardian under Section 1598/8 may be made by the ward himself if his age is not less than fifteen years complete or by a relative of the ward or by the Public Prosecutor.

Section 1598/10. When an application for the discharge of a guardian is pending in Court, the Court may appoint in his stead a temporary manager of the property of the ward.

Section 1598/11. When the guardian or the functions of the guardian are terminated, the guardian or his heir must without delay hand over to the ward, his heir or the new guardian the property managed; and, within six months, he must render an account of management, and if there is any document relating thereto, it shall be handed over at the same time as the account, but this period of time may be extended by the Court on application of the guardian or his heir.

Section 1580 and Section 1581 shall apply *mutatis mutandis*.

Section 1598/12. Interest shall be paid on the amount of money which either the guardian or the ward has to repay to the other, from the time when the account of guardianship is delivered.

If the guardian has disposed of the ward's money otherwise than for the benefit of the latter, he shall pay interest thereon from the day when he disposed of such money.

Section 1598/13. The ward has preferential right over the whole property of the guardian for the performance of the obligation due to him.

This preferential right shall rank as (6) after the other general preferential rights specified in Section 253 of this Code.

Section 1598/14. A guardian is not entitled to receive remuneration, except in the following cases:

1. it is provided in the will that the guardian is entitled to the remuneration, in which case the guardian shall receive the remuneration at such amount as provided in the will;
2. in case no remuneration is provided in the will, but there is no restriction as to the guardian to receive the remuneration, the guardian may apply subsequently to the Court for determining the remuneration, and the Court may or may not determine it;
3. in case no appointment of the guardian is provided in the will and there is no restriction as to the guardian to

receive the remuneration, the remuneration of the guardian may be determined by the Court in the order appointing the guardian, or, if not being determined, the guardian may apply subsequently to the Court for having it determined, and the Court may or may not determine it.

In determining the remuneration, the Court shall take the circumstances, income and condition of life of the guardian in consideration.

If the guardian or the ward can prove that the circumstances, income or condition in life of the guardian or of the ward has changed after the commencement of the guardianship, the Court may give an order effecting the payment, suspension, reduction, increase or recovery of payment of the remuneration, as the case may be; and, this shall also apply to the case where there are provisions in the will restricting the guardian to receive remuneration.

Section 1598/15. If the Court adjudges the husband or wife incompetent and makes the wife or the husband guardian, the provisions concerning the right and duty of the person exercising parental power shall apply *mutatis mutandis*, except the right under Section 1567 (2) and (3).

Section 1598/16. The spouse who is the guardian of the other spouse having been adjudged incompetent by the Court has the power to manage the **Sin Suan Tua** (*personal property*) of the latter and has the power to manage solely **Sin Somros** (*common marital property*). But management

of **Sin Suan Tua** and **Sin Somros** as specified in paragraph one of Section 1476 cannot be made by that spouse except with the permission of the Court.

Section 1598/17. Where the husband or wife has been adjudged incompetent and the other spouse has been considered not proper to be the custodian and whereby his or her father or mother or an outsider had to be appointed the custodian, the custodian shall, in this case, be a joint manager of the **Sin Somros** with the other spouse, but the Court may order otherwise, if there are vital circumstances with may endanger the incapacitated person.

However, the other spouse has the right to apply to the Court for an order dividing the **Sin Somros** if there exists circumstances as provided in paragraph one.

Section 1598/18. In case where the parents are the guardian of the child who is not *sui juris* the provisions concerning power and duties of the person exercising parental power shall apply *mutatis mutandis*. But, if the child become *sui juris*, the provisions concerning power and duties of the guardian shall apply *mutatis mutandis*, except the right under Section 1567 (2) and (3).

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CHAPTER IV

ADOPTION

Section 1598/19. A person who is not less than twenty five years old may adopt another, provided he is at least fifteen years older than the adopted person.

Section 1598/20. If the person to be adopted is not less than fifteen years of age, the adoption can take place only with the consent of the adopted person.

Section 1598/21. If the person to be adopted is the minor, the adoption can take place only with the consent of his parents, but if one of his parents died or has been deprived of his or her parental powers, consent thereto has to be given by his father or mother who has parental power.

If there is no person to give consent under paragraph one or the father or mother, or parents cannot express his or her consent thereto or refuses to give his or her consent, and the refusal has been made unreasonably and has adversely affected the health, progress and welfare of the minor, the mother or father, the person intending to be the adoptor or the Public Prosecutor may apply to the Court for an order allowing the adoption in lieu of giving consent thereto under paragraph one.

Section 1598/22. In case the minor to be adopted has been deserted and been under supervision of an institution for child welfare under the law on child welfare and protection, the institution shall give consent on behalf of his parents. If the institution refuses to give such consent, the provisions of paragraph two of Section 1598/21 shall apply, *mutatis mutandis*. <http://www.samuiforsale.com>

Section 1598/23. In case the minor to be adopted has not been deserted but has been under supervision of an institution for child welfare under the law on child welfare and protection, the parents or one of the parents, in case the other died or whose parental power has been deprived, may make a letter of power entrusting the said institution to give consent to the adoption, and the provisions of Section 1598/22 shall apply, *mutatis mutandis*.

The letter of power under paragraph one cannot be revoked as long as the minor is supported and maintained by that institution.

Section 1598/24. The person who has the power to give consent to the adoption on behalf of the institution under Section 1598/22 or Section 1598/23 may adopt the minor being under supervision and support of the institution as his own adopted child if the Court has granted the application made by the said person in lieu of giving consent thereto by the institution.

Section 1598/25. A married person who is to adopt or is to be adopted, must obtain consent of his or her spouse. If his or her spouse cannot express the consent or has left the domicile or residence and no news of him has ever been received for not less than one year, the application for the Court's permission in lieu of the consent by the spouse must be made.

Section 1598/26. A minor who is an adopted child of any person cannot concurrently be an adopted of another person except an adopted of the spouse of the adoptor. If one spouse will adopt the minor who has already been

the adopted child of the other as his or her adopted child, the consent thereto must be obtained from the latter, and Section 1598/21 shall not apply.

Section 1598/27. Adoption is valid upon registration being effected according to law. If the person to be adopted is a minor, it has to comply firstly with the law on the adoption of the child.

Section 1598/28. An adopted child acquires the status of a legitimate child of the adoptor, but none of his rights and duties in the family to which he belongs by birth are prejudiced thereby. In such , the natural parent lose parental power, if any, from the time when the child is adopted.

The provisions of Title 2 of this book shall apply *mutatis mutandis*.

Section 1598/29. Adoption does not creates to the adoptor the right of a statutory heir to the inheritance of the adopted.

Section 1598/30. If the adopted dies without a spouse or descendant before the adoptor, the adoptor is entitled to claim from the estate of the adopted the properties which were given to the adopted by the adoptor and which still exist in kind after the liquidation of the estate.

No action for claiming the right under paragraph one shall be entered later that one year as from the day when the adoptor has known or ought to have known the death of the adopted, or later than ten years as from the death of the adopted.

Section 1598/31. If the adopted has become sui juris, the dissolution of adoption may be made at any time by mutual consent of the adopted.

If the adopted is not yet sui juris, the dissolution of adoption shall take place after the consent of the parents has been obtained, and Section 1598/20 and Section 1598/21 shall apply mutatis mutandis.

In case where the adoption has been effected under paragraph two of Section 1598/21, Section 1598/22, Section 1598/24 or paragraph two of Section 1598/26, if the adopted is not yet sui juris, the dissolution of adoption shall be effected only by the order of the Court upon application of an interested person or of the Public Prosecutor.

The dissolution is valid only upon registration being effected according to law.

Section 1598/32. The adoption will become dissolved if the marriage is made in contravention of Section 1451.

Section 1598/33. As regards action for dissolution of adoption:

1. if one party is guilty of serious misconduct whether it be a criminal offence or not, which causes the other very much ashamed or being hated, or sustaining excessive injury or trouble, the latter may claim dissolution
2. if one party has seriously insulted or held in serious contempt the other or his ascendants, the latter may claim dissolution, and if the said commission has been

- done against the spouse of the adoptor by the adopted, the adoptor may claim dissolution;
3. if one party has committed any act of violence against the other, his ascendants or his spouse which causes grave danger to the body or mind and constitutes offence criminally punishable, the latter may claim dissolution;
 4. if one party does not maintain the other, the latter may claim dissolution;
 5. if one party has willfully deserted the other for more than one year, the latter may claim dissolution;
 6. if one party has been sentenced to imprisonment exceeding three years, except an offence committed through negligence, the other may claim dissolution;
 7. if the adoptor fails to comply with his parental duties and such failure constitutes a wrongful act or non-compliance with Section 1564, Section 1571, Section 1573, Section 1574 or Section 1575 which caused or would have caused serious injury to the adopted, the adopted may claim dissolution;
 8. if the adoptor has been deprived partly or wholly of his parental power, and the grounds for such deprivation bears circumstantial evidence showing that the adoptor is not the proper person to be adoptor further, the adopted may claim dissolution;
 9. *(Repealed)*

Section 1598/34. No action for dissolution of adoption shall be entered later than one year from the day when the claimant has known or ought to have known of the fact constituting the ground for dissolution, or later that ten years from the time of the occurrence of such fact.

Section 1598/35. If the adopted is under fifteen years old, the action for dissolution of adoption shall be entered on his or her behalf by the inborn parents. As regards the adopted being more than fifteen years old, he or she can enter the action without having to obtain consent from any person.

The Public Prosecutor may, in case under paragraph one, enter the action on behalf of the adopted.

Section 1598/36. Dissolution pronounced by the Court takes effect on and from the time when the judgment becomes final. However, it may not be set up to the prejudice of the rights of third persons acting in good faith unless it has been registered.

Section 1598/37. Upon death of a child adopter or a dissolution of a child adoption, the natural parents shall, in the case of the adopted child not yet becoming sui juris, recover the parental power from the date of the death of the child adopter or from the date of the child adoption dissolution registration under Section 1598/1 or from the date on which the final judgment affecting such child adoption dissolution has been pronounced by the Court unless the Court has otherwise expediently decided.

In case where a guardian of an adopted child has been appointed prior to the death of a child adopter or prior to the child adoption dissolution, such guardian's existing power and duties shall continue unless the child's natural parents have otherwise petitioned the Court and that the Court has issued an order restoring the parental power upon such petitioners.

A change in the person exercising the parental power under paragraph one or the guardian under paragraph two above shall not prejudice the rights of the third person acquired in good faith prior to the child adoption registration dissolution.

The Public Prosecutor shall be the person empowered to submit a petition to the Court in order to have the Court issue an order otherwise in accordance with paragraph one above.

TITLE III

MAINTENANCE

Section 1598/38. Maintenance may be claimed between husband and wife or parent and child when the party entitled to maintenance has not been furnished with the maintenance or has been furnished with the maintenance insufficient to his condition in life. How much and to what extend the maintenance would be granted or not will be decided by the Court, by taking account of the ability of the person bound to furnish the maintenance, the condition in life of the receiver and the circumstances of the case.

Section 1598/39. When any interested person can show that there has been a change in circumstances or in the means or condition in life of the parties, the Court may make alteration of the maintenance by cancelling, reducing, increasing or re-establishing the amount of maintenance.

In case the Court gives an order not granting the maintenance only on account of one party not being in the position to furnish the maintenance at the moment, the

Court may be requested to alter its order given in that case if the circumstances, means or conditions on life of the other have changed and the claimant, after having taken account of the circumstances, his means and condition in life, should be furnished with the maintenance.

Section 1598/40. Maintenance shall be furnished by periodical payments in money unless the parties agree to pay otherwise or in some other manners. However, in absence of such agreement and for special reason, the Court may, upon application of any party and it is deemed proper, determine the maintenance to be furnished otherwise or in some other manners and whether the payment to be made in money. In case of claim for maintenance of a child , if there are special reasons and deemed proper, the Court may determine the maintenance to be furnished by any means other than those agreed by the parties, or other than what has been applied for by any party such as to send the child to an educational or vocational institution and the expenses incurred thereby are to be borne by the person bound to furnish the maintenance.

Section 1598/41. The right to maintenance cannot be renounced, attached or transferred and is not subject to execution.

[\(up \(/law-texts/thailand-civil-code-part-1.html#top\)\)](#)

TITLE I

GENERAL PROVISIONS

CHAPTER I

DEVOLUTION OF AN ESTATE

Section 1599. When a person dies, his estate devolves on the heirs.

An heir may lose his right to the succession only under the provisions of this Code or other laws.

Section 1600. Subject to the provisions of this Code, the estate of a deceased includes his properties of every kind, as well as his rights, duties and liabilities, except those which by law or by their nature are purely personal to him.

Section 1601. An heir shall not be liable in excess of the property devolving on him.

Section 1602. When a person is deemed to have died under the provisions of Section 62* of this Code shall, the estate devolves on the heirs.

If it is proved that such person is living or that he died at a time different from that specified in the adjudication of disappearance, the provisions of Section 63* of this Code shall apply as regards his heirs.

Section 1603. An estate devolves on the heirs by statutory right or by will.

Heirs who are so entitled by law are called 'statutory heirs'.

Heirs who are entitles by will are called 'legatees'.

[*Amended by section 15 Act Promulgating the Revised Provisions of Book I of the Civil and Commercial Code B.E. 2535]

CHAPTER II

HEIRSHIP

Section 1604. A natural person can be an heir only when he has, at the time of the *de cujus* death, personality or is capable of rights under Section 15 of this Code.

For the purpose of this section, a child shall be deemed to have been *en ventre sa mere* at the time of such death if he is born or alive within three hundred and ten days after such time.

Section 1605. An heir who, fraudulently or with the knowledge that he prejudices any other heirs, diverts or conceal property up to or in excess of his share in the succession, shall be absolutely excluded from the succession; if he diverts or conceals less than his share in the succession, he shall be excluded from the succession up to the extent of the part so diverted or concealed.

This section does not apply to a legatee to whom a specific property has been bequeathed, in so far as his right to receive such property is concerned.

Section 1606. The following are excluded from succession as being unworthy:

(1) the person who is convicted by a final judgment of having wrongfully and intentionally caused the death or attempted to cause the death of the *de cujus* or of a person having prior right to the succession;

(2) the person who, having prosecuted the *de cujes* for having committed an offence punishable with death, has himself been convicted by a final judgment for bringing a false charge or for fabricating false evidence.

(3) the person who, having knowledge that the *de cujes* was murdered, did not give information thereof for the purpose of bringing the offender to punishment; but this does not apply if he has not completed sixteen years of age, or if he is unsound mind so as to be unable to distinguish between right and wrong, or if the murderer is his spouse or any of his direct ascendants or descendants;

(4) the person who, by fraud or duress, has caused the *de cujes* to make, revoke or change partly or wholly a will concerning the estate or has prevented him from so doing;

(5) the person who, has partly or wholly forged, destroyed or concealed a will.

The *de cujes* may remove the exclusion due to unworthiness by a pardon in writing.

Section 1607. The effects of exclusion from the succession are personal. The descendants of the excluded heir succeed as if such heir were dead, but as regards the property so devolved, the excluded heir has no right of management and enjoyment as specified in Book V title II Chapter III of this Code. In such case Section 1548 shall apply *mutatis mutandis*.

CHAPTER III

DISINHERITANCE

Section 1608. A *de cujus* may disinherit any of his statutory heirs only by an express declaration of intention,

(1) by will

(2) by writing deposited with the competent official.

The identity of the disinherited heir must be clearly stated.

However, when a person has distributed all his estate by will, all his statutory heirs who are not beneficiaries under the will are deemed to be disinherited.

Section 1609. A declaration of disinheritance may be revoked.

If the disinheritance has been made by will, the revocation may be made only by will; but if the disinheritance has been made in writing deposited with the competent official, such revocation may be made either from prescribed in Section 1608 (1) or (2).

CHAPTER IV

RENUNCIATION OF AN ESTATE AND MISCELLANEOUS PROVISIONS

Section 1610. When an estate devolves on a minor, or a person of unsound mind, or on a person incapable of managing his own affairs within the meaning of Section 32 (</law-texts/thailand-civil-code-part-1.html#32>)* of this Code, and such person has not already had a legal representative or custodian or curator, the court shall

appoint a guardian, custodian or curator as the case may be, on application of any interested person or of the Public Prosecutor.

[* Amended by Section 15 Act Promulgation the Revised Provisions of Book I of the Civil and Commercial Code (B.E. 2535)]

1611. An heir who is a minor, a person of unsound mind, or a person incapable of managing his own affairs within the meaning of 32* this Code, cannot, except with the consent of his parents, guardian, custodian or curator as the case may be and with the approval of the Court, do the following acts:

- (1) renounce and inheritance or refuse legacy
- (2) accept an inheritance or legacy encumbered with a charge or condition.

[* Amended by Section 15 Act Promulgation the Revised Provisions of Book I of the Civil and Commercial Code (B.E. 2535)]

Section 1612. Renunciation of an inheritance or refusal of a legacy shall be made by an express declaration of intention in writing deposited with the competent official, or by a contract of compromise.

Section 1613. Renunciation of an inheritance or refusal of a legacy cannot be merely for a part or made subject to a condition or time clause.

Renunciation of an inheritance or refusal of a legacy cannot be revoked.

Section 1614. In an heir in any way renounces an inheritance or refuses a legacy with the knowledge that in so doing he prejudices his creditor, the creditor is entitled to claim cancellation of such renunciation or refusal; but this does not apply if the person enriched by such act did not know, at the time of the renunciation or refusal, of the facts which would make it prejudicial to the creditor; provided, however, that the case of renunciation or refusal made gratuitously, the knowledge on the part of the heir alone is sufficient.

After cancellation of the renunciation or refusal, the creditor may apply to the Court for authorization to accept the inheritance or legacy in the stead and by the right to such heir.

In such case, after payment to the creditor of such heir, the remainder, if any, of his share in the estate shall accrue to his descendants or to the other heirs of the *de cuius* as the case may be.

Section 1615. The renunciation of an inheritance or refusal of a legacy by an heir relates back, as regards its effect, to the time of the death of the *de cuius*.

When renunciation is made by any statutory heir, his descendants, provided they are not persons in whose name a valid renunciation has been made on behalf by their parents, guardians or custodians as the case may be, shall succeed under their own rights and shall be entitled to the portion equal to the share which would have devolved on the renouncer.

Section 1616. If the descendants of the renouncer have acquired inheritance as provided in Section 1615, as regards the property so inherited by his descendants, the renouncer has no right of management and enjoyment as specified in Book V Title II Chapter III of this Code, and Section 1548 shall apply *mutatis mutandis*.

Section 1617. If any person refuses a legacy, neither such person nor his descendants are entitled to receive the legacy so refused.

Section 1618. If a renunciation is made by a statutory heir who has no descendant to inherit or if a refusal is made by a legatee, the part of the estate so renounced or refused shall be distributed to the other heirs of the *de cuius*.

Section 1619. A person cannot renounce or otherwise dispose of the rights which he may contingently have to the succession of a living person.

([up \(/law-texts/thailand-civil-code-part-1.html\)](http://law-texts/thailand-civil-code-part-1.html))

TITLE II

STATUTORY RIGHT OF INHERITANCE

CHAPTER I

GENERAL PROVISIONS

Section 1620. Where a person dies without having made a will, or if having made a will, his will has no effect, the whole of his estate shall be distributed among his statutory heirs according to the law.

Where a person dies having made a will which disposes of or has effect for a part only of his estate, the part which has not been disposed of or is not affected by the will shall be distributed among his statutory heirs according to the law.

Section 1620. Where a person dies without having made a will, or if having made a will, his will has no effect, the whole of his estate shall be distributed among his statutory heirs according to the law.

Where a person dies having made a will which disposes of or has effect for a part only of his estate, the part which has not been disposed of or is not affected by the will shall be distributed among his statutory heirs according to the law.

Section 1621. Unless otherwise provided by the testator in his will, although a statutory heir may have received any property under the will, such heir is still entitled to avail himself of his statutory right of inheritance up to the extent of his statutory share from the estate which has not been disposed of by the will.

Section 1622. A Buddhist monk cannot claim inheritance as a statutory heir, unless he leaves the monkhood and enforces his claim within the period of prescription specified in Section 1754.

However, a Buddhist monk can be a legatee.

Section 1623. Any property acquired by a Buddhist monk during his monkhood shall become, upon his death, property of the monastery which is his domicile, unless he has disposed of it during his life or by will.

Section 1624. Property belonging to a person before he entered the Buddhist monkhood shall not become property of the monastery, and shall devolve on his statutory heirs, or may be disposed of him by any way whatsoever according to the law.

Section 1625. If the deceased was married, the liquidation of property and the distribution of the estate between the deceased and the surviving spouse shall be as follows:

(1) as regards the share in the property of husband and wife, the provisions of this Code concerning divorce by mutual consent as supplemented by Sections 1637 and 1638 and especially Section 1513 to 1517 of this Code shall apply; however, such liquidation shall take effect as from the date of dissolution of the marriage by death;

(2) as regards the share in the estate of the deceased, the provisions of this Book other than Sections 1637 and 1638 shall apply.

Section 1626. After Section 1625 (1) has been complied with, the division of the estate between the statutory heirs shall be as follows:

(1) the estate will be divided between the several classes and degrees of heirs as provided in Chapter II of this Title;

(2) the proportion accruing to each class and degree shall be divided between the heirs of such class and degree, as provided in Chapter III of this Title.

Section 1627. An illegitimate child who has been legitimated by his father and an adopted child are deemed to be descendants in the same way as legitimate children within the meaning of this Code.

Section 1628. Spouses who are living apart under desertion or separation do not lose the statutory right of inheritance to one another as long as divorce between them has not taken place according to the law.

CHAPTER II

DIVISION INTO PORTIONS BETWEEN SEVERAL CLASSES AND DEGREES OF STATUTORY HEIRS

Section 1629. There are only six classes of statutory heir; and subject to the provisions of Section 1630 paragraph 2, each class is entitled to inherit in the following order:

- 1) descendants;
- 2) parents;
- 3) brothers and sisters of full blood;
- 4) brothers and sisters of half blood;
- 5) grandparents;
- 6) uncles and aunts.

The surviving spouse is also a statutory heir, subject to the special provisions of Section 1635.

Section 1630. So long as there is any heir surviving or represented in a class as specified in Section 1629 as the case may be, the heir of the lower class has no right at all to the estate of the deceased.

However, the forgoing paragraph do not apply in the particular case where there is any descendant surviving or represented as the case may be, and also the parents or one of them are still surviving; in such case each parent is entitled to the same share as an heir in the degree of children.

Section 1631. As between descendants of different degrees, only the children of the *de cujus* who are entitled to inherit. The descendants of lower degree may receive the inheritance only by the right of representation.

CHAPTER III

DIVISION INTO SHARES BETWEEN THE STATUTORY HEIRS IN EACH CLASS AND DEGREE

Section 1632. Subject to the provisions of Section 1629 last paragraph, the distribution of inheritance to the statutory heirs in the several classes of relatives shall be in accordance with the provisions in Part I of this Chapter.

Section 1633. The statutory heirs of the same class in any of the classes as specified in Section 1629 are entitled to equal shares. If there is only one statutory heir in such class, he is entitled to the whole portion.

Section 1634. As between the descendants entitled by way of representative to the division per stirpes as provided in Chapter IV of Title II, the divisions shall be as follows:

(1) If there are descendants of different degrees, only the children of the deceased who are the nearest in degree are entitled to receive the inheritance. The descendants of

lower degree may receive the inheritance only by virtue of the right of representation;

(2) descendants in the same degree are entitled to equal parts

(3) if in one degree there is only one descendant such descendant is entitled to the whole share.

PART II

Spouses

Section 1635. The surviving spouse is entitled to the inheritance of the deceased in the class and according to the division as hereunder provided:

(1) if there is an heir according to Section 1629 (1) surviving or having representatives as the case may be, such surviving spouse is entitled to the same share as an heir in the degree of children;

(2) if there is an heir according to Section 1629 (3) and such heir is surviving or has representatives, or if in default of an heir according to Section 1629 (1), there is an heir according to Section 1629 (2) as the case may be, such surviving spouse is entitled to one half of the inheritance;

(3) if there is an heir according to Section 1629 (4) or (6) and such heir is surviving or has representatives, or if there is an heir according to Section 1629 (5) as the case may be, such surviving spouse is entitled to two-thirds of the inheritance;

(4) if there is no heir as specified in Section 1629, such surviving spouse is entitled to the whole inheritance.

Section 1636. If the *de cujus* has left several wives surviving who acquired their legal status before the enforcement of the Civil and Commercial Code Book V, all those wives are jointly entitled to inherit in the class and according to the division as provided in Section 1635. However, as between themselves each secondary wife is entitled to inherit one half of the share which the principal wife is entitled.

Section 1637. If any surviving spouse is the beneficiary of an insurance on life, such surviving spouse is entitled to receive the whole sum agreed with the insurer. But he or she shall be bound to compensate either the **Sin Derm** or the **Sin Somros** of the other spouse, as the case may be, by restoring such sums paid as premiums as may be proved to have been in excess of the amount of money which could be paid as premiums by the deceased having regard to the latter's income or usual station in life.

The amount of premiums to be restored under the foregoing provisions shall in no case be more than the sum paid by the insurer.

Section 1638. Where both spouses have invested money in a contract whereby an annuity is payable to both of them during their joint lives and afterwards to the survivor for life, the latter shall be bound to compensate either the **Sin Derm** or the **Sin Somros** of the other spouse as the case may be, in so much as such **Sin Derm** or **Sin Somros** has been used for such investment. Such compensation to the **Sin Derm** or

Sin Somros shall be equal in the amount to the extra sum required by the grantor of the annuity in order to continue to pay the annuity to the surviving spouse.

CHAPTER IV

REPRESENTATION FOR THE PURPOSE OF RECEIVING INHERITANCE

Section 1639. If any person who would have been an heir according to Section 1629 (1), (3), (4) or (6) is dead or has been excluded before death of the *de cujus*, his descendants, if any, shall represent him for the purpose of receiving inheritance. If any of his descendants is dead or has been excluded in the same manner, the descendants of such descendants shall represent him for the purpose of receiving inheritance and the representation shall take place in this way as regards the share of each person consecutively to the end of the *stirpes*.

Section 1640. Where a person is deemed to have died according to the provisions of Section 65 of this Code, there may be representation for the purpose of receiving inheritance.

Section 1641. If any person who would have been an heir according to Section 1629 (2) or (5) is dead or has been excluded before the death of the *de cujus*, the whole share shall devolve to the other surviving heirs, if any, of the same class and no representation shall take place.

Section 1642. Representation for the purpose of receiving inheritance shall take place only among statutory heirs.

Section 1643. The right of representation for the purpose of receiving inheritance belongs only to the direct descendants, the ascendants having no such right.

Section 1644. A descendant may represent for the purpose of receiving inheritance only if he has complete right to the inheritance.

Section 1645. Renunciation of inheritance of a person does not preclude the renouncer from representing such person in inheriting from another person.

([up \(/law-texts/thailand-civil-code-part-1.html\)](/law-texts/thailand-civil-code-part-1.html))

TITLE III

WILLS

CHAPTER 1

GENERAL PROVISIONS

Section 1646. Any person may, in contemplation of death, make a declaration of intention by will concerning dispositions as to his property or other matters which shall take effect according to the law after his death.

Section 1647. The declaration of intention in contemplation of death shall be the latest one in imperative term provided by will.

Section 1648. A will must be made according to the forms prescribed in Chapter II of this Title.

Section 1649. The administrator of an estate appointed by the deceased shall have the power and duty to arrange for the funeral of the deceased unless another person has been specially appointed by the deceased for that purpose.

If there is no administrator, or no person appointed by the deceased to arrange for the funeral, or no person entrusted by the heirs to arrange for the funeral, the person who has received the greatest amount of property by will or by statutory right shall have the power and duty to arrange for the funeral unless the Court on application of any interested person, thinks fit to appoint another person for that purpose.

Section 1650. Expenses creating an obligation in favour of a person arranging for the funeral may be claimed according to the preferential right as specified in Section 253 (2) of this Code.

If the funeral is delayed for any reason whatsoever, any person empowered under the foregoing section shall reserve a reasonable amount of money out of the assets of the estate for this purpose. Where the amount to be reserved cannot be agreed upon, or where an objection is raised, any interested person may apply to the Court.

In any case, the expenses or the money for the arrangement of the funeral may be reserved only up to the amount suitable to the social station in life of the deceased, and provided that the rights of the creditors of the deceased are not prejudiced thereby.

Section 1651. Subject to the provisions of Title IV:

(1) where a person is entitled, under a testamentary disposition, to the whole of the *de cujus'* estate or to a fraction or a residuary part thereof which is not specifically separated from the mass of the estate, such person is said to be a legatee under a general title and has the same rights and liabilities as a statutory heir;

(2) where a person is entitled, under a testamentary disposition, only to a specific property identified in particular or specifically separated from the mass of the estate, such person is said to be a legatee under a particular title and has only rights and liabilities pertaining to such property.

In case of doubt, a legatee is presumed to be a legatee under a particular title.

Section 1652. A ward cannot make a legacy in favor of his guardian or in favor of the spouse, ascendant or descendant or brother or sister of his guardian until rendering of the account of the guardianship provided by Section 1577 and following of this Code is completed.

Section 1653. The writer of the will or a witness thereof cannot be a legatee under such will.

The forgoing paragraph shall also apply to the spouse of such writer of witness.

The competent official recording the statement made by witnesses under Section 1663 is deemed to be a writer within the meaning of this section.

Section 1654. The capacity of the testator must be considered only as at the time when the will is made.

The capacity of the legatee must be considered only as at the time when the testator dies.

CHAPTER II

FORMS OF WILLS

Section 1655. A will may be made only in any one of the forms prescribed in this Chapter.

Section 1656. A will may be made in the following form, that is to say, it must be made in writing, dated at the time of making of will and signed by the testator before at least two witnesses present at the same time who shall then and there sign their names certifying the signature of the testator.

No erasure, addition or other alternation in such will is valid unless made in the same form as prescribed by this section.

Section 1657. A will may be made by an holograph document (/other-miscellaneous/sample-text-holographic-will.html), that is to say the the testator must write with his own hand the whole text of the document, the date and his signature.

No erasure, addition or other alteration in such will is valid unless made by the restator's own hand and signed by him.

The provision of [Section 9 \(/law-texts/thailand-civil-code-part-1.html#9\)](/law-texts/thailand-civil-code-part-1.html#9) of this Code shall not apply to a will made under this section.

Section 1658. A will may be made by a public document, that is to say:

- (1) the testator must declare to the **Kromakarn Amphoe*** before at least two other persons as witness present at the same time what dispositions he wishes to be included in this will;
- (2) the **Kromakarn Amphoe** must note down such declaration of the testator and read it to the latter and to the witnesses;
- (3) the testator and the witnesses must sign their names after having ascertained that the statement noted down by the **Kromakarn Amphoe** corresponds with the declaration made by the testator;
- (4) the statement noted down by the **Kromakarn Amphoe** shall be dated and signed by such official who shall certify under his hand and seal that the will has been made in compliance with the foregoing Subsections 1 to 3.

No erasure, addition or other alternation in such will is valid unless signed by the testator, the witness and the **Kromakarn Amphoe**.

[* According to Section 40 of the Act on the Administrative Organization of the State, B.E. 2495, all powers and duties relating to the official service are determined by law to belong to Kromakarn Amphoe are vested in Nai Amphoe.]

Section 1659. A will made by a public document may, upon request, be made outside the **Amphoe Office**.

Section 1660. A will may be made by a secret document, that is to say:

- (1) the testator must sign his name on the document;
- (2) he must close up the documents and sign his name on the document;
- (3) he must produce the closed document before the **Kromakarn Amphoe** and at least two other persons as witnesses and declare to all of them that it contains his testamentary dispositions; and if the testator has not written with his own hand the whole text of the document he must state the name and domicile of the writer;
- (4) after the **Kromakarn Amphoe** has noted down upon the cover of the document the declaration of the testator and the date of the production and has affixed his seal thereupon, the **Kromakarn Amphoe**, the testator and the witness must sign their names thereon.

No erasure, addition or other alternation in such will is valid unless signed by the testator.

Section 1661. If a person, who is deaf-mute or unable to speak, desires to make his will by a secret document, he must instead of making the declaration required in Section 1660 (3) write with his own hand, in the presence of the **Kromakarn Amphoe** and of the witnesses, on the cover of the document, a statement that the enclosed document is his will and add the name and the domicile of the writer of the document, if any.

Instead of noting down the declaration of the testator on the cover, the **Kromakarn Amphoe** shall certify thereon that the testator has complied with the requirements of the

foregoing paragraph.

Section 1662. A will made by a public document or by a secret document shall not be divulged by the **Kromakarn Amphoe** to any other person during the lifetime of the testator, and the **Kromakarn Amphoe** is bound to hand over such will to the testator whenever the latter shall require him to do so.

If the will has been made by a public document the **Kromakarn Amphoe** shall, before handing over such will, make a copy thereof under his signature and seal. Such copy may not be divulged to any other person during the life of testator.

Section 1663. When under exceptional circumstances such as imminent danger of death, or during an epidemic or war, a person is prevented from making his will in any other if the prescribed forms, he may be make an oral will.

For this purpose, he must declare his intention regarding the dispositions of the will before at least two witnesses present at the same time.

Such witnesses must without delay appear for the **Kromakarn Amphoe** and state before him the dispositions which the testator has declared to them orally, as well as the date, place and exceptional circumstances under which the will was made.

The **Kromakarn Amphoe** shall note down the statement of the witnesses and such two witnesses shall sign the statement or, failing that, may make an equivalent to

signature only by affixing a finger-print certified by the signatures of two witnesses.

Section 1664. A will made under the forgoing section loses its validity one month after the time when the testator has again been placed in a position to make a will in any other of the prescribed forms.

Section 1665. When the signature of the testator is required under Section 1656, 1658, 1660, the only equivalent to signature is the affixing of a finger-print certified by the signatures of two witnesses at the same time.

Section 1666. The provisions of Section 9 paragraphs 2* of this Code shall not apply to witnesses whose signatures are required under Section 1656, 1658, 1660.

[Amended by Section 15 of Act Promulgating the Revised Provisions of Book I of the Civil and Commercial Code B.E. 2535.]

Section 1667. In the event of a Thai subject making his will in a foreign territory, such will may be made either according to the form prescribed by the law of the country where it is made or according to the form prescribed by Thai law.

When the will is made according to the form prescribed by Thai law, the powers and duties of the **Kromakarn Amphoe** under Section 1658, 1660, 1661, 1662, 1663 shall be exercised by:

- (1) the Thai Diplomatic or Consular Officer acting within the scope of his authority, or
- (2) any authority competent under foreign law for making authentic record of a statement.

Section 1668. Unless otherwise provided by law, the testator need not disclose to the witness the contents of his will.

Section 1669. During the time when the country is engaged in arms conflict or is in the state of war, a person serving in armed forces or acting in connection therewith may make a will according to the form prescribed in Section 1658, Section 1660 or Section 1663; and in such case the military officer or official of commissioned rank shall have the same powers and duties as those of the **Kromakarn Amphoe**.

The provisions of the foregoing paragraph shall apply *mutatis mutandis* to the person serving in armed forces or acting in connection therewith, who, while performing the duties for his country, makes a will in a foreign country which is engaged in armed conflict or is in the state of war; and in such cases the military officer or official commissioned rank shall have the same powers and duties as those of the Thai Diplomatic or Consular Officer.

If the testator under the two foregoing paragraphs is sick or wounded and is admitted to a hospital, the physician of that hospital shall also have the same powers and duties as those of the **Kromakarn Amphoe**, Thai Diplomatic or Consular Officer, as the case may be.

Section 1670. The following persons cannot witness at the making of a will;

- (1) persons not *sui juris*
- (2) persons of unsound mind or persons adjudged quasi- incompetent;
- (3) persons who are deaf or dumb or blind

Section 1671. Where a person other than the testator is the writer of a will, such persons must sign his name thereon and add the statement that he is the writer.

If such person is also a witness, a statement that he is a witness must be written down after his signature in the same manner as is done by any other witness.

Section 1672. The Minister of Interior, Defense and Foreign Affairs shall have the powers and duties, in so far as they are respectively concerned, to issue Ministerial Regulations for carrying out the provisions of this Book and for fixing the rates and fees in connection therewith.

CHAPTER III

EFFECTS AND INTERPRETATION OF WILLS

Section 1673. Rights and duties under a will take effect from the death of the testator, unless a condition or time clause has been provided by the testator for its taking effect thereafter.

Section 1674. If a testamentary disposition is subject to a condition and the condition has been fulfilled before the death of the testator; if the condition is precedent, such disposition takes effect at the death of the testator; if the condition is subsequent, the disposition has no effect.

If the condition precedent is fulfilled after the death of the testator, the testamentary disposition takes effect at the death of the testator but ceases to have effect when the condition is fulfilled.

However, if the testator has declared in the will that, in the case provided by the two foregoing paragraphs the effect of the fulfillment of the condition shall relate back to the time of his death, such declaration of intention shall prevail.

Section 1675. Where a legacy is subject to a condition precedent, the beneficiary under such testamentary disposition may apply to the Court for the appointment of an administrator of the property bequeathed up to the time when the condition will be fulfilled or when such fulfillment will become impossible.

If the Court thinks fit, such applicant himself may be appointed administrator of the property, and a proper security may be required from him.

Section 1676. A will may be made charging a person to create a foundation or directly determining the appropriation of property for any purpose in accordance with the provisions of [Section 110 \(/law-texts/thailand-civil-code-part-1.html#III\)](#)* of this Code.

Section 1677. Where there is a will creating a foundation under the foregoing section it shall be the duty of the heir or administrator, as the case may be, to apply to the Government for authorization to constitute it as a juristic person according to [Section 114 \(/law-texts/thailand-civil-code-part-1.html#III\)](#)* of this Code unless it is otherwise provided by will.

If the authorization by the Government has not been applied for by the aforesaid person, the application may be made by any interested person, or by the Public Prosecutor.

[Amended by Section 15 of the Act Promulgation the Revised Provisions of Book I of the Civil Code B.E. 2535.]

Section 1678. When a foundation created by will has been constituted as a juristic person, the properties appropriated to its purpose by the testator are deemed to vest in such juristic person from the time when the will takes effect unless it is otherwise provided by will.

Section 1679. Where the foundation cannot be organized in accordance with its object, the properties shall devolve as may have been provided by the will.

In the absence of such provision, the Court shall, on application by the heir, the administrator, the Public Prosecutor or any interested person, appropriate the properties to such other juristic persons whose purpose appears to be the nearest possible to the intention of the testator.

If such appropriate cannot be made or if the foundation cannot come into existence on account of its being contrary to law or against public order or good morals, such testamentary disposition becomes ineffective.

Section 1680. The creditors of the testators are entitled to claim cancellation of any testamentary disposition creating a foundation, only in so far as they are prejudiced thereby.

Section 1681. If the property forming the subject of the legacy has been lost, destroyed or damaged, and in consequence of such circumstances a substitute or a claim for compensation for such property has been acquired, the legatee may claim delivery of the substitute received or may himself claim the compensation as the case may be.

Section 1682. Where a legacy is made by way of a release or a transfer or a claim, such legacy shall be affective only up to the amount still outstanding at the time of the death of the testator, unless otherwise provided by the will.

Any document evidencing the claim released or transferred shall be delivered to the legatee; and the provisions of [Sections 303 \(/law-texts/thailand-civil-code-part-1.html#303\)](/law-texts/thailand-civil-code-part-1.html#303) to 313 and [340 \(/law-texts/thailand-civil-code-part-1.html#340\)](/law-texts/thailand-civil-code-part-1.html#340) of this Code shall apply *mutatis mutandis*; provided that if any act or proceedings were to have been carried out by the testator under those sections, the person who has to execute the legacy, or the legatee, may carry them out in his place.

Section 1683. A legacy made by the testator to any of his creditors is presumed not to be made in payment of the debt due to such creditor.

Section 1684. Where a clause in a will can be interpreted in several senses, the sense which best assures the observance of the intention of the testator shall be preferred.

Section 1685. Where the testator has made a legacy by describing the legatee in such a manner that he can be identified and there are several persons answering to the

description of the legatee so made by the testator, in case of doubt all such persons are deemed to be entitled to equal shares.

CHAPTER IV

WILLS WITH APPOINTMENT OF CONTROLLER OF PROPERTY

Section 1686. Trust created whether directly or indirectly by will or by any juristic act producing effect during lifetime or after death shall have no effect whatever.

Section 1687. If the testator desires to dispose of his property in favour of a minor or of a person adjudged incompetent or quasi-incompetent or of a person admitted into a hospital for unsoundness of mind but wishes to entrust the custody and management thereof to a person other than the parents, guardian, custodian or curator, he must appoint a controller of property by will.

Such appointment of a controller of property cannot be made for a longer period than the minority or the adjudication of incompetency or quasi-incompetency or the duration of the admittance into hospital as the case may be.

Section 1688. No appointment of the controller of property in regard to an immovable property or any real right appertaining thereto is complete unless it has been registered by the competent official.

The same provision applies as regards ships of five tons and over, floating houses and beasts of burden. (1)

[(1) The second paragraph of Section 1688 has been amended by Section 15 of the Civil and Commercial Code Amendment Act (no.14), B.E. 2548.]

Section 1689. With the exception of such persons as are specified in Section 1557 of this Code, any juristic or natural person of full capacity may be appointed a controller of property.

Section 1689. With the exception of such persons as are specified in Section 1557 of this Code, any juristic or natural person of full capacity may be appointed a controller of property.

Section 1690. A controller of property may be appointed by:

- (1) the testator himself
- (2) a person nominated for the purpose in the will

Section 1691. Unless otherwise provided in the will by the testator, a controller of property may appoint by will another person to act in his stead.

Section 1692. Unless otherwise provided in the will by the testator, the controller of property shall have, as regards the property entrusted to him, the same rights and duties as the guardian within the meaning of Book V of this Code.

CHAPTER V

REVOCATION AND LAPSE OF A WILL OR CLAUSE IN A WILL

Section 1693. A testator may at any time revoke his will wholly or partly.

Section 1694. If a former will is to be revoked wholly or partly by a latter will, the revocation is valid only when the latter will is made in any of the forms prescribed by law.

Section 1695. Where a will is embodied in one document only, the testator can revoke it wholly or partly by intentional destruction or cancellation.

Where the will is embodied in several duplicates, such revocation shall not be complete unless it is effected in all the duplicates.

Section 1696. A testamentary disposition is revoked if the testator has intentionally made a valid transfer of the property which is the subject of the will.

The same rule applies if the testator has intentionally destroyed such property.

Section 1697. Unless the testator has otherwise made a declaration of intention in his will, if it appears that a former and a latter will conflict, the former is deemed to have been revoked by the latter only as to the parts in which their provisions conflict.

Section 1698. A testamentary disposition lapses:

- (1) if the legatee dies before the testator;
- (2) if the testamentary disposition is to take effect on a condition being fulfilled and the legatee dies before its fulfillment, or it becomes certain that the condition cannot be fulfilled;
- (3) the legatee refuses legacy

(4) if the whole property bequeathed is, without the intention of the testator, lost or destroyed during his lifetime and the testator has not acquired a substitute or a claim for compensation for the loss of such property.

Section 1699. If a will or a clause in a will as regards any property has no effect for any reason whatsoever, such property devolves on the statutory heirs or the State as the case may be.

CHAPTER VI

NULLITY OF A WILL OR OF CLAUSE IN A WILL

Section 1700. Subject to the provisions of this Chapter, a person may, by an act producing effect during lifetime or after death, dispose of any property under a stipulation that such property shall be inalienable by the beneficiary under such disposition, provided that the stipulator appoints some person, other than the beneficiary under such disposition, who shall become absolutely entitled to such property in case of violation of the inalienability clause.

The person appointed must be capable or rights at the same time when the act disposing of such property takes effect.

If there is no such appointment, the inalienability clause shall be deemed non-existent.

Section 1701. The inalienability clause stipulated under the foregoing section may be either for a period of time or for the life of the beneficiary.

If no period has been fixed, the period of inalienability shall be deemed to last for the life of the beneficiary if the beneficiary is a natural person, or thirty years if the beneficiary is a juristic person.

If the period of inalienability is specified, such period cannot exceed thirty years; if a longer period is specified, it shall be reduced to thirty years.

Section 1702. Any inalienability clause concerning movable property whose ownership is not subject to registration shall be deemed non-existent.

No inalienability clause concerning immovable property or any real right appertaining thereto is complete unless it is made in writing and registered by the competent official.

(*1) The provisions of the foregoing paragraph applies as regards ships of five tons and over, floating houses and beast of burden.

[* The third paragraph of Section 1702 has been by Section 16 of Civil and Commercial Code Amendment Act, (no.14), B.E. 2548.]

Section 1703. A will made by a person who has not completed his fifteenth year of age is void.

Section 1704. A will made by a person adjudged incompetent is void.

A will made by a person, who is alleged to be of unsound mind but not adjudged incompetent, may be annulled only if it is proved that at the time of making the will the testator was actually of unsound mind.

Section 1705. A will or clause in a will is void if it is contrary to the provisions of Section 1652, 1653, 1656, 1657, 1658, 1660, 1661, or 1663.

Section 1706. A testamentary disposition is void:

(1) if it appoints a legatee upon the condition that the latter shall dispose also by will of his own property in favour of the testator or of a third person;

(2) if it refers to a person whose identity cannot be ascertained; however a legacy under a particular title may be made in favour of a person to be chosen by a certain person out of several other persons or out of any group of persons specified by the testator;

(3) if the property bequeathed is so insufficiently described that it cannot be ascertained or if the amount of a legacy is left to the discretion of a certain person.

Section 1707. If a testamentary disposition appoints a legatee upon the condition that the latter shall dispose of the property bequeathed in favour of a third person, such condition shall be deemed non-existent.

Section 1708. After the death of the testator, any interested person may apply to the Court to have a will cancelled on account of duress; but if the testator continues to live for more than one year after he has ceased to be under the influence of the duress, such application cannot be made.

Section 1709. After the death of the testator, any interested person may apply to the Court to have a will cancelled on account of mistake or fraud only when the mistake or fraud

is such that without it the will would not have been made.

The foregoing paragraph shall apply even if the fraud has been committed by a person who is not a beneficiary under the will.

However, a will made under the influence of mistake or fraud is operative if the testator fails to revoke it within one year after discovering the mistake or fraud.

Section 1710. No action for cancellation of a testamentary disposition can be entered later than:

(1) three months after the death of the testator if the ground for cancellation was known to the plaintiff during the lifetime of the testator, or

(2) three months after the plaintiff has acquired knowledge of such ground in any other case.

However, if such testamentary disposition affecting the interest of the plaintiff is unknown to him, even though the ground for cancellation was known to him, the period of three months shall run from the moment when such disposition is known or ought to have been known to the plaintiff.

In any case, such action cannot be entered later than ten years after the death of the testator.

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TITLE V

ADMINISTRATIVE AND DISTRIBUTION OF AN ESTATE

CHAPTER I

ADMINISTRATOR OF AN ESTATE

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TITLE IV

ADMINISTRATION AND DISTRIBUTION OF AN ESTATE

CHAPTER I

ADMINISTRATOR OF AN ESTATE

Section 1711. The administrators of an estate shall included the persons appointed by will or by order of the Court.

Section 1712. An administrator of the estate by will may be appointed:

1. By the testator himself; or
2. By the person nominated for the purpose in the will

Section 1713. Any heir or any toger interested person or the Public Prosecutor may apply to the Court to appoint an administrator of the estate in the following cases:

1. If on the death of the de cujus any statutory heir or legatee is not found or is abroad or is a minor;
2. If the administrator of the estate or the heir is unable or unwilling to carry on or is impeded in carrying on the administration or distribution of the estate
3. If a testamentary disposition appointing an administrator of the estate has no effect for any reason whatsoever

Such appointment shall be made by the Court in accordance with the provisions of the will, if any. Failing such provision the Court may make the appointment for the benefit of the estate, having regard to the circumstances and taking into consideration the intention of the de cujus as the Court may think fit.

Section 1714. Where an administrator of the estate is appointed by the Court for a particular purpose, he is not bound to make an inventory of the estate unless the

inventory is required for such purpose or by an order of the Court.

Section 1715. A testator may appoint one or more persons to be administrators of his estate.

Unless otherwise provided by will, if several persons have been appointed administrators and, because some of them are unable or unwilling to act, there remains only one, the latter is solely entitled to act as administrator; if there remain several administrators, it is presumed that they cannot act separately.

Section 1716. The functions of an administrator appointed by the Court begin from the day when the order of the Court is heard or is deemed to have been heard.

Section 1717. At any time within one year from the death of the de cuius but after fifteen days from such death, any heir or interested person may give notice requiring any person appointed administrator by will to declare whether he accepts or refuses the administratorship.

If the person so notified does not declare his acceptance within one month from the receipt of such notice, he is deemed to have refused. However, acceptance cannot be made after one year from the death of the de cuius unless by permission of the Court.

Section 1718. The following persons cannot be administrators of an estate:

1. Persons not sui juris;
2. Persons of unsound mind or adjudged quasi-incompetent;
3. Persons adjudged bankrupt by the Court

Section 1719. The administrator of an estate has the right and duty to do all such acts as may be necessary for complying with the express or implied order in the will and for the general administration or distribution of the estate.

Section 1720. The administrator of an estate shall be liable to the heirs as provided by Sections 809, 812, 819 and 823 of this Code mutatis mutandis; and as regards third persons Section 831 shall apply mutatis mutandis.

Section 1721. An administrator of an estate is not entitled to receive remuneration out of the estate unless permitted by the will or by the majority of the heirs.

Section 1722. The administrator of an estate cannot, unless permitted by the will or the Court, enter into any juristic act wherein he has an interest adverse to the interest of the estate.

Section 1723. The administrator of an estate must act personally unless he can act by an agent through express or implied authority under will or by order of the Court or by requirement of the circumstances for the benefit of the estate.

Section 1724. The heirs are bound to third persons by acts which the administrator has done within the scope of his authority by virtue of his administratorship. They are not bound by any juristic act entered into by the administrator with a third person if such juristic act was entered into for consideration of any property or other advantages given for his personal benefit or so promised to him by such person unless the heirs have given their consent.

Section 1725. The administrator of an estate shall take proper steps to seek for the interested person and shall notify them within a reasonable time of the testamentary dispositions concerning them.

Section 1726. If there are several administrators of an estate, the performance of their duties shall be decided by a majority of votes unless otherwise provided by the will. In case of a tie, on application of any interested person, the decision shall be given by the Court.

Section 1727. Any interested person may, prior to the completion of the distribution of the estate, apply to the Court for the discharge of an administrator for reason of neglect of his duties or any other reasonable cause. Even after having assumed his functions, the administrator may resign for any reasonable cause subject, however, to the permission of the Court.

Section 1728. The administrator of an estate must begin making an inventory of the estate within 15 days:

1. from the death of the de cujus if, at such time, the administrator has knowledge of his appointment under the will entrusted by the Court.
2. from the date when the administrator has knowledge of his appointment under the will entrusted to him, or
3. from the date of his acceptance of administratorship in any other case.

Section 1729. The administrator of an estate must have the inventory of the estate finished within one month from the time prescribed in Section 1728; but this period of time may

be extended by permission of the Court on application made by the administrator before the expiration of the month.

The inventory shall be made in the presence of at least two witnesses who must be persons interested in the estate. Persons who cannot be witnesses at the making of the will under Section 1670 cannot be witnesses for the making of any inventory under the provisions of this Code.

Section 1730. Between the heir and the administrator appointed by will, and between the Court and the administrator appointed by the Court, Sections 1563, 1564, paragraphs 1 and 2 and Section 1565 of this Code shall apply *mutatis mutandis*.

Section 1731. If no inventory is made by the administrator in due time and form or if the inventory is found unsatisfactory by the Court on the grounds of gross negligence, dishonesty or obvious incapability of the administrator, the administrator may be discharged by the Court.

Section 1732. The administrator of an estate shall perform his duties and complete the account of management and distribution within 1 year from the dates specified in the Sections 1728, unless the period of time is otherwise fixed by the testator, by a majority of the heirs or by the Court.

Section 1733. No approval, release from liabilities or any other agreement concerning the account of management provided in Section 1732, shall be valid unless such

account has been delivered to the heirs together with any document relating thereto not less than five years after the termination of the administratorship.

CHAPTER II
REALIZATION OF ASSETS, PAYMENT OF DEBTS AND
DISTRIBUTION OF AN ESTATE

Section 1734. The creditors of an estate are entitled to be paid only out of the property of an estate.

Section 1735. The heir is bound to disclose to the administrator all the properties and debts of the deceased known to him.

Section 1736. So long as all the known creditors of the estate or legatees have not been satisfied by the performance or distribution, the succession is deemed to be under management.

During such period the administrator is entitled as such to do the necessary acts of management such as to enter actions or to submit answers in Court and so on. He shall take all necessary steps to collect the debts due to estate within the shortest possible time. After the creditors of the estate have been satisfied he shall divide the estate.

Section 1737. A creditor of the estate may enforce his claim against any heir. However, where there is an administrator of the estate, he must be summoned by the creditor to appear in the action.

Section 1738. Before the division of the estate the creditor of the estate may enforce full payment of his claim from the estate. In such case each heir may, up to the time of

division inclusively, require that the performance be made out of the de cuius's estate or secured there from.

After the division of the estate, any other place this is found other than samuiforsale then this is copied, the creditor may claim performance from any heir up to the extent of the property received by him. In such case an heir who has made performance to the creditor in excess of his proportionate share in the obligation has a right of recourse against other heirs.

Section 1739. Without prejudice to the creditors having special preferential rights under the provisions of this Code or other law and to the creditors secured by pledge or mortgage, the debt due by the estate shall be paid in the following order and in accordance with the provisions of this Code concerning preferential rights (</law-texts/thailand-civil-code-part-1.html#250>):

1. expenses incurred for the common benefit of the estate;
2. expenses incurred for the funeral of the *de cuius*;
3. taxes and rates due by the estate;
4. wages due by the de cuius to any clerk, servant or workman;
5. supplies of daily necessities made to the *de cuius*;
6. remuneration tot the administrator.

Section 1740. Unless otherwise provided by the de cuius or by law, his property shall be appropriated to the payment of debts in the following order:

1. property other than immovable property

2. immovable property expressly appropriated to that purpose by will, if any;
3. immovable property to which the statutory heirs are entitled as such;
4. immovable property bequeathed to a person upon the condition that he shall pay the debts of the *de cuius*;
5. immovable property bequeathed under general title as provided by [Section 1651 \(/law-texts/thailand-civil-code-part-3.html#1645\)](/law-texts/thailand-civil-code-part-3.html#1645);
6. any specific property bequeathed under a particular title as provided by [Section 1651 \(/law-texts/thailand-civil-code-part-3.html#1645\)](/law-texts/thailand-civil-code-part-3.html#1645).

Any property appropriated under the foregoing provisions shall be sold by way of public auction, but any heir may prevent such sale by paying, to the extent required for the satisfaction of the creditors, the value of the whole or part of the property as may be determined by an appraiser appointed by the Court.

Section 1741. Any creditor of the estate may, at his own expense, raise an objection to the auction or appraisal of the property specified in the foregoing section. If, notwithstanding such objection having been raised by the creditor, an auction or appraisal is effected the auction or appraisal cannot be set up against the creditor who has raised such objection.

Section 1742. If, during the lifetime of the deceased, a creditor has been designated as the beneficiary of an insurance on the life in payment of a debt due to him, he is

entitled to receive the whole sum agreed with the insurer. He shall have to return to the estate of the deceased the amount of the premiums only if proved by other creditors:

1. That by paying his debt in such manner, the deceased and such creditor have acted in contravention of the provisions of [Section 237 \(/law-texts/thailand-civil-code-part-1.html#226\)](/law-texts/thailand-civil-code-part-1.html#226) of this Code; and
2. That such premiums were out of proportion to the income or station in life of the deceased.

In no case shall the amount of premiums to be returned in such manner exceed the sum paid by the insurer.

Section 1743. A statutory heir or a legatee under a general title is not bound to execute legacies under a particular title for more than the amount of property received by him.

Section 1744. The administrator is not bound to deliver the estate or any part thereof to the heirs before one year has elapsed from the death of the de cujus, unless all the known creditors of the estate and legatees have been satisfied by the performance and distribution.

CHAPTER III

PARTITION OF AN ESTATE

Section 1745 Until the partition of the estate is completed, the rights and duties of the co-heirs as regards the estate are in common, and Section 1356 to Section 1366 of this Code shall be applied in so far as they are not inconsistent

with the provisions of this Book. Section 1746 Subject to the provisions of laws or clauses in the will, if any, co-heirs are presumed to have equal shares in the undivided estate.

Section 1747 Where an heir has, during the lifetime of the de cuius, received from the latter any property or other advantage by gift or by other acts under gratuitous title, the rights of such heir in the partition of the estate shall in no way be prejudiced thereby.

Section 1748 Any heir in possession of the undivided estate is entitled to claim partition thereof even after the lapse of the period of prescription as specified in Section 1754. The right to demand partition as provided in the foregoing paragraph may not be excluded by a juristic act for a period exceeding ten years at a time.

Section 1749 When an action for partition of an estate is entered in court, every person claiming to be an heir entitled to such estate may intervene in the action.

The court can neither call in to participate in the partition other heirs than the parties or the intervener in the action, nor reserve a part of the estate for such other heirs.

Section 1750 Partition of the estate may be made by the heirs severally taking possession of the property or by selling the estate and dividing the proceeds of sale between the co-heirs.

Section 1751 After the partition of an estate, if any heir is by reason of eviction deprived of the whole or a part of the property allotted to him under the partition, the other heirs are bound to compensate him.

Such obligation ceases if there is an agreement to the contrary, or if the eviction results from the fault of the heir evicted or from a cause arising after the partition.

The heir evicted shall be compensated by the other heirs in proportion to their shares, less the quota corresponding to that of the heir evicted; if any of the heirs bound to make compensations insolvent. The other heirs shall be liable for the part of the insolvent heir in the same proportion less the quota corresponding to that of the compensated heir.

The provisions of the foregoing paragraphs shall not be applied to a legatee under a particular title.

Section 1752 No action for liability on account of eviction under Section 1751 can be entered later than three months after the date of eviction.

TITLE V

VACANT ESTATES

Section 1753 Subject to the rights of the creditor of the estate, where on the death of a person, there is no statutory heir or legatee or creation of foundation under a will, the estate devolves on the state.

TITLE VI

PRESCRIPTION

Section 1754 An action concerning inheritance cannot be entered later than one year after the death of the *de cujus* or after the time when the statutory heir knows or ought to have known of such death.

An action concerning a legacy cannot be entered later than one year after the time when the legatee knows or ought to have known of the rights to which he is entitled under a will. Subject to the provisions of [Section 193/17 \(/law-texts/thailand-civil-code-part-1.html#8\)](#) of this Code, a creditor having against the *de cuius* a claim which is subject to a prescription longer than one year is barred from bringing an action after one year from the time when he knows or ought to have known of the death of the *de cuius*.

In no case shall claims under the foregoing paragraphs be entered later than ten years after the death of the *de cuius*.

Section 1755 The prescription of one year can be set up only by an heir or a person entitled to exercise the rights of an heir or by an administrator of the estate.

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