

BOOK 2

OBLIGATIONS

TITLE 1

GENERAL PROVISIONS

CHAPTER 1.1

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 If a money debt is payable in a specific kind of money which is no longer current at the time of payment, the payment shall be as if the kind of money were not specified.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

[\(Return to the main menu of the Commercial and Civil Code of Thailand\)](#)

CHAPTER II

EFFECT OF OBLIGATIONS

PART 1.2

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, 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.

[\(Return to the main menu of the Commercial and Civil Code of Thailand\)](#)

PART II

Subrogation

Section 226. A person to whom the rights of a creditor are transferred 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:

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.

When acquires an immovable property, the person who uses the purchase price in paying off the persons who have mortgages thereon.

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.

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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 or 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 forgoing 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.

[\(Return to the main menu of the Commercial and Civil Code of Thailand\)](#)

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 of 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 apply correspondingly.

[\(Return to the main menu of the Commercial and Civil Code of Thailand\)](#)

CHAPTER 1.3

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. Until 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 persons 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 1.4

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.

[\(Return to the main menu of the Commercial and Civil Code of Thailand\)](#)

CHAPTER V

EXTINCTION OF OBLIGATION

PART 1.5

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.

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 paragraph 3.

[\(Return to the main menu of the Commercial and Civil Code of Thailand\)](#)

TITLE 2

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 do 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.

[\(Return to the main menu of the Commercial and Civil Code of Thailand\)](#)

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 contract 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.

[\(Return to the main menu of the Commercial and Civil Code of Thailand\)](#)

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:

(1) To be returned or treated as part-payment upon performance

To be forfeited, if the party giving it fails to perform, or if the performance becomes
(2) impossible in consequence of the circumstance for which he is responsible or if the rescission of the contract is due to his fault.

(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.

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.

[\(Return to the main menu of the Commercial and Civil Code of Thailand\)](#)

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 changed 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.

[\(Return to the main menu of the Commercial and Civil Code of Thailand\)](#)

TITLE 3

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 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 to 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 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 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.

TITLE 4

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 alterations 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.

[\(Return to the main menu of the Commercial and Civil Code of Thailand\)](#)

TITLE 5

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 foregoing 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.

[\(Return to the main menu of the Commercial and Civil Code of Thailand\)](#)

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.

[\(Return to the main menu of the Commercial and Civil Code of Thailand\)](#)

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 things 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 adverting 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 for 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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