

Commercial and Civil Code of Thailand in English

BOOK IV

PROPERTY

TITLE I

GENERAL PROVISIONS

Section1298. Real rights may be created only by the virtue of this Code or other laws.

Section1299. 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.

Section1300. 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.

Section1301. The provisions of the two foregoing sections shall apply mutatis mutandis to modification, extinction and revival of real rights appertaining to immovable property.

Section1302. 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.

Section1303. 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.

Section1304. The domain public of State includes every kind of State property which is in use for public interest or reserved for the common benefit, such as:

- (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.

Section1305. Any property which forms part of the domain public of State is in-alienable except by virtue of a special law or Royal Decree.

Section1306. No prescription can be set up against the State with regard to any property which forms part of its domain public.

Section1307. No seizure of State property can be effected, whether such property forms part of its domain public or not.

TITLE II

OWNERSHIP

CHAPTER I

ACQUISITION OF OWNERSHIP

Section1308. Where land is formed by alluvion, it becomes the property of the riparian owner.

Section1309. Islands formed in a lake or water-way of in territorial waters, and beds of water-ways left dry, are the property of the Sate

Section1310. 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.

Section1311. 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.

Section1312. 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:

- (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.

Section1328. 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.

Section1329. The right of a person who has acquired property fro the value an in good faith is not affected even if the act under which his transferor acquired the property was voidable and has been subsequently avoided.

Section1330. 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.

Section1331. 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.

Section1332. 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.

Section1333. Ownership may be acquired by prescription under the rules provided in Title III of this Book.

Section1334. 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

Section1335. Subject to the provisions of this Code or other laws, the ownership of land extends above and below the surface.

Section1336. 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.

Section1337. 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.

Section1338. 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.

Section1339. 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.

Section1340. 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.

Section1341. The owner of an immovable property must not construct roofs or other structures which cause rain water to fall upon the adjoining property.

Section1342. 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.

Section1343. 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.

Section1344. Fences walls, hedges or ditches, which serve as a boundary, are presumed to belong to the owners of the adjoining properties in common.

Section1345. 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.

Section1346. 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 neighbor 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.

Section1347. 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.

Section1348. Fruits falling naturally upon adjoining land are presumed to be fruits of such land.

Section1349. 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

Section1350. 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

Section1351. 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 neighbor without the latter's consent. If damage is caused, the neighbor may claim compensation.

Section1352. 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.

Section1353. 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.

Section1354. 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

Section1355. 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.

CHAPTER III

CO-OWNERSHIP

Section1356. If a property belongs to several persons in common the provisions of this chapter apply unless otherwise provided by law.

Section1357. Co-owners are presumed to have equal shares.

Section1358. 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 coowner 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.

Section1359. 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 of this Code.

Section1360. 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.

Section1361. 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.

Section1362. 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.

Section1363. 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.

Section1364. 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.

Section1365. 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.

Section1366. 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.

TITLE III

POSSESSION

Section1367. A person acquires possessory right by holding a property with the intention of holding it for himself

Section1368. A person may acquire possessory right through another person holding for him.

Section1369. A person who holds a property is presumed to hold it for himself.

Section1370. A possessor is presumed to possess in good faith, peacefully and openly.

Section1371. 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.

Section1372. It is presumed that a possessor has, in law, the right which he exercises over the

property possessed.

Section1373. 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.

Section1374. 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.

Section1375. 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.

Section1376. Where property is to be returned to the person entitled to recover it, the provisions of Section 412 to 418 of this Code concerning Undue Enrichment shall apply mutatis mutandis.

Section1377. 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.

Section1378. Transfer of possession is effected by delivery of the property possessed.

Section1379. Where property is already held by the transferee or his representative, the transfer of possession may be effected by a declaration of intention.

Section1380. 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.

Section1381. 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.

Section1382. 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.

Section1383. 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.

Section1384. 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.

Section1385. 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.

Section1386. The provisions of this Code concerning Prescription shall apply mutatis mutandis to acquisitive prescription to this Title.

TITLE IV

SERVITUDES

Section1387. 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.

Section1388. 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.

Section1389. Changes in the requirements of the owner of the dominant property do not entitle him to impose an additional burden on the servient property.

Section1390. 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.

Section1391. 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.

Section1392. 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.

Section1393. 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.

Section1394. 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.

Section1395. In case of a division of dominant 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.

Section1396. 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.

Section1397. Servitude is extinguished by the total destruction of the servient or dominant property.

Section1398. 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.

Section1399. Servitude is extinguished by non-usage for ten years.

Section1400. 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.

Section1401. 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)

Section1402. 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.

Section1403. 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.

Section1404. The right of habitation is not transferable even by way of inheritance.

Section1405. 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.

Section1406. 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.

Section1407. 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.

Section1408. When the right of habitation comes to an end the grantee must return the property to the grantor.

Section1409. The provisions of this Code concerning Duties and Liabilities of the Hirer, as specified in Sections 552, 555, 558, 562 and 563 shall apply mutatis mutandis.

TITLE VI

SUPERFICIES

Section1410. The owner of a piece of land may create a right of superficies in favor of another person by giving him the right to own, upon or under the land, buildings, structures or plantations.

Section1411. Unless otherwise provided in the act creating it, the right of superficies is transferable and transmissible by way of inheritance.

Section1412. 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

Section1413. 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.

Section1414. If the superfiary 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.

Section1415. The right of superficies is not extinguished by destruction of the buildings, structures or plantations even if caused by force majeure.

Section1416. When the right of superficies is extinguished, the superfiary 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 them at a market value, the superfiary may not refuse the offer except on reasonable ground.

TITLE VII

USUFRUCT

Section1417. 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.

Section1418. 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.

If it is created for a period of time, the provisions of Section 1403 paragraph 3 shall apply mutatis mutandis.

In any cases the usufruct comes to an end on the death of the usufructuary.

Section1419. 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.

Section1420. 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.

Section1421. 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.

Section1422. 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 direct.

Section1423. 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.

Section1424. 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.

Section1425. 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.

Section1426. 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.

Section1427. 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.

Section1428. 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

Section1429. 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.

Section1430. 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.

Section1431. Unless otherwise provided in the act creating it, a charge on immovable property is not

transferable even by way of inheritance.

Section1432. If the beneficiary fails to comply with any essential condition specified in the act creating the charge, his right may be terminated.

Section1433. 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.

Section1434. Sections 1388 to 1395 and 1397 to 1400 shall apply mutatis mutandis to the charge on immovable property.

ThailawOnline