

# **BOOK**

# **ON**

# **OBLIGATIONS.**

## **PRELIMINARY.**

### **TITLE I.**

#### **TITLE, COMMENCEMENT AND REPEAL.**

1. — This law shall be called the Civil and Commercial Code, Book on Obligations.

2. — It shall come into force on the ..... day of ..... 246 ...

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regulations in so far as they deal with matters governed by this Code or are inconsistent with its provisions, shall be repealed.

## TITLE II. DEFINITIONS.

4. — Law denotes exclusively any Code, Act, Law, Decree or other rule enacted by His Majesty the King and promulgated.

5. — Injury denotes any harm to the body, mind, liberty, honour, reputation or property of a person.

6. — Security denotes any guarantee which may be given for the performance of an obligation.

7. — A person who is subrogated to the rights of a creditor can exercise all the rights which the creditor had in respect of the effects of the obligation or of any security for it.

8. — Intention or consent may be inferred from words spoken or written, or from conduct, or from any other circumstances.

9. — An obligation is said to be due from the time when the creditor is entitled to performance of it.

10. — *Force majeure* denotes any circumstance not under the control of a person and which that person could not have avoided even by using such care as may be expected from a person of ordinary prudence.

## TITLE III. GENERAL PROVISIONS.

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11. — An obligation is a legal relation whereby one or more persons, called debtors, are bound to one or more other persons, called creditors, to deliver property, or to do or to abstain from doing an act.

The delivery of property or the doing or not doing of the act is called prestation.

*ILLUSTRATION.* — I. — *A borrows money from B. A, the debtor, is under an obligation to repay the money to B, the creditor.*

II. — *A sells a house to B for 10,000 baht. A is under an obligation to deliver the house to B. B is under an obligation to pay the price to A. With regard to the obligation to deliver the house A is the debtor and B is the creditor. With regard to the obligation to pay the price B is the debtor and A is the creditor.*

III. — *A, a transport company on the river Menam, agrees with B, another transport company, that A's boats shall ply only from Bangkok down the river and B's boats shall ply only from Bangkok up the river. A is under an obligation not to run boats up the river and B is under an obligation not to run boats down the river. In the first obligation A is the debtor and B is the creditor. In the second obligation B is the debtor and A is the creditor.*

12. — Obligations may be created, modified or determined by mutual consent of the parties, as they may think fit.

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*See Illustration under Section 13.*

~~13. — A private agreement or a clause in a private agreement which exclude or modify the provisions of law in which public policy or the safety of persons or property are involved, is void.~~

[13. — An agreement or a clause in an agreement which excludes or modifies the provisions of law in which public policy or the safety of persons or property are involved, is void.]

*ILLUSTRATION (Sections 12 & 13).* — *Section 392 provides that the costs of a contract of*

*sale must be borne by both parties equally. The payment of the costs of a contract of sale is a question in which public policy and good morals are not involved. The parties to a contract of sale can therefore agree that the costs of the contract shall be borne by one of them.*

*Section 654 provides that interest shall not exceed 15% per year. The limitation of the rate of interest is a question in which public policy is involved. The parties to a contract of loan of money cannot therefore agree that the loan shall bear more than 15% interest per year.*

14. — If there is no law applicable to a case, custom shall apply.

15. — If there is neither law nor custom applicable to a case, the case shall be decided by analogy with the nearest provision or the general principles of law. [5]

16. — Whenever a writing is required by law, it is not necessary that it be written by the person or persons from whom it is required, or by the parties to it, but it must bear their signature.

17. — In so far as circumstances admit, the provisions of this Code concerning the validity of contracts apply to anything which may create, modify or extinguish an obligation.

*ILLUSTRATION.* — *Although not included in this Code, wills may create, modify or extinguish an obligation. In so far as circumstances admit, the provisions of this Code concerning the validity of contracts apply to wills.*

*I.* — *A makes a will in favour of B, stating in it that he makes it only because B is a near relation to A's dead wife. After the death of A it turns out that B is no relation to A's dead wife. A's will was made under a mistake as to an essential element. A's will is voidable.*

*II.* — *A makes a will in favour of B because B fraudulently made A believe that C, a nearer relation to A, was already dead. It turns out after A's death that C is still living. A's will is vitiated by B's fraud and is voidable.*

*III.* — *A makes a will in favour of B under B's duress. A's will is vitiated by B's duress and is voidable.*

*IV.* — *A makes a will bequeathing his property to an association not authorized by law. The object of the will is unlawful : the will is void.*

~~18. — Every person is bound to act in good faith in exercising his rights and in performing his obligations.~~

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[18. — Creation, extinction or modification of rights, and fulfilment of obligations must be made in good faith.]

19. — Every person is presumed to be acting in good faith.

20. — Good faith is no defence if not coupled with such care as may be expected from a person of ordinary prudence.

21. — An agreement that a person shall not be liable for the consequences of his own bad faith is void.

22. — In case of doubt an obligation shall be construed in favour of the debtor.

*ILLUSTRATION. I. — A dies after having bequeathed by will a part of his land to B. The heirs are under an obligation to deliver that part to the legatee. They are the debtors and B is the creditor of that obligation. Then it is found that it is doubtful whether the part of the land described in the will extends to a certain Klong only or further on. The obligation must be construed in favour of the heirs, that is to say their obligation to deliver land shall be limited to the part of the land which extends to the klong.*

*II.— The Government has conceded to a company a line of tramway running from the town A to the town B. In this case the Government is under an obligation to allow the company to lay the track and to run cars on the line conceded. The Government is the debtor and the company is the creditor. Then a dispute arises between the Government and the company as to extent of the line conceded. The company contends that the concession extends to the centre of the town B. The Government contends that it extends only to the limits of the town B. If the question is doubtful, that is to say if there is no evidence to show whether the concession extends to the centre or to the limits of the town B, the doubt must be construed in favour of the debtor, viz. in favour of the Government.*

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23. — Whenever interest is to be paid, and the rate is not fixed by the contract or by law, it shall be 7½% per year.

## TITLE IV. RULES FOR THE CONSTRUCTION OF DOCUMENTS.

24. — Whenever the meaning of a document is doubtful the Court shall look at the real intention rather than at the literal meaning of the words or expressions.

25. — Whenever two or more provisions of a document are inconsistent or repugnant and the Court cannot ascertain the real intention, the last provision shall govern.

26. — Whenever it is proved that part of a document has been forged, the Court shall restore such document to its original condition.

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If the Court cannot ascertain what the original condition was, no regard shall be had to the part which has been forged.

27. — That construction shall be preferred by which effect may be given to a provision or document.

28. — Whenever a sum or quantity is expressed in letters and in figures, and the two expressions do not agree, and the Court cannot ascertain the real intention. the expression in letters shall be held good.

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

30. — Whenever a document is executed in two versions, one in the Siamese language, the other in another language, and there are discrepancies between the two versions, and the Court cannot ascertain which version was [intended to govern] ~~considered to be the original~~, the document executed in the Siamese language shall govern.

## TITLE V. PERIODS OF TIME.

31. — The rules contained in this Title apply to the calculation of all periods of time.

32. — Periods of time are calculated by the day and not by the hour.

*ILLUSTRATION.* — ~~On the 20th. of May, at 10 a. m., A, the holder of an unpaid bill of exchange, sends a protest to B the drawee.~~

~~According to Section 1061, the bill of exchange shall be dishonoured by non-payment if B does not pay it within three days from the date of protest, that is to say on or before the 23rd. of May. The period however is calculated by the day, not by the hour. If B pays on the 23rd. of May after 10 a. m. but before the end of the day, the bill shall not be dishonoured.~~

*[ILLUSTRATION.* — *On the 1st. of July 2463 at 10 a.m. A lends to B 100 baht to be returned on the 1st. of September 2463. B is not obliged to return the money on this day at 10 a.m., but only before the end of the day.]*

33. — When a period of time begins to run from a certain day, that day is not included within the period. When a period begins to run from an event or a point of time, the day in which the event or the point of time occurs is not included.

*ILLUSTRATION.* — I. — *On the 1st. of April A borrows from B 100 Baht, to be repaid within twenty days. A must return the money on or before the 21st. of April, that is to say the 1st. of April is not included in the twenty days period.*

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II. — *A borrows from B 100 baht to be repaid three days after A's return from a voyage to Chantaboon. A comes back on the 10th of April. A must return the money on the 13th of April, that is to say the 10th, of April is not included in the three days period.*

34. — A period measured by weeks ends in the last week on the expiration of the same day as that on which it began to run.

*ILLUSTRATION.* — I. — *On Monday the 4th. of January, A agrees to sell a pony to B and*

*deliver it in three weeks. The pony must be delivered on or before Monday the 25th. of January.*

*II. — A agrees to sell 100 bags of rice to B and to deliver them two weeks after the arrival of the cargo boat Patani. The cargo boat arrives on Wednesday the 15th. of March. The 100 bags of rice must be delivered on Wednesday the 29th. of March.*

**35. — A period measured by months or years ends in the last month or year on the expiration of the day which corresponds to the date on which the period began to run.**

If there is no corresponding date or if the date on which the period began to run is the last day of a month, the period ends on the expiration of the last day of the last month. [11]

*ILLUSTRATION. — On the 10th of January A agrees to sell a pony to B and deliver it in one month. The pony must be delivered on or before the 10th. of February.*

*If the sale is made on January 31st. 2455, the pony must be delivered on or before the 28th. day of February 2455.*

**36. — Month and year are those of the official calendar.**

The beginning of a month means the first day of such month.

The middle of a month means the fifteenth day of such month.

The end of a month means the last day of such month.

**37. — If a period of time is extended, the first day of the extension is the day following the last day of the original period.**

**38. — If the last day of a period is a holiday on which it is customary not to do business, the period includes the next working day.**

**39. — In matters of justice, administration and commerce, day means the usual hours of office or business.**