

DIVISION I. — HOW OBLIGATIONS ARISE.

TITLE I. CONTRACTS.

CHAPTER I. DEFINITION.

40. — A contract is an agreement between two or more persons which creates one or more obligations.

CHAPTER II. CONDITIONS FOR THE VALIDITY OF CONTRACTS.

41. — A contract which does not comply with the conditions concerning capacity or consent is voidable.

42. — A contract which does not comply with the conditions concerning object is void.

43. — A contract is also void if it does not comply with any other condition required by law for its completion.

44. — A voidable contract may be cancelled on the application of, or ratified by, such persons only as are specified by law, and within the time provided by law.

ILLUSTRATION. — Five thousand tons of ice are made annually at A's ice factory. A falsely represents to B that the annual output of the factory is ten thousand tons, and thereby induces B to buy the factory. B would not have bought the factory if he had known that the output was five thousand tons only. B's consent to the contract of sale is defective and the contract is voidable. It may be ratified by B or B's heirs. Its cancellation may be claimed by B or B's heirs as long as prescription (under Sections 76 to 78) is not completed.

45. — Whenever a voidable contract is ratified, or the time allowed by law for claiming its cancellation has expired, it becomes valid as from the date of its making.

46. — A void contract may be cancelled at any time on the application of any interested person.

47. — A void contract cannot be ratified. If the parties purport to ratify it with knowledge of its invalidity, they are deemed to have made a new contract.

48. — In the event of the cancellation of a contract, the parties must be replaced in the same position as they were at the time when the contract was made or became void.

Each party is bound to restore to the other party the prestation which he received **[as a performance] in execution** of the contract. or to make compensation for it, according to the provisions of this Code concerning restitution for undue enrichment.

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ILLUSTRATION.—A sells to B for 1,000 baht an ingot which both parties thought to be of pure gold. Later on B discovers that the ingot contained lead inside. The sale is voidable on account of mistake. B is entitled to claim for the return of the 1,000 baht paid to A. A is entitled to claim for the return of the ingot.

If the ingot has been lost or stolen, restitution becomes impossible. But B has no compensation to pay since he is liable only for such part of his enrichment as still exists (see Section 112): when the ingot was lost or stolen, the enrichment totally disappeared. Nevertheless, B is still entitled to claim for the return of the 1,000 baht paid to A.

If B sold the ingot, he is only bound to restore to A the price which he received from the purchaser, because such price represents B's actual enrichment (see section 112). But he is still entitled to claim for the return of the 1,000 baht paid to A.

[PART] I. — CAPACITY OF PARTIES.

49. — Every person who is not declared by law or custom to be incapacitated can enter into a contract.

[PART] II. — CONSENT.**[15]**

50. — There is no contract except by the mutual consent of the parties, that is to say unless the parties have agreed upon the terms of the contract.

51. — Consent may be expressed or implied.

1. — OFFER AND ACCEPTANCE.

52. — If an offer to make a contract is made, the contract is complete only when acceptance reaches the offerer.

[See Illustration under Section 54]

ILLUSTRATION. — B has borrowed money from A, a banker in Bangkok, at 7½% interest. On the 1st. of August A writes to C, in Chantaboon, offering to transfer to C the rights of A against B. A specifies in his letter that the offer must be accepted before the 1st. of September. Acceptance reaches A on the 25th. of August. The contract is formed on the 25th. of August and C is entitled to receive interest from the 25th. of August only.

53. — Acceptance has no retrospective effect, that is to say it does not relate back to the time when the offer was made.

See Illustration under Section 54.

54. — If it is agreed that acceptance shall have a retrospective effect, such effect cannot affect the rights acquired by third persons acting in good faith.

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ILLUSTRATION (Sections 53 & 54). — On the 1st. of May A writes to B offering him a carriage for sale and asking that B should give an answer not later than the 10th. of May. On the 8th. of May A receives an answer from B that B is willing to take the carriage. The contract is formed on the 8th. of May.

If A had stipulated that B's acceptance should relate back to the time when the offer was made the contract of sale would be deemed to have been made on the 1st. of May. But should on the 3rd. of May A have sold the carriage to a third person C., who bought it in good faith, the retrospective effect [stipulation] could not affect C's right, that is to say C would remain the lawful owner of the carriage.

55. — An offer made *inter praesentes* is binding only if accepted at once.

An offer made by telephone is deemed to be made *inter praesentes*.

ILLUSTRATION. — *A meets B and offers to sell him his motor — car. B does not accept immediately. A is not bound to B and is free to sell his motor — car to C.*

The same rule applies if A telephones to B and B does not accept at once.

56. — An offer made *inter absentes* in which no time for acceptance is specified is binding only if acceptance reaches the offerer within a reasonable time. [17]

A reasonable time is the time in which acceptance may be reasonably expected to arrive, due regard being paid to distance and means of communication, and to the nature and object of the proposed contract.

The offer cannot be withdrawn during such period.

57. — An offer in which a time for acceptance is specified cannot be withdrawn, but it is binding only if acceptance reaches the offerer within such time.

58. — If the acceptance arrives after the time specified, but it is apparent that it was sent so that in the ordinary course of things it ought to have arrived within the time specified, the offerer must forth with give notice to the offeree of such late arrival unless he has already informed the offeree that no acceptance has arrived within the time specified.

If the offerer fails to give such notice, the acceptance is deemed to have reached him in due time.

ILLUSTRATION. — *A, a trader in Chiengmai, writes on the 1st. of August to B, a trader in Bangkok, offering him timber for sale. A specifies in his letter that the offer must be accepted on or before the 1st. of November. On the 10th. of October B writes to A accepting the offer. Owing to unusual floods, the letter is only delivered in Chiengmai on the 5th. of November ; but in the*

ordinary course of things it ought to have been delivered before the 1st. of November. Th, acceptance is deemed to have reached A in time, unless A immediately on receiving B's letter gives notice to B that the letter arrived to late, or unless on the second, third or fourth of November before receiving B's letter, A had already notified B that no acceptance had arrived within the time specified.

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59. — Silence on the part of the offeree is not an acceptance, unless it be considered so by custom or by the practice of the parties.

60. — Part performance by the offeree of the proposed contract is presumed to be an acceptance. The contract is complete when the part performance begins.

ILLUSTRATION. — On the 1st. of April A sends to B, a brick-maker, an order for ten boat loads of bricks, to be delivered boat by boat within one month from the date of order. B does not answer the order, but he sends one boat load of bricks to A on the 5th. of April. A has made to B an offer for a contract of sale of bricks. B has not sent an acceptance, but he has partly performed the proposed contract. He is presumed to have accepted the offer. The contract was complete on the 5th. of April.

[ILLUSTRATION. — On the 1st. of April A sends to B, a brick — maker, an order for ten boat loads of bricks, to be delivered boat by boat within one month from the date of order. B does not answer the order, but he sends one boat load of bricks to A on the 5th. of April. B has partly performed the proposed contract, and is presumed to have accepted the offer. The contract was complete on the 5th. of April.]

61. — An acceptance which reaches the offerer too late is deemed to be an offer made by the offeree to the offerer.

ILLUSTRATION. — On the 1st. of April, A writes to B offering him a piano for sale and asking that an answer be given on or before the 10th of April. On the 15th. of April, B writes that he is willing to buy the piano. There is no contract of sale, since B's acceptance is late. But B's answer is an offer from B to buy A's piano. If A accepts such offer within a reasonable time, the contract of sale is formed. If he does not *[accept] send an acceptance* within a reasonable time, B is not bound by his answer.

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62. — An acceptance must be unqualified, that is to say the offer

must be accepted without modification.

An acceptance by which the terms of the offer are modified is deemed to be a refusal coupled with a new offer.

ILLUSTRATION. — A writes to B offering him a piano for sale for 500 baht. B answers that he willing to buy the piano for ~~500~~ [400] baht. B having modified the terms of the offer, his answer is a refusal. But B's refusal is at the same time an offer to buy the piano for 400 baht. If A accepts such offer within a reasonable time the contract of sale is formed. If he does not [accept] ~~send an acceptance~~ within a reasonable time, B is not bound by his answer.

63. — An offer is not binding if the offerer dies or becomes incapacitated before the acceptance reaches him.

ILLUSTRATION. — A, a merchant in Chiengmai, writes to B, a merchant in Bangkok, offering goods for sale. B answers by letter that he accepts the goods. While the letter is on the way. A dies. The offer is not binding on A's heirs.

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64. — An offer is not binding if notice of its withdrawal reaches the offeree before or at the same time as the offer.

ILLUSTRATION. — On the 4th. of April A, a merchant in Bangkok, orders by letter goods from B, a merchant in Pre. On the 6th. of April, he sends a telegram to B .cancelling his order [s]. The telegram reaches B before the letter. A is not bound by his order.

65. — A person who advertises that he will give a reward to whosoever shall do a certain act is bound to give such reward to any person who does the act.

66. — The advertiser can, at any time before the act has been done, withdraw his offer by the same means which he used for making it, except if he has declared in the advertisement that he would not withdraw it, or if he has fixed a period of time within which the act must be done.

67. — If it is impossible to find out from the wording of the advertisement or from the circumstances of the case how the reward shall be paid, the following rules shall apply:

If several persons do the act specified in the advertisement, the person who does it first is entitled to receive the reward.

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If several persons do the act at the same time, each of them is entitled to receive an equal share in the reward. But if the reward cannot by its nature be divided, or if according to the advertisement one person only is to receive it, the person to receive it must be designated by lot.

2. — DEFECTIVE CONSENT.

68. — Consent is defective if given under a mistake as to an essential element of the contract.

ILLUSTRATION. — A, a merchant in Bangkok, has two launches, an old one named N and a new one named X. At the time when he is out of Bangkok B sends a telegram offering to buy the launch X for 10,000 baht. In consequence of a clerical error committed at the telegraph office, the telegram delivered to A bears N instead of X. A answers by telegram : "offer accepted". A's consent is defective.

69. — Consent given under a mistake as to an essential element of the contract is not defective if the party whose consent was so given could have avoided the mistake by exercising such care as may be expected from a person of ordinary prudence.

A mere clerical error shall be corrected.

70. — Consent of one of the parties is defective if obtained by a fraud committed by the other party, provided that the fraud be such that without it the first party would not have given his consent.

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ILLUSTRATION.— Five thousand tons of ice are made annually at A's ice factory. A falsely represents to B that the annual output of the factory is ten thousand tons, and thereby induces B to buy the factory. B would not have bought the factory if he had known that the output was five thousand tons only. B's consent to the contract of sale is defective.

71. — Section 70 applies if the consent of one of the parties is obtained by a fraud committed by a person not a party to the contract, provided that the other party to the contract knew of the

fraud at the time when the contract was made, or would have known of it if he had exercised such care as may be expected from a person of ordinary prudence.

ILLUSTRATION. — Five thousand tons of ice are made annually at A's ice factory. C falsely represents to B that the annual output is ten thousand tons, and thereby induces B to buy the factory. B would not have bought the factory if he had known that the output was five thousand tons only. A knew of the fraud committed by C. B's consent to the contract of sale is defective.

72. — Consent of one of the parties is defective if obtained by the duress of the other party or of any other person.

73. — When a party was induced to give his consent by such violence or threat as would lead him reasonably to believe that his life, body, liberty, reputation or property or the life, body, liberty, reputation or property of any other person was endangered, his consent is said to have been obtained by duress.

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74. — Legal action does not constitute duress.

75. — In deciding whether a case of mistake, fraud or duress exists, the Court shall have due regard to the age, sex and position of the parties, and other circumstances of the case.

76. — The party whose consent to a contract was vitiated by mistake, fraud or duress can claim cancellation of such contract by the Court within one year from the day when the mistake or fraud became known to him, or when the duress ceased.

77. — The heirs of the party whose consent to a contract was vitiated by mistake, fraud or duress can claim cancellation of such contract by the Court within one year after death of such party.

If such party died after the mistake or fraud became known to him or after the duress ceased, his heirs cannot claim cancellation of the contract later than one year after such knowledge or after such cessation.

ILLUSTRATION. — *A has been induced by B's fraudulent representations to buy B's factory. The contract of sale has been entered into on the 1st. of April 2455. A dies on the 1st of June 2455 before having discovered the fraud. The right of A's heirs to claim cancellation of the contract is extinguished by prescription the 1st. of June 2456 (one year after A's death). If the heirs discover the fraud after the 1st. of June 2456 they have no action and the contract is valid.*

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If A discovers the fraud on the 1st. of May 2455 and dies on the 1st, of October next following without having entered an action for cancellation, the right of his heirs to enter such an action is extinguished by prescription the 1st. of May 2456 (one year after discovery of fraud).

78. — In no case can an action for cancellation of a contract on the ground of mistake, fraud or duress be entered later than ten years after the date of the contract.

79. The party whose consent was vitiated by mistake, fraud or duress can ratify the contract after he knew of such mistake [or fraud] after the duress ceased.

3. — RATIFICATION.

80. — Ratification may be expressed or implied.

81. — Implied ratification may result from the circumstances of the case such as when the person entitled to ratify, without expressing any reservation, performs the contract wholly or in part, or

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claims its performance, or

gives a security for its performance, or

asks for an extension of time from the creditor, or

notifies the creditor that any right or liability arising out of the contract is extinguished by set off, or

transfers any of the rights or liabilities arising out of the contract, or

does not raise the objection that the contract is voidable when sued in Court for its performance.

82. — Ratification does not require acceptance, but it is subject to the rules concerning consent.

ILLUSTRATION. — *A had entered into a contract of hire of services with B, who represented himself as a qualified architect. It turns out afterwards that B has no such qualification. A may ratify the contract, and ratification does not require to be accepted by B. But ratification is not valid if it was given under B's duress.*

83. — Ratification has a retrospective effect.

84. — The retrospective effect of a ratification cannot affect the rights acquired by third persons acting in good faith.

ILLUSTRATION. — *A, a merchant in Bangkok, has two launches, an old one named N and a new one named X. B, who is living in Patriu, writes to A asking whether he can sell him one of his launches. A sends a telegram offering the launch N for 10,000 baht. In consequence of a clerical error committed at the telegraph office, the telegram delivered to B bears X instead of N. B answers by telegram: "Offer accepted." B's consent is defective.*

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B can ratify the contract that is to say he can notify A that he agrees to buy the launch N for 10,000 baht and such ratification shall have a retrospective effect. But it before the ratification A has sold the launch N to C who bought it in good faith, the ratification of the contract between A and B cannot affect the rights of C, that is to say C shall remain the lawful owner of the launch N.

[PART] III. — OBJECT.

85. — A contract is void if its object is :

- 1) Impossible, or
- 2) Unlawful, or
- 3) Contrary to public policy or to the safety of persons or property.

ILLUSTRATION. — *I.— Impossible. — On the 15th. of April in the morning, A, the manager of a Navigation Co., agrees to hire to B the lighter N which is supposed to be then engaged in unloading a steamer in Koh Si Chang. It turns out afterwards that during the night of the 14th. ~~to~~ the 15th. of April the lighter was sunk. The object of the contract is impossible. The contract is*

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void.

II. — Unlawful, ~~etc.~~ — A enters into a partnership with B for the purpose of smuggling opium into Siam. The object of the contract is unlawful. The contract is void.

86. — A contract which is void on account of its object does not become valid if the cause of invalidity ceases after the contract was made.

ILLUSTRATION. — A, a rice-miller in Bangkok, contracts to send every month a cargo of rice to B, a merchant in Hongkong, although the export of rice has been prohibited in Siam. The contract is void on account of its object being unlawful. Subsequently the export of rice is allowed. The contract does not become valid.

87. — A valid contract becomes void if, after it was made, its object becomes unlawful or contrary to public policy or to the safety of persons or property.

ILLUSTRATION. — A, a rice-miller in Bangkok, contracts to sell every month a cargo of rice to B, a merchant in Hongkong. After the contract has been carried out for several months the export of rice is prohibited in Siam. The export becoming unlawful, the contract between A and B becomes void.

TITLE II.
MANAGEMENT OF AFFAIRS WITHOUT A
MANDATE.

88. — Management of affairs without a mandate occurs when a person acts for another without his request or without being bound by law to do so.

89. — The manager must immediately notify the principal that he is acting for him.

No notification is necessary if the principal knows of it.

90. — The manager is bound to act for the principal with such care as may be expected from a person of ordinary prudence.

91. — The manager is bound to continue to act until the principal or his heirs can act.

92. — If the manager has undertaken to act although he knew or ought to have known that such undertaking was contrary to the will of the principal, the following rules apply:

1) The principal is not bound to third persons, by the acts done by the manager.

2) The manager is liable to the principal for all the consequences of his intervention, even consequences due to *force majeure*.

3) The principal is not bound to reimburse the manager for the advances made or expenses incurred except in so far as he has been enriched thereby.

93. — The fact that the manager has undertaken to act contrary to the will of the principal shall not be taken into consideration in any case in which a duty imposed on the principal in the public interest would not be fulfilled in due time except for such intervention.

94. — If an act of management has for its object the averting of an imminent danger which threatens the principal, the manager is liable to the principal for the consequences of his act in so far only as they are due to his fault.

95. — If the manager has **not** undertaken to act **[not]** contrary to the will of the principal, but has failed to act with proper care, the following rules apply:

1) The principal is bound to third persons by the acts done by the manager.

2) The manager is liable to the principal for the consequences of his misconduct.

3) If advances have been made or expenses incurred by the manager, the principal is bound to reimburse them only in so far as he has been enriched thereby.

96. — If the manager has **not** undertaken to act **[not]** contrary to the will of the principal and has acted with proper care, the principal is bound to third persons by the acts done by the manager. [30]

He is also bound to reimburse the manager for any advances made or expenses incurred by him.

97. — The manager is not entitled to remuneration.

98. — After the management has ceased, the manager must as soon as possible report to the principal how the matters have been executed.

99. — The manager must transfer to the principal the rights which he has acquired in his own name but on behalf of the principal.

100.—The manager must hand over to the principal all the monies and other properties which he receives in the execution of the management.

DIVISION I. TITLE II. — MANAGEMENT OF AFFAIRS WITHOUT MANDATE.

101. — If the manager has used for his own benefit money which he ought to have handed over to the principal or to have used for the principal, he must pay interest thereon from the day when he used it for his own benefit.

102. — A person who acts for another, believing that he is acting for himself, has only an action for undue enrichment against the principal.

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103. — If the manager acts for one person, believing that he is acting for another person, the first named person only has the rights and duties arising out of the management.

104. — If the principal expressly or impliedly ratifies it the management is transformed into a contract of agency.

The principal who knew of the management and did not object to it within a reasonable time is deemed to have ratified it.

DIVISION I.

**TITLE III.
UNDUE ENRICHMENT.**

**CHAPTER I.
LIABILITY FOR UNDUE ENRICHMENT.**

~~105. — A person who has made a prestation which was not due, or was no longer due, believing that such prestation was due, is entitled to restitution from the person who has been unduly enriched by such prestation.~~

[105. — A person who has made a prestation which was not due, or was no longer due, believing that such prestation was due, is entitled to restitution from the person who has been unduly enriched by such prestation.]

ILLUSTRATION. — *A, the heir of C, pays to B the amount of a bill which A thinks not to have been paid by C. A afterwards finds a receipt showing that Chad paid the said bill. A is entitled to restitution from B.*

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106. — Incapacitated persons, when unduly enriched. are bound to make restitution in the same way as capable persons.

107. — A person who has made a prestation as if in performance of an obligation, knowing that such obligation did not exist, is not entitled to restitution.

ILLUSTRATION. — *A knows that he is not indebted in any way to B. A hands over 1000 baht to B by pretending that he is indebted to B in such amount. A is not entitled to restitution from B.*

108. — The following persons are not entitled to restitution:

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

2) A person who performs an obligation which has been extinguished by prescription.

ILLUSTRATION. — I. — A has borrowed from B 1,000 baht to be ~~repaid~~ returned on the 1st. of March 2455. A ~~returns~~ repays the money on the 1st. of December 2455, that is to say before the time has arrived. ~~Although the money was not yet due,~~ A cannot claim its restitution.

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II. — A has borrowed 1000 baht from B in the year 2442, to be repaid in the year 2444. A has not repaid the money and B has not claimed repayment. In the year 2456, at the time when A's obligation is extinguished by prescription, A repays the 1000 baht. A cannot claim restitution of the money.

CHAPTER II.

RESTITUTION FOR UNDUE ENRICHMENT.

109. — A person who unduly received a prestation is bound to make restitution as provided by the following sections.

[See Illustration under Section 111]

ILLUSTRATION. — A delivers to B an elephant, market value 2000 baht, believing that such prestation was due. In fact, the prestation was not due. According to Section 109, A is entitled to restitution from B.

110. — If the subject of the prestation is property which may be returned, and the person who received it was in good faith, such person is only bound to return it in such condition as it is.

See Illustration under Section 111.

111. — If the subject of the prestation is property which may be returned, and the person who received it was in bad faith, such person is liable for any damage caused to it.

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ILLUSTRATION (Sections 110 & 111). — If the elephant is still in B's possession, B must return it to A; but if the elephant is not in good condition, a distinction is to be made:

1) If B was in good faith, that is to say if he believed in good faith that the prestation was due to him, he is only bound to return the elephant in such condition as it is.

2) If B was in bad faith, that is to say if he knew that the prestation was not due to him, he is liable for damage and he must pay compensation to A for such damage.

ILLUSTRATION (Sections 109, 110 & 111). — A delivers to B an elephant, market value 2000 bant, believing that such prestation was due. In fact, the prestation was not due, A is entitled to restitution from B.

If the elephant is still in B's possession, B must return it to A; but if the elephant is not in good condition, a distinction is to be made:

1) If B was in good faith, that is to say if he believed in good faith that the prestation was due to him, he is only bound to return the elephant in such condition as it is.

2) If B was in bad faith, that is to say if he knew that the prestation was not due to him, he is liable for damage and he must pay compensation to A for such damage.]

112. — If the subject of the prestation is such as cannot be returned, or if restitution is otherwise impossible, and the person who received the prestation was in good faith, such person is bound to return such part of his enrichment as still exists at the time when return is demanded.

See illustration under Section 113.

113. — If the subject of the prestation is such as cannot be returned, or if restitution is otherwise impossible, and the person who received the prestation was in bad faith, such person is bound to pay the highest value which the subject of the prestation may have reached between the time when prestation was made and the date of final judgment.

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ILLUSTRATION (Sections 112 & 113). — If B no longer has the elephant (dealt with in illustration for Section ~~109~~ [111]), restitution is impossible and compensation is due under Sections 112 and 113, according to the following distinctions :

1) If B was in good faith :

B is bound to restore such part of his enrichment as still exists at the time when compensation is demanded, that is to say:

a) If the elephant has died or was lost before such time, B's enrichment has totally disappeared and B has nothing to restore.

b) If B has sold the elephant to a third person, he must deliver to A the price which he received, whether such price be 2000 baht, or more or less, because the price represents B's

enrichment.

c) If B has exchanged the elephant, say for twenty buffaloes, he must deliver to A those 20 buffaloes ; but if five of those buffaloes have died before the compensation was demanded, B is only bound to deliver that part of the enrichment as still exists at that time, that is to say the remaining 15 buffaloes,

II. — If B was in bad faith :

B is bound to restore the highest value of the elephant, whether the elephant has died, or whether B has sold, lost or exchanged it. Therefore :

a) If the market price of elephants remains unchanged, B must pay 2000 baht.

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b) If at any time between the time when B received the elephant and the date of final judgment the market price of elephants has risen, say to 2500 baht, B must pay 2500 baht.

c) If the market price has fallen say from 2000 baht to 1500, A is still entitled to claim the full value of the prestation at the time when it was made, that is to say 2000 baht.

114. — The person who received the prestation in good faith is bound to return interest and profits from the date of demand only.

See Illustration under Section 115.

115. — The person who received the prestation in bad faith is bound to return interest and profits from the date of prestation.

ILLUSTRATION (Sections 114 & 115). — On the 1st, of October, A delivers to B a house which is let to a tenant for 100 baht per month. A has collected the rent for September. B collects the rent for October and for the following months. On the 1st of January, A claims restitution of the house on the ground of undue delivery as provided by Section 105. The Court orders B to restore the property.

If B received the house believing in good faith that he was entitled to it, B is only bound to account to A for the rent of January and following months up to the restitution.

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If B received the house in bad faith, that is to say knowing that he was not entitled to it, he is bound to account to A for the rent of October and following months up to restitution.

116. — If the person who returns the property has incurred expenses on account of it, he is entitled to reimbursement from the

person to whom the property is returned, as provided in the following sections.

117. — Expenses which were necessary for the preservation of the property or for its maintenance or repair, or **for** charges incumbent upon it must be reimbursed in full.

If the person who returns the property has collected the profits, the expenses for maintenance, repairs or charges must be borne by him to the extent of the value of such profits.

ILLUSTRATION.— *A is ordered under Section 105 to restore to B a house which had been unduly delivered to him by B. A has incurred 200 baht expenses in repairing the roof of the house and he has paid 50 baht house tax on it. B must reimburse these 250 baht to A.*

If A had leased the house and collected 150 baht rent, he would be bound to bear his expenses up to the amount of the profits collected by him, that is to say he would keep the 150 baht rent and be entitled to the 100 baht balance from B.

[ILLUSTRATION. — *A is ordered under Section 105 to restore to B a house which had been unduly delivered to him by B.*

a) A has incurred 200 baht expenses in repairing the roof of the house and he has paid 50 baht house tax on it. B must reimburse these 250 baht to A. If A has leased the house and collected 150 baht rent, he is entitled to keep such rent if he was in good faith (Section 114). But then these 150 baht profits must be deducted from the 250 baht to be reimbursed to him, that is to say that B would have finally to reimburse 100 baht balance;

b) if A. has ascertained at a certain time that the house was on the verge of falling in owing to floods, and has had to make 5000 baht for the ground works, this is an expense for preservation. Then B must reimburse to A 5000 baht; and no deduction shall be made of any rent collected by A and which he is entitled to keep on account of his being in good faith.]

118. — If the person who has in good faith unduly received a property has made alterations in, or additions to it, he must return the property in such condition as it is; he is entitled to compensation for any increase of value accruing to the property from such alterations or additions, and he is not liable for any decrease of value resulting from the same. [38]

~~119. — 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. If it is impossible to put it in its former condition or the property would be damaged thereby, he is entitled to no compensation for any increase of value accruing to the property from such alterations or additions, and he is liable to pay compensation for any decrease of value resulting from the same.~~

[119. — 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. If it is impossible to put it in its former condition or the property would be damaged thereby, he must return it in such condition as it is and he is entitled to no compensation for any increase of value accruing to the property from such alterations or additions, and he is liable to pay compensation for any decrease of value resulting from the same.]

DIVISION I.

TITLE IV.
WRONGFUL ACTS.

CHAPTER I.
LIABILITY FOR WRONGFUL ACTS.

~~120. — Whoever intentionally or negligently causes injury to another person under any of the following circumstances, that is to say:~~

~~1) By omission of such care as may be expected from a person of ordinary prudence, or~~

~~2) By omission of such skill and care in a profession as may be expected from a person exercising such profession, or~~

~~3) In disobedience to any law, bye-law or lawful order,~~

~~is said to commit a wrongful act and is bound to make compensation to the injured person.~~

[120. — Whoever intentionally causes injury to another person, or whoever causes such injury negligently, that is to say, under any of the following circumstances:

[39]

1) By omission of such care as may be expected from a person of ordinary prudence, or

2) By omission of such skill and care in a profession as may be expected from a person exercising such profession, or

3) In disobedience to any law, bye-law or lawful order,

is said to commit a wrongful act and is bound to make compensation to the injured person.]

121. — Every person, even though he be incapacitated, is liable for the consequences of his wrongful acts.

122. — An employer is jointly liable with his employee for the

consequences of a wrongful act committed by such employee in the course of his employment.

123. — 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.

ILLUSTRATION.— *A, a clerk in B's shipping firm, when conveying goods by boat in the course of his employment, through his negligence causes the boat to collide with another boat belonging to C, whereby C's goods are damaged. C enters an action for damages against B. The Court orders B to pay 100 baht compensation. After B has paid such 100 baht to C, he is entitled to recover them from A.*

[40]

~~124. — If a wrongful act has been committed by several persons, the Court shall decide the proportion in which the compensation must be borne by each wrongdoer.~~

~~125. — Unless otherwise decided by the Court, the several wrongdoers are jointly liable for the payment of the whole of the compensation to the injured person.~~

[124. — If a wrongful act has been committed by several persons, the several wrongdoers are jointly liable for the payment of the whole of the compensation to the injured person unless otherwise decided by the Court.]

125. — As between the several wrongdoers themselves, the Court may decide the proportion in which the compensation must be borne by each of them.]

126. — Civil liability is independent of criminal liability, as provided by ~~Section 91 of~~ the Penal Code.

CHAPTER II.

SELF-HELP.

127. — A creditor is entitled, for the purpose of securing performance of an obligation, to take possession of property, or to compel a debtor to suffer an act which he is bound to suffer, provided that under the circumstances of the case it was not possible for the creditor to wait for an order of a Court or of the proper authority without running a risk that the enforcement of the obligation would be seriously impeded or endangered.

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128. — Self-help must be strictly limited to that which is necessary for averting the risk.

[41]

129. — A creditor who uses self-help contrary to the provisions of Sections 127 and 128 commits a wrongful act and is liable for any injury caused. ~~It is no defence that he was ignorant that his act was wrongful or that his ignorance was not due to his own fault.~~

CHAPTER III.

LAWFUL DEFENCE, LAWFUL COMMAND, NECESSITY.

130. — A person who, acting in lawful defence or under a lawful command, has caused injury to any other person does not commit a wrongful act and is not liable for 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 lawful command, as the case may be.

ILLUSTRATION. — I. — *A is assaulted by a gang of robbers. A fires at the robbers and wounds B, a passer by. If A did not act in excess of what is permitted or necessary for lawful defence, A has not committed a wrongful act and B can only claim compensation from the robbers.*

[42]

II. — *A is arrested by B, a policeman acting under an unlawful order of C, his superior officer. If B is considered as having carried out a lawful command (as defined by Penal Code*

Section 52), B has not committed a wrongful act and A can only claim compensation from C.

131. — A person who damages or destroys a thing belonging to another person in order to protect himself or any other person against immediate danger does not commit a wrongful act, but is liable for compensation.

If the danger was caused by the thing itself, no compensation is due, provided that no more was done than reasonably required under the circumstances.

ILLUSTRATION. — I. — A is going down the river Menam in a sampan loaded with fruit, betel, etc. for sale. B, who has fallen in the river by accident and is very nearly drowned, gets hold of the edge of the boat and, unfortunately, the boat capsizes. B has not committed a wrongful act, but he must make compensation to A for the lost fruit, betel, etc. as well as for damage to the boat, if any.

II. — A's elephant being mad is running towards B. B wounds the elephant and thereby escapes danger. No compensation is due by B for the injury caused to A's elephant.

CHAPTER IV.

[43]

COMPENSATION FOR WRONGFUL ACTS.

132. — Compensation shall include:

- 1) Restitution of the property of which the injured person has been wrongfully deprived, if any, or its value, and
- 2) Compensation for any injury caused to the injured person.

133. — The restitution provided by the foregoing section is governed by such provisions of this Code concerning restitution for undue enrichment ~~as refer to restitutions made~~ by persons in bad faith.

134. — If the injury was partly caused by the fault of the injured person, the Court may reduce the amount of compensation, or even grant no compensation at all.

135.— In case of bodily harm, compensation shall be at least for expenses incurred [for medical treatment] ~~during illness~~, for injury resulting to the injured person from having been unable to follow his ordinary pursuits, and for bodily pain.

136. — If the injured person has died from the wrongful act, and no action for compensation was entered by him or finally decided, the parents, husband. wife, children ~~and~~ [or] grand-children of the deceased can claim compensation for expenses incurred by the deceased and by them [for medical treatment] ~~during his illness~~, for the costs of his funeral, and for any other injury resulting to them from his death. [44]

137. — The obligations arising out of a wrongful act are extinguished by prescription six months after the day when the wrongful act and the person who is liable for it became known to the injured person. But in no case the action for compensation can be entered later than ten years after the day when the wrongful act was committed.

However if the wrongful act constitutes an offence the prescription of the civil action is governed by section 96 of the Penal Code.