

DIVISION III. – TRANSFER OF OBLIGATIONS.

TITLE I.

GENERAL PROVISIONS.

200. — The rights and liabilities arising out of an obligation may be transferred unless their nature does not admit of it, or unless their transfer be forbidden by law.

ILLUSTRATION. — I. — A is a creditor of B for a sum of 10.000 baht. A can sell to C his right to recover 10.000 baht from B.

II. — A, a painter, has agreed to make a picture for B. A is not entitled to transfer to another painter C the obligation to make the picture, because the nature of the agreed work does not admit of its transfer.

III. — An official cannot transfer to another person his right to receive his monthly salary, because such a transfer is forbidden by law (See Section 203).

201. — An agreement that an obligation shall not be transferred can only be set up against such third persons as had knowledge of it.

ILLUSTRATION. — A is creditor of B for 1500 baht. A and B have agreed that the obligation shall not be transferred, A however transfers to C his right to receive 1500 baht from B. If C knew of the agreement between A and B, B is entitled to refuse to make payment to co his new creditor. If C had no knowledge of the said agreement. he is entitled to claim payment from R notwithstanding the agreement entered into between A and B.

[70]

202. — An obligation attached or seized by an order of a Court[, before or after judgment,] cannot be transferred by the creditor.

ILLUSTRATION. — A is the creditor of B for a sum of 1500 baht. C, who is a creditor of A, obtains from the Court an order of attachment of the monies due by B to A From the moment when B is served with the order of attachment, the debt due by B to A cannot be transferred by A.

203. — Salaries and pensions of Government officials cannot be transferred.

DIVISION III.

TITLE I. — GENERAL PROVISIONS.

204. — A transfer not notified or agreed to, as provided by Sections 205 or 214, is valid as between the transferor and the transferee.

TITLE II.
TRANSFER OF RIGHTS.

205. — The transfer of a right cannot be set up against the debtor or against any third person until the transferor has given written notice thereof to the debtor, or the debtor has agreed to the transfer.

[71]

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

ILLUSTRATION. — *A is the creditor of B for a sum of 1500 baht. A transfers his right to C. A has not given written notice of the transfer to B and B has not agreed to the transfer. C demands payment from B. B is entitled to refuse to make payment to C. If B makes payment to A before he has received notice of, or agreed to the transfer, his payment is valid and he is thereby discharged from his debt.*

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

207. — The debtor can set up against the transferee any defence which he had against the transferor at the time when he received notice of the transfer or agreed to it.

ILLUSTRATION. — *A is a creditor of B for a sum of 1500 baht. A transfers his obligation to C on the 1st. of April 2456 and B receives notice of the transfer or agrees to it on the same day. But it appears that the obligation was extinguished by prescription since the 1st. of January 2455. B is entitled to set up against C the defence resulting from the prescription of the obligation.*

208. — The transferee of a right is subrogated to the rights of the transferor in any accessories such as securities or preferential rights to which the transferor was entitled.

[72]

Interest due is presumed to be included in the transfer of the capital.

ILLUSTRATION. — *I. — A is a creditor of B for 1000 baht, money borrowed ; D has agreed*

with A to be surety for the payment. A transfers the debt to C. The suretyship is included in the transfer, that is to say if B does not pay the money to C, C is subrogated to the rights of A and can recover the money from D.

II. — A is the employee of B. B dies owing to A 100 baht for one month salary. A has a general preferential right over the estate for the payment of that sum. A transfers to C his right to receive the 100 baht due to him. The transfer includes the general preferential right, that is to say C is subrogated to the right of A and entitled to have the 100 baht paid out of the estate in preference to other debtors, as provided by Section [s] 306 to 337.

III. — B owes 10.000 baht to A. The debt is due and bears interest from the 1st of January 2454 at 12% per ann[un]um. Neither capital nor interest has been paid. On the 1st. of January 2455 A sells his right to C. It is presumed that A has sold to C his right to recover from B 10.000 baht capital plus interest at 12% per annum from the 1st of January 2454.

209. — The transfer of a right includes the transfer of any charges or liabilities affecting such right.

ILLUSTRATION. — A bequeaths 20,000 baht to B on condition that B shall give 25 baht a month to C, an old servant of A, during C's lifetime. B transfers to D his right to the legacy. The transfer includes the liability to pay the 25 baht a month to C.

[73]

210. — If required by the transferee, the transferor of a right must deliver to the transferee a document of transfer, together with the documents acknowledging the existence of the right, if any.

He must also give the transferee any other documentary evidence or information in his possession which is necessary to claim the performance of the right transferred.

ILLUSTRATION. — A lends money to B. B signs a bond to A for the sum lent. Some correspondence is exchanged on the matter. Later on, A transfers to C his right over the money due by B. On demand made by C, A is bound to give to C:

- 1) A document acknowledging the transfer.
- 2) The bond signed by B.
- 3) The letters sent by B to A in so far as they might be used if B were to deny his indebtedness.

211. — The transferor of a right is liable for the consequences of the non-existence of such right at the time of the transfer.

But he is not liable for the consequences of the insolvency of the debtor.

ILLUSTRATION. — I. — A dies. His heir B finds in the estate a bond for 1000 baht signed by C. B sells the bond to D. D claims payment from C. C produces a receipt showing that the sum had been repaid to A. B has sold, right which did not exist at the time of the sale. B is liable to C for the consequences of the non-existence of the right, that is to say he must return to D the price of the sale with costs of action, interest, and compensation if any other injury was caused to D.

[74]

II. — A has lent money to B and has received a bond for it. A sells the bond to C. C claims the money from B. B turns out to be insolvent. A is not liable to C for the consequences of the insolvency of B.

212. — When the transferor agrees to be liable for the consequences of the insolvency of the debtor his liability is extinguished by prescription one year after the transfer

If the right transferred was not due at the time of the transfer, prescription runs from the day when such right became due.

ILLUSTRATION. — I. — A has lent money to B and has received a bond for it. The money is due. A sells the bond to C on the 15th of January 2454 and agrees to be liable for the consequences of B's insolvency. C claims payment from B. B turns out to be insolvent. C's right to claim compensation from A is extinguished by prescription on the 15th of January 2455 (one year after the transfer).

If C waits till February 2455 before claiming payment from B, and B turns out to be insolvent, C has no action for compensation against A.

II. — A has lent money to B, and has received a bond for it. The money must be repaid not later than the 15th of January 2454. In November 2454 A sells the bond to C, and agrees to be liable for the consequences of B's insolvency. On the 15th of January B does not pay and it turns out afterwards that B is insolvent. C's right to claim compensation from A is extinguished by prescription on the 15th of January 2455 (one year after the time when the right became due).

[75]

213. — If a right is transferred for a reciprocal prestation whilst subject to litigation, the debtor can satisfy the transferee by

~~reimbursing to such transferee the value of such prestation, together with interest and costs of action, if any.~~

[213. — Any transfer of right for a reciprocal prestation, whilst subject to litigation, is void.]

ILLUSTRATION. — *A has brought an action against B for the recovery of 5010 baht. Before judgment A transfers his rights to C for 200 baht. C continues the proceedings against B. B can have the action of 6 dismissed by repaying to C 200 baht plus interest from the date of transfer and the costs of action incurred by C, if any.*

TITLE III. TRANSFER OF LIABILITIES.

214. — The transfer of a liability cannot be set up against a creditor or against any third person until the creditor has agreed to the transfer.

See Illustration under Section 215.

[76]

215. — The transferee can notify the creditor in writing to state within a reasonable time, to be fixed in such notice, whether he agrees to the transfer or not.

If the creditor fails to comply with the notice, he is presumed not to have agreed to the transfer.

ILLUSTRATION (Sections 214 and 215). — A is the creditor of B for a sum of 1500 baht. On the 1st. of April 2454 B transfers to C his liability, that is to say C agrees that he will be the debtor of A in place of B. Unless A agrees to the transfer, it is of no effect as against him, and he can claim payment from B.

But C can, say on the 10th of April 2454, notify A in writing to state within say one month from date whether he agrees to the transfer or not. If A answers within that time that he agrees to the transfer, then C is substituted for B as the debtor of A. If A answers that he does not agree to the transfer, or if he does not make any answer within the time fixed in the notice, B remains liable to A as a debtor.

216. — The transferee can set up against the creditor any defences which the transferor had against such creditor at the time when the creditor agreed to the transfer, except in the case provided by section 355 concerning set off.

ILLUSTRATION. — A is creditor of B for a sum of 1500 baht. B transfers his liability to C on the 1st. of April 2456. A agrees to the transfer on the same day. Subsequently it appears that the obligation was extinguished by prescription on the 1st. of January 2454. If A claims payment from C, C can object that the obligation is extinguished by prescription.

[77]

217. — When a liability has been transferred, the benefit of the

securities or preferential rights given by the original debtor does not pass as security for the performance of the obligation by the new debtor.

Interest due is presumed to be included in the transfer of a debt.

ILLUSTRATION. — I. — A is a creditor of B for 10,000 baht, money borrowed. D has agreed with A to be a surety for B. B transfers his liability to C and A agrees to the transfer. Dis discharged.

II. — A builds a house [for B] for 20,000 baht. The price is not paid. A has the right to be paid out of the proceeds of the sale of the house in preference to other creditors. B transfers his liability to C. A agrees to the transfer. A has no longer a preferential right over the house.

III. — A owes 10,000 baht to B. The debt bears interest. Neither capital nor interest has been paid. A transfers the debt of 10,000 baht to C. It is presumed that C is liable for the capital and for the interest.