

## DIVISION IV. — EFFECTS OF OBLIGATIONS.

### TITLE I.

#### GENERAL PROVISIONS.

218. — An obligation is binding upon the parties to it.

It is also binding upon the heirs of the parties to the extent provided by the laws on Inheritance.

It cannot affect the rights of third persons.

219. — A party to a contract who promises that a third person shall make a prestation is bound to make compensation if such prestation is not made.

*ILLUSTRATION.* — *A sells to B a carriage, and promises that C shall sell to B a pony that has been used for the carriage. If C refuses to sell the pony to B, B is entitled to compensation from A.*

220. — If a party to a contract agrees to make a prestation to a third person the other party is entitled to claim that the prestation be made to such third person.

The third person also can claim directly performance from the debtor.

*See Illustration under Section 221.*

221. — If it is agreed in a contract that a party shall make a prestation to a third person, the parties to such a contract cannot modify it after the third person has notified in writing to the debtor his intention to take the benefit of the contract.

*ILLUSTRATION (Sections 220 and 221).* — *In the year 2453 A has made a gift to B of a house on the condition that C shall be allowed to live in it during the year 2455. A is entitled to claim from B that the house be put at the disposal of C during the agreed time. C is also entitled to require B to put the house at his disposal. As long as C has not notified B that he intends to*

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*take advantage of the clause which concerns him, A and B can by mutual consent modify or revoke such clause. After C has notified B in writing that he intends to take advantage of the clause, A and B cannot modify or revoke it without C's consent.*

## TITLE II. RIGHTS OF THE CREDITOR.

222. — The creditor of an obligation is entitled to have it performed in the way provided by the obligation or by law.

He is entitled to receive compensation from the debtor for any injury resulting from non-performance except when the law otherwise provides.

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### CHAPTER I. PERFORMANCE.

#### [Part] I. — WHO MAY PERFORM.

223. — The obligation must be performed by the debtor, but a third person also can perform it if its nature admits of such performance, provided that a person who has no interest in the performance cannot make performance against the will of the debtor.

*ILLUSTRATION. — I. — A has sold a cargo of rice to B for 10,000 baht. C is not a party to the contract and has no interest in the payment of the price. C may pay the price to A provided it be not against the will of B.*

*II. — A agrees to paint a picture for B. The nature of the obligation does not admit of such painting being made by C.*

*III. — A has contracted to build a house for B. A buys timber from C for building the house, but he has no money to pay it and cannot therefore obtain delivery of it. B has an interest in the payment of the price of the timber, because the payment will enable A to take delivery of the timber and to build the house. B can pay the price even against the will of A.*

224. — A third person who has performed an obligation otherwise than as a gift to the debtor is entitled to compensation from the debtor according to the provisions of this Code concerning undue enrichment.

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The debtor can set up against such third person any defences

which he would have had against the original creditor.

*ILLUSTRATION.* — *A has sold a cargo of rice to B for 10,000 baht. Ca third person, pays the price to A. C is entitled to receive from B 10,000 baht. But if it appears that C intended to make a gift to B, C is not entitled to reimbursement.*

*If at the time when C made the payment the right of A to claim the price of 10,000 baht was extinguished by prescription and C claims reimbursement from B, B can refuse reimbursement on the ground that the right of A was extinguished by prescription.*

**[Part] II. — WHO IS ENTITLED TO RECEIVE PERFORMANCE.**

225. — The right of receiving performance of an obligation belongs to the creditor.

226. — Performance made to a person not entitled to receive it is valid :

- 1) If the creditor ratifies such performance, or
- 2) If the creditor is enriched by such performance.

In the case provided under subsection 2, performance is valid only to the extent to which the creditor is enriched thereby.

**[82]**

*ILLUSTRATION.* — *A is the debtor of B for 1000 baht. A pays the 1000 baht to C who is not entitled to receive performance. C delivers the money to B. The whole performance is valid because B was enriched by it up to the amount of the whole obligation.*

*If C delivers only 800 baht to B, the performance is valid only to the extent to which B was enriched by it. that is to say up to an amount of 800 baht.*

227. — Performance made in good faith to the person who produces the document embodying the obligation or a receipt for performance is valid unless the person making performance knew that such person was not entitled to receive performance, or would have known of it if he had exercised such care as may be expected from a person of ordinary, prudence.

*ILLUSTRATION.* — *I. — A has subscribed a promissory note to bearer. On the note falling due, it is presented to A by B, a merchant. A makes payment to B. The payment is valid.*

II. — *A has bought goods from the firm B. C, a bill collector of the firm B, comes to A and asks for payment of the goods by producing a receipt signed by the firm B. A pays. The payment is valid.*

III. — *A has borrowed money from B and made a bond for it. Later on, B informs A that the bond has been stolen and warns A not to pay it if presented by a person other than B. C presents the bond and A pays it. The payment is not valid because A knew that the person producing the document of the obligation was not entitled to receive performance.*

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IV. — *A has bought a large quantity of goods from the firm B. A has previously bought goods from that firm and had always paid the bills to persons whom he knew to be bill collectors of the firm B. C who is well known as a bad character, who has no connection whatever with the firm B, comes and presents to A the bill for the goods sold and a receipt signed by the firm B. A pays. It turns out afterwards that the bill and the receipt were stolen by C. The payment is not valid, because if A had acted with such care as may be expected from a person of ordinary prudence he would have easily known that C was not entitled to receive performance.*

**228. — Performance made to an incapacitated creditor is void, unless the creditor was enriched by it.**

**In such case, the performance is valid only to the extent to which the creditor has been enriched thereby.**

*ILLUSTRATION. — A owes 1000 baht to B who is a person of unsound mind placed under the custody of a guardian. A pays the 1000 baht to B himself.*

*If B gives the whole money to his guardian the whole payment is valid, because B was enriched thereby.*

*If B wastes or loses 300 baht and gives the rest to his guardian. Bis enriched only to the extent of 200 The payment is valid for 700 baht only and A is bound make to the guardian of B a fresh payment of 300 baht*

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*If B used 200 baht to pay a debt incurred for his maintenance and gave the rest to his guardian, he has been enriched to the u hole extent of the 1000 baht paid by A The whole payment made by A is valid.*

**229. — If the debtor performs the obligation notwithstanding an order for ~~attachment or seizure~~ [seizure, before or after judgment], the person in whose favour the order has been given can still demand performance from the debtor.**

The debtor who has been obliged to make a fresh performance is entitled to compensation from his creditor according to the provisions of this Code concerning undue enrichment.

*ILLUSTRATION.* — *A owes 5000 baht to B. C is a judgment creditor of B for 2000 baht. C obtains from the Court a decree ordering A to pay 2000 baht to C in satisfaction of the judgment. A pays the 5000 baht to B notwithstanding the order. C is still entitled to claim from A payment of 2000 baht.*

*A having been obliged to make a fresh payment of 2000 baht to C can claim compensation from B as provided by the rules concerning undue enrichment.*

### **[Part] III. — WHAT MAY PERFORMANCE CONSIST OF.**

**230. — The creditor cannot be compelled to accept another prestation than the prestation due.**

*ILLUSTRATION.* — *A sells to B an Australian horse. He cannot compel B to accept two ponies instead of the horse, even should the value of the two ponies be greater than the value of the horse.*

**[85]**

**231. — If the creditor accepts another prestation than the prestation due, the debtor is discharged in the same way as if he had made the prestation due.**

*ILLUSTRATION.* — *A sells to B an Australian horse. If B agrees to accept two ponies instead of the horse, A is discharged from his obligation in the same way as if he had delivered the horse to B.*

**232. — Performance made by making, transferring or indorsing a bill or warrant is valid only if such bill or warrant is paid.**

*ILLUSTRATION.* — *A owes 1000 baht to B and gives in payment a cheque on the N bank. The cheque is not paid. The payment made by the cheque is not valid. A remains the debtor of B for 1000 baht.*

**233. — The creditor cannot be compelled to receive part performance.**

*ILLUSTRATION.* — *A has lent B 1000 baht. A claims repayment. B offers to make a part payment of 500 baht only. B cannot compel A to accept these 500 baht and A has the right to enter an action in Court for the whole sum of 1000 baht.*

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**234.** — If part of a divisible obligation is subject to litigation, the creditor is entitled to claim performance of the undisputed part.

*ILLUSTRATION.* — *A demands from B the payment of 1000 baht, money borrowed. B admits that he has borrowed 700 baht and denies the indebtedness for the surplus. A has the right to claim that he should pay him forthwith the undisputed part of the obligation, viz. 700 baht.*

**235.** — If the obligation is for the delivery of a property *in genere*, the debtor is discharged by delivering a property of average quality.

*ILLUSTRATION.* — *A sells to B 1000 kwiens of Na Suan paddy. A is discharged from his obligation by delivering to B 1000 kwiens of the average quality of Na Suan paddy.*

**236.** — If the obligation is to pay a sum of money, payment must be made in such Siamese currency as is legal tender even should the sum be expressed in foreign currency.

**237.** — If the sum payable is expressed in foreign currency, payment in Siamese currency can be made at the rate of exchange prevailing at the time when and at the place where performance is due.

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**238.** — The person making performance is entitled to a receipt from the person who receives performance.

**239.** — When the obligation is entirely performed, the person making performance is entitled, in addition to the receipt, to the surrender of the document embodying the obligation, if any.

*ILLUSTRATION.* — *A has lent 1000 baht to B. B has given A a bond for that sum. The bond is the document embodying the obligation. B repays the 1000 baht to A. B is entitled to claim from A a receipt for 1000 baht and the bond.*

240. — If the document is declared to be lost, the person making performance is entitled to have such loss mentioned in the receipt or in a separate document by the person who receives performance.

241.—The person making part performance is entitled, in addition to the receipt, to have the part performance mentioned on the document embodying the obligation by the person who receives performance.

242. — If the document embodying the obligation has been surrendered, it is presumed that the obligation has been performed. [88]

243. — If a receipt for an instalment or for payment of interest is produced, it is presumed that prior instalments or interest have been paid.

*ILLUSTRATION. — I. — In 2450 A borrowed from B 10,000 baht to be repaid in ten yearly instalments from January 1st. 2451. A produces a receipt for an instalment paid on January 1st. 2454. instalments of January 2451, January 2452, and January 2453 are presumed to have been paid.*

*II. — In 2453 A borrowed from B 10,000 baht at 6% interest, to be paid quarterly. A produces a receipt for interest for the quarter ending March 31st. 2455. Interest for the previous quarters is presumed to have been paid.*

244. — If a receipt for the capital is produced, it is presumed that the interest due has been paid.

245.—Costs of performance must be borne by the debtor.

#### **[Part] IV. — PLACE OF PERFORMANCE.**

246. — Performance must be made at such place as is provided by the obligation or by law.

*ILLUSTRATION. — I. — A borrows money from B in Bangkok. It is agreed that the money shall be repaid at B's rice mill at Petriu. The performance of A's obligation [.] that is to say the* [89]



*repayment of the money shall be made at the place provided by the contract, that is to say at the said rice mill.*

*II. — It is provided by the Excise Law that payment of certain import duties shall be made at Custom House at Bangkok. If A imports goods subject to such 'duties he is under an obligation to pay such duties and he must perform his obligation at the place provided by law, viz. at the Bangkok Custom House.*

247. — In the absence of any provision in the obligation and in the law, the place of performance shall be governed by custom.

If there is no custom, the following rules apply:

1) Delivery of a specific property must be made at the place where such property was when the obligation arose.

2) In any other case, performance must be made at the residence of the debtor.

*ILLUSTRATION. — I. — A, a merchant in Bangkok, imports goods from Europe by sea, freight to be paid on arrival of the goods. If there is no provision in the contract and no provision of law as to where the freight due is to be paid, but there is a custom in Bangkok that freight due is payable at the office of the agents of the Navigation Company, A must make payment at such office.*

*II. — A buys a pony from B. A and B are living at Samsen. The pony is in a stable at Hua Lampong. Nothing is provided by the contract of sale or by law as to where the pony must be delivered. There is no custom in Bangkok as to the place of delivery of ponies sold. A is bound to take delivery and B is bound to make delivery of the pony at the place where the pony was when the contract was made, that is to say at the stable at Hua Lampong.*

*If nothing is provided by the contract of sale or by law as to where the price must be paid, and there is no custom on the matter, the payment must be made at A's residence.*

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### **[Part] V. — TIME OF PERFORMANCE.**

248. — Performance must be made at such time as is provided by the obligation or by law.

249. — In the absence of any provision in the obligation and in the law, the time of performance shall be governed by custom.

If there is no custom, performance must be made without delay.

250. — Reciprocal prestations must be made in such order as is provided by the obligation or by law.

In the absence of any provision in the obligation and in the law, the order shall be governed by custom.

If there is no custom, the prestations must be made in such order as is required by the nature of the obligation. [91]

*ILLUSTRATION. — I. — A sends goods to B through C, a carrier. The freight and accessories are to be paid by B. Under this Code C is entitled to retain the goods as long as the freight and accessories are not paid. The reciprocal obligation (payment of freight and delivery of goods) must be performed in the order provided by law, that is to say C is not bound to deliver the goods until B has paid the freight.*

*II. — B, a banker, agrees to advance m[on]ey to A on condition that A gives a security for it. The banker is not bound to advance money until security is given, for the nature of the contract requires that the banker should have security before he advances money.*

#### [Part] VI. — APPROPRIATION.

251. — When a debtor is bound by several obligations to one creditor, and a prestation made as performance is not sufficient to satisfy all these obligations, such prestation must be appropriated.

252. — The person performing can, at the time of performance, designate the obligation to which the prestation shall be appropriated.

*ILLUSTRATION. — A owes B 200 baht for house rent and 200 baht the price of a pony. A sends by letter o cheque of 200 baht to B. A may in his letter notify B that the cheque is payment for the house rent, or for the pony, as A may think fit.* [92]

253. — If the person performing does not make such designation, the person receiving the prestation can make it, at the time of reception, unless the person performing at once refuses to agree to such appropriation.

*ILLUSTRATION.* — *If A does not notify B to which item the cheque applies ( see the foregoing illustration ). B, on receiving the cheque, may notify A that he considers it to be payment for the house rent or for the pony, as B may think fit.*

254. — If no appropriation is made by the parties, or if the person performing at once refuses to agree to the appropriation made by the person receiving performance, the prestation must be appropriated according to the following rules :

- 1) Judgment debts must be paid in preference to other debts.
- 2) If there are several judgment debts, the debt bearing the highest interest must be paid in preference.
- 3) If there are several debts other than judgment debts, the debt bearing the highest interest must be paid in preference.
- 4) If there are several debts bearing the same interest, the prestation must be divided between them in proportion to their respective amounts.

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*ILLUSTRATION.* — *A is the creditor of B for the following sums :*

No. 1.	Judgment debt of	1000 baht	bearing interest at	10 %
No. 2.	<i>id.</i>	400 „	<i>id.</i>	8 %
No. 3.	<i>id.</i>	800 „	<i>id.</i>	8 %
No. 4.	Ordinary debt of	3000 „	<i>id.</i>	12 %
No. 5.	<i>id.</i>	200 „	<i>id.</i>	6 %
No. 6.	<i>id.</i>	100 „	<i>id.</i>	6 %

*I. — On the 1st. of April 2455 B makes a payment of 1300 baht. This payment shall be appropriated as follows:*

- a) Judgment debt of 1000 baht to be entirely extinguished (rules Nos. 1 and 2.)*
- b) Balance of 300 baht to be divided between the 2nd. and the 3rd. judgment debts, viz. 100 baht to debt No. 2 and 200 baht to debt No. 3 (rule No. 4).*

*Then a balance of 300 baht remains unpaid on judgment debt No. 2 and a balance of 600 baht on judgment debt No. 3.*

*II. — On the 1st. of May 2455 B makes a further payment of 1200 baht. This payment shall be appropriated as follows :*

- a) Judgment debts No. 2 and 3 to be entirely extinguished ( rule No. 1).*

*b) Ordinary debt No. 4 to be extinguished up to the amount of 300 baht, 2700 baht remaining unpaid ( rule No. 3).*

*III. — On the 1st. of June 2455 B makes a further payment of 2850 baht. This payment shall be appropriated as follows:*

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*a) Ordinary debt No. 4 to be entirely extinguished (rule No. 3).*

*b) The balance of 150 baht to be divided between ordinary debts Nos. 5. and 6, viz. 100 baht to the ordinary debt No. 5 and 50 baht to the ordinary debt No. 6 ( rule No. 4), 150 baht remaining unpaid.*

**255. — If the creditor has received security, part performance shall be appropriated first to the unsecured portion of the obligation.**

*ILLUSTRATION. — A lends to B 800 baht, C being security for 600 baht. B makes to A payment of 300 baht. B cannot appropriate such payment to that part of the debt which is guaranteed by C in preference to the other part, that is to say he cannot declare that C's liability is reduced from 600 to 300 baht. The payment must be appropriated first to the part ( 200 baht ) which is not guaranteed, and the surplus to the part which is guaranteed. C's liability as security is therefore reduced only to to 500 baht.*

**256. — If costs and interest are due, the prestation must be appropriated in the following order :**

- 1) Costs.
- 2) Interest.
- 3) Capital.

## CHAPTER II.

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### NON PERFORMANCE.

#### **[Part] I. — DEFAULT OF THE DEBTOR.**

**257. — If the obligation is not performed the debtor is said to be in default.**

**258. — If the obligation is to be performed at a definite time, that is to say on a date which was known beforehand, the debtor is in**

default from such date.

If the obligation is to be performed at a time which is not definite, the debtor is in default from the moment when he knows that such time has arrived, or when he would have known of it if he had exercised such care as may be expected from a person of ordinary prudence.

If the performance of the obligation by the debtor depends on an act to be done by the creditor or by another person, the debtor is not in default until such act is done.

*ILLUSTRATION. — I. — A borrows money from B. A agrees to repay the money at B's residence on the 1st. of April 2456. If A does not bring the money to B's residence on the 1st. of April, he is in default from such date.*

*II. — A borrows money from B, who is going out for a trip. It is agreed that the money shall be repaid at B's residence on his return. If A does not bring the money to B, he is in default from the moment when he knows that B has returned.*

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*III. — In the case described in illustration No. I, if it is agreed that the money borrowed by A shall be repaid on the 1st. of April 2456 on demand by B, A is not in default until B has demanded the money.*

*IV. — In the case described in illustration No. II. if it is agreed that B shall demand the money on his return. A is not in default until B has demanded the money.*

259. — If no time, definite or otherwise, has been fixed for the performance of the obligation, the debtor is in default ~~from the moment when~~ [after] a demand for performance is made to him.

260. — If the debtor cannot be found, he is in default without previous demand being necessary.

261. — A person whose obligation arose out of a wrongful act is in default from the time when such wrongful act was committed without previous demand being necessary.

*ILLUSTRATION. — A by driving carelessly his motor car runs over B and injures him. A is in default as regards the compensation due by him to B from the time of the accident. It is not necessary for B to make a previous demand before he enters an action for compensation.*

**[Part] II. — REMEDIES OF THE CREDITOR.****[97]**

262. — From the time when the debtor is in default, the creditor may claim specific performance of the obligation.

If the obligation arose out of a contract, the creditor may claim cancellation of the contract, except when the law provides that his remedy is to determine the contract.

The creditor is also entitled to compensation for any injury caused to him by the non-performance, except in the cases provided by Part IV of this Chapter.

*ILLUSTRATION. — I. — A sells to B a pony to be delivered to B on April 1st. A does not deliver the pony to B on that date. A is in default since April 1st. On the 2nd. of April, the pony is accidentally killed. A is liable to B for the consequences of the non-performance of the contract.*

*II. — A, living in Korat, sells a pony to B, living in Bangkok. It is agreed that A shall send the pony to B by rail on the 1st. of April. On the 31st. of March an accident happens on the line by which the traffic is interrupted for eight days. On the 3rd. of April, the pony is killed accidentally. A was in default since April 1st, but the fact that he was in default was not due to his fault. A is not liable to B for the consequences of the non-performance of the contract. A is entitled to the price of the pony.*

*See also Illustration under Section 270.*

263. — In case of cancellation the parties must be replaced in the same position as they were before the contract was made.

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*See Illustration under Section 270.*

264. — If the creditor accepts part performance of the obligation, the reciprocal prestation, if any, must be reduced in proportion.

The creditor can also claim compensation, except in the cases provided by Part IV of this Chapter.

*ILLUSTRATION. — A contracts to supply B with 200 boat loads of bricks, to be delivered*

*within one month, for 1000 baht. A delivers only 10 boat loads. The contract is not performed. B can claim cancellation of it, that is to say he can refuse to keep the 10 boat loads delivered to him and to pay the agreed price. But he can also keep the 10 boat loads of bricks and reduce in proportion the reciprocal prestation, that is to say he can pay only a proportionate part of the price.*

*If the non-performance of the contract has caused injury to B and was not due to force majeure, B can claim compensation.*

### **[Part] III. — SPECIFIC PERFORMANCE.**

**265. —** The Court may in its discretion order specific performance of an obligation whenever such performance is possible and desirable.

*ILLUSTRATION. — A sells to B one rare China vase and refuses to deliver it. B enters an action against A and claims for specific performance or compensation. The vase is still in possession of A and specific performance is therefore possible. If the Court thinks that it is desirable that the contract be specifically enforced, the Court can order A to deliver the vase to B.*

**[99]**

*See also Illustration under Section 270.*

**266. —** If the obligation is to do an act, the Court may order that the act shall be done by a third person at the expense of the debtor.

**267. —** If the obligation is for the execution of a document, or for the giving of a consent, the Court may appoint a third person to execute the document in place of the debtor, or order that the judgment shall stand in the place of the consent to be given by the debtor.

**268. —** If the obligation is to abstain from doing an act, the Court may order that the acts done shall be undone, if possible ; the Court may also order proper measures to be taken for the future.

**269. —** In any case, the Court may grant to the debtor a reasonable extension of time for performing the obligation.

**[Part] IV. — COMPENSATION.****[100]**

270. — If performance has been delayed or made possible by force majeure, the creditor is not entitled compensation for the consequences of such delay or in possibility.

*ILLUSTRATION. — I. — A, a merchant in Bangkok, sells goods to B, a merchant in Chiengmoi. It is agreed that the goods shall be delivered in Chiengmai on a certain day. A sends the goods in due time, but owing to unusual floods the goods arrive after the agreed time. Bis not entitled to compensation for the injury resulting from the delay.*

*H. — A sells his pony to B. It is agreed that the pony shall be delivered to B one week after the sale. Before the time for delivery has come, the pony is killed by accident. B has the right to claim cancellation of the contract Section 262 § 2 and to recover the price, if he has paid it (Section 263), but he is not entitled to compensation for non-performance.*

*[II. — A sells his pony to B. It is agreed that the pony shall be delivered to B one week only after the sale. A is not in default unless one week has elapsed from the day of this agreement (Section 262 2). During the week, that is to say before the time for delivery. has come, the pony is killed by accident. B has no right to claim cancellation of the contract or to recover the price, if he has paid it, and he has no right to claim compensation for non-performance.]*

*III. — In May 2445 A orders a “ Meteor ” motor car from B who is the agent of the firm “Meteor’ in Bangkok. The car is to be delivered in October. B sends the order to the “Meteor Company and the car is shipped in due time. During voyage the ship is wrecked and the car is lost. B cannot deliver the car in due time. A has the right to claim cancellation of the contract (Section 262 § 2) and to recover such part of the price as he may have paid in advance (Section 263), but he is not entitled to compensation for the injury which he may have suffered in consequence of the delay.*

*If A claims for specific performance, B must order a new car from the “ Meteor Company and deliver it to A. But A is not entitled to compensation for the delay.*

**[101]**

*ILLUSTRATION (Sections 262, 263, 265 and 270).*

*I. — Non-performance of an obligation.*

*A makes a will bequeathing all his property to B on condition that B shall deliver a house to C. Afterwards A dies.*

*a) If B refuses to deliver the house to C, C may claim for specific performance, that is to say for an order of the Court enjoining B to deliver the house. (Sections 262, 265). If the delay in delivery has caused injury to C, B will also be ordered to pay compensation to C for such injury.*



*b) If the house has been destroyed by floods before A dies, C is not entitled to claim compensation because performance has become impossible by force majeure. (Section 270).*

*c) If the house is destroyed before delivery by a fire caused by the negligence of B, C is entitled to claim compensation from B because the non-performance is due to the fault of B. (Section 270).*

*II. — Non-performance of a contract.*

*On the 1st. of April 2455 B agrees to lease a house from A at a monthly rent of 100 baht : the said lease to come into force and the premises to be entered on the 1st. of June 2455. On signing the contract B pays in advance the rent for June.*

*1) On the 1st. of June, A refuses to deliver to B the keys of the house and to let him enter the premises. B then has an option between the following remedies :*

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*a) B may claim specific performance, that is to say an order of the Court enjoining A to deliver the house to him or a decree authorizing B to forcibly enter the premises. B may also claim from A compensation for any injury caused by the delay in delivery.*

*b) Instead of claiming for specific performance, B may allow the contract to remain unperformed and claim only compensation for non-performance, that is to say for any injury caused to B by A's refusal to perform the obligation arising out of the lease.*

*c) B may also claim cancellation of the lease, with restitution of the 100 baht paid in advance ( Section 263 ), together with compensation for any injury caused to B by the cancellation and the delay.*

*2) Some time in May, the house is destroyed by floods. B can only claim cancellation of the lease and restitution of the 100 baht paid in advance. He cannot claim specific performance, because specific performance is impossible. Neither can he claim compensation of any kind, because the impossibility of performance is due to force majeure.*

*3) Some time in May the house is destroyed by a fire due to the negligence of A. B cannot claim specific performance because the performance is impossible. But since the impossibility is due to the fault of A, B is entitled to claim either:*

*a) Compensation only, that is to say compensation for any injury caused to him by the non performance, or*

*b) Cancellation of the lease, with restitution of the 100 baht paid in advance together with compensation for any injury caused to him by the cancellation.*

**[103]**

*III. — Determination of a contract. — A, the employee of B, has been engaged by B as a cashier ; it turns out that A is unable to keep the necessary accounts; Bis entitled to determine the*

*contract (Section 551).*

271. — If after the debtor is in default performance of the obligation becomes impossible owing to *force majeure*, the debtor is bound to make compensation to the creditor, unless he proves that his default was not caused by his fault.

272. — As between the creditor and the debtor, non-performance caused by persons for whom the debtor or the creditor are not responsible is deemed to be caused by *force majeure*.

*ILLUSTRATION.* — I. — A sells to B some jewelry. It is agreed that A shall deliver the jewelry at B's residence. A sends it by one of his servants, but the man is attacked by robbers and the jewelry is stolen. . Non — performance is deemed to be caused by *force majeure*. B can claim cancellation of the contract, but he is not entitled to compensation.

*If the servant had run away with the jewelry, B would be entitled to compensation, because A, the master, would be responsible for the consequences of the wrongful acts committed by his employee in the course of the employment (Section 122).*

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II. — On the 1st. of April A leases from B a house. the premises to be entered on the 1st. of June.

*During the month of May, an offender breaks into the house and sets fire to it. The house is destroyed. Performance of B's obligation to deliver the premises to A becomes impossible. But since ] is not responsible for the acts of the offender, the case, as between A and B, is deemed to be a case of *force majeure*.*

#### **[Part] V. — ASSESSMENT OF COMPENSATION FOR NON-PERFORMANCE.**

273. — Compensation shall be for the injury actually suffered by the plaintiff and for the loss of the benefits which the parties, at the time when the obligation arose, foresaw or could have foreseen would result from performance of the obligation.

*ILLUSTRATION.* — On the 1st. of January 2450 A buys for 10,000 baht 100 teak logs lying in the Me Pin forest.

*On the 20th of January, C buys these 100 logs from A for 13,000 baht on condition that the logs shall be dragged to the Me Pin river before the 1st. of October 2451. It is stipulated that if*

*all the logs are not dragged to the river on the 1st. of October 2451, the contract shall be determined and A shall pay to C 1000 baht compensation (penalty clause).*

*On the 1st. of February A makes an agreement with D, a contractor, to drag the logs to the river Me Pin for 1000 baht not later than the 1st. of September. No penalty is provided in the contract, but before signing it A has shown to D the clauses of the agreement entered into between himself and C. D is therefore aware of the consequences of failure of A to deliver the logs to the Me Pin river in due time.*

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*D and D's employees manage their business so badly that 10 of the logs are lost and the remaining 90 logs reach the river after the 1st. of October. As a consequence A cannot perform his contract with C. C determines the contract and A must pay him 1000 baht for the breach.*

*A is entitled to claim from D:*

- 1) The value of the 10 logs which were lost.*
- 2) 1,000 baht paid to C for breach of contract.*
- 3) 2,000 baht being the benefit which A would have made if his contract with C had been executed (13,000 baht sale price of the logs to C, less 10,000 baht original price paid by A and 1,000 baht cost of dragging the logs).*

**274. — If non-performance is partly due to the fault of the party entitled to compensation, the Court may reduce the amount of compensation or even grant no compensation at all.**

*ILLUSTRATION. — A agrees with B that A shall drag a certain number of teak logs to the river Me Pin before the 1st. of August and B agrees that he shall provide A with 10 elephants for dragging. B delivers only 5 elephants. On the 1st. of August part only of the logs were dragged to the river. A has not performed the contract, but, since non — performance is partly due to the fault of B, the Court may reduce the amount of compensation due by A to B or even grant no compensation at all.*

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**275. — If the obligation was to pay a sum of money. the Court shall, as a rule, grant interest as compensation.**

**Should the injury and loss of benefit exceed the sum allowed as interest, the Court shall grant compensation for the surplus.**

*ILLUSTRATION. — I. — A sells to B a house for 20,000 baht, delivery of the house to be made on the 1st. of May 2455, price to be paid one half on delivery and one half one month after*

*delivery. On the 1st. of May the house is delivered and 10,000 baht are paid. But the remaining 10,000 baht are not paid at the agreed time. A enters an action against B for payment of price and compensation. The Court may give judgment ordering B to pay to A 10,000 baht plus interest at 7½% per annum (Section 23) from the 1st. of June 2455 up to date of payment.*

*II. — A enters into a timber contract with B and has to pay a sum of 10,000 baht to B on the 1st. of June 2455 in execution of this contract. In order to procure the money A, in the month of April, mortgages a piece of land to C for 10,000 baht. It is agreed that the money shall be paid direct by C to B on behalf of A on the 1st. of June and C is aware of the nature of the contract entered into between A and B. C fails to pay the money on the 1st. of June, whereupon A has to pay heavy damages to B and loses the benefit which he could expect from the timber contract. A enters an action for compensation against C. Under the first paragraph of Section 275 A would be entitled as compensation to 7½% interest on 10,000 baht from the 1st. of June until execution of judgment. But if the injury and loss of benefit suffered by him exceed such interest, the Court may grant him compensation for the surplus.*

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**276. — In each particular case, the Court shall decide whether the compensation granted by its judgment shall bear interest and, if so, from what date.**

*ILLUSTRATION. — I — A contracts to supply B with rice mill machinery. A does not deliver the machinery, B suffers injury thereby and enters an action for compensation in Court. The Court grants to B 5,000 baht damages. The Court shall decide whether A shall also pay interest on these 5,000 baht up to date of payment of the capital. If the Court decides that A shall pay interest, the Court shall also decide from what date interest is to be reckoned, that is to say whether interest on the 5,000 baht shall be reckoned from date of judgment, or from date of entry of action, or from date of non-performance of the contract or from any other date as the Court may think fit.*

*II. — A is run over by B's motor car and injured. The Court grants him 2,000 baht damages. The Court shall decide whether B shall pay interest or not on that sum up to execution of judgment. If interest is allowed, the rate shall be 7½% per annum (Section 23) and the Court shall decide whether it shall be paid from the date of judgment, or from date of entry of the action, or from date of accident or from any other date as the Court may think fit.*

**277. — If the judgment is that the debtor shall do or abstain from doing an act the Court may (in addition to any compensation awarded or measures taken ) order in its judgment that the debtor shall do or abstain from doing such act under a penalty, to be paid to**

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the creditor of a fixed **sum** of money for each day of delay.

278. — The debtor shall be relieved from such penalty if he proves that the delay is not due to his fault.

**[Part] VI. — PENALTY CLAUSE AND EARNEST MONEY.**

279. — The parties to an obligation can fix beforehand the amount of compensation for non-performance of the obligation.

Such agreement is called a penalty clause.

*ILLUSTRATION.* — A contracts to build for B a house to be delivered at a fixed date. It is provided in the contract that if the house is not delivered in due time, A shall pay 10 baht to B for each day of delay. This is a penalty clause.

280. — If the obligation is void or voidable, the penalty clause is void or voidable.

*ILLUSTRATION.* — A, a rice miller in Bangkok, contracts to send every month a cargo of rice to B in Hongkong. The contract provides that if A fails to send a cargo he shall pay to B 5000 baht damages. If the export of rice is prohibited by the Siamese Government, the contract becomes void. The penalty clause cannot be enforced.

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281. — In case of non-performance of an obligation subject to a penalty clause the creditor can claim either specific performance or enforcement of the penalty clause.

*ILLUSTRATION.* — A sells his land to B, the land to be delivered one month after the sale. It is agreed that if A does not deliver the land, he shall pay 100 baht to B. If A does not deliver the land, B may claim specific performance, that is to say delivery against payment of price, or he can claim the compensation provided by the penalty clause, that is to say 100 baht.

282. — A penalty clause shall not be enforced if non. performance is due to *force majeure*.

*ILLUSTRATION.* — A contracts to build for B a house to be delivered at a fixed date. It is provided in the contract that if the house is not delivered in due time A shall pay 10. baht to B for

*each day of delay. Before delivery part of the house is damaged by a fire due to force majeure, and delivery is delayed 10 days thereby. The penal<sup>[t]</sup>y clause shall not be enforced.*

283. — A penalty clause shall be enforced even if the creditor has suffered no injury.

284. — If the Court is of opinion that the amount fixed in a penalty clause is excessive, the Court may reduce such amount.

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285. — No compensation shall be granted in addition to the amount fixed in a penalty clause.

286. — If a joint obligation is subject to a penalty clause, the creditor can claim from any one of the debtors the total amount fixed in the penalty clause.

*ILLUSTRATION.* — *A, B and C contract to build a house for D and deliver it to D at a fixed time under penalty of 50 baht for each day of delay. If the house is not delivered in time, D may claim the whole of the penalty from A or from B or from C.*

287. — Earnest money is a sum of money which is delivered by one of the parties to an obligation to the other party, before or at the time when the contract is entered into and which is fixed by the parties as the amount of compensation in case of non-performance of the obligation.

The party who is not in default is entitled either to specific performance or to compensation up to the amount of the earnest money, that is to say :

~~1) if he has received the earnest money he is entitled to keep it;~~

[1) if he has received the earnest money he is entitled to forfeit it;]

~~2) if he has delivered the earnest money, he can claim its return together with an equal sum of money.~~

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[2) if he has delivered the earnest money. he can claim double amount of earnest money.]

In any other respect the provisions concerning penalty clause apply to earnest money.

**TITLE III.  
RIGHTS OF THE DEBTOR.**

**CHAPTER I.  
DEFAULT OF THE CREDITOR.**

288. — The creditor is bound to receive performance of the obligation if the performance tendered is such as provided by the obligation or by law.

289. — The creditor is in default ~~from the time when~~ [after] a tender of performance is made to him.

290. — No tender of performance is necessary in the following cases :

1) If the creditor has expressly declared that he will refuse to receive performance.

2) If the performance of the obligation by the debtor depends on an act to be done by the creditor, and the creditor does not do such act.

In such cases the creditor is in default from the time when the debtor notifies him to receive performance or to do the act.

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*ILLUSTRATION. — I. — A has sold his launch to B. B afterwards expressly informs A that he does not want the launch. B is in default without A having to tender him delivery of the launch.*

*II. — A has sold his launch to B. It was agreed that B should send a steersman to take delivery of the launch. If B does not send a steersman, B is in default from the time when A notifies him to send the steersman.*

291. — No tender of performance or notification is necessary if the act of the creditor mentioned in Section 290 is to be done within a definite period of time.

If the creditor does not do the act within the period, he is in default from the end of it.



292. — No tender of performance or notification is necessary if the debtor cannot ascertain who or where the creditor is. In such cases the creditor is in default from the time when the debtor has the right to perform his obligation.

293. — A tender of performance must be in conformity with the obligation.

*ILLUSTRATION. — I. — A sells to B a picture. On the day appointed for delivery A brings the picture to B's residence. This is a tender in conformity with the obligation.*

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*II. — A orders from B a motor car to be delivered at A's residence. B informs A that the car is at A's disposal in the godown of a Navigation Company. This is not a tender in conformity with the obligation.*

*III. — A contracts to send men to repair the roof of B's house. On the appointed day A send the men to B's house with the necessary tools and apparatus. This is a tender in conformity with the obligation.*

*If A comes alone and merely states that he is willing to begin work, this is not a tender in conformity with the obligation.*

*IV. — A contracts to supply a rice mill with so many boat loads of paddy every week, delivery to be made at the mill's wharf. On the last day of the first week, during business hours, A brings to the wharf the agreed number of boats loaded with paddy of the agreed quality. This is a tender in conformity with the obligation.*

*If A only informs the rice miller that the boats are at his disposal somewhere in the river, or if he brings the boats to the mill's wharf after business hours, this is not a tender in conformity with the obligation.*

294. — From the time when the creditor is in default, the following rules apply ;

1) If performance of the obligation becomes impossible owing to *force majeure*, the creditor is not discharged from his reciprocal prestation, if any.

2) If the obligation is to pay a sum of money, such sum ceases to bear interest.

*ILLUSTRATION.* — I. — A sells a pony to B. The pony is to be delivered to B on the 1st. of May, at C's residence. On the 1st. of May A brings the pony to the residence of C. B does not come to take delivery of it. On the 2nd. of May, A takes back the pony. On the same day the pony is accidentally killed. B is still bound to pay to A the agreed price.

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II. — In the year 2454 A borrows from B 10,000 baht at 12%, interest, to be repaid on the 1st. of May 2455. It is agreed that B shall come and take the money at the residence of A. On the 1st. of May 2455 B does not come to A's residence to take the money. No interest is due to B from that date.

## CHAPTER II.

### DEPOSIT IN LIEU OF PERFORMANCE.

295. — From the time when the creditor is in default, the debtor can deposit the property due instead of delivering it.

296.—The deposit must be made at the deposit office of the place where the obligation must be performed.

If there is no deposit office, the Court shall, on the application of the debtor, appoint a depositary.

297. — The debtor must, if possible, forth with notify the deposit to the creditor.

298. — The creditor is entitled to obtain delivery of the property deposited within ten years from the date of deposit.

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299. — The debtor can withdraw the deposit. But if the creditor has notified his acceptance of it, or the deposit has been ordered or confirmed by the Court, he can withdraw it only after ten years have elapsed from the date of deposit.

300. — If the deposit is withdrawn by the debtor, it is deemed to have never been made, and the original obligation stands good with its accessories.

*ILLUSTRATION.* — Under a contract with B, A must deliver to B on the 10th of May 2460

*one hundred bags of rice. On the date appointed B has gone abroad and nobody can say where B is. A deposits the bags of rice on the 25th. of May 2460. Then A withdraws the deposit. The deposit is deemed to have never been made. A's obligation stands good, that is to say stands as it would have stood if no deposit had been made.*

*If B returns from his journey before the obligation be extinguished by prescription, B can claim performance. But if B returns more than ten years after the day when B was in default, say on the 16th. of May 2470, A's obligation is extinguished by prescription, notwithstanding the fact that a deposit had been made on the 25th. of May 2460.*

301. — If the property deposited is not withdrawn by the creditor within ten years or by the debtor within ten years and six months after deposit, it becomes the property of the State. [116]

302. — In the cases when :

1) The property is not suitable for deposit, or

2) The property is perishable, or

3) The keeping of the property would be unreasonably expensive,

the debtor can, instead of depositing the property, sell it by public auction and deposit the nett proceeds.

303. — The depositary can sell the property by public auction as soon as it appears that the costs of keeping it would exceed the proceeds of the auction.

The nett proceeds, after deducting the costs of keeping, must be deposited in lieu of the property itself.

304. — The debtor who makes a deposit in accordance with this Chapter and does not withdraw it, is discharged from his obligation in the same way as if he had performed it.

305. — Costs of deposit must be borne by the creditor, unless the deposit be withdrawn by the debtor. In the latter case, costs must be borne by the debtor.