

DIVISION V. — RIGHTS OF THE CREDITOR OVER THE PROPERTY OF THE DEBTOR.

TITLE I. RESPECTIVE RIGHTS OF THE ORDINARY AND PREFERRED CREDITORS.

CHAPTER I. GENERAL PROVISIONS.

306. — There are two kinds of creditors, that is to say :

- 1) Ordinary creditors.
- 2) Preferred creditors.

307. — Any creditor is entitled to have his obligation performed out of the whole of the property of his debtor, such property including any monies or other properties due to the debtor by third persons.

308. — If there are several creditors and the property of the debtor is not sufficient to satisfy them all, they are entitled to receive performance in proportion to the amounts of their respective obligations.

309. — In addition to the remedy provided in Sections 307 and 308, the preferred creditor is entitled to have his obligation performed in preference to the other creditors either out of particular properties of the debtor, or out of the whole property of the debtor.

[118]

310. — If the property of a debtor has been seized by order of the Court in execution of a judgment, every judgment creditor or preferred creditor who files a motion in Court before the property be

DIVISION V. TITLE I. — RESPECTIVE RIGHTS OF THE ORDINARY AND PREFERRED CREDITORS.

sold is entitled to share in the proceeds provided that the costs incurred by the original judgment creditor be paid by preference.

ILLUSTRATION. — *A, a judgment creditor of B for 200 baht, has seized the house furniture of B. Before such furniture be sold, C', another judgment creditor for 100 baht, and D, the landlord of B's house and a preferred creditor for 150 baht rent due (Section 3 14), can file a motion in Court and shall thereupon be entitled to share in the proceeds of the sale, provided that the costs incurred by A shall be paid by preference.*

If the costs incurred by A amount to 30 baht and the proceeds of the sale amount to 300 baht, the money shall be distributed in the following manner :

<i>A shall first receive reimbursement of costs</i>	<i>Baht</i>	<i>30</i>
<i>D, preferred creditor, shall be paid his whole debt</i>	<i>„</i>	<i>150</i>
<i>The remainder shall be distributed between A and C in proportion to the amount of their obligations, that is to say A shall receive</i>	<i>„</i>	<i>80</i>
<i>C shall receive</i>	<i>„</i>	<i>40</i>
<i>Total</i>	<i>Baht</i>	<i>300</i>

311. — Whenever a person is entitled by law to withhold or retain money or property not belonging to him, the creditors of the owner of such money or property can exercise no rights over it until such person has given up possession or has been satisfied.

[119]

312. — A creditor who satisfies another creditor of the same debtor is subrogated to the rights of that other creditor against the debtor up to the amount of the sum paid by him.

But he cannot exercise such rights to the injury of the creditor.

313. — No preferential rights or rights to retain a property may be created in favour of creditors other than those mentioned in, or exceeding the limits laid down by, law.

CHAPTER II.

SPECIAL PREFERENTIAL RIGHTS.

314. — A creditor in whose favour an obligation exists based upon one of the following grounds has a special preferential right

over particular properties of the debtor :

1) Sale of movable property, deposit, carriage, lodging in an inn, agency, pledge, endorsement of a warrant, ware-housing.

2) Preservation of property.

[120]

3) Hire of work.

4) Hire of immovable property.

5) Sale of immovable property or mortgage.

315. — The preferential rights mentioned in Section 294[314] No. 1 are described in the parts of this Code dealing with the sale, deposit, carriage, inn-keepers, agency, pledge and ware-housing.

316. — The preferential right arising out of the obligation based upon preservation of property (S. 314 No. 2) is for the cost of preservation and is over such property.

317. — The preferential right arising out of the obligation based upon hire of work (S. 314 No.3) is :

1) If the hire of work is in relation to movable property, for the sums due to a contractor by the hirer of work, and over the movable property which is the result of the work ;

2) If the hire of work is in relation to immovable property, for the sums due to a contractor by the hirer of work up to the increase of value resulting from such work, and over the immovable property upon which the work has been done.

318. — The preferential right arising out of the obligation based upon hire of immovable propo[er]ty (314 No. 4) accrues to the lessor of immovable property or of a floating house or of a house boat, who has a preferential right over the movables which are on, or in the property leased. This right does not extend to movables which have been found or which are the proceeds of any offence; or which the lessor knew or ought to have known were not the property of the lessee.

[121]

The preferential right of the lessor is for the payment of the rent and of any other monies which may be due by the lessee to the lessor in connection with the lease.

319. — In case of lease of agricultural land, the preferential right of the lessor extends to such fruits of the land as are in the possession of the lessee.

320. — If the lease is transferred or there is a sublease, the preferential right of the lessor extends :

- 1) To the movables brought by the transferee or sublessee.
- 2) To the monies which may be due by the transferee or sublessee to the original lessee by reason of the lease.

A payment of rent made in advance by the sublessee cannot be set up against the original lessor.

321. — The preferential right arising out of the obligation based upon sale of immovable property (S 314 No. 5) is for the price and accessories and is over such property.

[122]

322. — The preferential right arising out of the mortgage (S. 314 No. 5) is described in the part of this Code relating to Mortgage.

323. — The preferential rights arising out of sale of movable property, deposit, carriage, lodging in an inn. agency, pledge, endorsement of warrants, warehousing (S. 314 No. 1) are extinguished if the creditor gives up possession of the movable property which is subject to his preferential right.

324. — The preferential rights arising out of preservation of property or out of hire of work (S. 314 No. 2 or 3) can be exercised :

1) over a property which is movable, as long as the ownership of such property remains in his debtor.

2) over a property which is immovable, even though the ownership of such property has been transferred to a third person,

provided that the creditor has had his preferential right registered before the transfer, not later than one month from the act of preservation or from the termination of the work, as the case may be.

325. — The preferential right arising out of the hire of immovable property (S. 314 No. 4) can be exercised on movables so long as they are still on, or in, the immovable property.

The lessor can object to such movables being removed until he has been satisfied, and attach them if necessary to prevent their removal.

[123]

326. — The preferential rights arising out of the sale of immovable or mortgage (S. 314 No. 5) can be exercised over the property, even though the ownership of such property has been transferred to a third person, provided that they have been registered before the transfer.

327. — The person who applies for registration of a preferential right on an immovable other than mortgage must produce to the Registrar a statement showing the names of the creditor and the debtor, the description of the property, the nature and amount of the claim, and the date of application.

328. — The preferential right arising out of Section 314 No. 1 can be exercised [by the creditor] on the monies or other properties due to the debtor by third persons for the loss of, or damage caused to, the property which is subject to his preferential right, if such loss or damage happened while he was in possession of it.

The preferential right arising out of Section 314 No. 2, 3, 4 or 5 can be exercised on the monies or other properties due to the debtor by third persons for the hire, transfer or loss of, or for the damage caused to, the property which is subject to such right.

~~Provided that such monies or properties be attached or seized before they are paid or delivered to the debtor.~~

[Provided that such monies or properties be seized by order of the

Court, either before or after judgment before they are paid or delivered to the debtor.]

ILLUSTRATION. — I. — A contracts to build a motor boat for B, the price to be paid on delivery of the motor boat. B takes possession of the motor boat, gives it on hire to C for 100 baht a month and does not pay the price. A has a preferential right over the motor boat for the payment of the price due to him. This right extends to the rent for the hire of the motor boat that is to say A is entitled to be paid in preference to other creditors out of the monies due by C to B for rent provided that A has an order of attachment of B's monies served on C. The preferential right extends then to the rent which remained due from C to B when the order of attachment was served on C and to the rent which may become due afterwards.

[124]

If B has sold the motor boat to C, A is entitled to be paid in preference to other creditors out of the price due by C to B, provided that C has not paid the price before he receives the order of attachment.

If B has insured the motor boat and the motor boat is burnt by fire, A is entitled to be paid in preference to other creditors out of the compensation due by the underwriter, provided that the underwriter has not paid the compensation to B before he receives the order of attachment.

II. — A has deposited to B a cycle, and B has spent 20 baht for the maintenance in good condition of the cycle. A has insured his cycle. The cycle is destroyed by accident while in the possession of B. B is entitled to be paid in preference to other creditors out of the compensation due by the underwriter to A, provided that the underwriter has not paid the compensation to A before he receives the order of attachment.

329. — Any question, relating to special preferential rights on immovables, which is not covered by this Chapter II, shall be decided in accordance with the provisions concerning mortgage in so far as they are not contrary to or inconsistent with it.

[125]

CHAPTER III.

GENERAL PREFERENTIAL RIGHTS.

330. — A creditor in whose favour an obligation exists based upon any of the following grounds has a general preferential right over the whole of the property of the debtor :

- 1) Payment of funeral expenses.

2) Monies due to the State.

3) Hire of services.

331. — The preferential right arising out of the obligation based upon the payment of funeral expenses is for such reasonable expenses as have been incurred considering the station in life of the deceased, and is over the estate of the deceased.

332. — The preferential right arising out of the obligation based upon hire of services is for salary due by the employer to his employees for services performed during the current month and the two next preceding months; the amount is limited to three hundred **baht** for each employee.

CHAPTER IV.

[126]

RANK AND EFFECT OF PREFERENTIAL RIGHTS.

333. — The respective rank of preferential rights is as follows:

1) Special preferential rights according to the order of enumeration in Section 314.

2) General preferential rights according to the order of enumeration in Section 330.

ILLUSTRATION. — *A dies 1st. of April. The Liabilities of A's estate are as follows :*

<i>Baht.</i>	<i>50 due to B who has lent that sum to A and is pledgee of A's golden watch.</i>
<i>„</i>	<i>40 due to C who has taken care of A's poney when it had run away (preservation of movable property).</i>
<i>„</i>	<i>150 due to D for expenses in extinguishing a fire which occurred in A's house on the 15th. March 2459 (preservation of immovable property, registered on the 28th. March 2459).</i>
<i>„</i>	<i>200 due to E, who has repaired A's carriage (hire of work).</i>
<i>„</i>	<i>1,000 balance due to F who has finished to build A's house on the 3rd. March 2458 (hire of work; registered on the 1st. April 2459).</i>

DIVISION V. TITLE I. — RESPECTIVE RIGHTS OF THE ORDINARY AND PREFERRED CREDITORS.

<i>Baht.</i>	<i>150 due to G for rent of a floating house (hire of immovable).</i>	
<i>„</i>	<i>50 due to the Treasury for taxes (monies due to the State).</i>	
<i>„</i>	<i>80 due to H for A's funeral expenses.</i>	
<i>„</i>	<i>60 due to I for salary (hire of services).</i>	
<i>„</i>	<i>5,000 due to J for mortgage on A's house (registered on the 5th of May 2458).</i>	
<i>„</i>	<i>2,000 balance due to K on the price of the land on which A's house is built (registered on the 10th. of June 2458).</i>	
<i>„</i>	<i>300 due to several ordinary creditors.</i>	
<i>„</i>	<i>9,080 Total of liabilities.</i>	

[127]

The assets of the estate are :

<i>Cash</i>	<i>Baht</i>	<i>20</i>
<i>Gold watch sold for</i>	<i>„</i>	<i>100</i>
<i>Poney sold for</i>	<i>„</i>	<i>100</i>
<i>Carriage sold for</i>	<i>„</i>	<i>150</i>
<i>Furniture of floating house sold for</i>	<i>„</i>	<i>150</i>
<i>Land and house sold for</i>	<i>„</i>	<i>7,000</i>
<i>Nett proceeds of other properties</i>	<i>„</i>	<i>50</i>
<i>Total</i>	<i>„</i>	<i>7,570</i>

The assets are not sufficient to satisfy all the creditors in full. The distribution shall be made in the following order :

DIVISION V. TITLE I. — RESPECTIVE RIGHTS OF THE ORDINARY AND PREFERRED CREDITORS.

I. — *Special preferential creditors :*

[128]

	<i>Sum paid.</i>	<i>Balance due.</i>	<i>Balance available for other creditors.</i>
<i>B receives out of the proceeds of the gold watch</i>	50	...	50
<i>C receives out of the proceeds of the poney</i>	40	...	60
<i>E receives out of the proceeds of the carriage</i>	150	50	...
<i>G receives out of the proceeds of the furnitures of the floating house</i>	150
<i>D receives out of the proceeds of the house</i>	150
<i>F receives out of the proceeds of the house</i>	1,000
<i>J receives out of the proceeds of the house</i>	5,000
<i>K receives out of the proceeds of the house</i>	850	1,150	...
	<hr/> 7,390		110

II. — *General preferential creditors :*

<i>H receives in preference out of remaining assets</i>	80
<i>The Treasury receives in preference out of remaining assets</i>	50
	<hr/> 7,520

The surplus is only 50 baht which shall be given to I who is a General preferential creditor for 60 baht.

[129]

E and K, who are ordinary creditors for the balance due to them (Baht 50 and 1150 respectively) and all the other ordinary creditors shall receive nothing.

334. — If there are several persons entitled to a preferential right for the preservation of property (S. 314 No. 2) a later preserver ranks before an earlier one.

335. — If there are several persons entitled to a preferential right for hire of work (S. 314 No. 3) an earlier contractor ranks before a later one.

336. — If there are several persons entitled to a preferential

DIVISION V. TITLE I. — RESPECTIVE RIGHTS OF THE ORDINARY AND PREFERRED CREDITORS.

right for sale of an immovable property or on account of mortgage (S. 314 No. 5), an earlier creditor according to the respective dates of registration ranks before a later one.

337. — When there are several preferential rights of the same rank, each creditor is entitled to receive performance in proportion to the amount of his obligation.

TITLE II.
RIGHTS OF THE CREDITOR TO EXERCISE THE
DEBTOR'S RIGHTS OF ACTION.

338. — If a debtor refuses or neglects to exercise a right of action belonging to him, and his refusal or neglect is likely to prejudice a judgment creditor, such judgment creditor can exercise such right of action in **[his own]the** name **[on behalf]** of the debtor.

[130]

ILLUSTRATION. — *A is a judgment creditor of B for 20,000 baht, B is creditor of C for 10,000 baht; B neglects to claim from C the payment of these 10,000 baht and his negligence is likely to prevent A from being paid. A has the right to exercise B's claim against C, that is to say to sue C in Court and to obtain judgment ordering C to pay 10,000 baht.*

339. — The judgment creditor who exercises a right of action belonging to his debtor must summon the debtor to appear in the action.

~~340. — The judgment creditor can exercise a right of action belonging to the debtor for its whole amount, irrespective of the amount of his own claim. But the defendant can have such action dismissed on satisfying the claim of the judgment creditor provided that, if the original debtor joined as a plaintiff, he may proceed to judgment for the balance.~~

[340. — The judgment creditor can exercise a right of action belonging to the debtor for the whole amount due to the debtor, irrespective of the amount due to the creditor. But the defendant can satisfy the creditor by paying the amount due to him, provided that, if the original debtor joined as a plaintiff, he may proceed to judgment for the balance.]

ILLUSTRATION. — *A is a judgment creditor of B for 10,000 baht. A exercises against C a right of action for the recovery of sums due by C to B. If C owes to B more than 10,000 baht, say 20,000 baht, A may nevertheless enter an action for the full amount of 20,000 baht. C may have the action dismissed by paying 10,000 baht to A ; but, if B was a co-plaintiff with A, he may proceed to judgment for the balance of 10,000 baht.*

[131]

341. — Prestations made by the defendant in order to satisfy the judgment creditor are equivalent to prestations made to the debtor.

ILLUSTRATION. — *A is a creditor of B for 5,000 baht. B is the creditor of C for 2000 baht. A enters an action against C under Section 338. C pays 2000 baht to A. Such payment is equivalent to a payment made to B, that is to say C is discharged from his debt in the same way as if he had made payment to B.*

342. — The defendant can set up against the judgment creditor all defences which he has against the debtor, excluding those which arose after the entry of the action.

ILLUSTRATION. — *A is a judgment creditor of B for 5000 baht. B is a creditor of C for 2000 baht. C is a creditor of B for 3000 baht. A enters an action against C under section 338. C has notified B that his debt is extinguished by set off; C can plead set off in answer to the claim of A.*

If C has become creditor of B after the entry of the action by A, he cannot plead set off in answer to A's claim.

TITLE III.

RIGHT OF THE CREDITOR TO CANCELLATION OF THE ACTS MADE IN FRAUD OF HIS OWN RIGHTS.

343. — A judgment creditor is entitled to claim cancellation by the Court of transfers or renunciations which a debtor may have made to the prejudice of such creditor provided that:

1) Such transfers or renunciations were made after the original obligation arose, and

2) The debtor knew that such transfers or renunciations would prejudice the judgment creditor, and

3) The person in whose favour such transfers or renunciations were made knew that such transfers or renunciations would prejudice the judgment creditor.

ILLUSTRATION. — I. — In 2451 A lends money to B, to be repaid at the end of the year 2453. B does not repay the money. In the year 2455 A obtains a judgment and a writ of execution against B. On having the writ executed A finds out that the present property of B is insufficient to satisfy him and that in the year 2454 B made a gift of a valuable piece of land to his son C. If A can prove that B and C knew that the gift would prejudice A, A is entitled to claim cancellation of the gift by the Court.

II. — If the gift was made in the year 2452, A would not be entitled to have it cancelled, because the obligation of repayment arose only at the end of the year 2453, that is to say after the gift.

III. — If B instead of giving his land to C has sold it to D for a price much below its value and A can prove that B and D knew that such sale would prejudice A, A is entitled to claim cancellation of the sale by the Court. On cancellation of the sale that land reverts to B's estate and D becomes entitled as an ordinary creditor to restitution of the price paid by him.

~~344. — The defendant in such action is entitled to have it dismissed on satisfying the judgment creditor.~~

[344. — In such action, the Court shall hold the plaintiff as duly satisfied if the defendant pays off the judgment creditor's claim.]

345. — Prestations made by the defendant in order to satisfy the judgment creditor are equivalent to prestations made by the debtor.

346. — If a transfer or renunciation has been cancelled by the Court, restitution by the transferee or by the person in whose favour the renunciation was made is governed by such provisions of this Code concerning restitution for undue enrichment as refer to restitution made by persons in bad faith.

ILLUSTRATION. — In 2451 A lends money to B, to be repaid in 2453. B does not repay the money. In the year 2455 A obtains a judgment and a writ of execution against B. On having the writ executed, A finds out that the present property of B is not sufficient to satisfy him and that in the year 2454 B has sold a valuable house to C for a price much below its value. If A can prove that B and C knew that the sale would prejudice A, A is entitled to have the sale cancelled by the Court. C must restore the house: if C has made to the house alterations or additions which he cannot take away without damaging the house, he must restore the house with the additions and alterations and is not entitled to compensation for the increase in the value resulting therefrom.

[134]

347. — Cancellation operates in favour of all the creditors.

ILLUSTRATION. — A, B and C are creditors of D. A obtains under S. 343 the cancellation of a contract by which D has sold a house to E to the prejudice of A. The house reverts to D's estate and is sold in execution. B and C, although they entered no claim for cancellation of the sale of the house, are entitled to share in the proceeds of such house as provided by law.

348. — The right to claim cancellation is extinguished by prescription one year after the day when the judgment creditor knew of the transfer or renunciation.

ILLUSTRATION. — A owes money to B, to be repaid on the 1st. of May 2455. A does not repay the money. In July 2455 A sells land of his for an inadequate price to C. B knows of the sale on the 15th. of August 2455. The right of B to claim cancellation of the sale under Section : 343 is extinguished by prescription on the 15th. of August 2456.

349. — In no case can an action for cancellation of a transfer or renunciation made in fraud of the rights of a creditor be entered later than ten years after the transfer or renunciation.