

DIVISION VI.—EXTINCTION OF OBLIGATIONS.

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TITLE I. PERFORMANCE.

350. — The provisions concerning performance are to be found in Division IV of this Code.

TITLE II. RELEASE.

351. — When the creditor grants a release to the debtor, the obligation is extinguished to the extent of the release.

ILLUSTRATION. — *A owes 1000 baht to B. B grants to A a release of 300 baht. The obligation of A is extinguished up to the amount of 300 baht, that is to say it is reduced to 700 baht.*

TITLE III. SET OFF.

352. — When two persons are respectively creditor and debtor and debtor and creditor of obligations to pay money and these obligations are due, the obligations may be extinguished by set off up to the amount of the smaller sum, in the same way as if they had been performed up to that amount.

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See Illustration under Section 353.

353. — Set off is made by a notification made by one party to the other.

ILLUSTRATION (Sections 352 and 353). — *A has lent 200 baht to B. A is creditor of B and B is debtor of A for 200 baht. Afterwards, B sells a pony to A for 150 baht and delivers it before the price be paid. B is creditor of A and A is debtor of B for 150 baht.*

A and B are respectively creditor and debtor and debtor and creditor. Their obligations may be extinguished by set off up to the amount of the smaller obligation, that is to say up to 150 baht, in the same way as if B had paid 150 baht to A and A had paid 150 baht to B.

If A notifies set off to B, A's debt is wholly extinguished. B's debt is extinguished up to 150 baht only. B remains the debtor of A for the balance, viz. 50 baht.

354. — Set off takes effect from the time when the notification reaches the other party.

355. — If an obligation has been transferred, the debtor who is notified of, or has agreed to, the transfer cannot set off against the transferee

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obligations which he could set off against the transferor.

356. — A debtor cannot notify set off after attachment or seizure of the obligation.

[356. — A debtor cannot notify set off after the obligation has been seized by order of the Court either before or after judgment.]

ILLUSTRATION. — A owes 10,000 baht to B. B owes 4000 baht to A. Both debts are due. A can at any time notify B that he sets off B's debt against A's own debt and that A's own debt to B is reduced to 6000 baht.

D being a judgment creditor of B for 15,000 baht obtains from the Court a decree ordering A to pay to D any monies due by A to B. If such decree is served after A has notified the set off to B, A is bound to pay 6000 baht only to D. But if A has not yet notified the set off to B when he is served with the decree, he cannot afterwards notify it and he is bound to pay 10,000 baht to D.

357. — Set off can be made even if the places of performance of the two obligations are different; but the party who makes the set off must make compensation to the other party for any injury resulting therefrom.

*ILLUSTRATION. — A owes 5,000 baht to B, to be paid in Bangkok. B owes 7,000 baht to A to be paid in Chiangmai. B can set off the debt of A against his own debt to A, that is to say he can pay only 2,000 baht to A in Chiangmai, the surplus of his debt having been extinguished by way of set off. But if A suffers injury from the fact that he only gets in Chiangmai where bullion is scarce 2,000 baht instead of 7,000 baht, B must make compensation ~~of~~**[for]** such injury.*

358. — Appropriation in case of set off is governed by the provisions of Sections 251 to 256 concerning performance.

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TITLE IV. MERGER.

359. — An obligation is extinguished by merger when the same person at ~~once~~ **[the same time] becomes at once the creditor and the debtor of it.**

ILLUSTRATION. — A owes money to B. B dies bequeathing his estate to A. A as heir of B becomes the creditor of his own debt. His obligation is extinguished by merger.

DIVISION VI.

TITLE V. PRESCRIPTION.

CHAPTER I. GENERAL PROVISIONS.

360. — A right is extinguished by prescription if the creditor does not exercise it during the time provided by law.

361. — The benefit of prescription cannot be waived before prescription is completed, but it may be renounced afterwards.

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ILLUSTRATION. — A has engaged B's services at 100 baht per month ; on the 1st. of March 2456 A dispenses with B's services without paying three months salary due to B.

A however agrees that he shall pay B's salary later on and further agrees that he shall not take advantage of prescription if B claims his salary more than two years hereafter. This latter clause is void ; A cannot waive prescription before it is completed.

Now on the 3rd. of March 2458 B claims his salary from A. B's right is extinguished by prescription (Section 383 3°). A may nevertheless renounce the benefit of prescription and pay B his salary.

362. — The periods of prescription fixed by law cannot be extended or reduced.

~~363. — When a claim is for a right extinguished by prescription and prescription has not been set up as a defence, the Court may nevertheless dismiss the claim on the ground of prescription, provided that the defendant has not renounced the benefit of prescription.~~

[363. — When prescription has not been set up as a defence, the Court cannot dismiss the claim on the ground of prescription.]

~~364. — Prescription can be set up as a defence at any stage of the proceedings and in any Court.~~

~~365~~[364]. — Prescription runs from the time when the right can first be exercised.

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ILLUSTRATION. — On the 13th of March A agrees to pay 1000 baht to B when B marries. On the 15th. of April next B marries. B cannot claim 1000 baht from A before the 15th. of April. Prescription runs against B from the 15th. of April.

~~366~~[365]. — If the creditor cannot demand performance until he has given notice to the debtor, prescription runs from the time when notice can first be given.

366. — If the debtor is not bound to perform until a period of time has elapsed after notice, prescription runs from the expiration of that period.

If the debtor is to abstain from doing an act, prescription runs from the time when the act is done.

ILLUSTRATION. — I. — Under a contract with B, A is bound to pay B 100 baht after B shall have notified A of his arrival in Bangkok. B arrives in Bangkok but does not notify A of the fact. Prescription runs from the day of B's arrival in Bangkok.

II. — A is bound to pay 100 baht to B within 8 days after B has given notice to A. On the 10th. of May 2456 B gives notice to A. Prescription runs from the 18th. of May 2456.

III. — Under a contract with B, entered on the 1st. of April 2456, A is under an obligation not to run boats up the river. On the 15th. of June 2456 A runs a boat up the river. Prescription runs from the 15th. of June 2456.

367. — When prescription is completed, the right is extinguished as from the time when prescription began to run.

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368. — When the principal of an obligation is extinguished by prescription, interest, profits and accessories are also extinguished.

369. — The extinction of an obligation by prescription does not prevent the mortgagee or the creditor who has a preferential right on a property retained by him, to satisfy himself out of the mortgaged or retained property.

However, this provision does not extend for more than five years to the arrears of interest claimed by the mortgagee or creditor.

370. — As to rights existing in favour of an incapacitated person who is without a lawful representative, prescription is not completed until one year after such person has acquired or resumed capacity, or a lawful representative has been appointed.

As to rights existing in favour of an incapacitated person against his lawful representative, prescription is not completed until five years after such person has acquired or resumed capacity.

ILLUSTRATION. — On the 1st. of April 2454 A becomes insane and thereby incapacitated. Prior to his becoming incapacitated A had entered into contracts. A remains without lawful representative until the 1st. of May 2455 when a guardian is appointed for him.

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1) Obligations in favour of A for which the period of prescription otherwise provided by law expires more than one year after the date of appointment of guardian, that is to say after the 1st. of May 2456, are not affected by Section 370. The lawful representative of A can claim performance of these obligations from the creditors as long as prescription is not completed.

2) Obligations in favour of A for which the period of prescription otherwise provided by law would have expired either during the time when A being insane had no lawful representative or within one year after the appointment of the lawful representative are affected by Section 370. The period of prescription is extended to the 1st. of May 2456, the lawful representative being

given a full year to claim performance from the debtors.

3) Obligations against A are not affected by Section 370. They are extinguished after expiration of the period of prescription otherwise provided by law.

371. — As to rights existing in favour of a husband against his wife or in favour of a wife against her husband, prescription is not completed until one year after dissolution of marriage.

ILLUSTRATION. — A and B are husband and wife. They enter into contracts with each other. On the 15th of March 2455 the marriage is dissolved by divorce or by the death of one of the spouses.

1) Obligations existing in favour of A against B or in favour of B against A for which the period of prescription otherwise provided by law would have expired either during the time of marriage or within one year after dissolution of marriage are affected by Section 371. The period of prescription is extended to the 15th. of March 2456.

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2) Obligations for which the period of prescription otherwise provided by law expires after the 15th. of March 2456 are not affected by Section 371. The creditor can claim performance as long as prescription is not completed.

372. — When the prescription of an obligation existing in favour of a person or against him at the time of his death would have expired within one year after the date of the death, the period of prescription shall be extended to one year after the death.

ILLUSTRATION. — A dies on the 1st. of April 2455, leaving assets and liabilities.

1) Obligations against A for which the period of prescription otherwise provided by law expires more than one year after the date of death, that is to say after the 1st. of April 2456, are not affected by Section 372. The creditors of such obligations may claim performance from the estate as long as prescription is not completed.

2) Obligations against A for which the period of prescription otherwise provided by law would expire within one year after the date of death, that is to say between the 1st. of April 2455 and the 1st. of April 2456, are affected by Section 372. The period of prescription is extended to the 1st. of April 2456, the creditors being given a full year to claim performance from the estate.

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3) Obligations in favour of A for which the period of prescription otherwise provided by law expires more than one year after the date of death, that is to say, the 1st. of April 2456, are not affected by Section 372. The heirs can claim performance of such obligations from the debtors as long as prescription is not completed.

4) Obligations in favour of A for which the period of prescription otherwise provided by law would expire within one year after the date of death, that is to say between the 1st. of April 2455 and the 1st. of April 2456, are affected by Section 372. The period of prescription is extended to the 1st. of April 2456, the heirs being given a full year to claim performance from the debtors.

5) As to obligations against A or in favour of A for which the period of prescription provided by law was completed before the date of death, they were extinguished before death and are not part of the estate.

373. — Prescription is interrupted :

1) By the entry of an action in Court, provided that the action be not discontinued or dismissed; the date when the petition of the claimant is

filed in Court is the date of the entry of the action.

2) By an application to prove in bankruptcy^[t]cy, provided that the creditor does not withdraw his proof or that his proof be not disallowed.

3) By submission to arbitration.

4) By acknowledgment^[n] of the obligation.

374. — When an action is entered in Court, prescription remains interrupted until final judgment.

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375. — If the action is dismissed on the ground of want of jurisdiction and the period of prescription has expired pending proceedings or would have expired within six months after final judgment, it shall be extended to six months after such judgment.

376. — In case of proof of bankruptcy^[t]cy, prescription remains interrupted until annulment of bankruptcy^[t]cy, or until final distribution of assets, as the case may be.

377. — In case of submission to arbitration, prescription remains interrupted until final decision^[s].

378. — Acknowledgement of the obligation must be :

1) By a writing, or

2) By payment of an instalment or of interest, or

3) By any other part performance, or

4) By the giving of a security.

379. — Deposit in lieu of performance does not interrupt prescription^[re].

380. — The creditor of an obligation the subject of which is the payment of money periodically is entitled to require from the debtor at any time before the completion of the period of prescription a written acknowledgement of the obligation, in order to obtain evidence of the interruption of prescription.

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ILLUSTRATION. — On the 1st. of January 2455 A has sold his house to B with a clause stating that B would pay 500 baht per year to A during A's life, the payment to be made on every 1st. of April from the 1st. of April 2456 inclusive. The obligation of B can be extinguished by prescription, the period being 10 years (Section 387) from the 1st. of April 2456. B performs his obligation by paying 500 baht per year; and A gives B the receipts thereof. Under Section 378 No. 2, each payment of an instalment is on acknowledgement of debt which interrupts prescription. But A gets no written evidence of such payments. On the 1st. of May 2466 B falsely pretends that he has never paid instalments to A and consequently that his obligation is extinguished by

prescription. A has no written evidence to set up against this false statement, unless he has received from B before the 1st. of April 2466, say on the 10th. of November 2465 a written acknowledgement of B's obligation. Section 380 gives A the right to require from B such an acknowledgement.

381. — When prescription is interrupted, the period of time which has elapsed before interruption does not count for prescription.

382. — From the time when the interruption ceases, a fresh period of prescription runs.

ILLUSTRATION. — I. — On the 1st. of December 2454, A becomes creditor of B for 300 baht for hire of work. The period of prescription is two years under Section 383 6°, that is to say will be completed on the 1st. of December 2456. On the 30th. of November 2455. A files a petition in Court against B, thus interrupting prescription. On the 15th of December 2455 A withdraws his claim on receiving from B a written acknowledgement of B's obligation.

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Prescription has been interrupted from the 30th of November to the 15th of December 2455. A fresh period of prescription runs from the 15th of December 2455. Prescription shall be completed on the 15th. of December 2457.

II. — On the 1st. of September 2452, A becomes creditor of B for 500 baht for the hire of immovable property. The period of prescription is five year's under Section 384 3°, that is to say will be completed on the 1st. of September 2457. On the 15th of April 2457, B is declared bankrupt. On the 30th. of April 2457, A files an application to prove for 500 baht in B's bankruptcy. His proof is allowed and he receives a dividend of 20%, viz. 100 baht, at the final distribution of assets on the 22nd. of December 2457. B has not been discharged so that A is still creditor of B for the 400 baht unpaid. As regards these 400 baht, prescription has been interrupted from the 15th of April to the 22nd. of December 2457 and shall be completed on the 22nd. of December 2462.

CHAPTER II. PERIODS OF PRESCRIPTION.

383. — The period of prescription is two years for :

- 1) The payment of the price due to a retail trader.
- 2) The payment of money due for board or lodging to the proprietor of an inn, hotel or other such place.
- 3) The payment of salary due by employers to employees.
- 4) The payment of freight and accessories due to carriers.
- 5) The payment of the rent due for the hire of movable property.
- 6) The payment of the price due for the hire of work, including the payment of fees due to medical practitioners, lawyers, witnesses and experts.

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384. — The period of prescription is five years for :

- 1) The payment of the price due to wholesale dealers.

- 2) The payment of interest or dividends.
- 3) The payment of the rent due for the hire of immovable property.
- 4) All prestations to be performed periodically.

385. — The period of prescription for all obligations existing in favour of the Government is ten years.

386. — The period of prescription for obligations resulting from a final judgment or from an award of an arbitrator is ten years, ~~whatever the original cause of action may have been.~~

ILLUSTRATION. — On the 3rd of June 2455 A, a contractor, becomes creditor of B for 500 baht on the ground of hire of work. The period of prescription is 2 years (under Section 383 6°) and would be completed on the 3rd. of June 2457.

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B having failed to perform his obligation, A enters an action in Court against B. Judgment is given in favour of A with costs, and becomes final on the 10th. of April 2457. B's obligations, as embodied in the judgment, shall not be extinguished by prescription until the 10th of April 2467.

387. — The period of prescription for obligations for which no other period of time is provided by law is ten years.