

## DIVISION VII. — SPECIFIC CONTRACTS.

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### TITLE I. SALE.

#### CHAPTER I.

#### NATURE AND ESSENTIALS OF THE CONTRACT OF SALE.

##### [Part] I. — GENERAL PROVISIONS.

388. — Sale is a contract whereby a person[,] called the seller[,] agrees to tran[s]fer to another person[,] called the buyer[,] the ownership of property, and the buyer agrees to pay to the seller a price for it.

389. — The property sold may be :

- 1) A specific property ~~such as a house, or an elephant, or a boat~~, or
- 2) A divided or undivided part of a specific property, or
- 3) A property *in genere*, ~~such as paddy, coal, kerosine~~, or
- 4) A right.

*ILLUSTRATION. — I. — A sells to B the piece of land which A has in Samsen. A sells a specific property.*

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*II. — A sells to B a part of A's piece of land, such part being measured and its limits described. A sells a divided part of a specific property.*

*III. — A being entitled by inheritance to one half of a piece of land sells such half to B before such half be measured and its limits described. A sells an undivided part of a specific property.*

*IV. — A sells to B ten kwiens of paddy to be taken out of A's stock of paddy. A sells a property determined only as to its kind or property in genere. If the ten kwiens are measured and placed apart in a boat or in any other place, they become a specific property.*

*V. — A owes 1,000 baht to B, balance due for goods sold on credit. A being momentarily unable to pay, B who is in want of money agrees with C that C shall pay to B at once 750 baht and shall recover later on at his own risk and benefit the 1,000 baht due by A to B. B sells to C a right against A.*

390. — The time of the completion of the contract of sale is referred hereafter as the time of the sale.

391. — A sale of immovable property is void unless made in accordance with the laws and regulations relating thereto.

The same rule applies to ships or vessels having displacement of and over six tons, steam-launches or motor boats having displacement of and over five tons, floating-houses and beasts of burden.

392. — Costs of a contract of sale must be borne by both parties equally.

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**[Part] II. — TRANSFER OF OWNERSHIP.**

393. — The ownership of the property sold is transferred from the seller to the buyer when the contract of sale is complete.

*ILLUSTRATION. — I. — On the 6th. of May A agrees to sell his carriage to B and B agrees to pay 500 baht for it. The ownership of the carriage is transferred from A to B on the 6th. of May.*

*II. — A enters the shop of B and selects some goods in it. B agrees to send the goods to A and A agrees to pay the price later on. From the moment when A and B have agreed on the goods to be sold and on the price to be paid, the ownership of the goods is transferred from B to A.*

*III. — On the 10th of April A agrees to sell his paddy land to B and B agrees to pay 10,000 baht for it. The parties have their contract made in writing before the Amphure on the 15th. of April. The ownership of the paddy land is transferred from A to B on the 15th. of April.*

394.—If a contract of sale is subject to a condition or to a time clause, the ownership of the property is not transferred until the condition is fulfilled or the time has arrived.

*ILLUSTRATION. — I. — A. an official living in Korat and expecting to be appointed in Bangkok, agrees to buy the house which B owns in Bangkok, subject to the condition that A shall be appointed in Bangkok. The ownership of the house is transferred from the moment when A is appointed in Bangkok.*

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*II. — A agrees to buy from B a motor car which B has ordered from Europe. It is agreed that the sale shall be valid only on the motor car being landed in Bangkok. The ownership of the car is transferred from B to A from the moment when the car is landed.*

395. — In case of sale of a property *in genere*, the ownership is not transferred until the property has been numbered, counted, weighed, measured, or selected or its identity has been otherwise rendered certain.

*ILLUSTRATION. — I. — A sells to B ten kwiens of paddy to be taken out of a cargo lying on the river. The ownership of the paddy is not transferred to B until the ten kwiens of paddy have been measured and put apart.*

*II. — A sells to B ten kwiens of paddy being the cargo of the paddy boat No. 150 lying on the river. The ownership of the paddy is transferred to B on the contract being made.*

**[Part] III. — PROMISE OF SALE.**

396. — A promise of sale is a contract whereby one party agrees to sell or to buy a property, and the other party agrees that he will at his discretion either complete or not complete the sale.

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*See Illustration under Section 398*

397. — If the other party notifies his intention to complete the sale, the promise of sale has the effect of a contract of sale as soon as the notification reaches the first party.

*See Illustration under Section 398.*

398. — If no time is fixed for the notification, the party who made the promise can fix a reasonable time and call upon the other party to answer within that time whether he will complete the sale or not.

If he does not answer within that time, the contract is extinguished.

*ILLUSTRATION (Sections 396, 397 and 398). — A Rubber Company wants to buy the rubber plantation of A. Before submitting the scheme to the shareholders, the directors would like to know for certain which price A would ask for his plantation. They approach A. On the 1st. of May 2456 they make a contract whereby A gives the Company the option to buy A's plantation for 20,000 baht, provided that the Company shall notify A on or before the 31st. of August 2456, whether they buy the plantation or not. This is a promise of sale.*

*The shareholders having approved the scheme, the directors notify A on the 16th. of August 2456 that they will complete the sale and they execute a contract of sale in writing before the proper official on the same day. The sale is complete from the 16th. of August.*

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*If the shareholders do not approve the scheme and no notification is made to A within the specified period, A's promise of sale falls to the ground and A is no more bound by it.*

*If no time was fixed for the notification, A may, say in July 2456, call upon the directors to let him know on or before the 30th. of September whether the Company will complete the sale or not. If the directors do not answer on or before the 30th. of September, the promise of sale falls to the ground and A is no more bound by it.*

## CHAPTER II.

### DUTIES AND LIABILITIES OF THE SELLER.

#### [Part] I. — DELIVERY.

399. — The seller is bound to deliver to the buyer the property sold.

400. — Delivery may be made by doing anything which has the effect of putting the property at the disposal of the buyer.

*ILLUSTRATION. — I. — A sells to B certain specific goods which are in the godown of C. A gives B the godown receipt which enables B to get the goods. This is a delivery.*

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*II. — A sells to B an empty house. A gives B the keys of the house. This is a delivery.*

*III. — A sells to B a house which is occupied by A's children. A gives B the keys of the house, but does not cause his children to leave the house. This is not a delivery.*

401. — If the contract provides that the property sold shall be forwarded from one place to another, delivery takes place at the moment when the property is delivered to the carrier.

*ILLUSTRATION.* — *B, at Ayuthia, orders from A, a merchant in Bangkok, two bales of piece goods to be sent to him by railway. Delivery to B takes place when A delivers the bales to the Bangkok railway station.*

402. — The property sold must be delivered in such condition as it was at the time of the sale.

*ILLUSTRATION.* — *On the 10th. of May 2455 A buys B's ship which is provided with all the necessary sails. B must deliver the ship as it was at the time of the sale ; for instance, B would not remove the sails before delivery.*

*But as the ownership is transferred to A from the time when the contract of sale is complete (Section 393), B is not responsible for any damage caused by force majeure; for instance B would not be responsible if the sails were torn away by a gale before delivery takes place.*

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403. — When there is no time clause for payment of the price, the seller is entitled to retain the property sold until the price is paid.

404. — Even when there is a time clause for the payment, the seller is entitled to retain the property if the buyer either becomes bankrupt before delivery, or was bankrupt at the time of the sale without the seller knowing thereof, or impairs or reduces the securities given for payment.

405. — When the property is retained, the buyer may at any time apply to the Court for an order to deliver the property, on the buyer giving security for the payment of the price.

406. — When the buyer is in default, the seller who retains the property under the foregoing sections can, instead of using the ordinary remedies for non-performance, notify the buyer by registered letter to pay the price and accessories, if any, within a reasonable time to be fixed in the notice.

If the buyer fails to comply with the notice, the seller can sell the property by public auction.

407. — The seller must forth with deduct from the nett proceeds of the public auction the price and accessories due to himself and deliver the surplus, if any, to the buyer.

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## **[Part] II. — LIABILITY FOR DEFECTS.**

408. — In case of defect existing in the property sold and impairing either its value or its fitness for ordinary purposes or for the purposes

appearing from the contract, the buyer has the remedies described in this Code concerning non-performance.

The foregoing provision applies whether the seller knew or did not know of the existence of the defect.

409.— The seller is not liable in the following cases :

1) Whenever the buyer knew of the defect at the time of the sale, or would have known of it if he had exercised such care as may be expected from a person of ordinary prudence.

2) If the defect was apparent at the time of the delivery, and the buyer accepted the property without reservation.

3) If the property was sold by public auction

*ILLUSTRATION. — I. — A is leasing a house from B and is living in it. A knows that the roof of the house is leaking, B wants to sell the house. A buys it. B is not liable for the defective condition of the roof, because A knew of the defect at the time of the sale.*

*II. — A advertises in the papers that he has a carriage for sale for 500 baht. B writes to A that he buys the carriage. On delivery B finds that the hood is in bad condition. A is not liable because if B had exercised such care as may be expected from a person of ordinary prudence he would have examined the carriage before buying it.*

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*III. — A sells a pony to B. The pony is brought to B for delivery. It then appears that the pony is lame. B accepts the pony and takes delivery without making any reservation. A is not liable because the defect was apparent at the time of delivery and no reservation was made.*

410. — The liability for a defect is extinguished by prescription one year after the discovery of the defect.

411. — When the seller is liable for defects in the property sold, the buyer is entitled to withhold such part of the price as has not yet been paid to the seller provided that the seller may at any time apply to the Court for an order either:

1) Restricting the exercise of this right to such part of the price as the Court may deem sufficient to cover any restitution or compensation which may become due from the seller to the buyer, or

2) Ordering the buyer to pay the price on the seller giving security for ultimate restitution or compensation.

### **[Part]** III. — LIABILITY FOR EVICTION.

412. — The seller is liable for the consequences of any disturbance caused to the peaceful possession of the buyer by any person having over the property sold a right existing at the time of the sale or derived from the seller after that time.

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*ILLUSTRATION.* — *A sells a house to B on the 1st, of August 2455. B takes possession of the house. On the 1st. of October 2455, C comes in and produces a lease executed before the proper official on the 1st of June 2455 by which A leases the house to C for the period extending from the 1st. of October 2455 to the 30th. of September 2456. C accordingly takes possession of the house for one year. A is liable to B for the consequences of such disturbance.*

413. — The seller is not liable for a disturbance caused by a person whose rights were known to the buyer at the time of the sale.

*ILLUSTRATION.* — *A sells a house to B on the 1st. of August 2455. B is aware that the house has been let by A to C for the period extending from October 2455 to September 2456. If C comes and takes possession of the house, B has no remedy against A because the rights of C were known to B at the time of the sale.*

414. — In any cases of disturbance where an action arises between the buyer and a third person, the buyer is entitled to summon the seller to appear in the action to be joint defendant or joint plaintiff with the buyer.

415. — The seller is also entitled, if he thinks proper, to intervene in the action in order to deny the claim of the third person.

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416. — Whenever the seller is a party to the action the Court shall give judgment deciding on the merits of the case between the buyer and the third person and on the liability of the seller to the buyer.

417. — If in consequence of a claim of a third person the buyer is deprived of the whole of the property sold, he is said to suffer total eviction.

If the buyer is deprived of part of the property sold, or if the property is declared to be subject to a right, the existence of which impairs its value or fitness, the buyer is said to suffer partial eviction.

*ILLUSTRATION.* — *I. — A sells his house to B. Before B takes possession of the house, A sells it to C. C takes possession. B comes in and ejects C from the house. C suffers total eviction.*

*II. — A leases his house to B for one year and afterwards sells it to C, concealing to C that the house was let. When C comes to take possession of the house, he finds that B is living in it and will not leave it before several months. C suffers partial eviction.*

418. — Whenever the seller is liable for total or partial eviction the buyer has the remedies described in this Code concerning non-performance.

419. — If immovable property is declared to be subject to a servitude established by law, the seller is not liable unless he has expressly guaranteed that the property was free from servitudes or from that particular servitude.

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*ILLUSTRATION.* — I. — *A and B have two adjoining pieces of land. There is no way out of B's land except through the land of A. A sells his land to C. who is unaware of the right of way of B. No clause for guarantee is inserted in the contract of sale. B claims his right of way and gets an order of the Court granting his claim. C has no remedy against A because the right of way is inherent in the position of the land.*

*II. — If A had guaranteed that the land was free from servitudes or free from rights of way, A should be liable to C for partial eviction.*

420. — If an action in connection with a claim of a third person is entered, the buyer is entitled to withhold the price as provided by Section 411.

421. — If the seller was not a party to the original action, or if the buyer has made a compromise with the third person, or has yielded to his claim, the liability of the seller is extinguished by prescription three months after final judgment in the original action, or after the date of the compromise, or of the yielding to the third person.

*ILLUSTRATION.* — *A sells his house to B in April 2455 but B does not occupy it. In May 2455 A sells the same house to C and delivers it to C on the 15th. of June 2455, B comes to C, produces his deed of sale and asks for delivery of the house. Three cases may happen:*

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*a) C refuses to deliver the house, B enters a case against C, A does not join in the action. B gets a judgment in his favour. The judgment becomes final on the 15th. of January 2455. The right of C to claim compensation for eviction from A is extinguished by prescription on the 15th. of April 2456.*

*b) On the case being entered against him C comes to an understanding with B. C agrees to deliver the house to B on payment of a compensation. The compromise is made on the 1st. of July 2455. The right of C to claim compensation for eviction from A is extinguished by prescription on the 1st. of October 2455.*

*c) On B coming and producing his deed of sale, C finds that it is useless to deny B's claim and at once delivers the house to B. The right of C to claim compensation for eviction from A is extinguished by prescription on the 15th. of September 2455.*

422. — The seller is not liable for eviction in the following cases :

1) If no action was entered and the seller proves that the rights of the buyer were lost on account of the fault of the buyer, or

2) If the buyer did not summon the seller to appear in the action, and the seller proves that he would have succeeded in the action if summoned to appear, or

3) If the seller appeared in the action, but the claim of the buyer was dismissed on account of the fault of the buyer.

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In any case the seller is liable whenever he is summoned to appear in the action and refuses to take the part of the buyer as joint defendant or joint plaintiff.



*ILLUSTRATION.* — A buys from B a house. C claims the house by virtue of a titled deed. It appears that originally C was the lawful owner of the house and B had no right over it : but C abandoned the house and B became owner by way of usucapion. Three cases may happen :

*I.* — A restores the house to C before any action for ejectment be entered by C and claims compensation from B. B proves that C's rights were really extinguished because B has become owner and that A lost his rights by omitting to make such objection to C. B is not liable to A.

*II.* — Centers an action against A. A does not summon B to appear in the action and omits to argue that B's rights are acquired by usucapion. Judgment is given against A, who is ejected from the house. A claims compensation from B. B proves that C's rights were really extinguished and that A omitted to object it to C. B is not liable to A.

*III.* — C enters an action against A. A summons B to appear in the action as joint defendant. A and B agree that A shall give evidence to the Court that B's right is acquired by usucapion. A, by his own negligence, omits to give such evidence. Judgment is given in favour of C and A is ejected from the house. A claims compensation from B. B proves the facts stated above. B is not liable to A.

#### **[Part] IV. — CLAUSE FOR NON-LIABILITY.**

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423. — The parties to a contract of sale can agree that the seller shall not incur any liability on account of the sale.

424. — If the consequences of a non-liability clause are not specified, such clause does not exempt the seller from reimbursing the price.

*ILLUSTRATION.* — A sells to B a house for 10,000 baht with a non-liability clause. Subsequently, C claims the house by virtue of a right which existed at the time of the sale. B is ejected from the house. B can claim the return of the 10,000 baht, but he is not entitled to compensation for any other injury resulting from the eviction.

*If the parties have agreed that the non-liability clause should exempt A from refunding the price, B would not get back his 10,000 baht.*

425. — A non-liability clause cannot exempt the seller from the consequences of :

- 1) Facts which he knew at the time of the sale and concealed.
- 2) Rights which he created in favour of, or transferred to, third persons subsequently to the sale.

### **CHAPTER III.**

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#### **DUTIES OF THE BUYER.**

426. — The buyer is bound to take delivery of the property sold and to pay the price according to the provisions of this Code concerning performance.

427. — The price of the property sold may be either fixed by the contract or inferred from the clauses of the contract or from the



circumstances of the case.

428. — Tender of security is not equivalent to payment of price.

#### CHAPTER IV. OF SOME PARTICULAR KINDS OF SALES.

##### **[Part]** 1. — SALE WITH RIGHT OF REDEMPTION.

429. — Sale with right of redemption is a contract of sale whereby the ownership of the property sold passes to the buyer subject to a special agreement that the seller can redeem that property.

430. — If the property is not redeemed within the period fixed by the contract or by law, its ownership is deemed to have been vested in the buyer from the time of sale.

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431. — The parties may agree that the buyer shall not dispose of the property sold. If he disposes of it contrary to his obligation, he shall be liable to the seller for any injury resulting thereby.

~~339~~**[432]** — If a sale with right of redemption refers to immovable property it is void unless made in writing in the presence of and registered by the proper official.

The same rule applies to ships or vessels having displacement of and over six tons, steam-launches or motor-boats having displacement of and over five tons, floating-houses and beasts of burden.

433. — The right of redemption cannot be exercised later than:

1) Ten years after the time of the sale in case of immovable property or of movable structures sold with the land on which they are erected.

2) One year after the time of the sale in case of movable property.

434. — If a longer period is provided in the contract, it shall be reduced to ten years and one year respectively.

435. — If a shorter period than ten years or one year is provided in the contract, the time cannot be afterward extended.

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436. — The right of redemption may be exercised only by:

1) The original seller or his heirs, or

2) The transferee of the right, or

3) Any person expressly allowed to redeem by the contract.

437. — The right of redemption may be exercised only against:

1) The original buyer or his heirs, or

2) The transferee of the property or of a right on the property, provided that, in case of movable property, he knew at the time of transfer that such property was subject to a right of redemption.

438. — If no price of redemption is fixed, the property may be redeemed by reimbursing the price of the sale.

439. — Costs of the sale borne by the buyer must be reimbursed together with the price.

Costs of redemption must be borne by the person who redeems.

440. — The property must be returned in the condition in which it is at the time of redemption.

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441. — The person who redeems the property recovers it free from any rights created by the original buyer or his heirs or transferees before redemption, provided that any lease made by them in writing shall remain valid for not more than one year after the redemption.

**[Part] II. — SALE BY SAMPLE. — SALE ON APPROVAL.**

442. — In a sale by sample, the seller is bound to deliver property or properties corresponding to the sample.

If the sample is lost or damaged, the burden of proof that the property delivered does not correspond to the sample lies on the buyer.

443. — The liability on account of non-correspondence to the sample is extinguished by prescription one year after delivery.

444. — A sale on approval is a sale made on condition that the buyer shall have the opportunity to examine the property before acceptance.

445. — If no time is fixed for the examination of the property, the seller can fix a reasonable time and notify the buyer to answer within that time whether he accepts the property or not.

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446. — If the property is to be examined by the buyer before delivery and the buyer does not accept it within the time fixed by the contract or by

the notification, the contract is extinguished.

447. — When the property has been delivered to the buyer in order that he may examine it, the sale is complete in the following cases :

- 1) If the buyer does not notify his refusal within the time fixed by the contract or by the notification, or
- 2) If the buyer does not return the property within that time, or
- 3) If the buyer after delivery pays the price or part of it, or
- 4) If the buyer disposes of the property or uses it otherwise than for the purpose of examining it.

**[Part] III. — SALE BY NUMBER, QUANTITY, WEIGHT OR MEASURE.**

448. — A sale by number, quantity, weight or measure is a sale where no total price is fixed, but the property is sold at so much per unit.

449. — If a property is sold at so much per unit and the total amount of such property is specified in the contract, the following rules shall apply in case of deficiency or excess.

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450. — Sale of immov~~e~~able property.

In case of deficiency or excess not exceeding five per cent of the total area specified in the contract, the buyer is bound to accept the property and pay the proportionate price at so much per unit.

In case of deficiency or excess exceeding five per cent, the buyer has the option either to accept the property and pay the proportionate price, or to claim cancellation of the contract.

451. — Sale of mov~~e~~able property :

In case of deficiency the buyer is bound to accept the property and pay the proportionate price, provided that the buyer can claim cancellation of the sale if the deficiency is such as would have prevented him from entering the contract.

In case of excess the buyer is entitled to refuse the surplus, but if he accepts it, he is bound to pay the proportionate price for it.

452. — The liability on account of deficiency or excess is extinguished by prescription one year after delivery.

**[Part]** IV. — SALE BY AUCTION.**[172]**

453. — A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner.

454. — A buyer at a sale by auction is bound by the clauses of the notice advertising the sale and by any other statements made by the auctioneer before opening the bidding for each particular lot.

455. — The auctioneer cannot bid at an auction conducted by himself.

456. — The seller cannot bid or employ any person to bid, unless it be expressly stated in the advertisement of the auction that he has such right.

The seller within the meaning of this section is the person whose property is sold.

457. — The auctioneer can withdraw property from the auction whenever he thinks that the highest bid is insufficient.

458. — A bidder ceases to be bound by his bid as soon as a higher bid is made, whatever be the validity of such higher bid, or as soon as the lot is withdrawn from the auction.

459. — The highest bidder must pay the price in ready money on the completion of the sale, or at the time fixed by the notice advertising the sale.

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460. — If the highest bidder fails to pay the price, the auctioneer shall resell the property. If the nett proceeds of such sale do not cover the price and costs of the original auction, the original bidder is liable for the difference.

461. — The auctioneer is liable for any part of the proceeds of an auction which remains unpaid owing to his failure to enforce the provisions of Section 459 or 460.

**TITLE II.  
EXCHANGE.**

462. — Exchange is a contract whereby each party agrees to transfer to the other party the ownership of properties other than money.

463. — The provisions of Title I concerning sale apply to exchange, each party to a contract of exchange being considered as a seller with regard to the property delivered in exchange, and as a buyer with regard to the property received in exchange.

464. — If one party to a contract of exchange agrees to transfer to the other party money in addition to other property, the provisions of Title I concerning price shall apply to such money.

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### TITLE III. GIFT.

465. — A contract of gift is a contract whereby a person, called the donor, agrees to transfer gratuitously a property of his own to another person, called the donee, and the donee agrees to accept such property.

466. — A gift may be made by granting to the donee a release of an obligation or by performing an obligation due by the donee.

467. — A renunciation by an heir to an inheritance or to a share in an inheritance is not a gift made to the other heirs.

468. — A gift of property the sale of which is subject to the execution of an official document is void unless made in writing before the proper official.

469. — If a gift has been made in writing before the proper official and the donor does not deliver to the donee the property given, the donee is entitled to claim the delivery of it or its value, but he is not entitled to any additional compensation.

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470. — A gift of property the sale of which is not subject to the execution of an official document is complete only on delivery of the property given.

471. — If it is agreed that the delivery of the property given shall be made by instalments, the donor can at any time determine the gift as to any future instalment.

Such gift is also extinguished as to any further instalment on the death of the donor.

*ILLUSTRATION.* — *A has agreed to make to B a gift of 30 shares in the "Siam so and so Co." It has been provided that he shall deliver 10 shares on the 1st. of April of each year during three successive years. A delivers 10 shares on the 1st. of April 2454. He then makes up his mind to determine the gift for the future. B has no claim to the undelivered shares. B has likewise no claim to the undelivered shares if A dies.*

472. — The donor is not liable for injury caused to the donee by defects existing in the property given, unless at the time of the contract he knew and concealed from the donee that such property was likely to cause injury.

473. — The donor is not liable for injury caused to the donee by

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eviction as described in Section 417 concerning sale, unless, at the time of the contract, he knew and concealed from the donee the reason for such eviction.

474. — Whenever the donor is liable for injury caused to the donee by defects existing in the property given or by eviction, the provisions of Section [s] 410, 414, 415 416 and 419 concerning sale apply *mutatis mutandis*.

475. — If the gift is made on condition that the donee shall make a prestation to the donor or to a third person the gift is said to be subject to a charge.

476. — If the donee fails to perform the charge the donor is entitled to claim cancellation of the gift.

477. — If the charge is to be performed to a third person, and the donee fails to perform it, the third person is entitled to claim performance.

478. — If the charge is for the benefit of the public, the Government is entitled to claim its performance.

479. — If the property given is not sufficient to perform the charge, the donee is bound to perform it only as far as the value of the property allows.

*ILLUSTRATION.* — *A has given a house to B on condition that B shall pay 10,000 baht to C. After the gift is completed, B refuses to pay on the ground that the house is not worth 10,000 baht. A valuation takes place; the house is valued at 7,000 baht. B is not liable to pay more than 7,000 baht.*

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480. — If the gift is subject to a charge, the liability of the donor for defects or eviction is the same as that of a seller, up to the amount of the charge only.

481. — If the donee is convicted by a final judgment of having intentionally and unlawfully caused the death of the donor, the heirs of the donor are entitled to claim cancellation of the gift by the Court.

482. — The right of the heirs to claim cancellation is extinguished by prescription six months after final judgment.

483. — If the donee intentionally and unlawfully attempts to cause the



death of the donor, the donor is entitled to claim cancellation of the gift by the Court.

484. — The heirs of the donor can exercise the action described in Section 483 unless the donor has forgiven the offence.

485. — The right of the heirs to claim cancellation is extinguished by prescription six months after the date of the death of the donor.

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No action can be entered later than ten years after the attempt.

486. — A gift to take effect at the death of the donor is governed by the provisions of law concerning inheritance and wills.

## TITLE IV. HIRE OF PROPERTY.

### CHAPTER 1. GENERAL PROVISIONS.

487. — A contract of hire of property or a lease is a contract whereby a person, called the lessor, agrees to let another person, called the lessee, have the use or profits of the property for a limited period of time, and the lessee agrees to pay therefor a remuneration called rent.

488. — A lease of immovable property is void unless made in writing.

If the lease is for more than three years, it is void unless also registered by the proper official.

489. — Costs of a contract of hire must be borne by both parties equally.

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490. — The rent may consist of money or other properties, or of a share in the fruits and profits of the property hired.

491.—No lease may be made for a period exceeding twenty years, provided that an existing lease may be renewed for a period not exceeding twenty years after the date of renewal.

*ILLUSTRATION.* — In the year 2430 A leases a house to B for a period of 20 years extending from the 1st. of April 2431 to the 31st. of March 2450. On the 1st. of January 2448 A and B make a renewal of the lease for another period of 20 years. The second period shall not extend from the 1st. of April 2451 (date of expiration of the original lease) to the 31st. of March 2470. It shall extend from the 1st of January 2448 (date of renewal) to the 31st. of December 2468.

492. — Leases made or renewed for more than twenty years are valid for twenty years only.

493. — A lease may be made for the duration of the life of the lessor or of the lessee.

494. — When several persons claim the same movable property under different leases, the lessee who has first taken possession of the property by virtue of his lease shall be preferred.

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495. — When several persons claim the same immovable property under different leases:

1) if none of the leases is required by law to be registered, the lessee who has first taken possession of the property by virtue of his lease shall be preferred:

2) if all the leases are required by law to be registered the lessee whose lease was first registered shall be preferred;

3) if there is a conflict between a lease which is required by law, and a lease which is not required by law, to be registered, the lessee whose lease has been registered[,] shall be preferred unless the other lessee has taken possession of the property by virtue of his lease before the date of registration.

## CHAPTER II. DUTIES AND LIABILITIES OF THE LESSOR.

### [Part] 1. — DELIVERY AND REPAIR.

496. — Delivery of the property hired is governed by the provisions of this Code concerning sale.

497. — The lessor is bound to deliver the property hired in such a condition as renders it fit for ordinary purposes or for the purposes appearing from the contract.

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*ILLUSTRATION. — I. — A hires a motor car from B for daily use in Bangkok. The car is brought every morning from B's garage to A's house and driven back to the garage every night. A can require that the tyres of the car be every morning in such a condition as renders them fit for the ordinary daily use.*

*II. — A hires a motor car from B in order to drive by road from Alor Star to Singora and back. A can require that when the car is delivered to him the tyres be in such condition as renders them fit for the whole journey.*

498. — The lessor is bound to keep the property hired in good order and repair during the continuance of the contract.

In case of houses or other buildings, this includes at least the repairing of the roofs, timber, walls and floors, and the repainting of the inside and outside at reasonable intervals.

499. — The lessor is bound to reimburse to the lessee any necessary expenses incurred by him for the preservation of the property hired, except expenses for ordinary maintenance and petty repairs.

*ILLUSTRATION.* — *A leases a house from B. During the rainy season A finds that the roof is leaking and that leakage may spoil the house. B is absent. A has the roof repaired. B is bound to reimburse to A the expenses which he has incurred in repairing the roof.*

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500. — In case of delivery in unsuitable condition, the lessee may determine the contract.

**[Part] II. — LIABILITY FOR DEFECTS.**

501. — In case of a defect existing in the property hired and impairing its fitness for ordinary purposes or for the purposes appearing from the lease, the lessee may determine the contract.

The foregoing provision applies whether the lessor knew or did not know of the existence of the defect.

A property hired which is not kept in good order and repair is a defective property within the meaning of this section.

502. — The lessor is not liable in the following cases:

1) Whenever the lessee knew of the defect at the time of the lease or would have known of it if he had exercised such care as may be expected from a person of ordinary prudence.

2) Whenever the defect was apparent at the time of the delivery, and the lessee has taken delivery of the property without reservation.

*ILLUSTRATION.* — *I. — A is leasing a house from B. C is living in the house with A. C knows that the ground floor of the house is damp and that it cannot be used. A leaves the house and C leases it from B. B is not liable for the defective condition of the ground floor, because C knew of the defect at the time of the hire.*

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*II. — A advertises in the papers that he has a carriage for hire at so much per month. B writes to A that he hires the carriage. On delivery B finds that the hood is in bad condition. A is not liable because if B had exercised such care as may be expected from a person of ordinary prudence, he would have examined the carriage before hiring it.*

*III. — B hires a pony from A. The pony is brought to B for delivery. It then appears that the pony is lame. B accepts the pony and takes delivery without making any reservation. A is not liable because the defect was apparent at the time of delivery and no reservation was made.*

503. — If the defect is not such as would deprive the lessee of the use and profits of the property hired, and can be remedied by the lessor, the lessee must first notify the lessor to make it good. If the defect is not made good within a reasonable time, the lessee may determine the contract.

504. — If there is a deficiency in the area stipulated for in a lease of garden land or of a paddy field, the following rules shall apply:

In case of deficiency not exceeding twenty five per cent, the lessee is only entitled to a proportionate reduction of rent.

In case of deficiency exceeding twenty five percent, the lessee has the option either to have the rent reduced proportionately, or to determine the contract.

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505. — The liability for a defect is extinguished by prescription two years after the discovery of the defect provided that it shall always be extinguished six months after the extinction of the lease.

**[Part] III. — LIABILITY FOR EVICTION.**

506. — The lessor is liable for the consequences of any disturbance caused to the peaceful possession of the lessee by any person having a right over the property hired.

507. — The lessor is not liable for a disturbance caused by a person whose rights were known to the lessee at the time when the lease was made.

508. — In any case of disturbance where an action arises between the lessee and a third person, the lessee is entitled to summon the lessor to appear in the action to be joint defendant or joint plaintiff with the lessee.

509. — The lessor is also entitled, if he thinks proper, to intervene in the action in order to deny the claim of the third person.

510. — Whenever the lessor is a party to the action, the Court shall give judgment deciding on the merits of the case between the lessee and the third person, and on the liability of the lessor to the lessee.

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511. — If, in consequence of a claim of a third person, the lessee is deprived of the whole of the property hired, he is said to suffer total eviction.

If the lessee is deprived of part of the property hired, or if the property is declared to be subject to a right the existence of which impairs its fitness, the lessee is said to suffer partial eviction.

512. — Whenever the lessor is liable for total or partial eviction, the lessee may determine the contract.

513. — If immovable property is declared to be subject to a servitude established by law the lessor is not liable unless he has expressly guaranteed that the property was free from servitudes or from that particular servitude.

514. — If the lessor was not a party to the original action, or if the lessee has made a compromise with the third person, or has yielded to his claim, the liability of the lessor is extinguished by prescription three months after final judgment in the original action, or after the date of the compromise, or of the yielding to the claim of the third person.

515. — The lessor is not liable for eviction in the following cases:

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1) If no action was entered and the lessor proves that the rights of the lessee were lost on account of the fault of the lessee.

2) If the lessee did not summon the lessor to appear in the action, and the lessor proves that he would have succeeded in the action if summoned to appear.

3) If the lessor appeared in the action, but the claim of the lessee was dismissed on account of the fault of the lessee.

In any case the lessor is liable whenever he is summoned to appear in the action and refuses to take the part of the lessee as joint defendant or joint plaintiff.

*ILLUSTRATION.* — *A hires from B a house. C claims the house by virtue of a title deed. It appears that originally C was the lawful owner of the house and B had no right over it, but C abandoned the house and B has acquired it by way of usucapion. Three cases may happen:*

*I. — A restores the house to C before any action for ejectment be entered by C and claims compensation from B. B proves that C's rights were really extinguished and that A lost his rights by omitting to make such objection to C. B is not liable to A.*

*II. — C enters an action against A. A does not summon B to appear in the action and omits to argue that C's rights are extinguished. Judgment is given against A, who is ejected from the house. A claims compensation from B. B proves that C's rights were extinguished and that A omitted to object it to C. B is not liable to A.*

*III. — C enters an action against A. A summons B to appear in the action as joint defendant. A and B agree that A shall produce to the Court evidence which can prove that C's rights are extinguished. A, by his own negligence, omits to bring such evidence. Judgment is given in favour of C and A is ejected from the house. A claims compensation from B. B proves the fact stated above. B is not liable to A.*

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#### **[Part] IV. — CLAUSE FOR NON-LIABILITY.**

516. — Non-liability in matter of hire of properties is governed by the provisions of this Code concerning sale.

**CHAPTER III.**  
**DUTIES AND LIABILITIES OF THE LESSEE.**

517.—The lessee cannot use the property hired for purposes other than ordinary purposes or purposes appearing from the contract.

518.—The lessee is bound to take as much care of the property hired as a person of ordinary prudence would take of his own property.

519.—Ordinary maintenance and petty repairs shall be borne by the lessee.

520. — If the lessee uses the property hired contra to the provisions of Section 517, 518 or 519, or contra to the terms of the contract, the lessor may notify the lessee to comply with such provisions or terms, and if the lessee fails to comply with such notice, the lessor may determine the contract.

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521. — The lessee of a paddy field who has not paid the rent in advance must begin work on that field at such time as is customary.

522. — The lessee is bound to allow the lessor or his agents to inspect the property hired at reasonable times and intervals.

523. — The lessee is bound to allow the lessor to do whatever is necessary for keeping the property in good order and repair and for its preservation, provided that if the lessee is deprived thereby of the use or profits of the property hired he is entitled either to determination of the lease or to a decrease of rent proportionate to the period of deprivation.

524. — In any of the following cases:

- 1) If the property hired is in need of repairs by the lessor, or
- 2) If a preventive measure is required for avoiding a danger, or
- 3) If a third person encroaches on the property hired or claims a right over it,

the lessee shall forth with inform the lessor of the occurrence, unless the lessor already has knowledge of it.

If the lessee fails to inform the lessor, the lessee is liable to the lessor for any injury resulting from the delay.

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525.—The lessee may not make any alteration in, or addition to, the property hired without the permission of the lessor.



*See Illustration under Section 527.*

526. — If the lessor has granted permission to the lessee to make alterations or additions, the lessee is entitled, at the extinction of the lease, to reimbursement of his expenses up to the amount of the increase in value which the property is still deriving from the additions or alterations.

*See Illustration under Section 527.*

527. — If the lessee makes additions or alterations without the permission of the lessor, he is not entitled to reimbursement, but he is allowed, at the extinction of the lease, to take away whatever he added to the property, provided that he puts [the] property in its former condition.

If it is impossible to put the property in its former condition or the property would be damaged thereby, the property must be restored with the alterations additions, and no compensation therefor shall be due to the lessee.

[190]

*ILLUSTRATION (Sections 525, 526 and 527). — A has hired a house and its appurtenances from B. A may not change the partitions in the house or build a motor garage in the compound without B's permission.*

*I. — If B has granted permission to build a motor garage in the compound, A is entitled, at the extinction of the lease, to reimbursement of his expenses up to the amount of the increase of value which the property is still deriving from the new building, that is to say:*

- a) If 300 baht have been expended and the increase of value is 300 baht or more, A is entitled to reimbursement of 300 baht.*
- b) If 300 baht have been expended and the increase of value is 200 baht only, A is entitled to reimbursement of 200 baht.*

*II. — If B has not granted permission to build a motor garage in the compound, but A has nevertheless built such motor garage, A is entitled to no reimbursement, but he is allowed, at the extinction of the lease, to take away the motor garage, provided that he puts the compound in its former condition.*

*If A had painted the house without B's permission A would likewise be entitled to no reimbursement, but he could not take away the painting because the house would be damaged thereby.*

528. — If no time for payment of rent is fixed by the contract or by custom, the rent must be paid at the end of each period for which it is stipulated, that is to say: if a property is leased at so much per year, the rent is payable at the end of each year; if a property is leased at so much per month, the rent is payable at the end of each month.

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529. — In case of non-payment of rent, the lessor may determine the contract.

But, if the rent be payable monthly or at longer intervals, the lessor must first notify the lessee to pay it within a period of not less than fifteen days.

530. — At the determination or extinction of the lease, the lessee is bound to restore the property hired.

He is liable for any loss or damage caused during the continuance of the lease by his own fault or by the fault of the persons who are living with him.

He is not liable for loss or damage resulting from the agreed or lawful use of the property hired.

531. — If no written description of the condition of the property hired has been made and signed by both parties, the lessee is presumed to have received the property hired in good order and repair.

532. — The obligations incurred by the lessee towards the lessor in connection with the lease are extinguished by prescription six months after the restoration of the property hired.

533. — The outgoing lessee of agricultural land bound, in so far as he does not suffer any injury thereby to allow the incoming lessee to prepare the land for planting.

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#### CHAPTER IV. EXTINCTION OF THE LEASE.

534. — A lease is extinguished at the end of the agreed period without notice.

535. — A lease of garden land is presumed to be made for one year.

A lease of paddy land is presumed to be made for the agricultural year.

536. — If no period is agreed upon or presumed, either party can determine the lease at the end of each period of payment of rent, provided that such party gives notice to the other of at least one rent period.

In no such case need more than two months notice be given.

537. — If the whole of the property hired is lost, the lease is extinguished.

538. — If part only of the property hired is lost, the Court may, according to the circumstances of the case, either determine the lease or reduce the rent proportionately.

[193]

539. — A lease is not extinguished by the transfer of the ownership of the property hired.

The transferee is entitled to the rights and is subject to the duties of the transferor towards the lessee.

540. — A lease is not extinguished by the death of the lessor.

541. — A lease may be determined at the death of the lessee by the lessor or the heirs of the lessee giving notice as provided in Section 536 provided that such notice be not given later than two months after the death of the lessee.

542. — If after the lease is determined or extinguished the lessee remains in possession, and the lessor knowing thereof does not object, the lease is deemed to have been renewed upon the conditions described in Section 536.

543. — If a lease of paddy land is extinguished, determined or cancelled after the lessee has planted the paddy, the lessee is entitled to remain in possession till the harvest is finished, on paying the rent.

## CHAPTER V.

[194]

### TRANSFER OF LEASE AND SUBLEASE.

544. — Unless otherwise provided by the lease, a lessee can sublet or transfer his rights in the whole or part of the property hired to a third person.

545. — If a lessee sublets or transfers his rights in the whole or part of the property hired contrary to the provisions of the lease, the lessor may determine the contract.

546. — In case of transfer or sublease, the original lessee remains liable to the lessor for any obligations arising out of the original lease.

## TITLE VI. HIRE OF SERVICES.

547. — A contract of hire of services is a contract whereby a person called the employee agrees to render services to another person, called the employer, and the employer agrees to pay therefor a remuneration, called salary, proportionate to the duration of the services.

548. — The promise to pay a salary is implied if the services cannot, [195]  
under the circumstances of the case, be expected to be rendered gratuitously.

549. — The employer cannot transfer his right to a third person, except with the consent of the employee.

*ILLUSTRATION.* — *A has engaged the services of B as a clerk in his firm. A sells the firm to C. A cannot transfer to the rights derived from his contract with B, unless B consents.*

550. — The employee cannot render the services by a third person, except with the consent of the employer.

*ILLUSTRATION.* — *A has engaged the services of B as a clerk in his firm. B cannot send C to do work in his place without A's consent.*

551. — If the employee either expressly or impliedly warrants special skill on his part, the absence of such skill entitles the employer to determine the contract.

552. — Absence of the employee from service for a reasonable cause and during a reasonably short period does not entitle the employer to determine the contract.

553. — If no time for payment of salary is fixed by the contract or by custom the salary is payable after services have been rendered ; if fixed by periods salary is payable at the end of each period. [196]

554. — If after the end of the agreed period the employee continues to render services and the employer knowing thereof does not object, the parties are presumed to have made a new contract of hire on the same terms, but either party can determine the contract by giving notice in accordance with the following section.

555. — If the parties have not fixed the duration of the contract, either

party can determine it by giving notice at or before any time of payment to take effect at the following time of payment.

The employer can, on giving such notice, immediately dispense with the services of the employee by paying to the employee his salary up to the expiration of the notice.

556. — In case of workmen paid by the day and of domestic servants the employee can determine the contract at any time without previous notice. The workman or domestic servant has the same right subject to the provision of Section 334 No. 20 of the Penal Code.

557. — If a contract of hire of services is one in which the personality of the employer forms an essential part such contract is extinguished by the death of the employer.

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*ILLUSTRATION.* — *A, an architect, has engaged the services of B as a draughtsman to work out his sketches into definite drawings and plans. A dies. There are no more sketches to work out. The contract between A and B is extinguished.*

558. — On determination or extinction of the contract, the employee is entitled to a certificate as to the length and nature of his services.

559. — If the employee has been brought from elsewhere at the expense of the employer, the employer is bound, on determination or extinction of the contract, to pay the cost of the return journey, provided that:

- 1) The contract has not been determined or extinguished by reason of the act or fault of the employee, and
- 2) The employee returns within a reasonable time to the place from which he has been brought.

## TITLE VI. HIRE OF WORK.

560. — A contract of hire of work is a contract whereby a person, called the contractor, agrees to do a definite work for another person, called hirer of work, and the hirer of work agrees to pay him for the result of the work a remuneration, called the price.

[198]

561. — Tools or instruments which are necessary for the execution of the work shall be supplied by the contractor.

562. — If the materials for the work are to be supplied by the contractor, the contractor shall supply materials of good quality.

563. — If the materials are to be supplied by the hirer of work, the contractor shall use them carefully and without waste. He shall return the surplus, if any, after the work is completed.

564. — If during the execution of the work it becomes apparent that the ground selected by the hirer of work or the materials supplied by him are defective or unsuited to the work, the contractor must notify the hirer of work at once, failing which he shall be liable for the defects or delay caused by the unsuitableness or defects of such ground or materials.

565. — The contractor is bound to allow the hirer of work or his agents to inspect the work during its execution.

566. — If the hirer of work has reasonable ground to think that for any reason whatsoever except his own act or fault, the work will not be finished within the time fixed in the contract ( or within a reasonable time if no time is fixed in the contract), he may notify the contractor to proceed with the work within a reasonable time to be fixed in the notice.

[199]

567. — If for any reason whatsoever except the act or fault of the hirer of work, the work is being badly executed or is being executed contrary to the terms of the contract, the hirer of work may notify the contractor to make the defects good or to comply with the terms of the contract within a reasonable time to be fixed in the notice.

568. — If the work delivered is defective, the hirer of work must, immediately after the discovery of the defect, notify the contractor to make the defect good within a reasonable time to be fixed in the notice, failing which he is deemed to have accepted the defective work.

569. — If the contractor does not comply with the notice, the hirer of work has the remedies described in this Code concerning non-performance, except that the Court cannot order the work to be done by a third person at the expense of the contractor.

570. — If the materials have been supplied by the contractor, his liability for defects is governed by the provisions of this Code concerning sale.

571. — If the work is delivered after the time fixed in the contract, or, if no time was fixed, after an unreasonable delay, the hirer of work is entitled, as the Court may think fit, either to a reduction of price on cancellation of the contract, with compensation if any be due. [200]

572. — If the hirer of work has accepted the work without reservation either expressly or impliedly the contractor is no longer liable for delay in delivery or for defects, unless the defects were such as could not be discovered when the work was accepted, or they had been concealed by the contractor.

573. — If the work was done on land and its removal would be unreasonably expensive, the contract shall not be cancelled but the hirer of work shall be entitled to such reduction of price as the Court may think fit.

574. — The contractor is not liable for defects or delay caused by the hirer of work.

575. — In case of delay in delivery or of delivery of a defective work, the hirer of work is entitled to withhold the price as provided by Section 411 concerning sale.

576. — The liability of the contractor for defects is limited to the defects appearing within one year after delivery of the work.

If the work is for a structure on land other than a wooden building, the contractor is liable for the defects which may appear within five years after delivery of the work. [201]

577. — The liability of the contractor is extinguished by prescription one year after the defect appeared.

578. — If the work is to be done by instalments and the price is fixed at



so much per instalment, the agreed part of the price must be paid on delivery of each instalment.

579. — The contractor cannot claim more, nor the hirer of work pay less, than the price agreed, no matter what the actual labour was.

580. — If an estimate only was made for the work, and the price is not more than five per cent over the estimate, the hirer of work is bound to accept the work and pay the price.

If the price is more than five per cent over the estimate, the hirer of work can claim cancellation of contract.

581. — The hirer of work is bound to pay any excess of price caused by him.

582. — If the work is destroyed before delivery by *force majeure*, neither party is entitled to compensation.

[202]

583. — If the work is destroyed before delivery because the materials supplied by the hirer of work are defective or unsuitable, or through the act or fault of the hirer of work, the contractor is entitled to compensation for labour done and expenses incurred by him.

584. — As long as the work is not finished, the hirer of work can determine the contract on making compensation to the contractor for any injury resulting from the determination of the contract.

585. — A contract of hire of work may be determined at the death of the contractor by the heirs of the contractor giving notice to the hirer of work within two months after such death.

The hirer of work is bound to accept such part of the work as is already done, and to pay a reasonable price for it, provided that it be of some use to him.

586. — The contractor can sublet the whole or part of the contract to subcontractors unless the contract is one in which the personality of the contractor forms an essential part, but he remains liable for any act or fault of such subcontractors.

## TITLE VII. CARRIAGE.

[203]

587. — A carrier is a person whose business is to transport goods or passengers for a remuneration.

~~588. — The carriage of goods or passengers by State Railways is governed by the regulations and by laws of the Royal Railways Department.~~

[588. — The carriage of goods or passengers by the State Railways Department and of postal articles by the Department of Post and Telegraph are governed by the laws or regulations concerning such Departments.]

The carriage of goods by sea is governed by the laws and regulations relating thereto.

### CHAPTER I. CARRIAGE OF GOODS.

#### [Part] I. — GENERAL.

589. — The person making an agreement with a carrier for the transportation of goods is called the sender or consignor.

The person to whom the goods are forwarded is called the consignee.

The remuneration to be paid for the transportation of the goods is called the freight.

590. — The accessories of the freight include any customary expenses duly incurred by the carrier in course of transportation.

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591. — If required by the carrier, the sender must supply him with a way-bill. The way-bill must show the following particulars:

- 1) The nature of the goods sent, their weight or bulk and the nature, number and marking of the packages.
- 2) The place of destination.
- 3) The name or trade name and address of the consignee.
- 4) The place where and the time when the way. bill is made out.

The way-bill must be signed by the sender.

592. — If required by the sender, the carrier must supply him with a consignment note.

The consignment note must show the following particulars:

- 1) The matters contained in Section 591, 1, 2 & 3.
- 2) The name or trade name of the sender.
- 3) The amount of freight.
- 4) The place where and the time when the consignment note is made out.

The consignment note must be signed by the carrier.

593. — A consignment note may be made to a named person, or to order, or to bearer.

[205]

**[Part] II. — DUTIES AND LIABILITIES  
OF THE CARRIER.**

594. — In the absence of any specific agreement or custom as to the time of delivery, the goods must be forwarded and delivered within a reasonable time.

595. — If a consignment note has been made, delivery can be obtained only on its surrender.

596. — The carrier is liable for any loss, damage or delay in delivery of the goods entrusted to him unless he proves that the loss, damage or delay is caused by *force majeure* or by the nature of the goods.

597. — The carrier is liable for loss, damage or delay caused by apparent defects in the packing of the goods, if he accepted the goods without reservation.

598. — The carrier is not liable for loss, damage or delay caused by non-apparent defects in the packing of the goods.

599. — The carrier is liable for loss, damage or delay caused by the fault of the other carriers or persons to whom he entrusted the goods.

600. — The carrier is liable for loss, damage or delay caused by the fault of passengers.

[206]

601. — If the goods are of a dangerous nature or are likely to cause injury to persons or property, the sender must declare their nature before making the contract of carriage, failing which he shall be liable for any injury caused by them.

602. — The carrier is not liable for specie, currency notes, bank notes, bills, bonds, shares, debentures, warrants, jewels and other valuables, unless he is given notice of the value or nature of such goods when they are delivered to him.

If their value is declared, the liability of the carrier is limited to such declared value.

603. — Compensation in case of delay in delivery cannot exceed the amount which could be awarded in case of total loss of the same goods.

604. — The arrival of the goods must be notified to the consignee in the manner provided by custom.

605. — No compensation is due for loss or damage discoverable from the external condition of the goods or for delay, if the goods were accepted without reservation on delivery.

606. — In case of loss or damage not discoverable from the external condition of the goods, no compensation is due unless notice of loss or damage has been given to the carrier within eight days after delivery of the goods.

[207]

607. — The liability of the carrier for loss, damage or delay is extinguished by prescription one year after delivery or, if the goods were not delivered, one year after the date when delivery ought to have been made.

608. — A provision in a receipt, consignment note or other such document delivered by the carrier to the sender, excluding or limiting the liability of the carrier, is void unless the sender expressly agreed to such exclusion or limitation of liability.

### **[Part] III. — RIGHTS AND DUTIES OF THE SENDER AND THE CONSIGNEE.**

609. — As long as the goods are in the carrier's hands, the sender or the holder of the consignment note can exercise the right of stoppage in transit, that is to say he can require the carrier to stop the transportation or to return the goods.

In such case, the carrier is entitled to the freight in proportion to the transportation performed and to all other expenses occasioned by the stoppage or the return of the goods.

610. — If the consignment note has been made to order or to bearer, the right of stoppage in transit can be exercised only on surrendering the note to the carrier.

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611. — The right of stoppage in transit ceases:

1) When the carrier gives notice of the arrival of the goods to the consignee.

2) When the goods have arrived at the place of destination and the consignee demands delivery.

612. — After the goods have arrived at the place of destination and the consignee has demanded delivery, or after the carrier has given notice of the arrival of the goods to the consignee, the consignee is entitled to the rights of the sender arising out of the contract of carriage.

613. — The freight and accessories are payable either by the sender or by the consignee, as provided by the contract or by custom.

614. — If goods are lost by *force majeure*, the carrier is not entitled to the freight. Whatever has been received on that account must be returned.

615. — If the carrier delivers the goods before payment of the freight and accessories, he remains liable to preceding carriers for such part of the freight and accessories as may still be due to them.

[209]

*ILLUSTRATION.* — Goods forwarded by D from Bangkok to Chiangmai have been carried successively by A, a railway Co., B, a shipping Co., and C, a contractor for carriage on elephant's back.

*Freight due to A amounts to 30 baht including accessories*

„	„	„	B	„	„	20	„	„	„
„	„	„	C	„	„	50	„	„	„

*If C delivers the goods to D at Chiangmai, without being paid the whole freight, i. e. 100 baht, C is responsible to A for 30 baht and to B for 20 baht.*

616. — The carrier is entitled to retain the goods as long as the freight and accessories are not paid, provided that the party liable for them may at any time apply to the Court for an order, either :

1) Restricting the exercise of this right to such part of the goods as the Court may deem sufficient to cover the freight and accessories, or

2) Ordering the carrier to deliver the goods on security being given for payment of freight and accessories.

617. — If the consignee cannot be found, the carrier must notify the sender by registered letter to give his orders as to the disposal of the goods and to provide for the payment of the freight and accessories within a reasonable time to be fixed in the notice.

If the sender fails to comply with the notice the carrier can sell the goods by public auction.

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618. — If the consignee does not take delivery of the goods, or does not pay the freight and accessories due by him, the carrier can notify the consignee by registered letter to pay the freight and accessories and take delivery within a reasonable time to be fixed in the notice.

The carrier must at the same time notify the sender by registered letter.

If the consignee or the sender do not comply with the notice, the carrier can sell the goods by public auction.

619. — In the cases provided by Sections 617 and 618, if the goods are of a perishable nature, the carrier can sell them by public auction without notice.

620. — The carrier shall forthwith deduct from the nett proceeds of the public auction the freight, accessories and other monies due in connection with the contract of carriage and must deliver the surplus to the person entitled to it.

621. — If the goods were transported by several carriers, the last of them can exercise the rights described in Sections 616 to 620, for the amounts due to them all for freight and accessories.

622. — If the goods were transported by several carriers, all the rights arising out of the contract of carriage may, at the discretion of the party exercising them, be exercised against the last carrier alone.

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*ILLUSTRATION.* — *A has sent goods to B. The goods have been carried successively by C, a railway Co., and D, a shipping Co.*

*While in C's care the goods have suffered damage, non-discoverable from their external condition. Under Section 606 B can claim compensation for such damage within 8 days after delivery of the goods. B can, at his discretion, claim such compensation from D or from C. If he claims it from D, D shall have an action against C for reimbursement.*

## CHAPTER II. CARRIAGE OF PASSENGERS.

623. — The carrier of passengers is liable for delay or for any other injury suffered by any passenger by reason of the transportation, unless the delay or injury is caused by *force majeure* or by the fault of that passenger.

624. — Luggage entrusted to the carrier in time must be delivered on the arrival of the passenger.

625. — If the passenger does not take delivery of the luggage within one month after its arrival, the carrier can sell it by public auction. [212]

If the luggage is of a perishable nature, the carrier can sell it by public auction twenty-four hours after its arrival.

The provisions of Section 620 apply *mutatis mutandis*.

626. — The rights and liabilities of the carrier for the luggage which has been entrusted to him are governed by Chapter I, even though the carrier did not make a separate charge for it.

627. — No liability is incurred by the carrier for luggage which has not been entrusted to him, unless such luggage be lost or damaged by the fault of the carrier or of his employees.

628. — A provision in a ticket, receipt or such other document delivered by the carrier to the passenger excluding or limiting the liability of the carrier is void, unless the passenger expressly agreed to such exclusion or limitation of liability.