

## TITLE VIII.

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### LOAN.

#### CHAPTER I.

#### LOAN FOR USE.

629. — A contract of loan for use is a contract whereby a person, called the lender, agrees to let another person, called the borrower, have the use of a property without paying remuneration and the borrower agrees to return the property after having had the use of it.

630. — A contract of loan for use is complete only on delivery of the property lent.

631. — Costs of the contract, costs of delivery of the property lent and costs of return must be borne by the borrower.

632. — Delivery of the property lent is governed by the provisions of this Code concerning sale.

633. — The borrower cannot use the property lent for [purposes] other than ordinary purposes or purposes appearing from the contract itself.

*ILLUSTRATION. — I. — A borrows a rot koop (victoria phaeton). No agreement is made as to how A can use it. A can use the rot koop only for the ordinary purposes of a rot koop, viz. for conveying persons. He cannot use it for carrying goods.*

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*II. — A borrows a steam launch from B. It is agreed by A and B that the launch is lent for the purpose of going up and down the river Menam. A cannot use the launch for going in the Gulf.*

634 — The borrower cannot let a third person have the use of the property lent.

635. — If the borrower acts contrary to any of the provisions of

Section ~~s~~ 633 or 634, he becomes liable for any loss or damage even caused by *force majeure* to the property lent, unless he proves that the property would have been lost or damaged in the same way even if he had not acted contrary to such provisions.

636. — The borrower is bound to take as much care of the property lent as a person of ordinary prudence would take of his own property.

637. — If the borrower acts contrary to any of the provisions of Section ~~s~~ 633, 634 or 636, the lender can determine the contract.

638. — If a third person who claims a right over the property lent enters an action against the borrower or attaches the property, the borrower must forth with give notice thereof to the lender.

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After the borrower has been served with a writ at the suit of the claimant or after attachment, the borrower cannot return the property, except on an order of the Court or with the consent of the parties to the case.

639. — If the parties have fixed no time for the return, the borrower must return the property after he has had the use of it for the purposes appearing from the contract, provided that the lender can claim the return as soon as a time reasonably sufficient for such use has elapsed.

*ILLUSTRATION.* — *A has sent his launch to B who has to use it for a trip from Bangkok to Ayuthia and back.*

*If no time has been fixed for the return of the launch, B must return the launch to A when the trip is finished. A can claim the return of the launch when a time reasonably sufficient for the trip contemplated (say three days) has elapsed.*

640. — If the parties have fixed no time for the return and the purposes of the loan do not appear from the contract, the lender can claim return at any time.

*ILLUSTRATION.* — *If, in the foregoing illustration, A has lent his launch to B without fixing any time, and it was not agreed for what purpose the launch was lent. A can claim the return of his launch at any time.*

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641. — Expenses for ordinary maintenance of the property lent must be borne by the borrower.

Any other charges upon the property lent must be borne by the lender.

642. — The borrower may not make any alteration in, or addition to the property lent without the permission of the lender.

643. — If the lender has granted permission to the borrower to make alterations or additions, the borrower is entitled, at the extinction of the loan, 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.

The borrower is entitled to withhold the property until such reimbursement.

*See Illustrations under Sections 525, 526 and 527 mutatis mutandis.*

644. — If the borrower makes additions or alterations without the permission of the lender, he is not entitled to reimbursement, but he is allowed, at the extinction of the loan, 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 or additions and no compensation therefor shall be due to the borrower.

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*See Illustrations under Sections 525, 526 and 527 mutatis mutandis.*

645. — In case of loss of the property lent, the value to be taken into account for the assessment of compensation is the value which

such property would have had at the time when and at the place where it ought to have been returned.

646. — A contract of loan for use is extinguished by the death of the borrower.

647. — The liability for compensation or reimbursement of expenses in connection with a contract of loan for use is extinguished by prescription six months after the extinction of such contract.

## CHAPTER II.

### LOAN FOR CONSUMPTION.

#### **[Part]** I. — GENERAL PROVISIONS.

648. — A contract of loan for consumption is a contract whereby a person called the lender, agrees to transfer the ownership and possession of property to another person, called the borrower, with or without remuneration, and the borrower agrees to return property of the same kind, quality and quantity.

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649. — A contract of loan for consumption is complete only on delivery of the property lent.

650. — Costs of the contract, costs of delivery of the property lent and costs of return must be borne by the borrower.

651. — Delivery of the property lent is governed by the provisions of this Code concerning sale.

652. — If no time for return of the property lent has been fixed, the lender may give notice to the borrower to return the property within a reasonable time to be fixed in the notice.

#### **[Part]** II. — SPECIAL RULES FOR LOAN OF MONEY.

653. — No loan of money for a sum exceeding two hundred baht

in capital may be proved unless there be some written evidence signed by the borrower.

654. — Interest shall not exceed 15% per year; when a higher rate of interest is fixed by the contract, it shall be reduced to 15% per year. [219]

655. — Interest shall not bear interest. But the parties to a loan of money may, at the end of each succeeding year, agree that the interest due shall be added to the capital, and that the whole shall bear interest, provided that any such agreement be made in writing.

656. — If a contract of loan of money is made and the borrower, instead of money, accepts goods or negotiable instruments, the amount of the loan shall be taken as the actual value of the goods or negotiable instruments at the time of delivery.

## TITLE IX. DEPOSIT.

### CHAPTER I. GENERAL PROVISIONS.

657. — A contract of deposit is a contract whereby a person, called the depositor, agrees to deliver a movable property to another person, called the depositary, and the depositary agrees to keep such property in safe custody, with or without remuneration, and to return it to the depositor or to a third person.

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658. — A contract of deposit is complete only on delivery of the property deposited.

659. — The depositary is bound to take as much care of the property deposited as a person of ordinary prudence would take of his own property.

660. — The depositary is not allowed, without the permission of the depositor, to use the property deposited or to let a third person have the use or custody of it.

661. — The depositary who acts contrary to any of the provisions of Section 660 becomes liable for any loss or damage caused even by *force majeure* to the property deposited, unless he proves that the property would have been lost or damaged even if he had not acted contrary to such provision[s].

662. — If a property is the subject of litigation, the parties to the case can agree, or the Court may order, that such property shall be deposited with one of the parties or with a third person.

The depositary of such property can only return it to a person appointed for that purpose by the parties or by the Court.

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663. — If a third person claims a right over the property deposited and enters an action against the depositary, or attaches the property, the depositary must forth with give notice thereof to the depositor.

After the depositary has been served with a writ at the suit of the claimant or after attachment, the depositary can only return the property on an order of the Court, or with the consent of the parties to the case.

664. — If a time for the return of the property deposited has been ~~fixed~~[fixed], the depositary cannot return the property before such time, except in case of unavoidable necessity.

*See Illustration under Section 665.*

665. — Although the parties have fixed a time for the return of the property deposited, the depositary must return it at any time on demand made by the depositor.

*ILLUSTRATION (Sections 664 and 665). — A has handed to his friend B a box of jewels to be deposited in B's safe during six months.*

*B cannot oblige A to take the box back before the end of six months, except in case of unavoidable necessity, e. g. if B is suddenly obliged to leave Siam for good.*

*But A can at any time claim the return of the box from B.*

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666. — If the parties have fixed no time for the return of the property deposited, the depositary can return it at any time.

667. — If the property is deposited in the name of a third person, the depositary can only return it to that third person.

668. — The depositary is bound to deliver with the property any interest and profits which may have accrued from it.

669. — Costs of returning the property deposited must be borne by the depositor.

670. — In case of loss of the property deposited, the value to be taken into account for the assessment of compensation is the value which the property would have had at the time when and at the place where it ought to have been returned.

671. — The depositor is bound to reimburse the depositary for any expenses which were necessary for the preservation or maintenance of the property deposited unless such expenses were incumbent upon the depositary under the contract of deposit. [223]

672. — If no time for payment of remuneration is fixed by the contract or the[by] custom, the remuneration is payable when the property deposited is returned. If fixed by periods, the remuneration is payable at the end of each period.

673. — When the remuneration or expenses are not paid, the depositary is entitled to retain the property deposited, provided that the depositor may at any time apply to the Court for an order, either:

1) Restricting the exercise of this right to such part of the property deposited as the Court may deem sufficient to cover the remuneration or expenses, or

2) Ordering the depositary to return the property deposited on the depositor giving security for remuneration or expenses.

674. — If the depositary retains the property deposited as provided in Section 673, he may notify the depositor by registered letter to pay the remuneration or expenses within a reasonable time to be fixed in the notice.

If the depositor fails to comply with the notice the depositary can sell by public auction the property deposited.

675. — The depositary must forth with deduct from the nett proceeds of the public auction the remuneration and expenses due to himself and deliver the surplus to the person entitled to the return of the deposit. [224]



676. — No deposit of property exceeding two hundred baht in value may be proved, unless there be some written evidence signed by the depositary.

677. — If a property has been deposited under such circumstances of *force majeure* that no written contract could reasonably be made, written evidence of the deposit is not required.

678. — The liability for remuneration, reimbursement of expenses or compensation in connection with a deposit is extinguished by prescription six months after the extinction of such contract.

## CHAPTER II.

### SPECIAL RULES FOR DEPOSIT OF MONEY.

679. — If the deposit is one of money, it is presumed that the depositary shall not return the same specie, but the same amount.

The depositary can use the money deposited and is only bound to return an equivalent amount. He is bound to return such amount even should the money deposited have been lost by *force majeure*.

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680. — If the depositary is only bound to return the same amount of money, the depositor cannot demand the return of the money before the agreed time, nor can the depositary return it before such time.

*ILLUSTRATION.* — *A has deposited 1,000 baht with B for six months, without specifying that the same specie should be returned.*

*A cannot claim from B the return of the 1,000 baht before six months have elapsed.*

## CHAPTER III.

### SPECIAL RULES FOR INNKEEPERS.

681. — The proprietor of an inn, or hotel or of any other place where travellers or guests receive sleeping accommodation for remuneration is considered as a depositary of the luggage or other property brought by such travellers or guests.

He is liable for any loss or damage caused to such luggage or property unless he proves that such loss or damage was not caused by his act or fault, or by the act or fault of persons for whom he was responsible.

682. — The liability for specie, currency notes, bank notes, bills, bonds, shares, debentures, warrants, jewels or other valuables belonging to the traveller or guest is limited to two hundred baht, unless such valuables have been deposited with the proprietor with an indication of their nature and value.

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683. — If valuables have been deposited with the proprietor, he is liable for them up to the value declared.

684. — A notice posted in the inn, hotel or other such place excluding or limiting the liability of the proprietor is void unless the traveller or guest expressly agreed to such exclusion or limitation of liability.

685. — The liability for compensation for loss or damage caused to the luggage or other property of the traveller or guest is extinguished by prescription six months after the departure of the traveller or guest.

686. — If the remuneration is not paid, the proprietor can exercise over the luggage or other property of the traveller or guest which is in the inn, hotel or other such place the rights described in Sections 673, 674 and 675.

## TITLE X. SURETYSHIP.

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### CHAPTER I. GENERAL PROVISIONS.

687. — A contract of suretyship is a contract whereby a person, called surety[, ] agrees to perform an obligation in case the debtor does not perform it.

688. — A contract of suretyship may guarantee any obligation even unconditional or future.

*ILLUSTRATION.* — *A sells a house to B. Under Section 412 and foll. A is liable for the consequences of an eviction suffered by B in the cases provided by law; C may agree to be a surety for the obligation of A in case of B's eviction.*

689. — A contract of suretyship is void or voidable according as to whether the obligation secured is void or voidable.

690. — An obligation which is voidable owing to one of the parties being incapacitated may be guaranteed by suretyship if it appears from the contract or from the circumstances of the case that the surety agreed to guarantee the creditor against the consequences of the want of capacity.

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691. — Suretyship may be given for a limited period of time or for a series of transactions.

692. — A person can agree to be surety for another surety.

693. — The suretyship covers interest and compensation due by the debtor on account of the obligation and all charges accessory to it.

694. — The surety is liable for the costs of action to be paid by the debtor to the creditor, but he is not liable for such costs if the action was entered without first demanding performance from him.

695. — If, on enforcement of the contract of suretyship, the surety does not perform the whole of the obligation of the debtor, together with interest, compensation and accessories, the debtor remains liable to the creditor for the surplus.

*ILLUSTRATION.* — On April 1st. 2452 A borrows 5,000 baht from B at 10% interest, the capital to be returned on the 1st. of April 2454. C is surety for A. A does not pay interest and does not return the capital. B enters an action against C. Judgment is given against C for 5,000 baht plus interest up to the date of payment. C's properties are seized in execution. The sale takes place on the 1st of April 2455. The nett proceeds of the sale are 4500 baht which are appropriated as follows: 1500 baht as payment of interest during the years 2452, 2453 and 2454 ; 3,000 baht as part payment of capital. A remains liable to B for 2,000 baht capital and for interest on 2,000 baht from April 1st. 2455.

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## CHAPTER II.

### EFFECTS BEFORE PERFORMANCE.

696. — As soon as the debtor is in default the creditor is entitled to demand performance of the obligation from the surety.

697. — The surety is not bound to perform the obligation before the time fixed for performance, although the debtor may have lost the benefit of the time clause.

698. — The surety is entitled to summon the debtor to appear in the action in order that the judgment may decide on his liability to the creditor and on the liability of the debtor to him.

699. — When the debtor is summoned and the surety proves:

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1). That the debtor has the means to perform the whole or part of the obligation, and

2) That enforcement against the debtor would not be difficult,  
the Court may, in its discretion, order that the obligation shall be enforced first against the debtor.

700. — If the obligation is secured by a pledge or mortgage, the surety is entitled to have the obligation performed first out of the property pledged or mortgaged.

701. — If the surety has agreed to be bound jointly with the debtor, the surety becomes a joint debtor.

702. — If there are several sureties for the same obligation, they are jointly liable to the creditor within the limits specified in their respective contracts of suretyship.

As between themselves, their shares in any deficiency are in proportion to the amount for which each surety is liable.

If no amount was specified each surety shall bear an equal share in the deficiency.

703. — An interruption of prescription against the debtor is also an interruption against the surety.

### CHAPTER III.

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### EFFECTS AFTER PERFORMANCE.

704. — The surety who has performed the obligation is entitled to reimbursement from the debtor and is subrogated to the rights of the creditor against the debtor.

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

705. — In addition to the defences which the surety has against the creditor, he can also set up defences which the debtor has against the creditor.

706. — The surety who neglects to set up against the creditor defences of the debtor forfeits his right to reimbursement by the debtor to the extent of these defences, unless he proves that he did not know of such defences and that his ignorance was not due to his fault.

707. — If the surety does not inform the debtor that he has performed the obligation and the debtor, in ignorance, performs it, the surety is not entitled to reimbursement by the debtor.

The surety has only an action for undue enrichment against the creditor.

708. — If the creditor impairs or reduces the securities given for the performance of the obligation, the surety is discharged to the extent of the injury suffered by him thereby.

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*ILLUSTRATION.* — *A is creditor of B for 1,000 baht. C has agreed to be surety for B's obligation, which is also secured by a pledge. A returns the property pledged to B and afterwards demands performance from C.*

*Under Section 700 C was entitled to have the obligation performed first out of the property pledged ; C suffers injury by the fact that such property has been returned to B. C is discharged to the extent of such injury, that is to say if the property pledged was worth 600 baht C's liability is limited to 400 baht only.*

## CHAPTER IV.

### EXTINCTION OF SURETYSHIP.

709. — When the obligation of the debtor is extinguished, the surety is discharged.

710. — If suretyship has been given for a series of transactions, the surety can at any time determine the suretyship for the future by giving notice to the creditor to that effect.

In such case, the surety is not liable for transactions one by the debtor after the notice has reached the creditor.

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711. — Suretyship given for the transaction of a registered partnership or limited partnership is extinguished for the future if the partnership changes its firm name.

It is not extinguished by a change in the members or object of the partnership.

712. — If suretyship has been given for an obligation which is to be performed at a definite time, and the creditor grants to the debtor an extension of time, the surety is discharged.

The surety is not discharged if he agreed to the extension of time or if the extension is granted by the Court.

713. — The surety is entitled to tender performance of the obligation to the creditor from the time when performance is due.

If the creditor refuses to accept performance, the surety is discharged.

## TITLE XI. MORTGAGE.

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### CHAPTER I. GENERAL PROVISIONS.

714. — A contract of mortgage is a contract whereby a person, called the mortgagor, agrees to assign a property to another person, called the mortgagee, as security for the performance of an obligation, without delivering the property to the mortgagee.

The mortgagee is entitled to be paid out of the mortgaged property in preference to ordinary creditors and even though the ownership of the property has been transferred to a third person.

*ILLUSTRATION. — I. — A has made a contract with B according to which it is agreed that A's house is sold to B with right of redemption for 3,000 baht but that will remain in possession of the house and will pay an interest of 1% per month on the 3,000 baht until he has reimbursed that price to B. It is obvious that this so-called sale with right of redemption is made by way of security for reimbursement of the price which is only lent to A. The contract entered into between A and B cannot therefore be considered as a contract of sale with right of redemption but, in case of discussion, it shall be considered as a contract of mortgage : that is to say A remains the owner, and is at the same time the mortgagor, of his house, B has over the house a right of mortgage and he cannot dispose of the house otherwise than provided by the chapter of this Code concerning enforcement of mortgage.*

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*II. — A has made a contract with B according to which it is agreed that A's house is sold to B with right of redemption for 3,000 baht, but that A will pay an interest of 1% per month on the 3,000 baht until he has reimbursed that price to B. It is obvious that this so-called sale with right of redemption is made by way of security for reimbursement of the price which is only lent to A. The contract entered into between A and B cannot therefore be considered as a contract of sale with right of redemption. But it cannot any more be considered as a contract of mortgage, as A is not remained in possession of the house. A and B have made a kind of contract which is not provided by law. In case of discussion, the Court shall ascertain whether the intention of the parties was to make a contract of loan with security or a contract of sale with right of redemption (see Section 24) and they shall accordingly issue such orders as may be necessary to set contract right or bring the parties within the scope of the law, e. g. if the parties intended to make a*



*contract of loan with security, the Court shall order B to return to A the possession of the house, or if the parties intended to make a contract of sale with right of redemption, the Court shall cancel the clause of the contract providing for the payment of interest.*

715. — Immovables of any kind can be mortgaged.

The following movables can also be mortgaged, provided they are registered according to law:

1) Ships or vessels having displacement of and over six tons, steam-launches or motor-boats having displacement of and over five tons.

2) Floating houses.

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3) Beasts of burden.

4) Any other movables for which the law shall provide registration to that effect.

716. — A property which is not transferable cannot be mortgaged.

717. — A contract of mortgage must specify the property mortgaged.

718. — No property can be mortgaged except by its present owner.

*ILLUSTRATION. — I. — A is the present owner of a house in Bangkok. B is the only heir apparent of A and may, sooner or later, become the owner of that house. B cannot mortgage that house until, by the death of A, he has become the present owner of it.*

*II. — A is the present owner of a house in Bangkok. B is the guardian of A, and therefore the administrator of A's properties. B cannot mortgage that house on his own account. He can mortgage it on A's account subject to the provisions of the Book on Capacity of Persons (i. e. with the consent of the Court ).*

*III. — On the 1st. of May 2456 A has made a contract with B whereby A gives to B the option to buy A's rubber plantation for 20,000 baht provided that B shall notify A on or before the 31st. of August 2456 whether he buys the plantation or not.*

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*Notwithstanding that contract A remains the present owner of the plantation ; he can therefore still mortgage it while B could not yet do the same. If a contract of sale is executed before the proper official say on the 16th. August 2456 B can, from that date, mortgage the plantation while, from the same date, A can no more mortgage it.*

**719. — A person whose right of ownership over a property is subject to a condition, can mortgage the property only subject to the same condition.**

*ILLUSTRATION. — I. — A has given to B a rice—mill on the condition that B will have been able to enter the Government services within six months. B may, in the meanwhile, mortgage the rice—mill to C, but such mortgage is subject to the same condition : that is to say if B does not enter the Government services within the fixed delay the rice—mill does not become the property of B, and C has no right of mortgage over it; if B enters the Government services within the fixed delay the rice—mill becomes the property of B, and the mortgage is good.*

*II. — A has given his house to B on the condition that the ownership of the house will reverse to A if B has not a child within five years. B may, in the meanwhile, mortgage the house to C, but such mortgage is subject to the same condition : that is to say, if B has a child within five years, the mortgage is good ; but if B has no child within five years, the house is retransferred to A and C has no right of mortgage over it.*

**720. — A contract of mortgage may secure any obligation, even conditional or future.**

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*ILLUSTRATION. — I. — A sells a house to B. Under Section 412 and foll. A is liable for the consequences of an eviction suffered by B in the cases provided by law ; A may mortgage his rice—mill to B as security for the consequences of a possible eviction (restoration of price and payment of damages ).*

*II. — A owes 10,000 baht to B, and C is surety for the obligation. Under Section 704 and foll. if C pays any sum on behalf of A, the latter is liable to reimbursement of such sum to C. A may mortgage his house to C as a security for this future obligation.*

**721. — A contract of mortgage is void or voidable according as to whether the obligation secured is void or voidable.**

**722. — A contract of mortgage must certify[specify] the**

obligation for the performance of which the mortgaged property is assigned as security, and its amount in Siamese currency.

If the obligation is unlimited, the parties shall fix the highest amount for which the mortgaged property is assigned as security.

*ILLUSTRATION.* — *A mortgages his house in Bangkok to B, a Banking Co., as security for overdrafts on his current account. The contract must specify the highest amount, say 10,000 baht for which the house is mortgaged. TH A draws 13,000 baht overdraft, B is a preferred creditor (mortgagee) up to the sum specified, 10,000 baht. For the 3,000 baht balance B comes only as an ordinary creditor.*

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723. — A person may mortgage a property as security for the performance of an obligation by another person.

*ILLUSTRATION.* — *A owes 10,000 baht to B. C agrees to assign one of his properties as mortgage security for the obligation of A. When the obligation becomes due, C pays 10,000 baht to B. C is entitled to claim 10,000 baht from A.*

724. — The performance of one and the same obligation may be secured by the mortgage of several properties belonging to either one or several owners.

The parties may agree :

1) that the mortgagee shall enforce his right against the mortgaged properties in a specified order.

2) that each property is security only for a specified part of the obligation.

725. — As long as the obligation is not due, the mortgagor cannot agree that the mortgagee shall, in case of non-performance, become the owner of the mortgaged property or dispose of it otherwise than in conformity with the provisions concerning enforcement of mortgage (Chapter IV).

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726. — Notwithstanding any clause in the contract to the

contrary, a property mortgaged to a person can be mortgaged to another person during the continuance of the previous contract.

But beasts of burden cannot be subjected to successive mortgages.

727. — The parties to a contract of mortgage may agree that the obligation shall be performed by instalments.

728. — A contract of mortgage must be made in writing in the presence of and registered by the competent official in accordance with the rules relating thereto.

## CHAPTER II.

### EXTENT OF MORTGAGE.

729. — The mortgaged property is security for the performance of the obligation and for the following accessories :

- 1) Interest, if any.
- 2) Compensation in case of non—performance of the obligation.
- 3) Costs of enforcement of the right of mortgage.

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730. — The right of mortgage extends to all the properties mortgaged and to the whole of each of them, even after part performance.

*ILLUSTRATION. — I. — A is the creditor of B for 10,000 baht and B has assigned as mortgage to A his land situated in Samsen. If B pays 5,000 baht to A, the whole of the land remains however security for the payment of 5,000 baht still due by B, and A may exercise his right against the whole land as well as if he had received no part performance.*

*II. — A is the creditor of B for 10,000 baht and B has assigned as mortgage to A his land situated in Samsen. B dies, and C, D and E are his statutory heirs. The debts of the estate will be divided between C, D and E. However, suppose C has received in his own part the land situated in Samsen and mortgaged by B, C is liable for the payment of 10,000 baht even by enforcement of the land mortgaged as the case may be, and has only a recourse against D and E if he pays or*

*has his land sold.*

731. — When the mortgaged property is divided into parcels, rights of mortgage continues to extend to each and all of them.

However, one parcel may be transferred free of any right of mortgage with the consent of the mortgagee. Such consent or order cannot be set up against the buyer of the mortgagee's right unless it has been registered.

732. — The right of mortgage extends to all things which are so connected with the mortgaged property as to form one thing with it, subject to the restrictions provided by the three following Sections.

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*ILLUSTRATION. — I. — A mortgages to B his “dwelling house” in Bangkok. The mortgage extends of right to the servants' quarters, the garage, water—pipes, as well as to the doors, windows, gutters, lockers of the house because all those things are necessary to make a “dwelling. house”.*

*II. — A mortgages to B his “rice mill” in Ayuthia. The mortgage extends of right to all the fixtures and plant, such as boiler, engine etc., because such things are necessary to make a building fit to be used as “rice mill”.*

733. — The right of mortgage on a land does not extend to the buildings erected by the mortgagor upon it after the time of mortgage unless there is in the contract a special clause to that effect.

However, in any case, the mortgagee can have such buildings sold with the land, but his preferential right does not extend to the increase of value derived from the buildings.

734. — The right of mortgage over buildings made by a person upon or under another's land does not extend to that land, and vice versa.

735. — The right of mortgage does not extend to the fruits, interests and profits of the mortgaged property except after the time when the mortgagee has notified the mortgagor or the transferee of

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his intention to enforce the mortgage.

### CHAPTER III.

#### RIGHTS AND DUTIES OF MORTGAGEE AND MORTGAGOR.

736. — No agreement entered after the time of the mortgage creating servitudes or other real rights upon the mortgaged property which depreciates the property, can be set up against the mortgagee unless he has agreed to it.

*ILLUSTRATION.* — *A has mortgaged to B his godown situated along the river Menam. A afterwards agrees with C, a Shipping Co., that the latter shall have the exclusive right to use the embankment as a landing place for passengers and cargo. This agreement cannot be set up against B unless he has agreed to it.*

737. — If the mortgaged property is damaged, or if one of the mortgaged properties is lost or damaged, so that the security becomes insufficient, the mortgagee can enforce at once the mortgage, unless there is no fault of the mortgagor and the later offers either to mortgage another property of sufficient value or to repair the damage within a reasonable time.

*ILLUSTRATION.* — *I. — A has mortgaged to B, as security for a loan of 10,000 baht, his ship estimated 15,000 baht :*

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*a) The ship is totally destroyed by bad weather at sea. The mortgage is extinguished*  
*b) the ship returns badly damaged by bad weather so that her value is now estimated 7,000 baht only. The security becomes insufficient. B is entitled to enforce his mortgage at once over the ship. However, A is entitled, provided there was no fault of his in the damage, to have the enforcement postponed on offering, either to repair the ship within a reasonable time, or to mortgage other properties of sufficient value to cover the balance of 8,000 baht.*

*II. — A has mortgaged to B, as security for a loan of 10,000 baht, his house estimated 8,000 baht, a ship estimated 5,000 baht and four pairs of buffaloes estimated 1200 baht.*

*The ship is destroyed by a typhoon. The security becomes insufficient. B is entitled to enforce his mortgage at once over the house and the buffaloes. However, A is entitled, provided there was no fault of his in the wreck, to have the enforcement postponed on offering to mortgage another property valued 5,000 baht.*

738. — If a person who has mortgaged a property as security for the performance of an obligation by another person performs the obligation on behalf of the debtor to prevent the enforcement of the mortgage, he is entitled to recover from the debtor the amount of the performance.

If the mortgage is enforced, the mortgagor is entitled to recover from the debtor the amount up to which the mortgagee has been satisfied by such enforcement.

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739. — When two or more persons have mortgaged their properties as security for the performance of one and the same obligation by another person and no order has been specified, the mortgagor who has performed the obligation or on whose property the mortgage has been enforced, has no right of recourse against the other mortgagors.

740. — If a person has mortgaged a property as security for the performance of an obligation by another person, and the creditor grants to the debtor an extension of time, the mortgagor is discharged.

The mortgagor is not discharged if he agreed to the extension of time or if the extension ~~in~~[is] granted by the Court.

741. — If a person has mortgaged a property as security for the performance of an obligation by another person, the mortgagor is entitled to tender performance of the obligation to the mortgagee from the time when performance is due.

If the mortgagee refuses to accept performance[,] the mortgagor is discharged.

742. — When several persons have mortgaged their properties as security for the performance of one and the same obligation by another person and an order has been specified, the release granted by the mortgagee to one of the mortgagors discharges the subsequent mortgagors to the extent of the injury suffered by them thereby.

[246]

*ILLUSTRATION.* — A borrows 10,000 baht from B. The return of the money borrowed is secured by the mortgage of two pieces of land belonging one to C and the other to D and valued respectively at 6,000 baht and 12,000 baht, but it is specified that B shall enforce his right first on C's land. Later on B grants to C a release of his obligation. At the time when A's obligation becomes due, A appears to be insolvent and B asks for the enforcement of his right on D's land. If B had not granted a release to C, D would have been exposed to loss, on account of A's insolvency, only the difference between the value of C's land and the amount of A's debt, i. e. 4,000 baht. If B could sue D for 10,000 baht the release granted to C would cause to D an injury amounting to 6,000 baht. D is discharged of his liability to B up to 6,000 baht and can be sued only for reimbursement of 4,000 baht.

## CHAPTER IV.

### ENFORCEMENT OF MORTGAGE.

743. — In case of non-performance, the mortgagee is entitled to have the mortgage enforced in the manner described in the following sections.

744. — The mortgagee must first notify the debtor by registered letter to perform his obligation within a reasonable time to be fixed in the notice. If the debtor fails to comply with such notice, the mortgagee can apply to the Court for an order :

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1) either ordering that the property mortgaged be seized and sold by public auction; or

2) transferring to him the ownership of the mortgaged property.

745. — The Court shall not issue an order transferring the property to the creditor when :

1) the debtor has failed to pay interests for less than five years;  
or

2) the mortgagor has satisfied the Court that the value of the property overcovers the amount due; or

3) there are other registered mortgages or preferential rights on



the same property.

746. — When one and the same property is mortgaged to several mortgagees, they rank according to the respective dates and hours of registration, and the earlier mortgagee shall be satisfied before the later one.

*ILLUSTRATIONS. — I. — A mortgages his rice-mill in Bangkok to B for 50,000 baht. The mortgage is registered on the 5th of January 2459. A at the same time also mortgages the same rice-mill to C for another 25,000 baht. but the contract of mortgage is registered only on the 7th. of January 2459. C will rank after B: that is to say if A becomes bankrupt, B and C shall both be satisfied out of the proceeds of the sale of the rice-mill in preference to ordinary creditors, but if the rice-mill is sold for less than 75,000 baht, say for 60,000 baht, A will be first satisfied and will receive 50,000 baht ; C will receive only 10,000 baht and will come for the surplus as an ordinary creditor in bankruptcy.*

[248]

*II. — A mortgages his rice-mill to B for 50,000 baht. the mortgage being registered on the 5th. of January 2459, and to C for 25,000 baht, the mortgage being registered on the 1st. of May 2460. B is first and C second mortgagee. If A comes to reimburse to B the sum due to him the mortgage is extinguished as regards B. Then C becomes ipso facto the first mortgagee, and if, after B having been reimbursed, A mortgages his rice-mill to D for another 25,000 baht, D will rank as second mortgagee.*

747. — A later mortgagee cannot enforce his right to the injury of an earlier one.

*ILLUSTRATION. — On the 1st. of April 2452, A mortgages his land to B as security for the return of 5,000 baht borrowed from B at 10% and to be reimbursed on the 1st. of April 2462. On the 1st. of June 2454, A mortgages again his land to C for the return of 500 baht borrowed from C at 5% and to be reimbursed on the 1st. of June 2457. On that date A does not perform his obligation to C. Supposing C is then allowed to enforce his right on A's land, that land will be sold by auction, say for 10,000 baht, out of which 5,000 baht and interest are first paid to B and 500 baht and interest are afterwards paid to C. B is thus reimbursed five years before the date provided in his contract with A. B is injured by this anticipated reimbursement because he will get no interest on his money until he has found a new investment for it. Moreover he is exposed to find a new investment only at a lower rate of interest or without mortgage security. C cannot therefore be allowed to enforce his right on A's land as long as A's obligation to B has not become due unless C offers to B a good investment for his money at the same rate of interest, with*

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*the same mortgage security and for the same period of time as is provided in his contract with A, or unless B agrees to the anticipated reimbursement of A's debt.*

748. — The nett proceeds of the auction shall be distributed to the mortgagees according to their ranks, and the [ ] surplus, if any, shall be delivered to the mortgagor.

749. — If the estimated value of the property, in case of transfer, or the nett proceeds, in case of auction, are less than the amount due, the debtor of the obligation remains liable for the difference.

750. — If a mortgage extends to several properties and no order has been fixed, the mortgagee can enforce his right upon such of them as he may select, provided that he does not do so upon more properties than is necessary for the satisfaction of his right.

751. — The mortgagee who intends to enforce the mortgage against the transferee of a mortgaged property must notify the transferee by registered letter of his intention one month before applying to the Court.

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## CHAPTER V.

### RIGHTS AND DUTIES OF THE TRANSFEE OF A MORTGAGED PROPERTY.

752. — The transferee of a mortgaged property may remove the mortgage, provided that he be not the principal debtor, a surety or an heir of either of them.

*ILLUSTRATION. — I. — A mortgages his land to B as security for the performance of an obligation due by C. Later on C buys A's land (or is given such land by A). C, although the transferee of a mortgaged land, cannot remove the mortgage because he is personally liable for the performance of the obligation secured.*

*II. — A mortgages his land to B as security for the performance of his obligation. C stands also as security for the performance of A's obligation. A dies and his estate devolves on C. C, although the transferee of a mortgaged land, cannot remove the mortgage because he is*

*personally liable for the performance of the obligation secured.*

753. — The transferee may remove the mortgage at any time until, or within one month after he has been notified by the mortgagee of his intention to enforce the mortgage.

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754. — The transferee who wishes to remove the mortgage must offer to all the registered creditors to pay such sum of money as he thinks fit.

755. — The form of the offer may be made to contain the following particulars :

- 1) the place and description of the mortgaged property,
- 2) the date of transfer of ownership,
- 3) the name of the former owner,
- 4) the name and residence of the transferee,
- 5) the sum offered,
- 6) a calculation of the total amount due to each of the creditors including accessories, and of the sums which would be distributed to them according to their respective ranks.

A certified copy of the entries in the official register referring to the property mortgaged will be enclosed.

756. — If all the creditors accept the offer, the mortgages, and preferential rights, **is** any, are removed by the payment of the sum offered.

757. — If a creditor refuses the offer, he is entitled to apply to the Court within one month from the date of the offer, for an order to have the mortgaged property sold by public auction, provided that he notifies his refusal to the transferee and to the other registered creditors.

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The transferee can bid at the auction.

758. — If the nett proceeds of the auction are not more than the sum offered by the transferee, the creditor demanding sale shall bear the costs of the auction.

759. — If a creditor does not answer the offer of the transferee within one month from the date of the offer, the mortgage or preferential right is removed by the transferee depositing in lieu of performance the sum offered to such creditor.

760. — If the transferee who has been notified by the mortgagee of his intention to enforce the mortgage does not either perform the obligation or remove the mortgage, the mortgage is enforced against him in the same manner as if it were to be enforced against the mortgagor.

761. — Any right over the mortgaged property existing in favour of the transferee before the transfer and extinguished by merger in consequence of the transfer, shall revive in his favour when the enforcement or the removal of the mortgage results in the transfer of the ownership to another person.

*ILLUSTRATION.* — *A has a right of passage on B's land. He buys that land. His right of passage is extinguished by me***g[r]***ger.*

[253]

*But B's land was mortgaged to C who, being unpaid by B, enforces his right on the mortgaged land. Such enforcement results in the sale by auction of the land which is bought by D. A being no longer the buyer of the land, the right of passage revives and can be exercised on D's land as it was when the land was owned by B.*

762. — In case of enforcement or removal of mortgage, if the value of the mortgaged property has been reduced by the fault of the transferee, he is liable to pay compensation to the mortgagee up to the extent of the injury suffered by him thereby.

763. — In case of enforcement or removal of mortgage, if the value of the mortgaged property has been increased by the transferee, he is entitled to reimbursement of his expenses out of the

proceeds of the sale up to the amount of the increase of value at the time of the auction.

## CHAPTER VI. EXTINCTION OF MORTGAGE.

764. — A contract of mortgage is extinguished :

- 1) by the total loss, or expropriation, of the mortgaged property ;
- 2) by the extinction of the obligation secured ; [254]
- 3) by the release of the mortgage granted in writing to the mortgagor ;
- 4) by the discharge of the mortgagor ; 5) by the removal of the mortgage ;
- 6) by the auction sale of the mortgaged property by order of the Court;
- 7) by the transfer of the ownership of the mortgaged property to the mortgagee.

765. — The mortgagee can enforce the mortgage even after the obligation secured has been extinguished by prescription, but the arrears of interest on mortgage cannot be enforced for more than five years.

766. — When a contract of mortgage is extinguished, the owner of the property concerned is entitled to have such extinction registered by the competent official.

767. — The mortgagor is entitled to have any part performance, or any discharge, or any agreement reducing the number of the mortgaged properties or the amount of the obligation secured, registered by the competent official.

Any such part performance, discharge, or agreement, cannot be set up against the buyer of the mortgagee's right unless it has been

registered.

## CHAPTER VII. REGISTRATION.

[255]

768. — The registration concerning mortgage shall be made at the Registry Offices, the number, places, districts ~~and~~[and] competency of which are fixed by the special laws and regulations relating thereto.

769. — The parties who apply for the registration of contract of mortgage must:

1) make to the Registrar a statement of the terms of the agreement;

2) produce to him the land certificate, or, in case of movables, the registration certificate of the property concerned.

770. — On such application, the contract is drawn up according to the statement of the parties, and the Registrar shall enter on the certificate and on the Register counterfoil a summary of the contract showing the names of the parties, the nature of the obligation and the maximum amount for which the mortgaged property is security, the rate of interest, the date of maturity of the obligation, the date of registration.

771. — The person who applies for registration of an alteration or extinction of the mortgage must produce to the Registrar the land certificate, or, in case of movables, the registration certificate of the property concerned, and the document supporting his application.

[256]

772. — On such application the Registrar shall enter on the certificate and on the Register counterfoil the alteration or extinction of the mortgage, and the date of such entry, and he shall annex thereto the documents produced.

773. — If in the opinion of the Registrar the application does not

comply with the provisions of law, the Registrar shall decline to proceed with the registration until he has received an order of the Court to register.

He must however make on the certificate and Register counterfoil a note stating the fact and date of the application.

If the Registrar afterwards proceeds with the registration, such registration shall be deemed to have been made on the date of the application.

774. — When an alteration or extinction of the mortgage has been registered otherwise than with the consent of the mortgagee or by an order of the Court, the mortgagee may have such registration cancelled by the Court if he proves that in fact there had been no alteration or extinction of the mortgage.

On registration of the cancellation, the mortgagee shall be restored in his right and rank.

775. — Every person is entitled to consult the register's during the Office hours, without removing the books, and to obtain from the Registrar a certified copy or abstract of all the entries and documents relating to the mortgaged property, on payment of such fees as may be fixed by the competent Minister.

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## TITLE XII.

### PLEDGE.

#### CHAPTER I.

#### GENERAL PROVISIONS.

776. — A contract of pledge is a contract whereby a person, called the pledgor, agrees to deliver to another person, called the pledgee, a movable property, called pledge, as a security for the performance of an obligation to the pledgee.

*ILLUSTRATION.* — A has made a contract with B according to which it is agreed that A's golden watch is sold to B with right of redemption for 200 baht and that A will pay 1% interest per month on that price until he redeems the golden watch. It is obvious that this so-called sale with right of redemption is made by way of security for reimbursement of the price which is only lent to A. The contract entered into between A and B cannot therefore be considered as a contract of sale with right of redemption, but in case of discussion it shall be considered as a contract of pledge : that is to say A remains the owner, and is at the same time the pledgor, of his golden watch : B is only the pledgee of the golden watch, and should the 200 baht not be reimbursed to him, he cannot dispose of the watch otherwise than provided by the chapter of this Code concerning enforcement of pledge.

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777. — A contract of pledge is complete only on delivery of the pledge.

778. — A property which is not transferable cannot be pledged.

779. — A movable property which is already mortgaged cannot be pledged.

780. — The pledge is security for the performance of the obligation and for the following accessories :

- 1) Interest, if any.
- 2) Compensation in case of non-performance of the obligation.



3) Costs of enforcement of the right of pledge.

4) Expenses for the preservation of the pledge.

5) Compensation for injury caused by non-apparent defects of the pledge.

781. — The parties to a contract of pledge can agree that the pledge shall be kept by a third person.

[259]

782. — A property pledged to a person may be pledged to another person during the continuance of the first contract.

If the first pledgee has been notified in writing of the existence of the second contract of pledge, the following rules apply:

1) The first pledgee is bound, after the obligation due to him has been performed, to deliver the pledge to the second pledgee.

2) If the first pledgee has enforced the pledge and sold it by public auction, he must deliver to the second pledgee the surplus of the nett proceeds, if any.

If no notification in writing of the second contract of pledge has been made to the first pledgee, the first pledgee is under no obligation to the second pledgee.

*ILLUSTRATION. — I. — A borrows 500 baht from B and delivers to B as pledge gold ornaments. Before repaying the 500 baht to B, A borrows another sum from C and agrees with C that he shall pledge to C the gold ornaments already pledged to B. If no notification in writing of the second contract is made to B, B is under no obligation to C.*

*II. — If B is notified in writing of the existence of the second contract of pledge, B is bound, on A repaying the 500 baht, to deliver the gold ornaments to C. If A does not repay the 500 baht and B sells the gold ornaments according to law and the nett proceeds of the auction reach 600 baht, B can appropriate 500 baht and must deliver the surplus, viz. 100 baht to C.*

[260]

783. — If the pledge is a right represented by a written instrument, the contract of pledge is void ~~nn~~[un]less such instrument be delivered to the pledgee and the contract of pledge be notified in writing to the debtor of the right.

784. — Instruments to bearer may also be pledged by mere delivery.

785. — If the instrument is transferable by indorsement, the contract of pledge is void unless the pledgor indorses such instrument to the pledgee and the indorsement shows that it was made for the purpose of pledge.

No notification to the debtor of such instrument is necessary.

786. — If the instrument is a share certificate or other such instrument issued to a named person and not transferable by indorsement, the contract of pledge is void unless such instrument is pledged by making on it a statement to that effect.

No notification to the debtor of such instrument is necessary.

787. — If a pledged right becomes due before the obligation for which it is security is due, the debtor of such right must deliver to the pledgee the property due. The property delivered constitutes a pledge in lieu of the pledged right. If the property delivered is money, it shall be appropriated to the performance of the obligation.

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*ILLUSTRATION. — I. — On April 1st. 2455, A lets out to B a steam launch for a period of 6 months. A document of lease is made, in which it is provided that on October 1st. 2455 B shall return the launch to A. On the 1st. of June 2455, A borrows from C 1,000 baht to be returned on the 1st. of January 2455 and wishes to give to C as security his rights over the steam launch. A delivers to C the document of lease and gives to B a notice in writing of the contract. On the 1st. of October, B must deliver the steam launch to C. The steam launch becomes a pledge in the hands of C as security for the return of the 1,000 baht.*

*II. — On April 1st. 2455, A borrows from B 1,000 baht to be returned on April 1st. 2456. A endorses to B as pledge a promissory note of 500 baht made by C to the order of A and payable on January 1st. 2455. On January 1st. 2455, C must pay the 500 baht to B, who shall appropriate them as part payment of the 1,000 baht due to him.*

788. — If a right is pledged, it cannot be extinguished or modified to the injury of the pledgee without the consent of the pledgee.

789. — In the cases when a property is pledged by a person other than its owner, the contract is voidable unless the pledgee has received the pledge believing in good faith that the pledgor is the owner, or unless the owner authorizes or ratifies the contract, or unless the pledgor becomes owner of the property.

[262]

If the property pledged is a property lost or a property obtained through an offence or the pledging of which constitutes an offence, the contract of pledge is void.

790. — If a person who has pledged property as a security for the performance of an obligation by another person performs the obligation, he is entitled to recover from that person the amount of the performance.

*ILLUSTRATION.* — A owes 500 baht to B. C agrees to pledge to B gold ornaments as security for payment of A's debt. On the debt of A becoming due, C pays 500 baht to B and withdraws the gold ornaments. C is entitled to recover 500 baht from A.

791. — If a person has pledged property as a security for the performance of an obligation by another person and the pledge is enforced, the owner of the pledge is entitled to recover from such person the amount up to which the pledgee has been satisfied by such enforcement.

*ILLUSTRATION.* — A owes 500 baht to B. C agrees to pledge to B gold ornaments as security for the payment of A's debt. A does not pay the debt. The pledge is enforced and the ornaments are sold by auction. The nett proceeds of the auction are 400 baht, which are appropriated by B. C is entitled to recover 400 baht from A.

792. — The provisions of this Title XII apply to contracts of pledge entered into with licensed pawnbrokers only in so far as they are not contrary to the laws or regulations concerning pawnbrokers.

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## CHAPTER II.

## RIGHTS AND DUTIES OF PLEDGOR AND PLEDGEE.

793. — The pledgee is entitled to retain the pledge until he has received full performance of the obligation and accessories.

794. — The pledgee is bound to keep the pledge in safe custody and take as much care of it as a person of ordinary prudence would take of his own property.

795. — The pledgee is not allowed, without the consent of the pledgor, to use the pledge or to let a third person have the use or custody of it.

796. — If the pledgee acts contrary to any of the provision[s] of section 795, he becomes liable for any loss or damage caused to the pledge, even by *force majeure*, unless he proves that the pledge would have been lost or damaged even if he had not acted contrary to such provision[s].

797. — The pledgee must collect the interest and profits of the pledge and appropriate them to the performance of the obligation and accessories.

[264]

798. — The pledgor is bound to reimburse the pledgee for any expenses which were necessary for the preservation or maintenance of the pledge, unless such expenses were incumbent upon the pledgee under the contract of pledge.

799. — The pledgee is bound to return the pledge to the pledgor when the obligation and accessories are extinguished.

800. — The following liabilities are extinguished by prescription six months after the return of the pledge or its sale by auction:

1) The liability for compensation for damage caused to the pledge by the pledgee.

2) The liability for reimbursement of expenses incurred for the preservation or maintenance of the pledge.

3) The liability for compensation for injury caused to the pledgee by non-apparent defects in the pledge.

### CHAPTER III. ENFORCEMENT OF PLEDGE.

[265]

801. — If the obligation and accessories for which the pledge is security are not performed, the pledgee is entitled to have the pledge enforced in the manner described in the following sections.

802. — The pledgee must first notify by registered letter the debtor to perform the obligation and accessories within a reasonable time to be fixed in the notice.

If the debtor fails to comply with the notice, the pledgee can sell the pledge by public auction.

The pledgee must notify the pledgor by registered letter of the day and time when, and of the place where, the auction shall be held.

803. — If notification is impossible, the pledgee can sell the pledge by public auction one month after the obligation became due.

804. — The buyer of a pledge duly sold by public auction acquires over it the same rights as if he had bought it from the owner.

805. — The pledgee of a bill is entitled to collect it on the day of its maturity without previous notification.

806. — If the pledge is a sum of money, the pledgee is entitled to appropriate it up to the amount of the obligation and accessories.

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807. — The pledgee must appropriate the nett proceeds of the public auction or of his collection to the extinction of the obligation

and accessories and must return the surplus, if any, to the pledgor.

If the proceeds are less than the amount due, the debtor of the obligation remains liable for the difference.

808. — If several properties are pledged as security for one obligation, the pledgee can sell such of them as he may select, but he cannot sell more than required for the satisfaction of his claim.

809. — As long as the obligation is not due, the pledgor cannot agree that the pledgee shall, in case of non-performance, become the owner of the pledge or dispose of it otherwise than as provided by this Chapter.

*ILLUSTRATION. — On April 1st, 2455, A borrows from B 500 baht to be returned on April 1st, 2456, A pledges gold ornaments to B as security for the return of the money. Until April 1st, 2456, A cannot agree with B that B shall keep the ornaments as payment of the 500 baht or that B [shall] sell the ornaments privately. But A and B can make any such agreement on or after April 1st, 2456.*

## CHAPTER IV.

[267]

### EXTINCTION OF PLEDGE.

810. — A contract of pledge is extinguis[h]ed :

1) When the obligation for which the pledge is security is extinguished otherwise than by prescription, or

2) When the pledgee allows the pledge to remain in, or to return into the possession of the pledgor.

## TITLE XIII. WAREHOUSING.

### CHAPTER I. GENERAL PROVISIONS.

811. — A warehouseman is a person whose business is to receive goods for storage in a warehouse, for remuneration.

812. — The provisions of Sections 658, 660 to 665, 668, 669, 670, 672, 676 and 678 concerning deposit apply to warehousing in so far as they are not contrary to the provisions of this Title XIII.

813. — The warehouseman is liable for any loss or damage caused to the goods unless he proves that such loss or damage has been caused by *force majeure* or by the nature of the goods. [268]

814. — The warehouseman is liable for the loss or damage caused by apparent defects in the packing of the goods stored if he accepted them without reservation.

815. — The warehouseman is not liable for the loss or damage caused by non-apparent defects in the packing of the goods.

816. — If the goods are of a dangerous nature or are likely to cause injury to persons or property, the depositor must declare their nature to the warehouseman on making the contract of warehousing, otherwise he will be liable for any injury caused by them.

817. — A provision in a warehouse receipt excluding or limiting the liability of the warehouseman is void, unless the depositor expressly agreed to such exclusion or limitation of liability.

818. — The warehouseman is bound to allow the holder of the

warehouse receipt and the holder of the warrant to inspect the goods at any reasonable intervals during business hours and to take samples.

819 — No compensation is due for loss or damage discoverable from the external condition of the goods if the goods were withdrawn without express reservation.

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820. — 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 be given to the warehouseman within eight days after withdrawal.

821. — If no time for the return of the goods was fixed, the warehouseman can return the goods at any time on giving three months notice to the depositor.

822. — If the remuneration due is not paid, the warehouseman is entitled to retain the goods, provided that the depositor or the holder of the warehouse receipt 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 remuneration, or.

9) Ordering the warehouseman to return the goods on the depositor or the holder of the warehouse receipt giving security for the remuneration.

823. — If the depositor or the holder of the warehouse receipt does not withdraw the goods at the proper time, or does not pay the remuneration due, the warehouseman can notify the depositor by registered letter to withdraw the goods and pay the remuneration within a reasonable time to be fixed in the notice.

If the depositor fails to comply with the notice, the warehouseman can sell the goods by public auction.

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The proceeds of the public auction must be appropriated as provided by Sections 839 and 840.



## CHAPTER II.

## WAREHOUSE RECEIPT AND WARRANT.

824. — If required by the depositor, the warehouseman must deliver to him a warehouse receipt and a warrant.

825. — The warehouse receipt is a document by the indorsement of which the rights and liabilities of the depositor are transferred to the indorsee.

826. — The warrant is a document by the indorsement of which the goods mentioned in it may be pledged to the indorsee without being delivered to him.

827. — The warehouse receipt and the warrant must each bear a serial number and contain the following particulars :

- 1) The name or trade name and the address of the depositor.
- 2) The place of storage.
- 3) The remuneration for storage. [271]
- 4) The nature of the goods stored, their weight or bulk and the nature, number and marking of the packages, if any.
- 5) The place where, and the time when, the receipt and the warrant are made out.
- 6) The period for which the goods are stored, if any has been fixed.
- 7) If the goods stored are insured, the amount of the insurance, the period for which the goods are insured and the name or trade name of the underwriter.

The receipt and the warrant must each be signed by the warehouseman.

828. — The fact and date of the issue of the warrant and the

serial number of such warrant must be stated in the warehouse receipt.

829. — The fact of the issue of the warehouse receipt and warrant must be entered in the books of the warehouseman together with the particulars and serial numbers of such warehouse receipt and warrant.

830. — The holder of a warehouse receipt can require the warehouseman to divide the goods stored and to deliver to him a separate warehouse receipt for each part. In such case, the holder must return the original warehouse receipt to the warehouseman.

The expenses for such division and for the delivery of the new receipt or receipts must be borne by the holder. [272]

831. — The ownership of the goods stored can be transferred only by indorsement on the warehouse receipt.

832. — The goods stored can be pledged only by indorsement of the warrant. After the warrant has been indorsed, the goods may be pledged to a second pledgee by indorsing the warehouse r[e]ceipt in the same way as a warrant.

833. — As long as the goods stored are not pledged, the warehouse receipt and the warrant cannot be transferred separately.

834. — The first indorsement on a warrant must mention the amount of the obligation for the security of which the goods are pledged, the interest to be paid and the day of maturity of the obligation.

The same particulars must be noted by the first pledgee on the warehouse receipt with his signature, otherwise the first pledgee and the subsequent pledgees cannot set up their right of pledge against the holder of the warehouse receipt.

835. — The delivery of the goods stored can be obtained only on

surrender of the warehouse receipt.

836. — If a warrant has been issued, the delivery of the goods can be obtained only on surrender of both the warehouse receipt and the warrant. [273]

However, the holder of the warehouse receipt can at any time have the goods returned to him on depositing with the warehouseman the whole amount of the obligation entered in the warrant, with interest up to the date when the obligation is due.

The amount so deposited must be paid by the warehouseman to the holder of the warrant upon surrender of such warrant.

837. — If the obligation for which the goods have been pledged is not performed on the day of its maturity, the holder of the warrant is entitled to have the goods sold by public auction by the warehouseman, provided that the public auction shall not be held less than eight days after the day of maturity of the obligation.

838. — The holder of the warrant must notify the depositor by registered letter of the day and time when, and of the place where, the auction shall be held.

839. — The warehouseman must deduct from the nett proceeds of the public auction, the sums due to him in connection with the storage, and out of the balance he must, on surrender of the warrant, pay to the holder thereof the amount due to him.

Any surplus must be paid to the second pledgee on surrender of the warehouse receipt or, if there is no second pledgee or after he has been satisfied, to the holder of the warehouse receipt. [274]

840. — If the nett proceeds of the public auction are not sufficient to satisfy the holder of the warrant the warehouseman must return the warrant to the holder stating thereon the amount paid, and make an entry thereof in his books.

841. — The holder of the warrant can have recourse for the

amount unpaid against all or any of the prior indorsers, jointly or separately, provided that the public auction has been held within one month after the day of maturity of the obligation.

842. — As far as circumstances admit, the provisions of this Code concerning promissory notes apply to warrants and to warehouse receipts indorsed as warrants.

843. — If a warehouse receipt or a warrant has been lost or stolen, the holder on giving proper security can require the warehouseman to deliver him a new receipt or warrant.

## TITLE XIV.

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### AGENCY.

#### CHAPTER I.

#### GENERAL PROVISIONS.

844. — A contract of agency is a contract whereby a person, called the principal, directs another person, called the agent, to act for him and the agent agrees to do so.

845. — Agency may be express or implied.

846. — An employee is presumed to have an implied authority to do for his employer whatever is customary in the course of his employment.

847. — The *compradore* of a Bank is presumed to have no authority to bind his employer.

848. — Unless refused at once, an offer of agency is deemed to be accepted by the agent if it refers to acts to be done in the ordinary course of his business or which the agent offered to do by a notice or advertisement addressed to the public.

849. — Acts done by an agent on behalf of an incapacitated principal are valid only in so far as they would be valid if done by the incapacitated person himself.

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*ILLUSTRATION.* — *A, a minor, directs B, his agent, to buy a ship for him. This act is beyond A's capacity, and its consequences are likely to cause injury to A. The contract of sale would be voidable if entered into by A himself. It is also voidable when entered into by B on behalf of A.*

850. — Agency is void in so far as the principal directs the agent to do acts which by nature or by law cannot be done through representatives.

851. — The principal who employs an incapacitated person as an agent is bound by the acts of that agent in the same way as if he was capable.

But the liability of the agent to the principal is governed by the provisions concerning capacity.

852. — If the principal appoints an agent without limiting or specifying the nature or extent of his authority, the agent is said to have a general authority.

853. — If the nature or extent of his authority is limited or specified, the agent is said to have a special authority.

854. — The agent who has a special authority can do on behalf of his principal whatever is necessary for the due execution of the matters entrusted to him. [277]

855. — The agent who has a general authority can do anything on behalf of his principal, except:

- 1) Sell immovable property.
- 2) Make a gift.
- 3) Make a compromise.
- 4) Enter an action in Court.
- 5) Submit a dispute to arbitration.

856. — In case of emergency, the agent can do in order to protect his principal from loss all such acts as would be done by a person of ordinary prudence in his own case.

*ILLUSTRATION.* — *A, of Bangkok, is the agent of B, of Chiangmai, with a general authority, B is creditor of C, of Bangkok, but, when A becomes aware of it only five days remain before B's right is extinguished by prescription. A cannot get a special authority from B for entering an action in Court against C before these five days have elapsed. A can nevertheless enter such*

*action in Court on behalf of B.*

857. — The agent is only entitled to receive a remuneration in the cases provided by agreement or by custom.

858. — If several agents have been appointed by the same principal for the same matters, it is presumed that they cannot act separately.

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## CHAPTER II.

### DUTIES OF THE AGENT TO THE PRINCIPAL.

859. — The agent is bound to act for his principal according to the directions given by the principal or, in the absence of such directions, according to the custom and with such care as may be expected from a person of ordinary prudence.

If the agent acts otherwise, he must make compensation for any injury which the principal may sustain therefrom ; and, if any profit accrues, he must account for it to the principal.

860. — If required, the agent must at any reasonable time give information to his principal as to the condition of the matters entrusted to him.

861. — After determination or extinction of the agency, the agent must as soon as possible report to the principal how the matters have been executed.

862. The agent must transfer to the principal the rights which he has acquired in his own name but on behalf of the principal.

863. — The agent must hand over to the principal all the monies and other properties which he receives in the execution of the agency.

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864. — If the agent has used for his own benefit money which he

ought to have handed over to the principal or to have used for the principal, he must pay interest thereon from the day when he used it for his own benefit.

### CHAPTER III.

#### DUTIES OF THE PRINCIPAL TO THE AGENT.

865. — The principal is bound to reimburse the agent for any advances made or expenses incurred by him in his capacity as agent and within the scope of his authority.

Interest is due by the principal to the agent on such advances or expenses from the day when they were made.

866. — The principal is bound to make compensation to the agent for the consequences of acts done by him in his capacity as agent and within the scope of his authority.

867. — The principal must, if so required, advance to the agent such sums as are necessary for the execution of the matters entrusted to him.

868. — The remuneration of the agent shall be fixed by agreement. In the absence of any agreement, it shall be governed by custom.

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869. — In the absence of any agreement or custom as to the time of payment, remuneration is payable only after the determination or extinction of the agency.

870. — The agent is not entitled to remuneration in respect of that part of his agency which he has misconducted.

871. — The agent can withhold, out of any sum received by him on account of the principal in the execution of the agency, all monies due to himself for advances, expenses or remuneration.



872. — If any of the monies due to the agent are not paid, the agent can exercise over any property of the principal in his possession by reason of the agency the rights described in Sections 673, 674 and 675 concerning deposit.

#### CHAPTER IV.

##### LIABILITY OF PRINCIPAL AND AGENT TO THIRD PERSONS.

873. — The principal is bound to third persons by the acts which the agent has made within the scope of his authority and in the name of the principal.

A limitation of authority which is not customary or is not inherent in the nature of the matters entrusted cannot be set up against third persons who had no knowledge of it.

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*ILLUSTRATION.* — *A, a general outfitter in Bangkok, has appointed B as his agent, manager of a branch in Chiangmai. But B's authority is limited ; B has no power to sign receipts. This limitation is not customary. If B signs a receipt to C who has no knowledge of such limitation, such receipt shall stand good and C can set it up against A's claim.*

874. — A person who expressly or impliedly represents another person as his agent or knowingly allows another person to be represented as his agent, is liable to third persons in good faith in the same way as if such person was his agent.

875. — A principal who represents his agent or knowingly allows his agent to be represented as having a wider authority than he actually has is liable to third persons in good faith in the same way as if the agent had such wider authority.

876. — If a person does an act without authority or beyond the scope of his authority such act does not bind the principal unless he expressly or impliedly ratifies it.

877. — If the principal does not ratify the act, the person who has acted as agent is personally liable to third persons, unless he proves that such third persons knew that he was acting without

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authority or beyond the scope of the authority.

878. — A principal is not bound by a contract entered into by his agent with a third person, if the contract was entered into by the agent in consideration of any property or other advantage given or promised to him by such third person.

879. — Notifications made by, or to the agent within the scope of his authority are deemed to be notifications made by, or to, the principal.

## CHAPTER V. EXTINCTION OF AGENCY.

880. — Agency is extinguished in the following cases :

- 1) By the execution of the agency being completed.
- 2) If the authority was given for a limited period of time, by the expiration of such time.
- 3) By the death of the principal or of the agent.
- 4) By the principal becoming incapacitated.

881. — Agency is determined by the principal revoking the authority or the agent renouncing the agency.

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882. — The principal can revoke the authority and the agent renounce the agency at any time. The party who determines the agency at a time which is inconvenient to the other party is liable to such party for any injury resulting therefrom, unless the determination of the agency was caused by some unavoidable necessity.

883. — When agency is extinguished by the principal dying or becoming incapacitated, the agent is bound to take all reasonable steps to protect the interests entrusted to him until the heirs or representatives of the principal can themselves protect such interests.

884. — When agency is extinguished by the death of the agent, the heirs of the agent are bound to notify the principal and to take all reasonable steps to protect the interests entrusted to the agent until the principal can himself protect such interests.

885. — The principal is bound to the agent for the acts done by him before he knew or ought to have known of the determination or extinction of the agency.

886. — The agent is bound to the principal to continue the execution of the agency until the time when the principal knows or ought to have known of the renunciation by the agent. [284]

887. — The principal is not bound to third persons for the consequence of acts done by the agent after determination or extinction of the agency, if such persons knew or ought to have known of the extinction.

888. — Determination or extinction of the agency for any cause whatsoever is deemed to be known to third persons after three successive advertisements in a local paper.

889. — On determination or extinction of the agency the principal can require the surrender of any written authority delivered to the agent.

## CHAPTER VI.

### SUBAGENCY.

890. — The agent cannot appoint a subagent, unless he be allowed by the principal to do so, or unless by custom a subagent may be appointed.

891. — An agent who has appointed a subagent although he was not allowed by the principal or by custom to do so is liable for all the acts done by that subagent in such capacity. [285]

892. — The agent who has lawfully appointed a subagent is not liable to the principal for the acts done by the subagent unless the principal proves that the agent has not selected the subagent with such care as may be expected from a person of ordinary prudence.

893. — If the discretion left to the agent for the appointment of a subagent has been limited to persons designated by name by the principal, the agent is not liable for the acts done by any such subagent.

894. — The principal has a direct cause of action against the subagent for his rights arising out of the subagency.

895. — The subagent has a direct cause of action against the principal for his rights arising out of the subagency.

896. — The principal is bound to third persons by the acts done by a lawfully appointed subagent within the scope of the authority and in the name of the principal, in the same way as if such acts were done by the agent.

## CHAPTER VII.

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### IMPORTATION AGENTS.

897. — Importation agents, whether called agents, commission agents, representatives or otherwise are personally liable for the execution of the contracts entered into by them as such.