

DRAFT CIVIL and COMMERCIAL CODE.

BOOK

ON

Things.

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ABBREVIATIONS and REFERENCES.

Can. — Canadian Civil Code.

Dika. — Jurisprudence of the Dika Court,

F. — French Civil Code.

G. — German Civil Code.

I. — Italian Civil Code.

J. — Japanese Civil Code.

Maroc or M. — Morocco Regulations (Dahir) on immovables.

S. — Swiss Civil Code.

T. — Tunis Civil and Commercial Code.

P. C. — Penal Code of Siam.

DIVISION I.

GENERAL PROVISIONS.

TITLE I.

DIFFERENT KIND OF THINGS.

1. — Things are either immovable or movable.

F.516. G.90. J.86.

2. — All things that are not described by law as immovable are movable.

F.527, 528, 531, 532. S.653, 713. T.3, 4.

3. — The following things are immovable:

(1) land including water,

(2) buildings on land even made of wood or bamboo.

Siam Mortgage Act. 116 sect. 7. F.518. J.86. S.655. T.4.

4. — Anything which, by nature, or according to custom or to the intention of the owner of another thing, is joined, fixed, adapted or attached to such other thing for its permanent use, keeping or exploitation is an appurtenance of the principal thing.

When the appurtenance is temporarily severed from the principal thing, it does not cease to be an appurtenance.

Any act disposing of the principal thing extends to the appurtenance unless there be any agreement to the contrary.

F. 524. G. 95, 97, 926. I. 413,414. J. 242. S. 644.

Illustration: — The doors, shutters, rainpipes, locks and keys of a house, the fence of a garden-land, the machinery of a rice mill, being things which may be removed easily from one place to another, are movables. But they must be considered

respectively by their nature, the custom or the owner's intention, as fixed to the house, garden land or mill for its permanent use, keeping or exploitation: they must therefore be deemed to be appurtenances of the said house, garden-land or mill, and consequently they become immovable; contrary for instance to the motorcar in the house garage, to the fuel stored in the mill for heating the boilers, to the agricultural implements used for cultivating the garden — land, to the goods stored for sale in a shop or godown, to the furniture placed in a house to be let furnished.

In consequence, if a creditor is allowed by judgment to attach the movables of his debtor (the value of such movables being considered by the Court as sufficient to meet the creditor's claim) he shall not be allowed to attach the doors, shutters, etc. of his debtor's house, not the fence of his garden-land, not the machinery of his mill even though they have been removed temporarily from the house, garden-land or mill, e.g. for the purpose of repair. But he shall be allowed to attach them if they have been removed definitely, e.g. for being replaced by new ones. He shall be allowed also to attach the motorcar, fuel, implements, goods or furniture which may be found in his debtor's garage, mill, garden-land, shop, godown or house.

Likewise the buyer of a house, garden-land or rice mill shall be deemed, unless there is evidence to the contrary, to be the buyer of the house doors, shutters, etc., of the fence of the garden-land or of the machinery of the rice mill even if they have been removed temporarily for the purpose of repairs. He shall not be deemed to be the buyer of the same if they have been removed and replaced by new ones. The buyer of a house, shall no more be deemed to have bought the motorcar in the house garage; the sale of a garden shall not include the goods stored therein, etc.

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5. — Trees of all kind, when planted for an unlimited period of time, are appurtenances of the immovable on which they stand as long as they have not been cut. The fruit, leaves or flowers of a tree are appurtenances thereof as long as they have not been plucked off.

Harvest which may be cropped once or several times per year are movable.

Dika Nos. 140/120; 386/122.

6. — Animals are movable even when they are attached to an immovable for its exploitation.

F. 522, 524, 528. T. 8, 10.

7. — Profits denote the products of a thing as well as any benefits derived from the use of such thing.

G. 100.

8. — Products of a thing denote all that which is obtained in the use of such thing according to its nature or destination, such as the fruit of the trees, the milk, hair, wool of the animals and their offspring.

Products are acquired at the time when they are severed from the thing.

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F. 547, 582 to 586. S. 643. G. 99, 100. J. 88, 89.

9. — Interests of a thing denotes money or gain (such as rent, dividend on shares, interest on loans and debentures, etc.) obtained periodically by the owner from another person for the use of the thing by such other person.

Interests are calculated and acquired by day.

F. 586. J. 89.

10. — No real rights may be created other than those described by law.⁽¹⁾

F. 543. J. 175.

(1) In addition to the real rights described in this Book (ownership, possession, servitudes), other real rights which are admitted by the Siamese legislation (lease, pledge, mortgage – which is never established by law – rights of retention and preferential rights) are dealt with in the Book on Obligations.

TITLE II.

DOMAIN OF THE STATE.

11. — The domain of the State is divided into a public domain and a private domain.

F.538 to 541, 717. G.958, 959. J.230. S.659, 664, 718. T.1 Sept. 1885.

12. — The public domain of the State includes every kind of State properties which are, by nature or by designation, in use for the public interest or reserved for the common benefit, that is to say:

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- (1) all the unoccupied lands the ownership of which has never been granted to private persons;
- (2) the shore of the sea and harbours of any kind;
- (3) the highways, State railways, lakes and waterways;
- (4) the buildings and works of any kind erected by the State in the public interest or for common use (public palaces, fortresses and other military buildings, ministries, schools, museums, bridges, fountains, etc.);
- (5) the following movables: arms and am munitions for the service of the Army, Navy, Police and Gendarmerie, Warships, War aeroplanes, Museum collections;
- (6) all the things which are specifically included in the public domain by a Royal Decree.

13. — The private domain of the State includes every kind of State properties which are not included in the public domain under the foregoing Section, such as:

- (1) lands surrendered or abandoned by their owner without any other person being lawfully entitled to claim a right of ownership over them;
- (2) private palaces and buildings of any kind which are affected to the dwelling of officials, storing of movables belonging to the State, etc.;
- (3) movables used for the management of the Ministries, Departments or Offices of the State (such as furnitures of the Palaces or Administrative offices, cars or boats for public ceremonies and festivals, horses or other

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animals employed in the State services, etc.):

- (4) properties which are abandoned, or the owner of which is unknown, or the owner of which died without heirs or legatees, or which are transferred or forfeited to the State by contract, by will or by the effect of the law;
- (5) things lost or stolen the ownership of which devolves on the State according to the provisions of this Code or of the special laws relating thereto.

Illustration: — (4) Properties transferred or forfeited to the State by contract, by will or by the effect of law. Amongst such properties may be mentioned: the properties given by a tax-farmer as securities for the performance of his obligations and forfeited to the Treasury in case of non-performance of such obligations, —the properties given or bequeathed by a private person to the State or to a State Service (Government school or hospital, etc.); the treasure trove; —the smuggled goods seized by Customs officials, etc.

14. — No prescription or usucapion can be set up by private persons against the rights of the State on its public domain. [7]

15. — Things included in the public domain of the State cannot be disposed of except by Royal Decree provided the grant by the State of unoccupied lands to private persons, remains governed by the provisions of the Land, Mining and Forestry Laws.

Any act disposing of things included in the public domain of the State which is made without Royal Decree, or any grant of unoccupied lands which is made without complying with the substantial formalities of the Land, Mining and Forestry Laws, is void.

16. — Servitudes established by law cannot be exercised upon an immovable of the public domain except with the consent of the Government.

Such consent can always be withdrawn.

17. — No distress is available on things belonging to the State, whether included in the public or in the private domain.

18. — Except in the case provided in the foregoing Section, the private domain of

the State is governed by the same rules as things belonging to private persons.

*Illustrations: — I. — A dies without any heir or legatee, leaving a piece of land which beca[**o**]mes private property of the State. The competent government officials do not take any steps to show that such land is State's property. B settles upon it and cultivates it for twelve years. The Government officials who had hitherto made no objections to B's holding of the land, ask then for B's ejectment. B can validly set up usucapion against the State's claim.*

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II. — A, the owner of a piece of land, wishes to build a dwelling house on that land, but he is anxious to make sure beforehand that none of the adjoining owners will create on their respective lands an establishment likely to become a nuisance. He asks them to enter with him into an agreement creating on their lands a servitude to that effect. One of the adjoining pieces of land belongs to the private domain of the State. The competent government officials may enter with A into an agreement of the kind above referred to and render the State's land subject to a servitude.

III. — The competent government officials let to A a house belonging to the private domain of the State. The reciprocal rights and liabilities of the State and of A shall be governed by the provisions of law concerning hire of immovable property.

DIVISION II.

OWNERSHIP.

TITLE I.

ACQUISITION OF OWNERSHIP.

CHAPTER I.

GENERAL PROVISIONS.

19. — The ownership of things may be acquired: —

- (1) by the effect of law, or
- (2) by way of occupation, or
- (3) by way of usucapion, or
- (4) by way of inheritance, or
- (5) by the effect of obligations.

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F. 711, 712. I. 710.

20. — The acquisition of ownership on immovables by the effect of obligations is complete only by registration of the right of the owner in the Land Register.

S. 656, 1st. para., 657.

Illustration. — A sells to B a piece of land. Section 391 of the Code on Obligations provides that the sale of immovable properties is void unless made in accordance with the Land Laws. The Land Law (s. 41) specifies that such a sale must be made in writing and before the Registry Officer. The contract between A and B is

valid, and the ownership of the piece of land transferred to B if these formalities are complied with.

21. — As regards immovables which are acquired by the effect of the law, by way of occupation or by way of inheritance the right of ownership devolves, even before the registration, upon the acquirer, when he has complied with the conditions required by law. But he cannot set up his right against third persons or dispose of it until registration has been made.

J. 176, 177. S. 656 §2, 657, 662.

Illustration. — A has obtained from the Court a writ of execution which empowers him to have an immovable belonging to B seized and sold by auction in execution of a judgment. C buys the immovable. C is the owner of the immovable. But he cannot mortgage or sell it to another person before he has had his right of ownership registered. Supposing that, before any such registration, B sells the immovable to N, who is not aware of the seizure and sale by auction of the immovable, C cannot set up his right against N if N has had his right registered.

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22. — As regards immovables which are acquired by usucapion, the right of ownership devolves upon the possessor as soon as he has completed usucapion, and such possessor is then entitled to claim his registration as owner. But he cannot dispose of his right until registration has been made.

No transfer of immovables made by the original owner can be set up against the possessor after he has completed usucapion even when such possessor has not yet registered his right of ownership.

S. 662.

Illustration. — A has possessed a piece of land belonging to B openly and without interruption, for more than ten years. A is entitled to claim his registration as owner of the piece of land, but, as long as such registration has not been made, he cannot sell or mortgage the land. If, during the eleventh year, B sells the land to C and C claims the ownership of the land, A can oppose against B the transferor his right of acquisition by way of usucapion and against C the transferee the defence of the present section

23. — The acquirer of an immovable from an original owner who is known is entitled to require from him his assistance for the registration.

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24. — The Land Register shall contain a complete record of all rights and interests on the lands and buildings, of any transfer of ownership, and of lease over three years, mortgages, servitudes, preferential rights.

Immovables included in the public domain of the State are not registered in the Land Register unless real rights be created upon such immovables.

S. 912, 943, 944, 958.

25. — The organization of Land Register and the formalities and proceedings concerning registration or cancellation, publicity, etc. are regulated by the special law relating thereto.

(Cf. S. Title XXV.)

26. — 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 boats of burden can be acquired only by registration of the rights of the owner, in the same manner and conditions as immovables.

27. — The acquisition of ownership on movables other than those specified in the foregoing section cannot be set up against third persons unless the acquirer or transferee has taken possession of such movables.

J. 178.

Illustration: — On the 1st of April 2460, A buys from B the goods and furniture filling the building which B uses both as shop and dwelling house. Instead of taking at once possession of the said goods and furniture, A finds more convenient to agree with B that delivery will take place on the 1st of May only. On the 19th of April, C, a creditor of B, applies to the Court for a bankruptcy order against B and for the appointment of an interim receiver. On the 20th of April the Court appoints the interim receiver and directs him to take immediate possession of B's property. On the 21st the interim receiver attaches B's property including the goods and furniture sold to A. As these goods and furniture were movables which can be acquired without registration and were found in B's possession, their attachment is valid; A cannot claim them back as his own property; he can only, as an ordinary creditor, apply to

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the official receiver for the payment of such debts as may be substantiated by the non-delivery of the goods and furniture purchased.

CHAPTER II.

ACQUISITION BY THE EFFECT OF LAW.

28. — Things are acquired by the effect of law when the transfer of ownership results from the application of a law with or without the consent of the owner, such as in case of expropriation or requisition by the State, or of execution on goods by the State or by a private person empowered to do so' by the Civil or Criminal Procedure Laws, or of forfeiture to the State by application of the Penal Laws.

29. — Alluvial deposit formed by nature or by the work of man on the bank of a waterway or lake becomes the property of the riparian owner of the land. [13]

Siam Dika Nos.160/119, 482/125.

Fr.1. 8 April 1898. S.351, 556 to 558. G.69 law introduct.
Maroc, 19. S.659.

30. — Islands formed by alluvion in a lake or in a waterway, beds of waterways left dry, alluvion on the seashore and islands formed in the territorial waters become the property of the State.

F.557, 560. G.563. S.659. Maroc, 21.

31. — If an owner loses his land or a portion thereof in consequence of a change in the course of a waterway, such owner is entitled by priority to a portion of the old bed of the waterway provided he applies within one year to the Land Officer for grant thereof and such grant is duly registered.

The old bed of the waterway is considered as an unoccupied land.

32. — If a person has in good faith constructed a building on a piece of land owned by another person, the owner of the land shall become owner of such building; he must pay compensation to the constructor for any increase of value accruing to the land from the building and he is entitled to no compensation from the constructor for any decrease of value resulting from the same.

Cf. Obligations S.118. F.555. J.196. Maroc 18. S.671, 673.

Illustration: — See under section 33.

33. — If a person has in bad faith constructed a building on a piece of land owned by another person, he must at his own expense put the land in its former condition. [14]

If it is impossible to put the land in its former condition or it would be damaged thereby, the owner of the land shall become the owner of the building; he shall be liable to no compensation to the constructor for any increase of value accruing to the land from the building, and he shall be entitled to compensation from him for any decrease of value resulting from the same.

Cf. Obligations, S.119. Maroc. 18(1). S.672.

Illustrations for Sections 32 and 33: — A dies. No will being found, his estate devolves on B, who is the nearest statutory heir of the deceased. B builds a house on a piece of land included in A's estate. Then C, who was absent at the time of A's death, comes back, produces a will made by A in his favour and obtains from the Courts a final judgment declaring that he is the person on whom A's estate must devolve and ordering B to return the said estate to C. B has built his house on a land which belongs, not to him, but to C. If it is proved that he did not know of A's will in favour of C, he must be considered as being in good faith and S. 32 shall apply. If on the contrary, it is established that he knew of the will and kept it secret, he shall be considered as being in bad faith and Section 33 shall apply.

34. — If the conditional owner of a piece of land has constructed a building on it and the land becomes afterwards the property of another person by the effect of the condition, he may either put the property in its former condition at his own expense, or deliver it in such condition as it is; in the latter case, he shall be entitled to compensation from the new owner of the land for any increase of value accruing to the land from the building, but he shall be liable to compensation to him for any decrease of value resulting from the same. [15]

Cf. Dika No. 259/121.

Illustration: — A has sold a piece of land to B with a right of redemption. B is only the conditional owner of the land, that is to say, as long as the time for

redemption has not elapsed, he is the owner of the land only under the condition that A will not exercise his right of redemption. If B builds a house on that land before the time for redemption has elapsed and A redeems the land, B has built his house on a land which has become the property of another person and S. 34 applies.

B is entitled either to remove the house at his own expense, or to leave it to A. If B leaves it, he is entitled to receive from A a compensation amounting to the increase of value. If there has been a decrease of value, because for instance B has pulled down an existing house, B is liable to compensation to A.

35. — The three foregoing Sections apply *mutatis mutandis* to a person who, instead of constructing a building, has made a plantation or any other kind of work.

However, if the yearly harvest or crop is still to be made, the owner of the land must either allow the person in good faith or the conditional owner who has made the plantation to remain in possession of such land up to the time of the harvest or crop on payment of compensation based on the rental value of the same, or take at once possession of the land on payment to the other party of compensation for the loss of the harvest or crop.

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F.555. S.678.

36. — When the owner of a piece of land has in good faith constructed buildings on such land or made plantations or any other works from materials belonging to another person, he becomes the owner of such materials, but the other person is entitled to the payment of the value of those materials and compensation for injury if any.

F.554. Maroc. 17.

Illustration. — I. — A who wants to build a godown has ordered from B 500 sheet of corrugated iron. In consequence of a misunderstanding, the agent of A takes from B 500 sheet which had been delivered to C (e.g., loaded in a boat belonging to C) and were C's property. When the mistake is detected, the 500 sheet removed by A's agent have already been cut, pierced and screwed to the framework of A's godown. A has built his godown with materials belonging to C. A shall not be compelled to remove the sheet of corrugated iron and to return them to C; but he shall have to pay compensation to for any injury suffered by C in consequence of the mistake made by A's agent; e.g., he shall have to repay to C the purchase money paid by C to B; if C

cannot find 500 new sheet of corrugated iron but at a higher price than that paid for those removed by A's agent, A shall have to pay the difference; if C is a contractor and has been unduly delayed by the mistake of A's agent in the performance of a contract so that he has been compelled to pay a penalty clause, A shall have to repay to C that penalty clause.

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II. — A who wants to erect a landing-stage on the river in front of his compound cuts down some trees which he believes to be on his own land. In fact some of these trees were on B's land. When the mistake is detected, the trees have already been cut and used for the erection of the landing-stage. A has built his landing-stage with materials belonging to B. He shall not be compelled to pull down the landing-stage to return to B the wood belonging to the latter but he shall have to pay to B compensation for any injury suffered by B in consequence of A's mistake; e.g. he shall have to pay to B the value of the trees cut on B's land.

37. — If several movable things, belonging to different owners have been joined by the consent of such owners, and the union is such that the things can no more be severed from each other without injury or that the separation would entail excessive expense, the ownership of the composite thing belongs to the owner of the principal thing, provided he pays to the other person a compensation based on the value of the thing which belonged to such other person.

If there is no possible distinction of principal and appurtenance, the different owners become joint-owners of the composite thing in proportion to the respective value of the separate things at the time of union.

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G. 947. J. 243, 244. S. 726, 727.

Illustrations: — I. A and B agree to make an armchair out of teak wood belonging to A and wicker work belonging to B. When the armchair is finished both A and B claim the ownership of it. The teak wood as well as the wicker work can no more be separated without injury. As the teak wood is the principal thing the armchair belongs to A provided he pays to B the value of the wicker work.

II. — A and B who have both felled a few trees decide to use them to build a raft for fishing purposes. When the raft is made, both A and B claim the ownership of it. The logs of which the raft is made might still be severed from each other, but this would entail excessive expense and loss of all prospects of benefit for the fishing

season. There is besides no distinction possible of principal and appurtenance. The raft will belong to A and B jointly, in proportion to the number of logs which each of them has supplied for its construction.

38. — If two movable things, belonging to two different persons, have been united without the consent of one of such persons, the following rules shall apply:

- 1.— When the union is such as the two things can no longer be severed from each other, the person without whose consent the union was done shall become the owner of the new thing so created provided that if the other person was in good faith, the owner of the new thing pays to him the value of the thing which belonged to such other person.
- 2.— When the union is such as the two things can still be severed from each other, the person without whose consent the union was done is entitled to claim that the things be severed and that compensation be paid to him by the other person for any injury resulting therefrom.

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Illustration: — If, in the case described in the first illustration under the foregoing section, A has acted without B's consent, B shall be considered as the owner of the armchair, but, if A was in good faith, i. e. if it is established that A believed that the wicker work belonging to B was his own property. B shall pay to A the value of the latter's teak wood used for the construction of the armchair.

39. — If a material has, without the consent of its owner, been turned into a new form by a workman, it remains the property of the said owner without regard to the possibility or impossibility to turn the thing into its old form again. If the workman was in good faith, he is entitled to claim compensation for his work; if he was in bad faith, he is not entitled to such compensation, and is liable to pay to the owner compensation for injury if any.

However, when the value of the workmanship greatly exceeds the value of the material, the Court may decide that the thing becomes the property of the workman. In such case he shall be liable to pay compensation for the value of the material, and, if he was in bad faith, for injury if any.

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F. 570, 571. J. 246. S. 726.

Illustrations: — I. A has sawn into planks some logs which belong to B and which the latter intended to use for erecting the framework of a shed. The planks shall be considered as B's property; but, if A was in good faith and actually believed that the

logs belonging to B were his own property, B shall pay compensation to A for the work done in sawing the logs. If, on the contrary, A was in bad faith, he shall receive from B no compensation for having sawn the logs and shall in addition be liable to B for any injury suffered by the latter in consequence of A's doings; e.g. if B was a contractor and had undertaken to build the shed for C within a fixed time under a penalty clause, A shall be liable to reimburse to B the amount of the penalty clause paid by the latter to C for having not fulfilled his contract in time by A's fault.

II. — A carves a log belonging to B. The carving gives to the log a value much higher than that of the wood. The Court may decide that A shall be considered as the owner of the log, provided that A pays to B the value of such log and, if he was in bad faith, compensation for any injury suffered by B through the loss of his log, e. g. if B was compelled to buy a new log at a higher price than that of the lost log, A shall reimburse to B the difference.

CHAPTER III.

ACQUISITION BY WAY OF OCCUPATION.

40. — Any person may acquire the ownership of unoccupied lands belonging to the State by complying with the rules for “Grant of Unoccupied land” provided by the Land Laws.

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G. 927. S. 658, 662.

41. — The ownership of fish or game is vested in the person on whose land such fish or game is living.

The ownership of fish or game which pass from the land of one person to the land of another person without any fraud of the latter devolves on him.

The ownership of fish or game caught by a person or on his behalf in compliance with law, custom or agreement, devolves on such person.

F. 564. G. 960. S. 700.

42. — The ownership of a lost thing does not devolve on the finder. He is bound to inform the owner or the loser of such thing, or to deliver it within three days to a police officer or to any other competent official.

The finder is entitled to claim reimbursement of all reasonable expenses incurred by him for the detection of the loser and for the upkeep of the thing, and to avail himself thereanent of the preferential right for preservation of property described in the Book on Obligations.

If the finder has incurred damages therefrom, he can claim compensation and retain the thing until such compensation is paid to him.

Siam: Dika No. 9/123.

F. Circ. 3 August. 1825. G.965, 970. I.715, 717. S.700, 720. Civil Code, Obligations, s.324.

Illustrations for Sections 42 to 44. — I. The captain of a ship, in order to prevent her from sinking down during a storm, throws overboard a few scores of casks loaded on deck. One week later, the master of a junk finds these casks floating and picks them up. When he arrives at the next port of call, he must inform of his finding the owner of the casks or, if he cannot detect him, deliver the casks within three days of his arrival to the police or to the harbour or customs officers, or to the administrative head of the place, as the case may be. If the owner is found, he must reimburse to the master of the junk the cost of shipping of his casks from the place of discovery to the harbour.

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II. — By the effect of a sudden squall of wind or of an unexpected rise of the water level, A's river boat is torn from the landing stage to which it is made fast and carried away several miles down stream. It runs aground on the estate of B. B must inform A that A's boat has been found on B's estate or, if B cannot detect who is the owner of the boat, he must, within three days from that on which the boat has been found, deliver it to the police or to the administrative head of the place. If B has made advertisements in the papers to detect the owner of the boat, the latter shall reimburse to B the cost of such advertisements.

III. — A tiger attacks a herd belonging to B whilst that herd was grazing in the woods. A's ponies and buffaloes, frightened by the tiger, bolt away and are found by B on his estate situated at a distance of several miles from A's house. B must inform A that A's ponies and buffaloes have been found on B's estate or, if B cannot detect who

is the owner of the animals, he must deliver them, within three days from that on which they have been found, to the police or to the administrative head of the place. If A learns of the place where his ponies and buffaloes are and takes them back, he shall have to pay to B the cost of the fodder given by B to A's animals. If the ponies and buffaloes have damaged a plantation of rice belonging to B, B is entitled to retain such animals until A has paid to him compensation for the damage caused.

[23]

43. — The ownership of a lost or stolen thing which has been found or seized by, or deposited with, a competent official of the Government devolves on the State if the owner of such thing has not claimed it by a declaration to the Public Prosecutor or the Officers of the Judicial Police within one year from the day when the thing has been lost or stolen.

Laksana Rab Fong 11, 16. Dika No: 806/123. Laksana Chobr 76, 78. Law on Navigation Siam 61. State Railway tariff. Hackney Carriage Act 28. Town Police Law 27, 35. F.2279. G.973. J.193, 194, 240. S.722, 934.

44. — Lost thing, within the meaning of the two foregoing sections, includes everything which has been dropped into the sea, or has been washed ashore, or has by the strength of wind or of water, or otherwise by “force majeure” been withdrawn from the possession of its owner.

F.717. S.725.

45. — A treasure trove is a dug in, or otherwise hidden, valuable which is found without anybody being able to justify the ownership thereof.

The ownership of a treasure trove is vested in the State. The finder is bound to deliver it to a police officer or to any other competent official whereupon he shall receive one third of its value.

[24]

Trans. Land Act 119 s. 12. Laksana Ava Luang s.107. F.716. G.984. I.714. J.241. S.723.

CHAPTER IV.

ACQUISITION BY WAY OF USUCAPION.

46. — Acquisition of ownership by way of usucapion by the possessor is governed by the Division III dealing with Possession.

CHAPTER V.

**ACQUISITION BY WAY OF INHERITANCE OR BY THE EFFECT OF
OBLIGATIONS.**

47. — Acquisition of ownership by way of Inheritance or by the effect of Obligations is governed by the Law of Inheritance or by the Book on Obligations.

TITLE II.

EXTENT AND EXERCISE OF OWNERSHIP.

48. — The ownership of land extends above and below the surface, subject to the laws on mines and quarries.

Mining Act 120. F.552, G.905. J.207. S.667.

Illustration: — A, the owner of a piece of land, can erect on such land buildings as high as he likes or make excavations as deep as he thinks fit (subject to the restrictions imposed by law or legal regulations). He may object to the owners of the adjoining immovables making any work above or under his land, e.g. laying electric wires or water-pipes however high or deep these wires or pipes are laid (except in such cases as are provided by law). If his land contains any such mineral products as are worked by quarry or mine, he cannot work them but under the conditions provided by the Mining Law 01 object to another person working them in accordance with the provisions of the same Law.

[25]

49. — The ownership of a thing extends to:

- (1) profits and interest of such thing;
- (2) all natural or artificial appurtenances of such thing.

F.546, 551. J.206. Maroc. 12. S.642.

Illustration: — A is the owner of shares of a limited company; he is the owner of the dividends paid to him by the company.

A is the owner of a plantation of cocoanut-trees; he is the owner of the cocoanuts collected on his plantations.

A is the owner of a cow; he is the owner of the calf brought forth by his cow.

A is the owner of a ship; he is the owner of the money paid to him by the charterer of his ship.

A is the owner of a house; he is the owner of the doors, shutters, pipes, locks, etc. of his house.

A is the owner of a garden-land; he is the owner of the fruit-trees standing thereon.

[26]

50. — The owner has the right freely to use the thing and to dispose of it as he thinks fit, subject to the restrictions imposed by law.

When using his right, he must refrain from any act which would cause to the neighbouring properties more injury or inconvenience than is customarily tolerated according to the respective nature and situation of the properties.

He must take all reasonable steps in order to prevent any structures or trees standing on his property from collapsing on the adjoining property.

F.537. G.903, 906, 908, 909. J.200, 237, 238. S.641, 684, 685.

Cf. Siam, Local Sanitary Decree 116; Sanitary Regulation 117; Additional Law 117 to the Local Administration Act 116; Transitory Land Act 119, s.12.

Illustration: — A, the owner of a piece of land in Bangkok, may cultivate it himself, or hire it to another person for cultivation, or let it lie fallow; he can fell the trees standing on that land, build a dwelling house, or a store or a workshop on it, or turn it into a pond, as he likes, provided that he complies with the provisions of law enacted in the general interest or in the interest of the adjoining owners: for instance although A is entitled to erect any building he thinks fit on his land if the land is situated in any part of the town where "attap" roofs are forbidden by the Local Government regulations, he cannot cover it except with tiles or corrugated iron; although he is entitled to make excavations, he cannot make one of such nature as the neighbouring houses collapse (S. 52); although he is entitled to turn his land to such use as he thinks the more profitable, if the land is situated in a residential quarter, he cannot build on it a factory the smoke, stench or trepidation of which renders the neighbouring residences uninhabitable. In the first case, he would be liable to the penalties provided by law and in the other cases to pay compensation to the injured owners.

[27]

51. — The owner of an immovable cannot construct roofs or other structures

which cause rain water to fall directly on adjoining immovables.

F. 681. I. 591. J. 218. M. 141.

52. — When there are heavy buildings or structures on an immovable, the owner of the adjoining immovable, when digging wells, cisterns, ditches, pools, etc. must take any necessary precautions to prevent the collapse of such buildings or structures.

If he fails to do so, the owner of the buildings or structures may require that the work be stopped at once until necessary precautions have been taken.

G. 909. J. 237.

53. — The owner of an immovable is always entitled to enclose it, provided that he does not prevent the exercise of servitudes.

F. 47. M. 12

Illustration: — A is the owner of a piece of land over which B has a right of way. A may close his land by a wire fence provided that such fence be disposed so that B be not prevented from exercising his right of way.

[28]

54. — Fences, walls, hedges, ditches, or canals which serve as boundaries between two immovables are presumed to be joint-property of the owners of such immovables.

F. 653. J. 229, 230. M. 116. S. 670

Illustration: — A wall divides two lands belonging respectively to A and B. A claims that the wall is joint-property. B denies the claim and produces a genuine receipt from the contractor who has built the wall, establishing that the work was done at his own expense. The presumption set up by this section falls to the ground. Judgment must be given in favour of B.

55. — When the common enclosure of two immovables consists of an hedge or of a ditch which is not used as a drain, each of the joint owners is entitled to cut down the hedge or to fill up the ditch up to the middle of its width, in order to build a wall or fence on the limit of his own immovable.

F. 668.

56. — When a tree grows on the boundary line between two immovables it is joint-property. Each joint-owner can have it felled as he thinks fit. Its fruit and the timber belong to the joint-owners in equal shares.

F.670. G.923. M.132.

Illustration: — A tree grows on the boundary line between the pieces of land of A and B. B may fell the tree without asking for the consent of A. If he does so, he must bear the costs of the felling of the tree, and share the price of the sale of the timber with A.

[29]

57. — When branches or roots of any tree encroach upon the adjoining land its owner may give to the owner of the tree notice to cut such branches or roots within a reasonable time. If the owner of the tree does not comply with such notice the owner of the land is entitled to cut and keep the branches or roots, and to receive compensation for damages if he has incurred thereby.

F.673. G.910, 911. J.233. M.135. S.637.

58. — Any person is entitled to lead cattle in order to feed or water it over another person's land which is not enclosed, unless:

1. the owner expressly forbids it, or
2. the land is actually planted with trees, rice or other crops.

Siam Lakshana Betset 1 to 6, 8. S.699.

59. — Any person has a free access into the woods, forests and pasture land owned by another person and can collect fuel or fruits and gather wild growing vegetables, mushrooms and the like according to local custom, in so far as the local authorities have not issued special prohibition.

S.699.

TITLE III.

JOINT-OWNERSHIP.

60. — Joint-owners are two or more persons who share the ownership of an undivided thing.

Shares are presumed to be equal.

[30]

G.742, 1008. I.674. J.250. S.646. Cf. Obligations, 155.

61. — Each of the joint-owners can set up against third persons his right of ownership as extending to the whole thing.

G.1011.

Illustrations: — I. A and B are joint-owners of a piece of land. C claims a right of way over it. A is inclined to recognize the validity of C's claim and refuses to go to law. B alone can deny the validity of C's claim and be the only defendant in the action instituted by C before the Court, as if he was the only owner of the land.

II. A and B are joint-owners of a motorcycle. The motorcycle is stolen. A is absent. B alone can take all the legal steps necessary to secure the restoration of the motorcycle as if he was its only owner.

62. — Each of the joint-owners has over his share the same rights and liabilities as a single owner.

F.2021. G.1114. I.679. S.646, 800.

Illustration: — A and B are joint-owners of a ship. A may sell his share in the ship. If A is declared bankrupt, the Official Receiver can attach and sell A's share in the ship.

63. — No joint-owner can dispose of the thing without the consent of the other joint-owners.

Siam Dika No. 27, 40/117; 193, 232/118; 106, 140/119; 17,

257/120; 705/121; 87, 247/122; 46, 140, 409, 414, 473/123;
82/117.

Illustration:— A and B are joint-owners of a ship. A cannot sell the ship to C without the consent of B. If A sells the ship to C without B's consent, the sale does not affect the rights of B. The sale between A and C is voidable on account of mistake concerning its object, as c intended to buy a ship and not a share in the ownership of a ship.

[31]

64. — The transfer, pledge, mortgage, or servitude created by contract or will, on a joint property by one of the joint-owners, is valid only as far as the ownership of the thing remains in him after division.

As to real rights instituted over, or for the benefit of, the thing by the effect of Law, the joint-owners are presumed to be joint debtors, or joint creditors, as the case may be.

Illustration:— A and B are co-heirs of their father's estate. This estate includes a drug store. A sells it to C before division. If, at the time of division, the drug store is put in A's share or is bought by A in an auction sale, the sale is valid and C can claim from A its execution. If the drug store, on the contrary, is put in B's share or is bought by D in an auction sale, the sale is void and C has no right to claim its execution from B or D.

65. — A joint-owner is entitled to use the thing as he thinks fit provided he does not change its destination or use it to the injury of the other joint-owners.

None of the joint-owners is entitled to modify the thing except with the consent of all the other joint-owners.

I. 675, 677. J. 249, 251. S. 648,

66. — Unless there is an agreement to the contrary, the thing is managed by all the joint-owners together. Each of them is entitled to do such acts as may be required for the necessary upkeep and repair of the thing.

[32]

G. 744. I. 678. S. 647.

67. — If a servitude encumbers a servient property belonging to several joint-owners it cannot be extinguished with regard to one of them only.

F.709, 710. J.282, 284.

68. — A servitude acquired by one of the joint-owners of a dominant property benefits to the other joint-owners of such property. The fact that one of them exercises the servitude is enough to prevent it from being extinguished by non-usage with regard to all the joint-owners.

J.282, 284.

69. — The joint-owners bear all costs and expenses of management in proportion to their respective shares.

They are jointly liable towards third persons for the obligations incurred in that respect.

I.676. J.208, 253. S.649.

70. — Joint-owners may agree not to divide the thing between themselves for a period not exceeding five years: provided that if any of the joint-owners becomes seriously injured by the agreement he may apply to the Court for its cancellation.

When there is no such agreement or when such agreement has been cancelled, any of the joint-owners may at any time apply to the Court for an order to divide the thing. In such case the Court shall always order that the thing be sold by public auction and the price shall be distributed among the joint-owners in proportion to their respective shares.

[33]

Siam Dika Nos. 12, 17/117; 250/118; 175, 200,203, 300/119; 275/121; 350/122; 37, 228/123; 25, 31, 34/117; 48/118; 78/120 etc.

F.815. G.749, 750. I.881, 885. J.256, 258. S.650, 651.

Illustration: — A and B, joint-owners of a running concern (printing work), have agreed on the 1st. April 2460 that they shall not divide their joint-property for five years. In October 2462, A who is engaged in several other businesses is on the verge of bankruptcy. He cannot find any money to borrow on his share in the printing works, but if he is allowed to sell it, he could with his share in the price-money meet his liabilities and avoid bankruptcy. Under such circumstances, he may ask the Court to order that the non-division agreement be cancelled and the concern be sold by public auction.

TITLE IV.

SURRENDER AND ABANDONMENT OF IMMOVABLES.

71. — A person who has been, under the Land Laws, granted an unoccupied land by the Government, may at any time surrender his grant, by complying to that effect with the provisions of the Land Laws.

Cf. Land Law 127, s.57 and 58.

72. — When it appears that a land owner has abandoned his land for more than ten years, the Minister of Lands and Agriculture, after a formal inquiry, may apply to the Court for a declaration that the land has been abandoned and upon such declaration the Land Register shall be altered accordingly.

[34]

G.928. Land Law 2459, s.4 and 5.

TITLE V.

EXPROPRIATION.

73. — Lands and any other immovable properties which are required by the Government for national use or public works shall be subject to expropriation, that is to say to a compulsory purchase according to the provisions of the present Title.

74. — When the construction of a public work is decided without the exact area or tract being finally surveyed, a decree may be issued to mark out a zone within the limits of which the public work is likely to be constructed.

Such decree shall be valid for two years or for such other period stated therein which may be deemed necessary for the completion of the final survey. It shall specify the Ministry or Department (hereafter to be referred to as the Ministry or Department in charge) which is competent for the execution of the scheme.

75. — During the period of validity of the zone decree the officials of the Ministry or Department in charge are entitled to make on the properties of any person all the operations which may be necessary for a complete survey, such as to take measurements, to put up stakes in the ground, to collect samples of stones, sand or other material, etc. provided that the owners or lawful occupants of such properties shall receive compensation for any injury resulting from such operations of survey.

[35]

76. — When the final survey, or a part thereof, is completed, a special decree shall authorize expropriation and state:

- 1) the purpose for which such expropriation is authorized,
- 2) the lands and other immovables subject to expropriation and the places or districts where they are situated,
- 3) the Ministry or Department in charge of the expropriation.

A map or plan showing the boundaries of the land required for national use or for the construction of public works and the boundaries of each separate piece of land partly or wholly subject to expropriation shall be annexed to such decree.

77. — The decree shall be published in the Government Gazette.

78. — A certified copy of the decree with the map annexed thereto shall be

deposited:

- 1) at the offices of the Ministry or Department in charge;
- 2) at the offices of the Provinces, Townships and other local authorities in which the lands and other immovables subject to expropriation are situated; [36]
- 3) at the offices of the land-record in the provinces in which the lands and other immovables subject to expropriation are situated.

79. — On and after the date of the publication of the decree in the Government Gazette, the ownership of the lands and other immovables specified in the decree is vested in the Ministry or Department in charge, but such Ministry or Department shall have the right to take possession thereof only on payment or deposit of an indemnity, in the manner hereinafter provided.

On and after the same date, if any person having a right on the said lands and other immovables disposes of such right in favour of a third person, the latter can exercise the transferred right only against the indemnity.

80. — Indemnity shall be granted:

- 1) to the owner of a land subject to expropriation;
- 2) to the owner of a building existing on such land on the day when the zone decree was promulgated or erected afterwards with special authorization;
- 3) to the lessee of the land or building subject to expropriation, provided the lease be in writing and executed before the date of the promulgation of the zone decree, or after such date with special authorization, and be not determined on or before the day when the Ministry or Department in charge takes possession of the land or building. But indemnity in the case of such a lease shall only include the injury actually suffered by the lessee on account of his being obliged to vacate the land or building before the time fixed in the lease; [37]
- 4) to the owner of any fruit trees or plantation existing on the said land on the day when the zone decree was promulgated or put up afterwards with special authorization;
- 5) to the owner of any removable building existing on the said land on the day when the zone decree was promulgated; but indemnity in this case shall only include the expenses of removing and re-erecting the building.

81. — When part only of a building is subject to expropriation, the owner may

require that such extra part of the said building which cannot be used afterwards be also expropriated.

82. — When, in consequence of expropriation, a piece of land is to be reduced to less than one third of its original area, and such third contains less than one hundred square meters, the owner may require that the whole piece of land be expropriated, provided such third be not directly contiguous to any other piece of land belonging to the same owner.

83. — The indemnity due for the ownership of any piece of land or building shall be equivalent to the value of the land or building on the day when the zone decree or the expropriation decree if there has been no zone decree, was promulgated, according to the market price and to the special circumstances of each particular case. [38]

When part only of a piece of land or building is expropriated, a specific indemnity shall be allowed for the depreciation, if any, of the remaining part of the property.

When the owner is residing on a land or living in a building subject to expropriation, or carries thereon a lawful trade or business, indemnity shall be granted for the injury, if any, actually suffered by him on account of his being obliged to give up possession of such land or building.

84. — When the construction of the public works is such as to produce a special and immediate increase in the value of any remaining part of the property, such increase shall be deducted from the indemnity. But in no case shall such increase be considered to exceed the indemnity due so that the expropriated party be declared liable for a balance in money.

85. — No indemnity shall be allowed for the increase of value derived from:

- 1) any buildings, additions, plantations, improvements or leases when they have been made without special authorization granted by the Ministry or Department in charge after the date of the promulgation of the zone decree (due exception being made in case of cultivation of paddy or garden land in the ordinary course of husbandry);
- 2) any such buildings, additions, plantations, improvements or leases which appear to have been made fraudulently before the date of the promulgation of the zone decree for the only purpose of obtaining an indemnity. [39]

86. — Within three months from the date when the decree of expropriation has been published, and on application of the Ministry or Department in charge, a Commission shall be appointed by His Majesty's Government to consist of two

members, one being an official of the Ministry or Department in charge, the other an official of either the Ministry responsible for the local administration, or the Ministry of Agriculture, as may seem fit.

The duty of such Commission shall be to inspect the lands and other immovables subject to expropriation and to try and fix amicably the amount of the indemnity.

The names of the Expropriation Commissioners and the specification of the districts in which they shall discharge their duties shall be published in the Government Gazette.

87. — The Local Authorities shall cause the substance of the decree of expropriation to be made known to the inhabitants of the districts concerned by posting a notice at their office, and by any means of publicity in in their power. The said local authorities shall further make known that any person claiming any right or interest on any land or other immovable subject to expropriation must present his claim to the Expropriation Commissioners within a period of one month from the notice.

[40]

88. — The Expropriation Commissioners shall examine the claims brought before them, either verbally or in writing, in accordance with the foregoing section.

In case of any dispute as to the ownership of lands and other immovables, they shall try and settle it amicably.

Thereupon, the Expropriation Commissioners shall make a record of all the claims of ownership or otherwise for which indemnity may be due, distinguishing between claims of the persons whose rights are undisputed, and of those whose rights are disputed.

89. — The Expropriation Commissioners shall then negotiate with the persons whose rights are not disputed, and try to settle amicably the amount of the indemnity to be paid.

- (1) In case an agreement is come to, the terms and conditions thereof shall be reduced into writing and signed by both parties in the presence of a witness. On payment of the indemnity agreed upon, the Ministry or Department in charge shall have the right to take possession of the land or other immovable
- (2) In case no agreement is come to, the Ministry or Department in charge shall notify in writing its final offer to the other party. Should such offer not be accepted within ten days from date of notification, each party shall have the right to appoint an arbitrator; and, in the case where such arbitrators cannot come to an agreement, the arbitrators shall either appoint an umpire or apply to the Court to have an umpire appointed by it, subject to the provisions of the Civil Procedure Code.

[41]

90. — When a person who is presumed to be entitled to indemnity as owner of any land or other immovable cannot be found, the Expropriation Commissioners shall fix the amount of the indemnity as they think fit, and deposit such sum in a Law Court. On such deposit being made, the Ministry or Department in charge shall have the right to take possession of the land or other immovable.

If within six months from the date of the deposit, the owner lays claim to the property and refuses to accept the sum fixed by the Expropriation Commissioners, arbitrators shall be appointed as provided by the foregoing section.

After six months have elapsed, the owner shall have no other option than to accept the indemnity deposited as aforesaid in full satisfaction of all claims and demands.

91. — When (before payment to a party entitled to indemnity, or before the expiration of the period of six months provided in the foregoing section) any dispute arises as to the ownership of the property subject to expropriation, or as to the assignment or division of the indemnity, the Expropriation Commissioners or the Ministry or Department in charge as the case may be, shall try and settle amicably with all the parties in dispute the amount of indemnity. [42]

- (1) In case an agreement is come to regarding the amount of the indemnity, the amount so agreed upon shall be deposited in a Law Court. On such deposit being made, the Ministry or Department in charge shall have the right to take possession of the property.
- (2) In case no agreement is come to regarding the amount of the indemnity, the Ministry or Department in charge shall notify its final offer in writing to the parties in dispute. Should such offer not be accepted by all the parties in dispute within ten days from date of the notification each party shall have the right to appoint an arbitrator; and, in the case where such arbitrators cannot come to an agreement the arbitrators shall either appoint an umpire or apply to the Court to have an umpire appointed by it, subject to the provisions of the Civil Procedure Code.

When the dispute arises after payment to a party entitled to indemnity or after the expiration of the period of six months provided in the foregoing section, claims can be exercised only against the persons who received the indemnity or in whose names the deposit was made. [43]

92. — In case the amount of indemnity is to be settled by arbitration, the Court shall, on application made at any time by the Ministry or Department in charge, authorize such Ministry or Department to take possession of the land or other immovable; subject to the deposit of such sum as the Court think likely sufficient to secure the payment of indemnity.

93. — If the party entitled to indemnity refuses to receive it as fixed by agreement or by arbitration, the Ministry or Department in charge shall have the right to take possession of the land or other immovable on depositing the amount of such indemnity in a Law Court.

94. — If the owner or occupant of the land or other immovable refuses to let the Ministry or Department in charge take possession thereof when it is entitled by this Title to do so, the Court shall, on application of the said Ministry or Department, issue an Order of ejectment to be enforced at once, without prejudice to any judicial proceedings which may be instituted by the owner or occupant.

DIVISION III.

POSSESSION.

TITLE I.

GENERAL PROVISIONS.

95. — Possession of a thing is the fact of holding on his own account a thing, or otherwise exercising power or control over it, by a person called the possessor.

Possession may be exercised by the possessor either directly or through another person, hereafter referred to as his "representative", who is under an obligation to return the thing to the possessor.

In case of *property in genere* which is not identified, the person who holds such property or exercises power or control over it is always deemed to be direct possessor of such property notwithstanding the obligation, if any, under which he is, to deliver such property or its equivalent to the original possessor.

Can. 2192. F. 2228. G. 854, 855, 868. I. 685 J. 180, 181. S. 919, 920.

Illustrations: — A is the possessor of the waste land on which he has settled as well as of the shed he has built on it; but in the case of the waste land he is only possessor as long as he has not been granted a land certificate by the Government; in the case of the shed he is at the same time possessor and owner.

B is the possessor of the goods he has stored in a warehouse'; C the warehouse-man is his representative.

B is the possessor of the goods sent by him to his country residence; the Railway concern or the Transport Co. is his representative (carrier).

B is the possessor of the house which he leases to C; C, the lessee, is his representative.

D, a banker, is the possessor of all the money in his safe, whether derived from capital, interests, deposit on view, or fixed deposit by his customers; but he is only a representative as far as money in a sealed bag, or certificates of shares (not to bearer) deposited by E, a customer, are concerned (paragraph 3).

96. — Possession of a thing which cannot be the subject of a private right of ownership gives no right to the possessor.

Can. 2213, 2220. I. 690. F. 2226.

Illustration: — Seashore is part of the public domain of the State and cannot be the subject of a private right of ownership. A settles on the seashore and encloses part of it by means of posts and barbed wire; possession of the enclosed part gives him no right.

97. — Transfer of possession is complete by the actual or constructive delivery of the thing possessed.

J. 182.

Illustrations: — A sells his buffaloes to B; transfer of possession is complete by mere delivery of the buffaloes (while transfer of ownership depends on registration).

A sells his house to B; transfer of possession is complete by delivery of the keys of the house, means by which power is exercised (while transfer of ownership depends on registration).

In both cases possession may be transferred before, after, or at the same time as, ownership.

[46]

98. — A possessor is entitled to avert dispossession or any disturbance by using any means within the limits specified in the provisions concerning Lawful Defence.

G. 862. S. 926. Cf. Ob1. (Lawful Defence) s. 143.

99. — A possessor who has been unlawfully dispossessed of a thing by another person is entitled to have the thing returned to him at once, and to receive compensation for injury, unless such other person affords conclusive evidence of a better right over the thing which would entitle him to claim it back from the

possessor.

G.861, 985, 986. I.695, 696. J.200. S.927.

Illustration:-A is the possessor of a piece of land. B pretending to be the owner of such piece of land forcibly takes possession of it. A can claim immediate return of the piece of land and compensation for injury.

However if B can show without delay, for instance by producing his land certificate, that he is the owner of the piece of land, A's claim shall be dismissed.

100. — A possessor who is unlawfully disturbed in his possession by another person is entitled to have the disturbance stopped and to receive compensation for injury.

G.862, 1004. I.694, 698, 699. J.198, 199. S.928.

101. — The special rights of action which, under the two foregoing Sections, the possessor derives from the mere fact of his possession are extinguished by prescription after one year from the act of dispossession or disturbance.

[47]

G.864. S.694, 695. J.201. S.929.

102. — When possession is exercised through a representative the rights described in the foregoing Sections can be exercised by the representative as well as by the possessor.

In the case of an action entered by the representative, the latter is entitled to summon the possessor to appear in such action to be a joint-plaintiff with him, or the possessor is entitled to intervene in the action.

In any case of dispossession or disturbance, the representative shall forth with inform the possessor of the occurrence, failing which he is liable to the possessor for any injury resulting from his omission.

Cf. Oblig. 508, 509.

103. — Possessory rights are extinguished when the possessor voluntarily or by effect of the law gives up the thing or otherwise discontinues directly or indirectly to exercise the power or control over it.

G.856, 865, 866.

Illustration: — A is the possessor of a golden watch:

- 1° *A sells and delivers it to B. A's possessory rights are extinguished.*
- 2° *A pledges and delivers it to C. The latter holds the watch on A's account, A's possessory rights are not extinguished.*
- 3° *The watch is attached and sold by auction, against A's will, by order of the Court, for the benefit of his creditors. A's possessory rights are extinguished.*

[48]

See also illustrations under Section 113.

104. — The possessor of a thing *in genere* which is not identified is the owner of it.

This does not dispense the possessor from fulfilling any personal obligation (to deliver such thing or its equivalent, or to make compensation) which may have not yet been extinguished by prescription or otherwise.

Illustrations: — I. — A and B are the possessors of two cocoanut plantations. When the time for gathering the nuts has come B's workmen inadvertently encroach on the limits and gather 1,000 nuts from A's trees. B thus becomes the possessor of 1,000 nuts which belonged to A. But as it is impossible to identify those nuts B shall be deemed the owner of all the nuts gathered by his workmen; he shall not be dispensed thereby of the obligation to deliver to A 1,000 nuts or to pay compensation for them. But this is only a personal obligation and A has no. action for recovery of the nuts.

II. — Under Section 95 S 3 the person who holds a property in genere which is not identified or exercises power or control over it is deemed to be the direct possessor of such property. By the effect of the present section he is also deemed the owner of it. For instance, A has delivered to B, a rice miller, 100 piculs of paddy to be milled on A's account. B acts as a hirer of work. If the property could be identified B would be only a representative of A; but as the property cannot be identified among the 2 or 3,000 picules of paddy kept in B's granary, B is deemed the direct possessor of A's paddy, and by the effect of the present Section B's possession is equivalent to ownership. Now suppose that B does not perform his obligation to mill the paddy; A has an action for the return of 100 picules of paddy, or for delivery of their equivalent in milled rice, or for compensation, but he cannot pretend to identify his 100 picules

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of paddy among the bulk of 2 or 3,000 picules in the possession of B; A has therefore no action for recovery.

105. — The possessor of a specific or identified thing is presumed to be the owner of it.

F.2230. G.1006. J.186 §1.

Illustration: — If a discussion arises between two persons as to which of them is the owner of a thing, the one who possesses such thing shall be in the position of a defendant; the other one has to afford evidence of his right of ownership against the possessor, failing which the possessor will be left in possession on the ground of the presumption of ownership attached to possession. For instance, A is the possessor of a golden watch; B contends that he is the owner of that watch. A is not bound to give evidence or explanation of how and when he became possessor of the watch; he must be left in possession until B has first brought conclusive evidence of his right of ownership. Supposing that B was able to produce such evidence, for instance by quoting the number written inside the watch and proving that he bought it from such jeweller at such time, the presumption of ownership in favour of A falls to the ground.

106. — When possession is exercised through a representative, the presumption of ownership is in favour of the possessor. [50]

It passes in favour of the representative when he becomes possessor, that is to say only when he begins to possess on his own account under a new title, or by notifying the original possessor of his intention to do so, or because his personal obligation to return the thing is extinguished by prescription.

Can.2195. F.2231, 2238. I.687 (2), 2118. J.185.

Illustrations: — A has deposited a silver bowl with B. A remains the presumed owner of the bowl.

I. — A bequeaths the bowl to B and dies. B becomes possessor of the bowl under a new title, as legatee, and is henceforth the presumed owner.

II. — A being in debt towards B, B notifies A that he will keep the bowl in settlement of the debt. B is henceforth possessor and presumed owner of the bowl.

III. — A forgetting all about his bowl remains ten years without asking B to return it. B's obligation to return the deposit is extinguished by prescription. B begins henceforth to possess the bowl on his own account and to be presumed owner of it.

107. — As regards unoccupied lands belonging to the public domain of the State, mere possession without grant confers no right of ownership. The State is not bound to grant the land to the possessor but it may dispose of it at its own discretion, even when a Court has given a judgment in a case of dispossession or disturbance in favour of the possessor who has exercised the rights of action in accordance with the foregoing sections.

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S. 937.

Illustration. — A has settled on a piece of waste land and has received from the Land Officer a bai-yieb-yam for that piece of land. B unlawfully takes possession of part of that piece of land. A applies to the Court, under section 99, and judgment is given in his favour against B.

After some time it becomes apparent that the piece of land is larger than A is able to cultivate. In consequence a land certificate is granted to A for part only of the piece of land, excluding the very part of which B had unlawfully taken possession. Nothing in the judgment prevents the State from granting that part to I, or from deciding that such part shall henceforth be considered as land reserved for the use of the State.

As such waste land cannot be acquired by way of usucapion, the fact that A has possessed it during ten years or more would likewise not prevent the State from reducing the area of that piece when a land certificate shall be granted or even from refusing altogether to grant a land certificate to A.

108. — As regards immovables, possession can never be set up against the registered owner except by a hostile possessor who, having completed usucapion, has the right to claim registration as owner.

The same rule applies to the following movables: 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.

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Illustration: — A is the registered owner of a house in Bangkok. A goes abroad

and ceases to look after his house in any way as from the 1st. April 2462. B finding the house abandoned takes possession of it on the 15th. of August 2463.

If A comes back before the 15th. of August 2473 and claims the house, B derives from his possession no presumption of ownership against A, the registered owner:

If A comes back and claims the house on the 15th. • of August 2473, B can set up against A the presumption of ownership derived from possession (although B has not yet had registered his right of ownership, acquired by way of usucapion).

TITLE II.

USUCAPION.

109. — Usucapion is the way by which a possessor acquires the right of ownership by long and uninterrupted use.

J. 162.

110. — A person who openly and without interruption possesses a specific or identified thing belonging to another person for a period of

- (1) ten years in case of an immovable,
- (2) seven years in case of 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, [53]
- (3) five years in case of other movables, becomes the owner of it.

J. 162.

111. — In case of usucapion, the calculation of periods of time is governed, *mutatis mutandis*, by the provisions of the Code on Obligations concerning Prescription.

Illustration: — A who was born on the 1st of June 2452 has on the 3rd of July 2462 inherited from his father a house in Bangkok; but he was not aware of it and never looked after that house. A has no lawful representative. Supposing that B had taken possession of that same house on the 15th of August 2462, usucapion would, as against any person, be completed in B's favour on the 15th of August 2472. But as against A usucapion will not be completed in favour of B until the 1st of June 2473, that is to say, one year after A has acquired capacity (Obligations 370.)

If A enters an action in Court against B on the 1st of April 2473, and thereby interrupts usucapion such usucapion shall likewise not be completed in favour of B until the new period of usucapion to run from the interruption, has been completed against A. (Obligations 373, 381.)

112. — As regards things obtained through an offence, usucapion is not completed in favour of the offender or of the transferee in bad faith until the penal action is extinguished by prescription.

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J.162. Cf. Penal Code, Sect. 96.

Illustration: — A has, through robbery committed by night, wrongfully taken possession of a golden watch. The penal action is extinguished by prescription after fifteen years only. Usucapion, which in the ordinary course of things, would be completed after 5 years, shall not be completed in favour of A or of A's transferee in bad faith until fifteen years have elapsed from the offence, or from the last act interrupting the prescription of the penal action.

113. — Usucapion is interrupted when possessory rights are extinguished. It is not deemed to be interrupted:

- (1) when possession is exercised through a representative,
- (2) when the possessor having been unvoluntarily [=involuntarily] and temporarily dispossessed of the thing recovers possession of it.

Can.2196. F.2232, 2244. G.856 (2), 940. J.164, S.921.

Illustrations: — I. A was the possessor of a golden watch. A sells and delivers it to B, or it is attached and sold by auction to C. A's possession is extinguished and usucapion does no more run in his favour. If some time afterwards A finds the same watch or otherwise takes possession of it, a fresh period of usucapion begins to run in his favour.

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II. A delivered his watch to B as a pledge. A's possession is not extinguished, as explained under Section 103; usucapion is therefore not interrupted.

III. A lost his golden watch but it was found by the Police and returned to A two months afterwards. Usucapion is deemed not to have been interrupted, because possession was not extinguished within the meaning of Section 103.

See also illustrations under Section 103.

114. — When the first and last terms of possession are proved, the possession is

presumed to have continued during the interval.

Can.2199. F.2234. G.938. I.691, 692. J.186 §2.

Illustration: — A is the possessor of a bicycle. A can give conclusive evidence that he was in possession of it five years ago on such day, say on the 20th. of November 2458. A is presumed to have been in possession of the bicycle without interruption from that date. If B, a claimant, pretends that he has bought that same bicycle from X on the 1st. of January 2459 and was for some time in possession of it, B has to prove those facts, failing which the presumption of section 114 will hold good and A will be able to set up usucapion against B's claim.

115. — The transferee of a possessor can at his option either assert his own possession or his possession together with that of the transferor.

In the latter case the defects which existed in the possession of the transferor can be set up against the transferee.

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Can.2200. F. 2235. G.943, 944. J.187.

Illustration: — A was for three years the possessor of a silver bowl. He transfers it to B. After two years more C claims back the silver bowl which he had lost originally. B can, at his own option, set up his own possession during two years, or his possession together with that of A (totalling five years). In the latter case B can claim that usucapion is completed in his favour. However if A had not possessed the silver bowl on his own account, or if he possessed it clandestinely, the defect in the possession of A can be set up against B so that usucapion shall not be completed in favour of B.

TITLE III.

RECOVERY OF POSSESSION.

116. — An action for recovery of a specific or identified thing from a possessor who has no title of acquisition or has acquired the thing from a person who has no right to dispose of it, can be maintained by the owner.

The action for recovery can be maintained against the representative as well as against the possessor.

F. 2279. I. 708. J. 193. S. 932.

Illustration: — I. Possessor without title. A is the owner of a piece of land but does not look after it from the 15th. September 2457. B takes possession of it on the 20th. May 2461. B is without title. A may exercise against B the right of action for recovery of his piece of land until the 20th. May 2471 when B has become owner of it by way of usucapion.

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II. — Possession transferred by a person who had no title to dispose of the thing. A has lost his golden watch on the 3rd of April 2458. B found it and sold it to C on the 30th of May 2458. C has acquired the thing from a person who had no title to dispose of it. A may exercise against the right of action for recovery until the 30th of May 2463 when C has acquired the ownership of the watch by way of usucapion.

117. — When, on account of the action for recovery, a possessor or representative is deprived of the thing he has only a right to claim compensation from his transferor.

F. 2279. I. 708.

Illustrations: — I. — A is the owner of a golden watch which is stolen from him by B. B has no title of acquisition. B sells the watch to C. A may exercise against C the right of action for recovery, as long as C has not completed usucapion. When, on account of such action, C is compelled to return the watch to A, C has only the right to claim compensation from B.

II. — In the same occasion, B pledges the golden watch to C. B has been

possessor, as a matter of fact, and C is his representative. A may exercise against C the right of action for recovery in the same conditions as herein before and C, if compelled to return the watch to A, has only a right to claim compensation from B for amount lent to B.

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III. — B, who is a thief and has stolen the golden watch, has no transferor at all. Of course, when A, by exercising the right of action for recovery against B, compels B to return to him the watch which B possesses as a matter of fact, B can claim compensation from nobody.

118. — If a possessor or representative has acquired a thing lost or stolen, in good faith, by purchase at an auction, or in open market, or from a trader dealing in similar things, the owner can only recover it on reimbursement of the purchase price.

F. 2280. G. 935. I. 709. J. 194. S. 934.

Illustration: — A has bought a golden watch from a watchmaker. The watch was stolen from B by a thief who had sold it to this watchmaker. B may exercise against A the right of action for recovery, but he must reimburse to him the price paid to the watchmaker.

119. — Money and instruments to bearer even lost or stolen cannot be recovered from a possessor who has acquired them in good faith.

S. 935.

120. — A possessor is in good faith when he possesses by virtue of a title the defects of which he does not know. He remains in good faith until the time when conclusive evidence of the defects has been produced against his title. He then ceases to be in good faith from that moment only.

F. 550. I 701. J. 189 §2.

Illustrations: — A has bought a diamond necklace from B, not knowing that B had received it as pledge from C. A is in good faith. But he ceases to be in good faith when C has produced to him conclusive evidence of his right of ownership (for instance a “receipt as pledge” from B together with photographs or other documents for identifying the necklace).

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According to Section 19 of the Book on Obligations, A is presumed to have been in good faith. If C contends that A was in bad faith, C must bring evidence of such bad faith. If C contends that A ceased to be in good faith from a certain time because C has produced to A conclusive evidence of his (C's) ownership, C should also prove how and when he did produce such conclusive evidence.

121. — A possessor is in bad faith when he possesses forcibly or clandestinely.

But the possessor is not in bad faith when he has taken possession forcibly in compliance with the provisions governing self-help or lawful defence.

F. 2233, 2229. I. 689. G. 858.

Illustrations: — I. — A has stolen a golden watch from B and sold it to C, C, knowing that this watch was stolen, keeps it hidden. Both A and C are possessors in bad faith.

II. — A, who lives in Bangkok, is creditor of B who shall deliver to him a horse for the race-course of next Sunday. On Saturday, A hears that B is sending this horse to Singapore by a ship which will sail in a few hours. A, exercising the right of self-help which is granted to him by the Book on Obligations (Section 127) takes possession of the horse, even contrary to the protests of B's lads which were bringing the horse into the ship. A's possession is not forcible, and he is not in bad faith.

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122. — The possessor in good faith who is deprived from possession of a thing is not responsible towards the owner for loss or damage to such thing. But if he has received a compensation paid to him for such loss or damage, he is bound to return such part of compensation as governed by the provisions of undue enrichment.

If the possessor was in bad faith, he is fully responsible towards the owner for the loss or damage even caused by *force majeure*.

J. 191. S. 938 §2. Cf. Obligations (Undue Enrichment) s. 110, 112.

Illustration: — A was the possessor in good faith of a house in Bangkok. His is evicted by B who was the real owner of such house. If the house has been damaged by the floods or destroyed by fire during the time of A's possession, A is not responsible for it. However if A had insured the house against fire and has received an indemnity

for the destruction of such house he is bound to pay to B such part of the indemnity as he has not yet spent.

If A was in bad faith he is fully responsible towards B for the loss or damage caused to the house by floods or fire.

123. — A possessor in good faith acquires the profits and interests of the thing possessed. In case of his being deprived of possession, he is bound to return such profits and interests calculated from the moment he ceases to be in good faith only.

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If the possessor was in bad faith, he is bound to return the profits and interests of the thing possessed, and to pay compensation for those which have not been collected.

Can.431. F.519. G.955, 993. I.703. J.189, 190. S.938, 940.
Cf. Obligations s.114, 115.

Illustration: — A was the possessor of a plantation of coco-nut trees since the 1st. of April 2458. During the year 2458 he failed to pluck off the coco-nuts. Afterwards he secured the coco-nuts every year. On the 30th. of June 2461 B produces to A conclusive evidence of his right of ownership but A remains in possession until the 3rd. of May 2462.

If A was in good faith he is not responsible towards B for the missed crops of the year 2458 nor for the coconuts collected until the 30th. of June 2461. From that time, as I could no more pretend that he was in good faith, he must return to B the coco-nuts collected until the 3rd. of May 2462 or pay their value.

If A was originally in bad faith he would be responsible towards B for the value of the coco-nuts collected during the years 2459 to 2462 and also for the value of the coco-nuts which he failed to collect during the year 2458.

124. — A possessor who has incurred expenses on account of the thing from the possession of which he is deprived is entitled to reimbursement according to the provisions concerning restitution of undue enrichment.

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Can.411. S.939, 940.

125. — When the owner had transferred the thing to a person in execution of a contract which is afterwards cancelled as void, voidable or for any other reason, such cancellation gives only to the transferor a personal action against the transferee for

return of the thing or compensation, but it does not give him the real action for recovery against any present possessor of the thing in good faith.

Cf. Obligations s.112, 113.

Illustration. — *A, being a minor, aged 18 years, and without a lawful representative, was the owner of a house in Bangkok the estimated value of which was 20,000 baht. A, wanting money quickly, for his amusement, sells the house to B for 15,000 baht. The contract is registered and the house delivered to B. But three years afterwards, when he has become of full age, A claims that the contract of sale is voidable because he had, at the time, no capacity to conclude it and the contract actually caused injury to him (Civil Code, Capacity of Persons s. 77). The contract is cancelled on that ground. A has a personal action against B for the return of the house or for compensation; he has no real action for recovery either against B, or against C, D, X, transferee or subtransferees of B. That is to say:*

If B is still the owner of the house and is solvent A will get the house back;

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If B has transferred the house to C and is solvent, A cannot get the house back but will receive full compensation;

If, in any case, B is bankrupt A will get only a part compensation pro rata in competition with the other creditors of B.

DIVISION IV.

SERVITUDES.

TITLE I.

GENERAL PROVISIONS.

126. — A servitude is an encumbrance on an immovable created for the benefit of another immovable or of particular persons.

The owner of an immovable subject to the servitude is bound to suffer some specific acts to be done on his property for the benefit of the other immovable or persons, or to refrain from exercising certain rights inherent to his ownership.

F.637, 638. G.1018, 1019. J.280. M.108. S.730. Tunis 1. 1st. July 1885, s.153.

Illustration: — I. — A agrees with B that a canal will be dug on A's land to let the excess of water of an artesian well, bored by B on his land, flow off into the Klong bordering A's land. This is a servitude created for an indefinite period of time and binding A to allow B to do a specified act on A's land to the benefit of B's land.

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II. — A agrees with B that no building will be erected on A's land for fifty years in order not to conceal the sight of the landscape from the windows of the house to be built by B on his own land. This a servitude created for a limited period of time and binding A to refrain from doing a specified act on his own land to the benefit of B's land.

III. — A is the owner of a house which is let and the annual rent of which is 3000 baht. A may create for the benefit of B a servitude upon the annual profit of his house: so that B be paid an annual sum of 1200 baht from the rent. This is a servitude created for the benefit of a particular person.

127. — When a servitude established by law conflicts with a servitude created by contract or will, the former overrules the latter.

F. 639, 686. J. 280. M. 109. T. 154.

Illustration. — *A has agreed with B to give to B a conventional right to dig a canal on A's land. C, the owner of another land adjoining A's property, claims in accordance with section 142 a right of way of A's land. Neither A nor B can object to the right of way although the said right of way will cut the line of the canal which A has allowed B to build on A's land.*

128. — The owner of the dominant property is bound to exercise the servitude strictly according to the law or to the terms of the contract, and in the least injurious way to the servient property.

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F. 702. G. 1020. M. 152. S. 737.

Illustrations: — *I. A has dug a canal on B's land for the purpose of irrigating A's land. Later on. A wants to enlarge the canal so that he can use it as a water way; B objects thereto; A enters an action against B. A's claim must be dismissed because he cannot be allowed (under the agreement entered into) to dig on B's land a canal wider than necessary for irrigation purposes. He can be allowed to do so only by virtue of a new agreement entered into with B to that effect.*

II. A can be required by B to dig the irrigation canal on such part of B's land as is the most convenient to B, even though A be obliged thereby to make the canal larger and to incur higher expenses to dig it, e.g. B can require that A dig the canal, not across the ornamental garden in front of B's house, but along the edge of such garden, although the length of the canal be doubled thereby.

III. A, instead of letting the water run slowly through the canal according to the ebb and flow of the tide, builds a sluice and works it in such a way that he provokes slides on the sides of the canal and is about to cause the fall of several big fruit trees standing on B's land. B may require from A that he works the sluice in such other way as will not cause injury to B's land.

129. — The owner of the dominant property is entitled to make at his own

expense on the servient property any work that may be necessary for the upkeep and use of the servitude. [66]

He is bound to keep such work in a state of good repair inasmuch as the interest of the servient property may dictate.

The owner of the servient property is entitled to compensation if he is injured by an alteration in the condition of his immovable caused by such work or by its not being repaired.

He may use such work provided he does not thereby hinder the exercise of the servitude and he shares in the costs of upkeep and repair in proportion to the benefit which he derives therefrom.

F.697, 698. S.737, 741. G.1021, 1020 (2°). J.288 (for the last paragraph.) M.147. S.737. 741.

Illustration: — §1. — A has been allowed to lay electric wires on B's land. He is entitled, not only to lay the wires, but also to do on B's land, at his own expense, all such work as may be necessary to keep the electric line in good order, e.g. to change the posts, isolators, wires, etc. when they are worn out.

§ 2. — On the other hand, he is bound to do, on B's land at his own expense, all such work as may be required by the interest of B; e.g. if a post is in such a bad condition as it threatens to collapse and damage B's house or garden, or to cause a fire or any other accident, he must change it.

§ 3. — If the works made by A have caused an alteration in B's land, e.g. if several posts have been erected across B's land and some trees felled on the same land to allow the laying of the wires, or if the workmen repairing the line have caused a damage to B's land, e.g. if they have spoilt flowers, plants or crops on B's land, B is entitled to compensation. [67]

If A has failed to do the works necessary in the interest of B's land and some damage has been caused to B's property thereby, e.g. if a post has fallen and damaged the roof of B's house, B is also entitled to compensation from A.

§ 4. — B can take advantage of the laying of an electric line on his land to have an electric accommodation made for himself, provided that the necessity to supply electric power to two places does not render useless the installation originally made by A and does not entail a new installation, and provided further that B shares in the

expenses of upkeep and repair of the line. For instance, if he takes advantage of the whole installation made by A on his land and consumes as much electricity as A, he shall have to stand half the aforesaid expenses; if he takes advantage of part only of the line laid by A, he shall have to pay only a third, or a quarter, or a fifth of the said expenses, according to circumstances.

130. — In any case where the exercise of a servitude is subject to payment of a compensation, the owner of the servient property is not bound to suffer such exercise until proper security for the payment of compensation has been given by the owner of the dominant property.

S. 691.

131. — The owner of the servient property cannot alter the servitude or make its exercise more difficult. However if for any reason the servitude becomes more injurious, or hinders or prevents necessary repairs to his immovable, he can substitute a place not less convenient for the exercise of the servitude. [68]

F. 701. G. 1023. M. 151(3). S. 737, 742.

Illustration: — A servitude for watering cattle has been established by the Government on a pond situated on A's land to the benefit of the estates situated within a radius of ten sen from the pond and the owners of which are B, C and D. The latter use to lead their cattle to the pond by a gate of the enclosure of A's estate, through which the way from their places to the pond is the shortest. A cannot compel B, C and D to lead their cattle to another pond also situated on his land, nor can he compel them to use another gate of the enclosure and to make a much longer way to come to the pond. However, if the gate used by B, C and D is on such part of A's land as is the most convenient for the erection of a house and A would be injured if compelled to build a house elsewhere on account of B, C and D's right of way. A can require them to use another gate. But, if the use of such other gate would entail B, C and D making an exceedingly long way. A could not require them not to use the original gate.

132. — Servitude is transferred together with the ownership of the immovable as its appurtenance.

J.281, 286. S.781.

Illustration: — The quantity of water running in a stream being not sufficient to meet the needs of the owners of all the immovables situated along this stream, the said owners have gone to law and a judgment has been given by the Court specifying the quantity of water to which each owner is entitled. A, the owner of one of the immovables situated along the stream, cannot dispose of his right to the quantity of water assigned to him by the judgment (although he does not want it any more, because, for instance, he has given up the cultivation of his land) in favour of B, the owner of an immovable adjoining that of A, but not situated along the stream. But if A sells his land to B, the sale will include A's right to the quantity of water specified by the judgment.

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133. — If the servient property be divided, the servitude as a rule continues upon all parts thereof.

If however the servitude does not rest upon any particular part and according to the circumstances cannot so rest, each owner of a portion not encumbered therewith may demand that it be extinguished as to his part.

F.700. J.282. S.744. G.1026.

Illustrations: — I. — A, the owner of a land, divides that land into two parts which he sells respectively to B and C. That land was subject to a servitude according to which A could not prevent or modify the natural off-flow of rain or flood water to the injury of an adjoining land owned by D. B and C, becoming the owners of the two parts both adjoining D's land, are both subject to the same obligation as A regarding the off-flow of rain or flood water from D's land.

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II. — If A's land was subject to a right of way to the benefit of D's land and B can produce conclusive evidence that the way used by D was always on the part sold to C, he may ask for an acknowledgement by D or apply for an order of the Court declaring that his part is not subject to any right of way to the benefit of D's land.

134. — If the dominant property be divided, the servitude as a rule continues in favour of all the parts thereof.

If the use of the servitude is limited to one part according to the circumstances, the owner of the servient property can demand that it be extinguished in respect to the other parts.

G.1025. J.282. S.743.

Illustration: — A's land, being situated along a watercourse, is subject to the servitude provided by Section 140 allowing B, the owner of the land situated on the opposite bank of the watercourse, to rest a dam on A's land. B divides his land into two parts, one of which is along the watercourse and the other further inland. He sells the former part to C and the latter to D. A's land remains subject to the aforesaid servitude as regards the part sold to C, but it can be freed from the servitude as regards the part sold to D because D can no longer avail himself of Section 140.

TITLE II.

[71]

REAL SERVITUDES ESTABLISHED BY LAW.

135. — Servitudes established by law can be exercised at any time in the conditions provided by law and without being registered.

The conditions provided by law may be altered by a contract, but such contract must be registered on the Land Register.

G.924. M.109, 2°. S.680.

Illustration: — A's land is subject to a right of way to the benefit of B's land. A, having left his land waste for many years, B uses a way which he has built across the middle of A's land. Later on A, who wishes to enclose his land and erect a house on it, agrees with B that B will build a new way along one of the boundaries of A's land and give up the use of the original way. This agreement can be set up against a third person, e.g. the buyer of B's land, only if it has been registered in the Land Register.

136. — The manner of exercising a servitude established by law shall, in case of dispute thereanent, be inferred from the origin and nature of the servitude.

Illustration: — An electric line has been erected on A's land to the benefit of B's land. B's servants use to pass over A's land to maintain and repair the line. B avails himself of such fact to pretend that he has a right of way on A's land. If it appears from the enquiry made by the Court that B's servants have never been allowed to pass over A's land except for the purpose of maintaining and repairing the line, B's claim must be dismissed.

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137. — The Government can institute for the benefit of the neighbouring community a right to use for domestic or agricultural purposes the water of a well or pond upon private property; provided that the owner be never deprived of such quantity of water as will satisfy his reasonable requirements.

In such case, the owner is entitled to compensation for the institution and exercise of the servitude. This compensation shall be fixed in the same way as in the case of expropriation.

S. 709. F. 642.

138. — The owner of an immovable through which a water-course runs is entitled to alter the course of such water as he thinks fit, but he is bound to restore the water to its natural course at the place of exit.

F. 644, laws 29 April 1845, 8 April 1898. I. 543, 613. J. 219, 222.

139. — The owner of an immovable through or along which a water-course runs is entitled to use the water for his requirements but he is bound not to draw so much of it that the owners of other immovables along the same water-course cease to get the quantity of water which is necessary for their normal requirements.

140. — The owner of an immovable along which a water-course runs is entitled to build a dam across such water-course and to rest it on the opposite bank provided that no serious injury to other immovables be likely to result therefrom, and he pays compensation for minor injuries if any.

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Siam, Laksana Betset 18 to 21. I. 613. J. 222.

Illustration: — A, the owner of a piece of land situated along a watercourse, wishes to build a dam across that watercourse for the purpose of better irrigating his land. If it appears that the building of the dam and the consequent rise of the water level will cause the flooding of the whole or of the greatest part of another bordering land situated upstream, A cannot build the dam. If it appears on the contrary that the rise of the water level will cause the flooding of only a very little portion of another bordering land situated upstream, A may build the dam, but he must pay to the owner of the land upstream proper compensation for the loss of the flooded portion of that land.

141. — In any case the Government is entitled to restrict the rights mentioned in the three foregoing Sections as far as water-ways of the public domain are concerned.

142. — When an immovable has no access to any public road or has an access which is obviously inadequate to the reasonable requirements of its owner, the latter has a right of passage on the adjoining immovables to the nearest public way.

This right of passage can be claimed only against the owner of the adjoining land which will be the least injured thereby.

The owner who exercises a right of passage is bound to pay compensation for any injury resulting therefrom. [74]

The owner of an immovable is not precluded from claiming access to a public road by the fact that his immovable already has an access to a water-way.

F.682 to 684. G.917. I.593. J.210 to 213. M.142, 143. S.694.

143. — The owner of an immovable is bound to allow, under reasonable conditions, the owner of an adjoining immovable to use his land (exclusive of dwelling places) for the purpose of such repairs to fences, walls or buildings on or near the boundary as could not be conveniently executed otherwise. But he is entitled to compensation for any injury caused thereby.

I.591. J.209. S.695. Cf. Penal Code (trespass) s. 327 to 331.

Illustration: — A is the owner of a house which has been built in such a way that one of its walls stands on the boundary line and cannot be repaired from inside the compound of A. The part of the land situated along the wall on the other side of the boundary line and belonging to B is a garden. A may require from B to allow workmen to use his garden for repairing the wall of A's house (erection of scaffoldings, storing of bricks, cement, etc.), but B may declare the use of his garden subject to reasonable conditions such as: specification of the places where materials will be stored, prohibition of night work, delimitation of the part of the garden to be used by the workmen, etc. If B suffers any injury, e.g. if the carelessness of A's workmen or the storing of materials damages the garden, he is entitled to receive proper compensation from A. [75]

144. — The owner of an immovable is bound to allow the laying through his property of water pipes, drainage pipes, electric wires or other similar fixtures for the use of the adjoining immovable when they cannot be laid without the use of the land or at unreasonable costs.

S.691.

145. — Servitudes instituted by law other than those specified in this Title are described in the special Laws relating thereto.

TITLE III.

REAL SERVITUDES CREATED BY CONTRACTS OR WILLS.

146. — Servitudes created by contract or will, or any alterations of them, are void unless made in writing and registered in the Land Register.

S. 731.

147. — When two servitudes created by contract or will conflict with each other, the one registered before overrules the other.

G. 1024.

Illustration: — *A enters into an agreement with B, on the 1st of April 2458, giving B the right to dig an irrigation canal on A's land. On the 1st of May, he enters into another agreement with C, giving C a right of way on A's land across the line along which the canal is to be dug. If B has entered the former agreement in the Land Register before C enters the latter, C cannot object to B digging a canal across the line of the way to be made by C. But, if B was negligent and let C register his agreement first, he may dig his canal only on condition that it will not interfere with C's right of way; he may therefore be compelled to give up the digging of the canal or to do such works as may be required by the existence of a right of way across the line of the canal, e.g. he may be compelled to build and maintain at his own expense a bridge allowing C to cross the canal.*

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148. — If the necessities of the dominant property alter, an increased encumbrance cannot be imposed upon the servient property.

B. 739.

Illustration: — *A has entered into an agreement with B, giving B the right to lay on A's land the pipes necessary to bring to B's house the water required for B's domestic needs. Later on B erects on his land a factory for the working of which a very large quantity of water is needed. He cannot avail himself of the agreement entered into with A to lay on A's land the pipes necessary to meet his present*

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industrial needs. He must enter into a new agreement with A to that effect, and, if A refuses to do so, B must lay his pipes elsewhere.

149. — A servitude created by contract or will is extinguished:

- (1) by the extinction of the contract;
- (2) when the exercise of the servitude has become impossible owing to *force majeure*;
- (3) when the owner of the servient property gives conclusive evidence that the servitude has become practically useless;
- (4) by the non-usage of the servitude for ten years.

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F. 703, 705, 706. S. 734, 735, 736. M. 153.

Illustrations: — (2) A servitude has been created on A's land, allowing B, C and D, the respective owners of three adjoining lands, to use a well situated on A's land. The well dries up for ever. The servitude is extinguished.

(3) A servitude has been created on A's land, situated along a watercourse, allowing B, the owner of an estate situated further inland, to dig a canal on A's land to bring the water of the stream to B's land. In consequence of an extraordinary rising of the stream, the course of the latter is altered and the canal dug on A's land becomes useless. The servitude is extinguished.

150. — The extinction of a servitude created by contract or will cannot be set up against third persons unless mention of the extinction has been entered in the Land Register.

S. 731, 734.

Illustration: — A, the owner of a dominant property, enjoys a right of way upon the adjoining land of B. But A does not use it from 2453 to 2465, and his right has been extinguished by non-usage. B is entitled to have mention of the extinction entered in the Land Register. Even if B is negligent and does not request this mention, A can no more claim the exercise of the right of way against him.

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But suppose A, on the 1st. November 2465, sells his property to C. No mention of

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the extinction of the servitude has been entered in the Land Register. When C purchases the property of A, he is entitled to believe, on examination of the Land Register, that this property enjoys a right of way upon the adjoining immovable. B, having been negligent, cannot oppose against C the extinction of the servitude.

151. — Servitudes in the nature of right of way or of right of water may be acquired by way of usucapion: that is to say when a servitude has been actually exercised during ten years openly and without interruption, the owner or lawful occupant of the dominant property is entitled to have the servitude registered for the benefit of his property.

F.690, 691. G.937. J.283, 289, 291, 293.

Illustration: — A has, during ten years, openly and without interruption passed with his carts and his cattle over a waste land belonging to B, because it is much more convenient to him to use that way than any other one to reach the next public road. If B denies to A the right to cross his land any longer, A may claim that he has acquired a right of way through usucapion to the benefit of his land over that of B. If A has hired his land to C and C had passed over B's land as aforesaid, A may also claim the acquisition of the right of way through usucapion. If the land over which A or C used to pass belongs, not to B, a private person, but to the public domain of the State, A cannot claim that he has acquired a right of way by usucapion over that land.

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152. — A servitude acquired by usucapion is valid as between the owners of the dominant and servient properties even without registration. But it will not be valid on any transfer unless it be registered before the transfer.

Illustration: — A, owner of a dominant land, has acquired by usucapion a right of way upon the adjoining land of B. B cannot object to the exercise of the servitude. But suppose B sells his land to C, the servitude having not been registered. C, who was not aware of the existence of a servitude on the land he has purchased, though he has examined the Land Register, can object to the exercise of the servitude by A. A has been negligent when having the servitude not registered, and he loses his right.

TITLE IV.

OTHER SERVITUDES.

CHAPTER I.

HABITATION.

153. — Habitation is the right granted by the owner of a land or house to another person to use such land or house for a term of years or for life of the grantee without paying any rent.

Siam: Dika Nos. 711/124, 152/121, 263/122, 741/123. Land Law 2459, sections 1 and 2.

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154. — Unless the right of habitation has been granted in writing and registered in the Land Register:

- 1) it can be revoked by the grantor at any time on giving one month notice to the grantee;
- 2) it cannot be set up against the transferees for value or mortgagees of the land or house.

155. — The grantee can use the land or house as he thinks fit, provided he does not alter or use it to the injury of the grantor.

F.631, 634. G.1092. M.84. S.776. Siam Laksana Betset 42. Dika 610/121, 442/124, 105/125.

156. — The grantee is entitled to share the benefit of his right with his family and servants.

F.632. G.1093. M.81. S.777.

157. — The grantee cannot let the land or house subject to habitation, nor transfer

his right even by way of inheritance.

F. 634.

158. — The grantee is bound to make the petty repairs and to bear the expenses of ordinary maintenance.

Cf. Obligations s.519. F.605 (usufruct). S.778.

159. — If the grantee uses the land or house contrary to the provisions of the four foregoing Sections, the grantor may apply to the Court for injunction or for cancellation of the grant of habitation and compensation for injury if any.

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160. — Habitation is extinguished:

- (1) by the expiration of the period provided by contract or will;
- (2) by the death of the grantee;
- (3) by the renunciation of the grantee;
- (4) by abandonment of habitation;
- (5) by revocation or cancellation in the cases provided in this chapter.

161. — On extinction of the habitation the land or house shall be returned to the grantor in such condition as it is at the time of extinction without any compensation.

CHAPTER 2.

SUPERFICIES.

162. — Superficies is a real right by virtue of which a person, called the superficiary, is entitled to use another person's land for the purpose of owning structures thereon, with or without paying rent.

G. 1012, 1016. J. 265. M. 97. S. 675, 779

163. — A right of superficies may be created: for a term not exceeding forty

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years, or for the term of the life of the land owner or of the superficiary.

In case no term has been agreed upon, each party can at any time determine the contract by giving reasonable notice to the other. But when a rent is to be paid, either one year's notice must be given or rent for one year be paid.

J. 268

164. — Any contract or will creating or altering a right of superficies is void unless made in writing and registered on the Land Register.

165. — The superficiary can transfer his right and dispose of it by inheritance.

He can also mortgage the structures erected on the land.

166. — When the superficiary has agreed to pay a periodical rent to the owner of the land, he must perform his obligation notwithstanding the loss of structures caused by *force majeure*.

J. 266, 274.

167. — Superficies is extinguished:

- (1) by the expiration of the term fixed by contract or will;
- (2) by the cancellation of the contract for non-payment of the rent, if any;
- (3) by determination of the contract.

CHAPTER 3.

CHARGE ON LAND.

168. — A servitude on an immovable may be created by contract or will in favour of a person who is entitled to enjoy periodical profits derived from the immovable.

Such servitude cannot be transferred by the beneficiary unless otherwise provided.

DIVISION IV.

TITLE IV. — OTHER SERVITUDES.

In any other respect, the servitude is governed by the provisions concerning the servitudes created by contract or will.

G. 1090. S. 781.

Illustration: — A is the owner of a house which is let and the annual rent of which is 3,000 baht. A may establish for the benefit of B a servitude upon the annual profit of his house: so that B be paid an annual sum of 1,200 baht from the rent. If A sells the house to C, C is debtor of this annual sum.

