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Commercial and Civil Code of Thailand

TITLE II

CONTRACT

CHAPTER I

FORMATION OF CONTRACT

Section 354. An offer to make a contract in which a period for acceptance is specified cannot be withdrawn within such period.

Section 355. A person who, without specifying a period for acceptance, makes an offer to another at a distance cannot withdraw his offer within a time which notice of acceptance might reasonably be expected.

Section 356. An offer made to a person who is present without specifying a period for acceptance may be accepted only there and then. This applies also to an offer made by one person to another on the telephone.

Section 357. An offer ceases to be binding if it is refused to the offeror, or if it is not accepted in due time according to the three foregoing sections.

Section 358. If the notice of acceptance arrives out of time, but it is apparent that it was sent in such manner that in the ordinary course of things it ought to have arrived in due time, the offeror, unless he has already done so, must without delay give notice to the other party of the delayed arrival.

If the offeror fails to give notice mentioned in the foregoing paragraph, the notice of the acceptance is deemed not to have been out of time.

Section 359. If the acceptance of an offer arrives out of time, it is deemed to be a new offer.

An acceptance with additions, restrictions or other modifications is deemed to be a refusal coupled with a new offer.

Section 360. The provisions of Section 169 paragraph 2 do not apply, if the offeror has declared a contrary intention, or if before accepting the other party had notice of the fact of his death or loss of capacity.

Section 361. A contract between persons at a distance comes into existence at the time when the notice of acceptance reaches the offeror.

In accordance to the declared intention of the offeror or to ordinary usage no notice of acceptance is necessary, the contract comes into existence at the time of the occurrence of fact which is considered as a declaration to accept.

Section 362. A person who by advertisement promises that he will give a reward to whoever shall do a certain act is bound to give such reward to any person who does the act, even if such person did not act with a view to the reward.

Section 363. In the case of the foregoing section the promisor may so long as there is no person who has completed the specific act, withdraw his promise by the same means which used for advertising, unless he declared in the advertisement that he would not withdraw it.

If a promise cannot be withdrawn by the means of the aforesaid, withdraw may be made by other means, but in such case it is valid only against those persons who know of it.

If the promisor has fixed a period within which the specified act must be done, he is presumed to have renounced his right of withdrawal.

Section 364. If there are several persons who have done the act specified in the advertisement, only that one who does it first has a right to receive an equal share of the reward.

If several persons do such act at the same time, each one has a right to receive an equal share of the reward. But if the reward is in its nature indivisible, or if by the terms of the promise only one person is to receive the reward, it is decided by lot.

The provisions of the foregoing two paragraphs do not apply, if in the advertisement a different intention is declared.

Section 365. A promise of reward which has a prize competition is valid only if a period of time is fixed in the advertisement.

The decision whether any competitor fulfils the conditions of the promise within the period, or which one among several competitors deserves the preference, shall be made by the umpire named in the advertisement, or in the absence of any such, by the promisor of the reward. The decision is binding upon the parties concerned.

In case of equality of merit the provisions of Section 364 paragraph 3 apply correspondingly.

The transfer of ownership of the thing produced may be demanded by the promisor only if he has specified in the advertisement that such transfer shall be made.

Section 366. So long as the parties have not agreed upon all points of a contract upon which, according to the declaration of even one party, agreement is essential, the contract is, in case of doubt, not concluded. An understanding concerning particular points is not binding, even if they have been noted down.

If it is agreed that the contemplated contract shall be put into writing, in case of doubt, the contract is not concluded until it is put in writing.

Section 367. If the parties to a contract, which they regarded as concluded, have in fact not agreed as to one point upon which an agreement was to be settled, those parts which were agreed upon are valid in so far as it may be inferred that the contract would have been concluded even without a settlement of this point.

Section 368. Contracts shall be interpreted according to the requirements of good faith, ordinary usage being taken into consideration.

CHAPTER II

EFFECT OF CONTRACT

Section 369. A party to a reciprocal contract may refuse to perform his obligation until the other party performs or tenders performance of his obligation. But this does not apply, if the other party's obligation is not yet due.

Section 370. If the object of a reciprocal contract is the creation or transfer of a real right in a specific thing, and such thing is lost or damaged by a cause which is not attributable to the debtor, the loss or damage falls upon the creditor.

To a non-specific thing the provisions of the foregoing paragraph apply from the time when the thing has become specific in accordance with the provisions of Section 195 paragraph 2.

Section 371. The provision of the foregoing section do not apply, if the thing which forms the subject of a reciprocal contract depending upon a condition precedent is lost or destroyed while the condition is pending.

If the thing is damaged by a cause not attributable to the creditor, the latter, when the condition is fulfilled, may at his option either demand performance with reduction of his counter performance or rescind the contract, provided that in the case where the cause of the damage is attributable to the debtor, the creditor's right to compensate is not affected thereby.

Section 372. Except in the cases mentioned in the two foregoing sections, if an obligation becomes impossible of performance by a cause not attributable to either party, the debtor has no right to receive the counter performance.

If performance becomes impossible by a cause attributable to the creditor, the debtor does not lose his right to the counter performance. He must however, deduct what he saves in consequence of release from the performance, or what he acquires or maliciously omits to acquire by a different application of his faculties. The same rule applies in the performance due from one party becomes impossible, in consequence of a circumstance for which he is not responsible, at the time when the other party is in default to acceptance.

Section 373. An agreement made in advance exonerating a debtor from his own fraud or gross negligence is void.

Section 374. If a party by a contract agrees to make a performance to a third person, the latter has a right to claim such performance directly from the debtor.

In the case of the foregoing paragraph the right of the third person comes into existence at the time when he declares to the debtor his intention to take the benefit of the contract.

Section 375. After the right of the third person has come into existence in accordance with the provisions of the foregoing section, it cannot be charged or extinguished by the parties to the contract.

Section 378. Defences arising from the contract mentioned in Section 374 can be set up by the debtor against the third person who receive the benefit of the contract.

CHAPTER III

EARNEST AND STIPULATED PENALTY

Section 377. If, on entering into a contract, something is given as earnest, this is deemed to be proof of the conclusion of the contract. It also serves as a security that the contract shall be performed.

Section 378. In the absence of agreement to the contrary, earnest is:

- (1) To be returned or treated as part-payment upon performance
- (2) To be forfeited, if the party giving it fails to perform, or if the performance becomes impossible in consequence of the circumstance for which he is responsible or if the rescission of the contract is due to his fault.
- (3) To be returned, if the party receiving it fails to perform, or, if the performance becomes impossible in consequence of a circumstance for which he is responsible.

Section 379. If the debtor promises the creditor the payment of a sum of money as penalty in case he does not perform it in the proper manner, the penalty is forfeited if he is in default. If the performance due consist in a forbearance, the penalty is forfeited as soon as any act in contravention of the obligation is committed.

Section 380. If the debtor has promised the penalty for the case of his not performing his obligation, his creditor may demand the forfeited penalty in lieu of performance. If the creditor declares to the debtor that he demands the penalty, the claim for performance is barred.

If the creditor has a claim for compensation for non-performance, he may demand the forfeited penalty as the minimum amount of the damage. Proof of further damage is admissible.

Section 381. If the debtor has promised the penalty for the case of his not performing the obligation in the proper manner, such as, not at the fixed time, the creditor may demand the forfeited penalty in addition to the performance.

If the creditor has a claim for compensation on account of improper performance, the Section 380 paragraph 2 apply.

If the creditor accepts the performance he may demand the penalty only if on acceptance he reserves the right to do so.

Section 382. If another performance than the payment of a sum of money is promised as penalty, the provisions of Sections 379 to 381 apply; the claim for compensation is barred if the creditor demands the penalty.

Section 383. If a forfeited penalty is disproportionately high, it may be reduced to a reasonable amount by the Court. In determination of reasonableness every legitimate interest of the creditor, not merely his property interest, shall be taken into consideration. After payment of the penalty the claim for reduction is barred.

The same rule applies also, apart from the cases provided for by Sections 379 and 382, if a person promises a penalty for the case of his doing or forbearing to do some act.

Section 384. If the promises performance is invalid, an agreement made for a penalty for non-performance of the promise is also invalid, even if the parties knew of the invalidity of the promise.

Section 385. If the debtor contests the forfeiture of the penalty on the ground of having performed his obligation, he must prove the performance, unless the performance due from him consisted in a forbearance.

CHAPTER IV

RESCISSION OF CONTRACT

Section 386. If by contract or by the provisions of law one party has the right of rescission, such rescission is made by a declaration of intention to the other party.

The declaration of intention in the foregoing paragraph cannot be revoked.

Section 387. If one part does not perform the obligation, the other party may fix a reasonable period and notify him to perform within that period. If he does not perform within that period, the other party may rescind the contract.

Section 388. If the object of a contract according to its nature or to an intention declared by the parties can be accomplished only by performance at a fixed time or within a fixed period, and such time or period has passed without one of the parties having performed, the other party may rescind the contract without the notification mentioned in the foregoing section.

Section 389. If performance becomes wholly or partly impossible by a cause attributable to the debtor, the creditor may rescind the contract.

Section 390. If in a contract there are several persons on the one or the other side, the right of rescission may be exercised only by all and against all. If the right of rescission is extinguished in respect of one of those persons entitled, also in respect of the others.

Section 391. If one party has exercised his right of rescission, each party is bound to restore the other to his former condition; but the rights of third persons cannot be impaired.

To money which is to be repaid in the case of the foregoing paragraph interest is to be paid from the time when it was received.

For services rendered and for allowing the use of a thing the restitution shall be made by paying the value, or, if in the contract a counter-payment in money is stipulated for, this shall be paid.

The exercise of the right of rescission does not affect a claim for damages.

Section 392. The obligations of the parties resulting from rescission shall be performed according to the provisions of Section 369.

Section 393. If no period is fixed for the exercise of the right of rescission, the other party may fix a reasonable period and notify the party having a right of rescission to declare within such period whether he will rescind or not. If notice of rescission is not received within such period, the right of rescission is extinguished.

Section 394. The right of rescission is extinguished when the person entitled has, by his own act or fault, essentially damaged the thing which is the subject of a contract or has rendered the restitution thereof impossible or has changed into a thing of a different kind by working it up or remodeling it.

If without the act or fault of the person who has the right of rescission the thing which is the subject of the contract of the contract has been lost or damaged, the right of rescission is not extinguished.

TITLE III

MANAGEMENT OF AFFAIRS WITHOUT MANDATE

Section 395. A person who takes charge of an affair for another without having received mandate from him or being otherwise entitled to do so in respect of him, shall manage the affair in such manner as the interest of the principal requires, having regard to his actual or presumptive wishes.

Section 396. If the undertaking of the management of the affair is opposed to the actual or presumptive wishes of the principal, and if the manager must have recognized this, he is bound to compensate the principal for any damages arising from his management of the affair, even if no fault otherwise imputable to him.

Section 397. The fact that the management of the affair is opposed to the wishes of the principal is not taken into consideration if, without the management of the affair, a duty of the principal the fulfillment of which is of public interest or a legal duty to furnish maintenance to others by the principal would not be fulfilled in due time.

Section 398. If the management of the affair has for its object the averting of an imminent danger which threatens the person, reputation or property of the principal, the manager is responsible only for willful default and gross negligence.

Section 399. The manager shall notify to the principal, as soon as practicable, the undertaking of the management of the affair, and await his decision, unless there is danger in delay. For the rest the provisions of Sections 809 to 811 applicable to an agent apply mutatis mutandis to the obligation of the manager.

Section 400. If the manager is incapacitated, he is responsible only under the provisions relating to compensation for wrongful acts, and relating tot the return for undue enrichment.

Section 401. If the undertaking of management of the affair is in accordance with the interest and the actual or presumptive wishes of the principal, the manager may demand reimbursement of his outlay as an agent. The provisions of Section 816 paragraph 2 apply mutatis mutandis.

In the case provided for by Section 397 this claim belongs to the manager even if the undertaking of the management of the affair is opposed to the wishes of the principal.

Section 402. If the conditions of the foregoing section do not exist, the principal is bound to return to the manager all that he acquires through the management of the affair under the provisions relating to the return for undue enrichment.

If the principal ratifies the management of the affair, the provisions of this Code concerning Agency apply mutatis mutandis.

Section 403. The manager has no claim if he had not the intention to demand reimbursement from the principal.

If parents or grandparents furnish maintenance to their descendants, or vice versa, it is to be presumed, in case of doubt, that there is no intention to demand reimbursement from the recipient.

Section 404. If the manager acts for one person, believing that he is acting for another person, only the former has the right and duties arising out of the management.

Section 405. The provisions of the ten foregoing sections do not apply, if a person takes charge of the affair of another in the belief that it is his own.

If a person treats the affair of another as his own, although knowing that he is not entitled to do so, the principal may enforce the claims based on Sections 395, 396, 399 and 400. If he does enforce them, he is liable to the manager as provided for in Section 402 paragraph 1.

TITLE IV

UNDUE ENRICHMENT

Section 406. Any person who, through an act of performance made by another person or in any other manner, obtains something to the prejudice of such other person without legal ground, must return it to the latter. The acknowledgement of the existence or non-existence of a debt is deemed to be an act of performance.

The same provision shall apply if something has been obtained on account of a cause which has not been realized or of a ceased to exist.

Section 407. A person who has freely done an act as if in performance of an obligation, knowing that he was not bound to effect the performance, is not entitled to restitution.

Section 408. The following persons are not entitled to restitution:

A person who performs an obligation subject to a time clause before the time has arrived
A person who performs an obligation which has been barred by prescription
A person who performs an obligation in compliance with a moral duty or with the requirements of social propriety.

Section 409. When a person who is not a debtor has performed an obligation by mistake and the creditor, in consequence thereof, has in good faith destroyed or obliterated the documentary evidence of the obligation or given up any security or lost his right by prescription, the creditor is not bound to make restitution.

The provisions of the foregoing paragraph do not prevent the person who has performed from exercising a right of recourse against the debtor and his surety, if any

Section 410. A person who had made a performance for an intended result which is not produced is not entitled to restitution, if, from the beginning, it was known to him that the production of the result was impossible or if he was prevented the result in violation of good faith.

Section 411. A person who has made an act of performance, the purpose of which is contrary to legal prohibition or good morals, cannot claim restitution.

Section 412. If the property which was unduly received is a sum of money, restitution must be made in full, unless the person who received it was in good faith in which case he is only bound to return such part of his enrichment as still exists at the time when restitution is demanded.

Section 413. When the property which must be returned is other than a sum of money and the person who received it was in good faith, such person is only bound to return it in such condition as it is and is not responsible for loss or damage to such thing, but he must return whatever he has acquired as compensation for such loss or damage. If the person who received the property was in bad faith he is fully responsible for the loss or damage even caused by force majeure, unless he proves that the loss or damage would have happened in any case.

Section 414. If restitution is impossible on account of the nature of the property received or for any other reason, and the person who received the property was in good faith, such person is bound only to return such part of his enrichment as still exists at the time when restitution is demanded.

If a person who received the property was in bad faith, he is bound to pay the full value of the property.

Section 415. A person who has received the property in good faith acquires the fruits thereon as long as such good faith continues.

In case where he has to return such thing, he is deemed to be in bad faith from the time when restitution is demanded.

Section 416. Expenses which were necessary for the preservation of the property or for its maintenance or repair must be reimbursed in full to the person who returns such property.

However such person cannot claim reimbursement of the ordinary expenses for maintenance, repairs or charges made within the time during which he has acquired the fruits.

Section 417. For expenses other than those provided in paragraph 1 of the foregoing section the person who returns the property can claim reimbursement only if they were made while he was in good faith and if the value of the property is increased by such expenses at the time of restitution, and only to the extent of such increase.

The provisions of Section 415 paragraph 2 apply correspondingly.

Section 418. If the person who has in bad faith unduly received a property has made alterations in, or additions to it, he must return the property after having put it in its former condition at his own expense, unless the owner of the property chooses to have it returned in its present condition, in which case the owner must pay at his option either the cost of alterations or additions, or a sum representing the increased value of the property.

When restitution is to be made, if it is impossible to put it in its former condition or the property would be damaged thereby, the person who received the property must return it in such condition as it is and he is not entitled to compensation for any increase of value accruing to the property from such alterations or additions.

Section 419. No action on account of undue enrichment can be entered later than one year from the time when the injured party became aware of his right to restitution or later than 10 years from the time when the right accrued.

TITLE V

WRONGFUL ACTS

CHAPTER I

LIABILITY FOR WRONGFUL ACTS

Section 420. A person who, willfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore.

Section 421. The exercise of a right which can only have the purpose of causing injury to another person is unlawful.

Section 422. If damage results from an infringement of a statutory provision intended for the protection of others, the person who so infringes is presumed to be in fault.

Section 423. A person who, contrary to the truth, asserts or circulates as a fact that which injurious to the reputation or the credit of another or his earnings or prosperity in any other manner, shall compensate the other for any damage arising therefrom, even if he does not know of its untruth, provided he ought to know it.

A person who makes a communication the untruth of which is unknown to him, does not thereby render himself liable to make compensation, if he or the receiver of the communication has a rightful interest in it.

Section 424. The Court, when given judgment as to the liability for wrongful act and the amount of compensation, shall not be bound by the provisions of the criminal law concerning liability to punishment or by the conviction or non-conviction of the wrongdoer for a criminal offence.

Section 425. An employer is jointly liable with his employee for the consequences of a wrongful act committed by such an employee in the course of his employment.

Section 426. The employer who has made compensation to a third person for a wrongful act committed by his employee is entitled to reimbursement from such employee.

Section 427. The two foregoing sections shall apply mutatis mutandis to principal and agent.

Section 428. An employer is not liable for damage done by the contractor to a third person in the course of the work, unless the employer was at fault in regard to the work ordered or to his instructions or to the selection of the contractor.

Section 429. A person, even though incapacitated, on account of minority or unsoundness of mind is liable for the consequences of his wrongful act. The parents of such person are, or his guardian is, jointly liable with him, unless they or he can prove that proper care in performing their or his duty of supervision has been extended.

Section 430. A teacher, employer or other person who undertakes the supervision of an incapacitated person either permanently or temporarily, is jointly liable with such person for any wrongful act committed by the latter whilst under his supervision, provided that it can be proved that he has not exercised proper care.

Section 431. In case falling under the two forgoing sections the provisions of Section 426 apply mutatis mutandis.

Section 432. If several persons by a joint wrongful act cause damage to another person, they are jointly bound to make compensation for the damage. The same applies if, among several joint doers of an act, the one who caused the damage cannot be ascertained.

Persons who instigate or assist in a wrongful act are deemed to be joint actors.

As between themselves the persons jointly bound to make compensation are liable in equal shares unless, under the circumstances, the Court otherwise decides.

Section 433. If damage is caused by an animal, the owner, or the person who undertakes to keep the animal on behalf of the owner, is bound to compensate the injured party for any damage arising therefrom, unless he can prove that he has exercised proper care in keeping it according to its species and nature or other circumstances, or that the damage would have been occasioned notwithstanding the exercise of such care.

The person responsible under the foregoing paragraph may exercise a right of recourse against the person who has wrongfully excited or provoked the animal or against the owner of another animal which has caused the excitement or provocation.

Section 434. If damage is caused by reason of the defective construction or insufficient maintenance of a building or other structure, the possessor of such building or structure is bound to make compensation, but if the possessor has used proper care to prevent the happening of the damage, the owner is bound to make compensation.

The provisions of the foregoing paragraph apply correspondingly to defects in the planting or propping of trees or bamboos.

If in cases of the foregoing two paragraphs there is also some other person who is responsible for the cause of the damage, the possessor or owner may exercise a right of recourse against such person.

Section 435. A person who is threatened with an injury from a building or other structure belonging to another is entitled to require the latter to make necessary measures for averting the danger.

Section 436. An occupier of a building is responsible for damage arising from things which fall from it or are thrown into an improper place.

Section 437. A person is responsible for injury caused by any conveyance propelled by mechanism which is in his possession or control, unless he proves that the injury results from force majeure or fault of the injured person.

The same applies to the person who has in his possession things dangerous by nature of destination or on account of their mechanical action.

CHAPTER II

COMPENSATION FOR WRONGFUL ACTS

Section 438. The Court shall determine the manner and the extent of the compensation according to the circumstances and the gravity of the wrongful act.

Compensation may include restitution of the property of which the injured person has been wrongfully deprived or its value as well as damages for any injury caused.

Section 439. A person who is bound to return a thing of which he has deprived another by a wrongful act is also responsible for the accidental destruction of the thing, or for accidental impossibility of returning it arising from any other cause, or for its accidental deterioration, unless destruction or the impossibility of returning it or the deterioration would have happened even if the wrongful act had not been committed.

Section 440. If on account of the taking of a thing its value, or, on account of damage to a thing, its diminution in value is to be made good, the injured party may demand interest on the amount to be made good from the time which serves as the basis for the estimate of the value.

Section 441. If a person bound to make compensation for any damage on account of the taking or damaging of a movable compensates the person whose possession the thing was at the time of taking or damage, he is discharged by so doing even if a third party was the owner of the thing, or had some other right in the thing, unless the right of the third party is known to him or remains unknown in consequence of gross negligence.

Section 442. If any fault of the injured party has contributed in causing the injury, the provisions of Section 223 shall apply *mutatis mutandis*.

Section 443. In the cause of causing death, compensation shall include funeral and other necessary expenses.

If death did not ensue immediately, compensation shall include in particular expenses for medical treatment and damages for the loss of earning on account of disability to work.

If on account of the death any person has been deprived of his legal support, he is entitled to compensation therefore.

Section 444. In the case of an injury to the body or health, the injured person is entitled to receive reimbursement of his expenses and damages for total or partial disability to work, for the present as well as for the future.

If at the time of giving judgment it is impossible to ascertain the actual consequences of the injury, the Court may reserve in the judgment the right to revise such judgment for a period not exceeding two years.

Section 445. In the case of causing death, or of causing injury to the body or health of another, or in the case of deprivation of liberty, if the injured person was bound by law to perform service in favor of a third person in his household or industry, the person bound to make compensation shall compensate the third person for the loss of such service.

Section 446. In the case of injury to the body or health of another, or in the case of deprivation of liberty, the injured person may also claim compensation for the damage

which is not pecuniary loss. The claim is not transferable, and does not pass to the heirs, unless it has been acknowledged by contract, or on action on it has been commenced.

Section 447. Against a person who has injured the reputation of another, the Court may, on the application of the injured person, or order proper measures to be taken for the rehabilitation of the latter's reputation, instead of, or together with, compensation damages.

Section 448. The claim for damages arising from wrongful act is barred by prescription after one year from the day when the wrongful act and the person bound to make compensation became known to the injured person, or ten years from the day when the wrongful act was committed.

However if the damages are claimed on account of an act punishable under the criminal law for which a longer prescription is provided such longer prescription shall apply.

CHAPTER III

JUSTIFIABLE ACTS

Section 449. A person who, acting in lawful defence or under a lawful command, has caused injury to any other person is not liable to make compensation.

The injured person can claim compensation from the person against whom the lawful defence was directed, or from the person who wrongfully gave the command, as the case may be.

Section 450. If a person damages or destroys a thing in order to avert an immediate common danger, he is not liable to make compensation, provided the damage done is not out of proportion to the danger.

If a person damages or destroys a things in order to avert an immediate individual danger, he shall make restitution therefore.

If a person damages or destroys a thing in order to protect the rights of himself or of a third person against immediate danger threatened by the thing itself, such person is not liable to make compensation, provided the damage done is not out of proportion to the danger. If the danger was caused by such person's fault he is liable to make compensation.

Section 451. A person who uses force for protecting his right is not liable to make compensation if under the circumstances the help the Court or of the proper authorities is not obtainable in due time and there is danger that, if he does not act immediately, the realization of his right will be frustrated or seriously impeded.

The using of force according to the foregoing paragraph must be strictly limited to that which is necessary for adverting the danger.

If any person does the act specified in the first paragraph under the erroneous assumption that the necessary conditions exist to render his act lawful, he is liable to make compensation to the other person, even if the error was not due to his negligence.

Section 452. A possessor of an immovable property is entitled to seize animals belonging to another person which cause injury on such property and retain them as security for any compensation which may be due to him, he is even entitled to kill them if it is necessary under the circumstances.

However he must give notice without delay to the owner of the animals. If the owner could not be found the person seizing must take proper measures to seek him out.