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Commercial and Civil Code of Thailand in English

BOOK I

GENERAL PRINCIPLES

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TITLE 4

JURISTIC ACTS

CHAPTER I

GENERAL PROVISIONS

Section 149. Juristic act are voluntary lawful acts, the immediate purpose of which is to establish between persons relations, to create, modify, transfer, preserve or extinguish rights.

Section 150. An act is void if its object is expressly prohibited by law or is impossible, or is contrary to public order or good morals.

Section 151. An act is not void on account of its differing from a provision of any law if such law does not relate to public order or good moral.

Section 152. An act which is not in the form prescribed by law is void.

Section 153. An act which does not comply with the requirements concerning capacity of person is voidable.

CHAPTER II

DECLARATION OF INTENTION

Section 154. A declaration of intention is not void on the ground that the declarant in the recesses of his mind does not intended to be bound by his expressed intention, unless this hidden intention was known to the other party.

Section 155. A declaration of intention made with the connivance of the other party which is fictitious is void; but its invalidity cannot be set up against third persons injured by the fictitious declaration of intention and acting in good faith.

If a declaration of fictitious intention under paragraph one is made to conceal another juristic act, the provisions of law relating to the concealed act shall apply.

Section 156. A declaration of intention is void if made under a mistake as to an essential element of the juristic act.

The mistake as to an essential element of the juristic act under paragraph one are for instance a mistake as to a character of the juristic act, a mistake as to a person to be a partner of the juristic act and a mistake as to a property being an object of the juristic act.

Section 157. A declaration of intention is voidable if made under a mistake as to a quality of the person.

Mistake under paragraph one must be a mistake as to the quality of the person which is considered as essential in the ordinary dealings, and without which such juristic act would have not been made.

Section 158. If the mistake under Section 156 or Section 157 was due to the gross negligence of the person making such declaration, he cannot avail himself of such invalidity.

Section 159. A declaration of intention produced by fraud is voidable.

An act under paragraph one is voidable on account of fraud only when it is such that without which such juristic act would not have been made.

When a party has made a declaration of intention owing to a fraud committed by a third person, the act is voidable only if the other party knew or ought to have known of the fraud.

Section 160. The avoidance of a declaration of intention produced by fraud cannot be set up against a third person acting in good faith.

Section 161. If the fraud is only incidental that is to say it has merely induced a party to accept more onerous terms than would otherwise have done, such party can only claim compensation for damage resulting from such fraud.

Section 162. In bilateral juristic acts, the intentional silence of one of the parties in respect to a fact or quality of which the other party is ignorant, is deemed to be a fraud if it is proved that, without it, the act would not have been made.

Section 163. If both parties acted with fraud, neither of them can allege it to void the act or to claim compensation.

Section 164. A declaration of intention is voidable if made under duress.

Duress, in order to make an act voidable, must be imminent and so severe that makes him fear and without it, the act would not have been made.

Section 165. The threat of the normal exercise of a right is not considered duress. Any act made owing to reverential fear is not considered an act made under duress.

Section 166. Duress vitiates the juristic act, even when it is exercised by a third person.

Section 167. In determining a case of mistake, fraud or duress, the sex, age, position health, temperament of the person made the intention and all other circumstances and environment which may relate to that act shall be taken into consideration.

Section 168. A declaration of intention made to a person in his presence takes effect from the time when it becomes known to the receiver of the intention. This also apply to the declaration of intention made by one person to the other through telephone, other communication devices, or other means through which similar communication can be made.

Section 169. A declaration of intention made to a person not in his presence takes effect from the time when it reached the receiver of the intention. If does not become effective if a revocation reaches him previously or simultaneously.

Even though the person who made a declaration of intention dies, becomes incompetent or quasi-incompetent by an order of the Court after it has been sent, the validity of declaration is not impaired thereby.

Section 170. If the declaration of intention is made to a minor or a person adjudged incompetent or quasi-incompetent, it cannot be set up against him unless his legal representative, guardian or curator, as the case may be, has knowledge of it or has given prior consent to it.

The provisions of paragraph one do not apply to the declaration of intention concerning any matter that the minor or the incompetent is required by law to make by himself.

Section 171. In the interpretation of a declaration of intention, the true intention is to be sought rather than the literal meaning of the words or expressions.

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CHAPTER III

VOID AND VOIDABLE ACTS

Section 172. A void act cannot be ratified, and its nullity may be alleged at any time by any interested person.

The return of a property arising from a void act shall be governed by the provisions on Undue Enrichment of the Code.

Section 173. If any part of an act is void the whole act is void, unless it may be assumed under the circumstances of the case that the parties intended the valid part of the act to be separable from the invalid part.

Section 174. If a void act complies with the requirements of another act which is not void, it is valid as the other act, if it may be assumed that such validity would have been intended by the parties, had they known of the invalidity of the intended act.

Section 175. A voidable act may be avoided by:

The legal representative or the minor after becoming sui juris, but the avoidance can be made by

- (1) the minor before his becoming sui juris if a consent thereto has been given by his legal representative, or

- (2) the guardian or curator, as the case may be, but the avoidance can be made by the quasi-incompetent before recovery of his capacity if a consent thereto has been given by his curator, or

- (3) The person who has made the declaration of intention owing to mistake, fraud or duress, or

- (4) The person of unsound mind who did the voidable juristic act under Section 30 after he has recovered his capacity.

If the person who did the voidable juristic act dies before making the avoidance, it may be avoided by his heir.

Section 176. When a voidable act is avoided, it is deemed to have been void from the beginning; and the parties shall be restored to the condition in which they were previously, and if it is not possible to so restore them, they be indemnified with an equivalent.

If any person knew or ought to have known that an act is voidable, he, after making the avoidance, is deemed to have known that the act is void since the voidable act became known or ought to become known to him.

The claim resulting from restoring them to the previous condition under paragraph one cannot be exercised later than one year from the date of avoidance of the voidable act.

Section 177. If any person entitled to avoid a voidable act under Section 175 ratifies a voidable act, it is deemed to have been valid from the beginning; but the right of third persons cannot be affected thereby.

Section 178. The avoidance of or ratification to a voidable act could be made by a declaration of intention made to the other party who is a determinate person.

Section 179. A ratification is valid only if it is made after the state of facts forming the ground of voidability has ceased to exist.

When a person adjudged incompetent or quasi-incompetent or a person of unsound mind who did a voidable juristic act under Section 30 acquires knowledge of such act after he has recovered his capacity, he can ratify it only after acquiring knowledge. The heir of the person having done the voidable juristic act can ratify such act after the death of such person unless the right to avoid the voidable juristic act of the deceased has extinguished.

The provisions of paragraph one and paragraph two shall not apply to a ratification to the voidable juristic act made by the legal representative, guardian or curator.

Section 180. If after the time when ratification according to Section 179 could be made, any of the following facts takes place in regard to a voidable act by an act of the person entitled to avoid the voidable act under Section 175, it is deemed to be ratified, unless a reservation is expressed, such as:

- (1) The obligation has been fully or partially performed.
- (2) The performance of the obligation has been demanded.
- (3) A novation of the obligation has been affected.
- (4) Security has given for the obligation.
- (5) The whole or part of the right or liability has been transferred.
- (6) Any other acts done which indicate the ratification.

Section 181. A voidable act cannot be avoided later than one year from the time when ratification could have been made, or later than ten years since the act was done.

CHAPTER IV

CONDITIONS AND TIME

Section 182. A clause which subordinates the effect or the end of the effect of a juristic act to a future and uncertain event, is considered a condition.

Section 183. A juristic act subject to a condition precedent takes effect when the condition is fulfilled.

A juristic act subject to a condition subsequent cease to have effect when the condition in fulfilled.

If the parties to the act have declared an intention that the effect of the fulfillment of a condition shall relate back to a time before its fulfilled, such intention is to govern.

Section 184. Any party to a juristic act subject to a condition must not, while the condition is pending, do any thing by which the benefit which the other party might derive from the fulfillment of the condition impaired.

Section 185. The rights and duties which the parties have, while the condition is pending, may be disposed of, inherited, protected or secured according to law.

Section 186. If the fulfillment of a condition is prevented not in good faith by the party to whose disadvantage it would operate, the condition is deemed to have been fulfilled. If the fulfillment of a condition is brought about in bad faith by the party to whose advantage it would operate, the condition is deemed not to have been fulfilled.

Section 187. When the condition is already fulfilled at the time of the juristic act, the latter is unconditionally valid, if the condition is precedent, and is void, if the condition is subsequent.

When it is already certain at the time of the juristic act that the condition cannot be fulfilled, the act is void, if the condition is precedent, and unconditional valid, if the condition is subsequent.

The parties still have rights and duties according to Section 184 and Section 185 so long as they do not know whether the condition is fulfilled under paragraph one or cannot be fulfilled under paragraph two.

Section 188. A juristic act is void if it is subject to an unlawful condition, or a condition contrary to public order or good morals.

Section 189. A juristic act upon a condition precedent which is impossible is void. A juristic act upon a condition subsequent which is impossible is unconditionally valid.

Section 190. A juristic act upon a condition precedent which depends upon the will of the debtor is void

Section 191. If a time of commencement is annexed to a juristic act, its performance cannot demanded before such time arrives. If a time of ending is annexed to a juristic act, its effect ceases when such time arrives.

Section 192. It is presumed that a time of commencement or ending is fixed for the benefit of the debtor, unless it appears from the tenor of the instrument or from the circumstances of the case that it was intended for the benefit of the creditor, or of both parties.

The benefit of such a time may be waived, but this will not affect any benefit which would accrue there from to the other party.

Section 193. In the following cases the debtor cannot take advantage of a time of commencement or ending:

- (1) If he has been ordered by the Court to place his assets under final custody and control according to the law on bankruptcy.
- (2) If he has not given security when he was bound to give it.
- (3) If he has destroyed or diminished any security given.
- (4) If the debtor has produced as security a property of other person without the latter's consent.

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