



TU 122 LAW IN EVERYDAY LIFE

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1



Basic Principles of Contract & Tort

2



Initial Remarks

Obligations (หนี้) vs Property (ทรัพย์สิน)

Obligatory rights (สิทธิทางหนี้/บุคคลสิทธิ) vs Real Rights (ทรัพย์สินสิทธิ)

3



Obligations

Obligations are a legal relationship between two parties called “creditor” and “debtor”.

Obligations create rights and duty
Creditor – right to claim (สิทธิเรียกร้อง)
Debtor – duty to perform (หนี้/หน้าที่ต้องชำระหนี้)

Section 214 “...the creditor is entitled to have his obligation performed out of the whole of the property of his debtor including any money and other property due to the debtor by third person.”

4



Property

Real rights, notably ownership and possession, are rights over property.

Section 1336 TCCC Section 1336. “Within the limits of law, the owner of property has the right to **use** and **dispose** of it and **acquires its fruits**; he has the right to **follow** and **recover** it from any person not entitled to detain it, and has the right to **prevent** unlawful interference with it.”

5



Distinction between Obligations and Property

- 1) Real right depends on the thing which is the subject of right. Obligations do not depend on things.
- 2) Obligations impose duty on the debtor only. Real right imposes duty on every one in society not to interfere.

6



Sources of Obligations

- 1) Contracts
- 2) Legal causes
 - o Tort (delict or wrongful act)
 - o Unjust enrichment
 - o Management of another affairs
 - o Statutory obligations, for example, tax

7



Basic Principles of Contract

- A contract is formed by consent; a contract is formed when an acceptance agrees with an offer.
- The principle of freedom contract and the main exception:
 - Public order and good morals

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.

8



Basic Principles of Contract

OFFERS

- An offer must be clear and unequivocal
- An intention to make an offer which is unclear is considered to be an invitation to treat.
- An offer lasts for a period specified or a reasonable period, and the offeror cannot revoke the offer before such period ends.

9



Basic Principles of Contract

ACCEPTANCE

- The offeree can accept or decline the offer.
- An acceptance can be made expressly or impliedly.
- An acceptance with modification to the offer is considered to be a new offer.
- A late acceptance becomes a new offer.

10



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11



Basic Principles of Contract

VALIDITY OF CONTRACT

- 1) Objects
- 2) Intention
- 3) Forms
- 4) Capacity

12



Basic Principles of Contract

1. OBJECTS

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.

13



Basic Principles of Contract

2. INTENTION

- Fraud/deception (Section 159) - **Voidable**
- Mistake (Sections 156 and 157) - **Void / Voidable**
- Duress (Section 164) - **Voidable**

14



Basic Principles of Contract

3. FORM

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

Example: Section 456. A sale of immovable property is void unless it is made in writing and registered by the competent official.

15



Basic Principles of Contract

4. CAPACITY

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

Example: Section 21. For the doing of a juristic act, a minor must obtain the consent of his legal representative. All acts done by him without such consent are voidable unless otherwise provided.

16