



**TU 122 LAW IN EVERYDAY LIFE**

# **Contract Law**

## **Validity of a Contract**

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# Basic Principles of Contract

## VALIDITY OF A CONTRACT

- 1) Objects (วัตถุประสงค์)
- 2) Intention (เจตนา)
- 3) Forms (แบบ)
- 4) Capacity (ความสามารถของบุคคล)



# Validity of a Contract

## 1. OBJECTS

### ***Section 150 of TCCC***

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

Void (โมฆะ) = of no legal effect; null



# Validity of a Contract

OBJECTS = something sought to be attained or accomplished; an end, goal, or purpose

(ความมุ่งหมาย, เป้าหมาย)

An object, which is expressly prohibited by law or contrary to public order or good morals, renders a contract void only when such object is known by both contract parties.

How about an impossible object?



# Validity of a Contract

**EXAMPLE: A** told **B**, the owner of a knife shop, that she needed an extremely sharp knife to kill someone. **B** got the best knife for her and sold it to **A**. Is the contract void?



# Validity of a Contract

## 2. INTENTION

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

**Void** (โหมฆะ) = of no legal effect; null

**Voidable** (โหมฆียะ) = valid until annulled; esp., (of a contract) capable of being affirmed or rejected at the option of one of the parties.



# Validity of a Contract

- **Mistake**
- A mistake as to an essential element of the contract **void** (Section → 156 TCCC) (การแสดงเจตนาโดยสำคัญผิดในสาระสำคัญของนิติกรรม)



# Section 156 TCCC

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.



# Validity of a Contract

## Mistake as to an essential element

- Essential elements, such as
  - Character of the juristic act (e.g. renting > sales contract);
  - Person to be a partner of the juristic act;
  - Property to be an object of the juristic act

\* Only when such element is essential!



# Validity of a Contract

## Mistake as to an essential element

Are these contracts void?

E.g. Golf agreed to rent his apartment to Tinn. When signing a contract, Golf was mistaken that Tarm were Tinn. Golf and Tarm signed a contract.

E.g. Princess works part-time at a café. She was mistaken that she was selling caramel macchiato to Film. Actually, the buyer was Film's twin brother.



# Validity of a Contract

- **Mistake**

- A mistake as to a quality of the person or property → **voidable** (Section 157 TCCC) (การแสดงเจตนาโดยสำคัญผิดในคุณสมบัติของบุคคลหรือทรัพย์สิน)



# Section 157 TCCC

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

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



# Validity of a Contract

- Such quality must be essential. If not mistaken, the party would not have entered into such juristic act.
- But such mistake must not come from gross negligence. (ประมาทเลินเล่ออย่างร้ายแรง)



# Validity of a Contract

## **Mistake as to the quality of the person or property**

E.g. Mickey plans to open a Japanese restaurant. He hires Purich as a cook, believing that Purich can cook Japanese food. Actually, Purich can only bake French bakery.

E.g. Krittin visited Pinpetch's home. He saw a classic car parking in her garage. Krittin believed the car engine still worked, so he bought the car. In fact, the engine did not work anymore.



# Validity of a Contract

## **Mistake as to the quality of the person or property**

\*Essential quality of the person or property can be agreed by the contracting parties.

E.g. Bow told a car dealer she wanted an environmental-friendly car such as a hybrid or plug-in model. Bow bought a car believing that it was plug-in. Actually, it was only with a diesel engine and emitted a lot of PM 2.5.



# Validity of a Contract

- **Fraud/deception** (กลฉ้อฉล)
  - Casual Fraud: A contract is voidable only when it is such that without the fraud such contract would not have been made. (Section 159 TCCC)



## Section 159 TCCC

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.



# Validity of Contract

For example, Torfun was looking for a real wooden chair for her new apartment. Ramita tried to sell a chair, lying that it was made of real Oak. Actually, it was made of plywood (ไม้อัด).

If Torfun knew the truth, but bought the chair anyway. Was the contract voidable?



# Validity of Contract

## Incidental Fraud:

Section 161 TCCC. 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.



# Validity of Contract

## Incidental Fraud:

- Fraud only causes a party to accept more burdensome terms of contract. (ยอมรับข้อกำหนดอันหนักยิ่ง)
- The contract is valid/ not voidable
- A party can only claim compensation for damage resulting from such fraud.



# Validity of Contract

For example, Ramita wanted to sell her used iPad Air to Pimchanok. Although the iPad functions very well, Pimchanok asked if the iPad has ever fallen on the ground or not. Ramita lied that it has not. As a result, Pimchanok bought it for THB 10,000. If she had known that it has actually fallen on the ground, she would have bought it at a lower price.



# Validity of a Contract

- **Duress**
  - In order to make an act voidable, duress must be imminent and so severe that makes him fear and without it, the act would not have been made.  
(Section 164 TCCC)



# Validity of a Contract

## 3. FORM

### *Section 152 of TCCC*

“An act which is not in the form prescribed by law is void.”

### *Example:* Section 456 TCCC

“A sale of immovable property is void unless it is made in writing and registered by the competent official.”



# Validity of a Contract

## 3. FORM

**Example:** Section 456 TCCC “A will may be made in the following form, that is to say, it must be made in writing, dated at the time of making of will and signed by the testator before at least two witnesses present at the same time who shall then and there sign their names certifying the signature of the testator.

No erasure, addition or other alternation in such will is valid unless made in the same form as prescribed by this section.”



# Validity of a Contract

## 4. CAPACITY

### *Section 153 of TCCC*

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

**Example:** Section 21 TCCC “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.”



## Section 24 TCCC

A minor can do all acts which are suitable to his condition in life, and actually required for his reasonable needs.



# Exercise

Chip, an elementary school student, bought a notebook and a pencil from Dale for THB 25, without having received consents from his parents.

Is the sales contract between Chip and Dale legally valid?





# Exercise

Goofy lent Donald money in an amount of THB 100,000, without knowing the fact that Donald intended to spend this money on buying narcotics.

Is the loan contract between Goofy and Donald legally valid?



# Exercise

A 20-year-old girl, Wendy, sold a plot of land to Peter, without having received consents from her parents. The sales contract was made in writing.

Is the sales contract between Wendy and Peter legally valid?



# Exercise

Pinocchio lied to Alice that the doll Alice wanted to buy from him is made of hardwood. Alice knew that Pinocchio was telling her a lie. The doll is actually made of softwood. However, she still bought it from Pinocchio because of a bargain price.

Is the sales contract between Pinocchio and Alice legally valid?



# Exercise

Flynn bought a silver necklace from a jewelry shop as a gift for his girlfriend, because he understood that it is made of white gold. If he had known that the necklace is made of silver, he would not have bought it because his girlfriend is allergic to silver.

Is the sales contract legally valid?