

TU 122 LAW IN EVERYDAY LIFE

Formation of Contract

Pananya Larbprasertporn



Today's Agenda

- Sources of Obligations
- Formation of Contract
- Exercises



Sources of Obligations

Obligations (หนี้)

Section 194 TCCC. By virtue of an obligation the creditor is entitled to claim performance from the debtor. The performance may consist in a forbearance.

Sources of Obligations

- 1) Contracts (สัญญา)
- 2) Tort (delict or wrongful act) (ละเมิด)
- 3) Unjust enrichment (ลาภมิควรได้)
- 4) Management of another's affairs (จัดการงานนอก
สั่ง)
- 5) Statutory obligations (หน้าที่จากกฎหมายกำหนด), for
example, tax

Sources of Obligations

1) Contracts

An agreement between two or more parties creating legal relations between them



Sources of Obligations

2) Tort (delict or wrongful act)

A wrongful act or omission injuring the life, body, health, liberty, property or any right of another person





Section 420 TCCC

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.

Sources of Obligations

3) Unjust enrichment

When a person obtains something to the prejudice of other person without legal grounds. (Sections 406-419 TCCC)



Section 406 TCCC

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 acknowledgment 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.



Unjust Enrichment

Example: You ordered one book in internet and only paid for that book. By mistake, the seller sent you two books.



Unjust Enrichment

Example: A sold an apartment to B. A let B to stay in the apartment and B paid money to A.

Section 456 para. 1 TCCC. A sale of immovable property is *void unless it is made in writing and registered by the competent official. ...

*“Void” means of no legal effect; null. [Black’s Law Dictionary]



Section 411 TCCC

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



Unjust Enrichment

Example: *A* hired *B* to kill *C*. *A* paid money to *B* already. However, after studying TU 122 she learnt that Section 150 of the TCCC says:

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

Can *A* demand money back from *B*?

Sources of Obligations

4) Management of another's affairs

When a person takes charge of an affair for another without having received any mandate. (Sections 395-405 TCCC)

5) Statutory obligations

for example, tax, family law (parents and child)





Section 395 TCCC

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 TCCC

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 401 TCCC

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.



Management of another's affairs

Example: *A* and *B* were roommates. *A* ordered food in the app. The food arrived when only *B* was at the room. The food hadn't been paid, so *B* paid for the food.

Question 1

What source of obligations provides a legal basis for this claim?

Mickey punched Donald in the face. So, Donald claims damages from Mickey.



Question 2

What source of obligations provides a legal basis for this claim?

Belle, a housemaid, voluntarily paid an electricity bill for Jasmine, a house owner, because Jasmine forgot to pay. Belle demands reimbursement from Jasmine.

Question 3

What source of obligations provides a legal basis for this claim?

Christopher hired Pooh to sing in his birthday party. Pooh demands Christopher to pay for his performance.



Question 4

What source of obligations provides a legal basis for this claim?

Mufasa paid back his debt to a creditor without knowing that his son, Simba, has already repaid his debt on his behalf. So, Mufasa demands his payment back from a creditor.

Question 5

What source of obligations provides a legal basis for this claim?

Anna bought a dress online from Olaf. The dress delivered to Anna has several defects. So, Anna demands Olaf to repair or replace the dress.

Question 6

What source of obligations provides a legal basis for this claim?

A wife claims maintenance from her husband.



Question 7

What source of obligations provides a legal basis for this claim?

A flowerpot fell from a balcony of Ariel's room on the second floor of an apartment and smashed against a car of Eric. Eric claims compensation from Ariel.



Question 8

What source of obligations provides a legal basis for this claim?

Minnie found Daisy's lost dog, so she fed it and brought it back to Daisy. Minnie demands reimbursement from Daisy for a cost of dog food.



FORMATION OF CONTRACT

Basic Principles of Contract

- The principle of freedom of contract and the main exception:
 - Public order and good morals

Section 150 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.

Section 151 TCCC. 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.

Basic Principles of Contract

- A contract is formed by consent; a contract is formed when an acceptance agrees with an offer.



OFFERS

Characteristics of an Offer

- An offer must be clear and unequivocal.
- An intention to make an offer which is unclear is considered to be an 'Invitation to treat'.



OFFERS

When does an offer take effect?

- If an offeree is present, an offer takes effect from the time when it becomes known to the offeree (Section 168 TCCC).
- If an offeree is not present, an offer takes effect from the time when it reached the offeree (Section 169 TCCC).





Section 168 TCCC

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 TCCC

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. It does not become effective if a revocation reaches him previously or simultaneously.



Electronic Transactions Act B.E. 2544 (2001)

Section 23. The receipt of a data message is deemed to occur from the time when such data message enters an information system of the addressee.

If the addressee has designated an information system for the purpose of receiving data message specifically, it shall be deemed that the receipt of a data message occurs at the time when the data message enters the designated information system. However, if such data message is sent to an information system, it shall be deemed that the receipt of a data message occurs at the time when the data message is retrieved from that information system.



continued

The provision of this section applies notwithstanding that the place where the information system is located may be different from the place where the data message is deemed to be received by the addressee under Section 24.

OFFERS

Effects of an Offer

- An offer lasts for a period specified or a reasonable period, and the offeror cannot revoke the offer before such period ends (Sections 354 & 355 TCCC).
- An offer ceases to be binding if it is rejected, or if it is not accepted within a specified period, or a reasonable period, or at that moment (Sections 357, 354, 355 & 356).



TCCC

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.



TCCC

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 forgoing sections.

ACCEPTANCE

Characteristics of an Acceptance

- The offeree can accept or decline the offer.
- An acceptance can be made expressly or impliedly.
- An acceptance must be clear.

ACCEPTANCE

When does an acceptance take effect?

- If an offeror is present, an acceptance takes effect from the time when it becomes known to the offeror (Section 168 TCCC).
- If an offeror is not present, an acceptance takes effect from the time when it reached the offeror (Section 169 TCCC).

ACCEPTANCE

Effects of an acceptance

- If an acceptance matches an offer, a contract is formed (Section 361 TCCC). When an acceptance becomes effective, it cannot be revoked.
- Acceptance with modification OR late acceptance (Section 359 TCCC)
 - If an acceptance comes with modification / condition to the offer, there will be 2 effects (1) it terminates the old offer and (2) it becomes a new offer instead.
 - If an acceptance comes late, there will be 2 effects (1) it terminates the old offer and (2) it becomes a new offer instead.



Section 361 TCCC

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 359 TCCC

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.

CONTRACT FORMATION

Considerations for contract formation

1. Is there an offer?
2. When does the offer take effect? (Sections 168-169)
3. How long does the offeree have to accept the offer?
(Sections 354-355)
4. Does the offeree accept the offer within the given time and without modification to the offer?
(Sections 357, 359)
5. When does the acceptance take effect? (Sections 168, 169, 361)

EXERCISES

Belle sent a letter to Beast saying that:

“I would like to sell you my book titled “Beauty and the Beast”. The price is negotiable. Please respond within 7 days.”

Is this letter an offer?



EXERCISES

Two days later, the letter Belle sent to Beast arrived at Beast's house, but Beast had not read it yet.

Is Belle's intention expressing in the letter effective yet?



EXERCISES

After reading Belle's letter, Beast called Belle to say that he agreed to buy the book for THB 1,000 and gave Belle 5 days to decide.

Is this an offer or an acceptance?

Can Beast withdraw it?

EXERCISES

After hearing Beast's proposal, Belle rejected it immediately because she thought that her book was worth more than THB 1,000.

Two days later Belle changed her mind. So, she called Beast and told Beast that she accepted Beast's offer.

Does the contract between Belle and Beast form?