

Private Law Rights

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Terminology

Freedom

Right

Duty

Liability

Privilege

Immunity

Terminology

Freedom – the right to do what you want without being controlled or restricted by anyone.

E.g. freedom of contract

E.g. freedom of religion

Terminology

Rights – Something that you are legally allowed to do

Duty – A legal obligation that is owed or due to another and that needs to be satisfied; an obligation for which somebody else has a corresponding right.

Ownership

Section 1336 TCCC. 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.

Right and Duty, e.g., 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.”

“Entitle” = to grant a legal right to or qualify for.

“Forbearance” denotes intentional negative act.

Terminology

Liability – Legal responsibility to another or to society, enforceable by civil remedy or criminal punishment <liability for injuries caused by negligence>

Liability, e.g., 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.

Terminology

Privilege – an exception to a duty

E.g. The privilege immunizing from a defamation lawsuit any statement made by a parliament member at the Sitting of the House of Representatives or the Senate, or at a joint sitting of the National Assembly.

Terminology

Immunity – Any exemption from a duty, liability, or service of process.

E.g. diplomatic immunity from local law, such as criminal procedures, etc.

Rights

1. Rights under public law
2. Rights under private law

Rights under Public Law

Rights in public law (especially constitution)

- Fundamental rights, e.g.,
 - Right to liberty
 - Right to due process of law
 - Right to freedom of movement
 - Right to freedom of thought
 - Right to freedom of religion
 - Right to freedom of expression
 - Etc.

Rights under Private Law

Classification of Private Law Rights

The classification of private law rights varies depending on the criterion employed. Different criteria give different classifications.

Basic Classifications

- Classification by the subject matter protected by the rights
- Classification by the person who has a duty to respect the rights
- Classification by the enforcement of the rights

Classification by the Subject Matter Protected by the Right

1. Rights related to things

1. Real rights (rights *in rem*)
 - a. Absolute real right – ownership
 - b. Limited real right – right over a property of another person, e.g. habitation, superficies, servitude, usufruct, etc.
2. Concession
3. Intangible assets (especially intellectual property rights)
4. Obligatory rights (rights *in personam*)

2. Rights related to persons

1. Rights to life
2. Rights arising from status

Rights related to Things

Ownership

Section 1336 TCCC. 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.

Habitation

Section 1402 TCCC. A person who has been granted a right of habitation (arsai) in a building is entitled to occupy such building as a dwelling place without paying rent.

Superficies

Section 1410 TCCC. The owner of a piece of land may create a right of superficies in favour of another person by giving him the right to own, upon or under the land, buildings, structures or plantations.

Servitude

Section 1387 TCCC. An immovable property may be subjected to a servitude by virtue of which the owner of such property is bound, for the benefit of another immovable property, to suffer certain act affecting his property or to refrain from exercising certain rights inherent in his ownership.

Usufrucht

Section 1417 TCCC. An immovable property may be subjected to a usufrucht by virtue of which the usufructuary is entitled to the possession, use and enjoyment of the property.

>He has the right of management of the property.

>The usufrucht of a forest, mine or quarry entitles the usufructuary to the exploitation of the forest, mine or quarry.

Obligatory Rights

Section 537 TCCC. A hire of property is a contract whereby a person, called the letter, agrees to let another person, called the hirer, have the use or benefit of a property for a limited period of time and the hirer agrees to pay rent therefore.

Obligatory Rights

Section 546 TCCC. The letter is bound to deliver the property hired in a good state of repair.

Section 553 TCCC. The hirer is bound to take as much care of the property hired as a person of ordinary prudence would take of his own property, and to do ordinary maintenance and petty repairs.

Rights related to Persons

Rights to life

Including, body, health, freedom, etc., because one is a human being.

Rights arising from Status

Rights not inherent to all humans, but arise because of one's specific status

e.g.

Section 1564 TCCC. Parents are bound to maintain their children and to provide proper education for them during their minority.

When children are *sui juris*, parents are bound to maintain them only when they are infirm and unable to earn their living.

Sui juris means [Latin “of one's own right”; independent] of full age and capacity
[Black's Law Dictionary]

Classification by the Person Who Has Duty to Respect the Right

1. **Absolute right** (can be invoked against everyone)
2. **Relative right** (can be invoked only against a specific person(s))

Are they absolute or relative right?

- a. Real rights
- b. Intangible rights
- c. Obligatory rights
- d. Right to life
- e. Right arising from status

Classification by the Enforcement of the Right

1. Self-enforcing, including self-defense
2. Claim
3. Refusal
4. Nullification

Self-enforcing

Section 1336 TCCC. 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.

Self-enforcing

Section 1567 TCCC. A person exercising parental power (natural guardian) has the right:

1. to determine the child's place of residence;
2. to punish the child in a reasonable manner for disciplinary purposes;
3. to require the child to do such work as may be reasonable to his ability and condition in life;
4. to demand the return of the child from any person who unlawfully detains him.

Claim

Section 215 TCCC. When the debtor does not perform the obligation in accordance with the true intent and purpose of the same, the creditor may claim compensation for any damages caused thereby.

“Same” means the very thing just mentioned or described; it or them
[Black’s Law Dictionary]

Refusal

Section 193/10 TCCC. After the lapse of the period of prescription for claims, the debtor is entitled to refuse performance.

E.g. Tax – 10 years; salary – 5 years, etc.

Nullification

Section 19 TCCC. A person, on completion of twenty years of age, ceases to be a minor and becomes *sui juris*.

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.

“Voidable” means valid until annulled; esp., (of a contract) capable of being affirmed or rejected at the option of one of the parties.

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

Exercise

A driving negligently hit B, a minor, who was crossing a street. B's parents had to pay 100,000 THB for this treatment. They would like to sue A to claim damages for such wrongful act. Please answer.

- a. What rights of B were violated?
- b. By suing A, what rights are the parents exercising?

Wrongful Act

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.

Exercise

A has founded a fashion business under the brand “Straight A’s”. Bags under this brand are very popular.

B wants to earn money to pay for the LLB program, so he produces bags and uses a very similar logo. What right of A is violated?

Exercise

C, a minor, bought a limited edition of “Straight A’s” bag to use at TU for 100,000 baht. D wanted the bag but had no money. D snatched the bag from C.

What right of C is violated?

Can C immediately seize the bag back?

If D has already brought the bag to her apartment, can C break in and get her bag?

Exercise

While C and D fought, D hurt C's arm.

What right of C is violated?

Exercise

C's mom knew about the expensive bag C bought and did not agree with C's decision to buy it. C's mom goes to the shop and demands money back.

What right is C's mom exercising?

Reference

Black's Law Dictionary