

TU 122 REVIEW

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TOPICS

- Juristic Persons
 - Rights and Duties of Juristic Persons (Section 66 TCCC)
 - Management of Juristic Persons (Sections 70 & 71 TCCC)
 - Juristic Person's Contractual Liability
- Tort
 - General Tort (Section 420 TCCC)
 - Defamation (Section 423 TCCC)
 - Vicarious Liability (e.g. Employer - Employee, Sections 425-426 TCCC)

JURISTIC PERSONS: RIGHTS AND DUTIES

- Section 66 TCCC
 - “A juristic person has rights and duties conformity with the provisions of this Code or of other law within the scope of its power and duties, or its object as provided by or defined in the law, regulation or constitutive act.”

JURISTIC PERSONS: RIGHTS AND DUTIES

- Section 67 TCCC
 - “Subject to Section 66, a juristic person enjoys the same rights and is subject to the same duties as a natural person, **except** those which, **by reason of their nature, may only be enjoyed or incurred only by a natural person.**”

JURISTIC PERSONS: MANAGEMENT THROUGH REPRESENTATIVES

- Section 70 TCCC
 - “A juristic person must have one or several **representatives** as prescribed by the law, regulations or its constitutive act.
 - The will of a juristic person is declared through its representatives.”

JURISTIC PERSONS: MANAGEMENT – VOTING

- Section 71 TCCC
 - “In the case where a juristic person has several representatives, **if it is not otherwise provided** by the law, or defined in regulations or constitutive act, decisions as to the affairs of juristic person are made by **a majority** of representatives.”

JURISTIC PERSONS: CONTRACTUAL LIABILITY

- Considerations for binding of contracts:
 - Being a representative;
 - Acting within the scope of the objects of the juristic person;
 - Acting within the scope of the registered power of representatives;
 - Having no conflict of interest

JURISTIC PERSONS: EXERCISE

- **Company A's** object is to buy and sell second-hand books. **B** is a representative of the Company. **B** is sometimes bored while waiting for customers to come in. So **B** bought an MSI computer from the **Shop X** to play games while looking after the Company's shop.
- Question: Is **Company A's** bound by such contract? Please provide reasons.
- Question: Who needs to pay for the price of the MSI computer to **Shop X**, **Company A** or **B**?

JURISTIC PERSONS: EXERCISE

- **Company LOVEtheEARTH's** object is to sell environmentally-friendly products. The Company has **A**, **B** and **C** as representatives of the Company. According to its constitutive act and regulations, any contract worth more than 20,000 THB requires an approval of all representatives.
- Question: **A** had an idea that the Company's shop should also sell some drinks. **A** therefore ordered plastic straws worth 500 THB. Is the **Company** bound by such contract? Please provide reasons.
- Question: **B** bought a home food composting machine worth 25,000 THB to sell at the Company's shop. Is the **Company** bound by such contract? Please provide reasons.

TORT: GENERAL TORT

- Section 420 TCCC
 - “A person who, wilfully 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.”

TORT: GENERAL TORT

- Section 420 TCCC: Elements
 - A person wilfully or negligently acts or fails to act;
 - The act is unlawful;
 - Damage occurs; and
 - Damage is caused by an unlawful act.

TORT: GENERAL TORT

- Examples
 - A kills B.
 - A stole B's property.
 - A carelessly spilled a full cup of caramel macchiato over B's computer and made it broken.

TORT: DEFAMATION

- Section 423 TCCC
 - “A person who, contrary to the truth, asserts or circulates as a fact that which injurious to the reputation or the credit of another or his earnings or prosperity in any other manner, shall compensate the other for any damage arising therefore, even if he does not know of its untruth, provided he ought to know it.
 - A person who makes a communication the untruth of which is unknown to him, does not thereby render himself liable to make compensation, if he or the receiver of the communication has a rightful interest in it.”

TORT: DEFAMATION

- Section 423 TCCC: Elements
 - A person asserts or circulates;
 - Statement that is contrary to the truth;
 - Injuring the reputation or the credit of another or his earnings or prosperity in any other manner;
 - Even if he does not know of its untruth, provided he ought to know it; and
 - Exceptions: Section 423 paragraph 2, etc.

TORT: DEFAMATION

- Exercise

- A told his friends:

- “Have you heard that Ajarn X sexually harassed a female student?”
 - “Oh, you were talking about that golden boy, Y, in the TU122 class? He got the best grade because his dad bribed Ajarn.”
 - “I’m not sure if it’s true. I heard that Z has HIV.”

TORT: VICARIOUS LIABILITY (EMPLOYER – EMPLOYEE)

- Section 425
 - “An employer is jointly liable with his employee for the consequences of a wrongful act committed by such an employee in the course of his employment.”

TORT: VICARIOUS LIABILITY (EMPLOYER – EMPLOYEE)

- Section 425 TCCC: Elements
 - Employment contract;
 - An employee commits tort;
 - Such act is committed in the course of his/her employment
- Legal consequences:
 - An employer is jointly liable with his/her employee (Section 425 TCCC)
 - The employer who has made compensation is entitled to reimbursement from such employee (Section 426 TCCC)

TORT: VICARIOUS LIABILITY (EMPLOYER – EMPLOYEE)

- Exercise
 - Question: **A** is an employee of **Company CLEANHOME**. **A**'s duty is to clean the Company's customers' houses or apartments. **A** was cleaning at **B**'s apartment and carelessly broke **B**'s expensive vase. If you need to provide a legal advice to **B**, what would be your advice?
 - Question: While **B** was away, **A** stole **B**'s expensive vase.