

UPDATED
11th
ANNIVERSARY
EDITION

With a new
chapter on
Fraud

A Primer of
**Thai
Business
Law**

Concise and Understandable
Explanations

David Tan

A Primer of Thai Business Law

Fourth Edition

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Introduction

Do you want to:

- **Have Thai business laws explained in a simple and concise way ?**
- **Have complex legal principles explained in an easy to understand way ?**
- **Find solutions to legal issues that arise in your business ?**

If your answer to any of these questions is yes, then this is the book for you. Read it, think about what you read and understand it.

A Primer of Thai Business Law, this book is written to provide exactly that. When you finished this book, you should grasped the basic principles of Thai business laws and be able to apply these principles to your everyday situations, whether being business or otherwise.

How to use this book

This section provides a summary of the contents of this book and a guideline on how this book can be best approached.

Firstly, peruse the first three Chapters to get a good understanding of the meanings of some important words, types of juristic (legal)

person involved in business law and contract formation. This will put you in a position to go into the other Chapters of this book. (**Note:** These three Chapters may be a bit boring, be patient, they are just the bare essentials).

The other Chapters of this book cover the common types of business contracts which we encountered daily. Go straight to the Chapter dealing with the type of business contract that you are interested in. For example, if you want to know about a lease of property contract or some issues related to this type of contract, read Chapter 5 Lease of Property.

University students, however, are advised to read up on all the different types of business contracts in this book or read Chapters 4 through to 13.

Given the raise of investigations and prosecution of fraud cases since the publication of this book, I am compelled to include in this edition an additional chapter on the Thai criminal law on cheating and fraud. Chapter 14 should help to explain the elements constituting a fraud and clarify common issues relating to these.

For law students and lawyers, I have put in those numbers in brackets after most headings in each Chapter, these are the Section numbers of the Civil and Commercial Code (Penal Code for Chapter 14) for your easy reference. It is also necessary for you to refer to relevant Thai Supreme Court decisions. For Chapter 14 on Cheating and Fraud, I have stated in brackets case numbers of some Thai Supreme Court decisions to help explain the law and for your reference. The Thai business laws referred to in this book are based on the materials available to me as at July 1, 2019.

Given that a law subject is not considered pleasant reading for most people, I had tried to write each Chapter of this book in simple English language, easy to understand explanations of legal principles and with a minimum of legal jargon and statutory quotations.

Although I had done my best to ensure that the contents in this book are correct, please note that the contents herein do not constitute legal advice or representation in any form.

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Chapter 1

Some Words and Their Meanings

Lawyers use words that are difficult for people to know their exact meanings. In this Chapter, I will cover certain words which, knowing their legal meanings, are essential to learning about Thai business law. Knowing and understanding the meanings of these words will provide the reader with a good foundation for the topics covered in the rest of this book.

Note: The Thai language of these words and other important words in this book can be found in the **Glossary** of this book.

1. **Thing and Property** (137 – 138)

- 1.1 In legal terms, a **thing** is a corporeal object i.e. has a form, shape, appearance and it is tangible. For example, table, computer, car etc.

However, a **property** includes things and incorporeal objects that are capable of having a value and can be appropriated, carried or possessed.

Therefore, a property can either have a shape and be tangible or not have a shape and be intangible, for example, personal rights, real rights, a software program, intellectual property i.e. copyright, patent, trademark etc.

Things (139 – 142)

1.2 Things can be classified into: **Immovable things and movable things.**

Immovable things (Also known as real estate or real property)

- (a) Land;
- (b) Things fixed permanently to land, for example, trees, bridge, monument etc.;
- (c) Things forming a part of land, for example, river, rocks etc.; and
- (d) Including rights connected with land, for example, ownership title, possessory right, servitude right over land etc.

Movable things

- (a) Things other than immovable things; and
- (b) Including rights connected with movable things, for example, ownership title of a bicycle, right to possess, use or receive benefits from a computer, copyright, rights in a trademark.

1.2.1 The differences between an immovable thing and a movable thing are:

- (a) An immovable thing like a plot of land has an owner, the plot of land either belongs to a private owner or to the state, but a movable property may have no owner;

- (b) Ownership title of an immovable thing can be acquired by **open and peaceful possession** of the thing for an **uninterrupted period** of 10 years with the **intention to be its owner**. For a movable thing all conditions remain the same except that the possession period is 5 years;
- (c) Proof of ownership in an immovable thing is by registration, for example, registration of land ownership title at the Land Office. Proof of ownership in a movable thing is by possession, for example, possessing and using a bicycle; and
- (d) A juristic act or legal act (see 4. below) to acquire rights in an immovable thing has to comply with a legal form, for example, a contract on leasing land for more than 3 years must be made in writing, signed by the parties to the contract and registered at the Land Office. In general, there is no need to comply with a legal form for movable things.

1.2.2 **Things that can be divided and things that cannot be divided**

Things that can be divided are things that, when it is divided, do not affect its form or part except causing a reduction in its quantity, for example, dividing a bag of rice, cutting out a piece of cloth etc.

2 kinds of things that cannot be divided:

- (a) Things that cannot be divided due to its condition or nature. Any division of the thing will cause a change in the condition or nature of the thing, for example, house affixed to land.

- (b) Things which are unlawful to divide. For example, a company share.

1.2.3 **An accessory** (147)

An accessory is a movable thing that **serves a principal thing**. The principal thing, however, can be immovable or movable. For example, a mouse (accessory) plugged into a computer (principal thing).

The accessory and the principal thing must be from the same owner.

The accessory is attached permanently to the principal thing for its management, use or preservation and the accessory is brought by the owner into relation with the principal thing.

While an accessory can be temporarily severed from the principal thing, it does not stop serving the principal thing.

Unless agreed otherwise, a sale of the principal thing is sale of the accessory as well.

1.2.4 **Fruits** (148)

A fruit from a thing can come in 2 forms, a natural fruit or a legal fruit.

Natural fruit – a natural offspring of and is obtained from a thing in the normal possession e.g. apples, lemons, puppies, kittens, eggs etc.

Legal fruit – interest or thing obtained periodically by someone from another person's use of their thing. The fruit is calculated and may

be acquired day by day. For example, **interest** received by a lender (creditor) from a loan of money contract, **rent** received by a land owner (lessor) from a lease of land contract, **dividends** paid to a shareholder by a public company limited etc.

2. Person (15 and 65)

- (a) Natural person – A human person with the full completion of birth as a living child and ending with death.
- (b) Juristic person – A non human person that comes into existence by virtue of the law. A juristic person is formed by natural person collectively and is registered as according to law. Upon registration, a juristic person (For example, a foundation, an association, a company limited, a public company limited etc.) is considered as a separate person or entity from its members or shareholders.

3. Rights (138, 1298 and 1600)

Rights are the benefits that are verified and protected by the law.

The business law provides **two types of rights** to a natural person and a juristic person:

- 3.1 **Personal rights** are **rights to do something or refrain from doing something**. For example, the right of a creditor to request for payment of money debt from a debtor, the right for a land owner to request for payment of rent from the lessee, the right of a creditor to claim against a debtor in court for default in payment of debt etc. This kind of right **arises from a juristic (legal) act**, for example, a contract or a tort. Personal rights are

only enforceable against a **debtor, debtor's heir(s) or successor(s) of the debtor.**

Note: Debtor here includes **anyone who has an obligation to perform or to refrain from performing.** It does not only refer to a debtor of a money debt.

- 3.2 **Real rights** are **rights in property** which **arise from specific provision of the law.** Real rights in property cannot be provided through a juristic act from a person, for example, a contract by two parties agreeing to provide for real rights in property. Real rights in property are binding on everyone, not just the parties to the contract. For example: (i) a lessee who leased a plot of land and had registered the lease at the Land Office, has the real rights in the leased property to possess and to use the property and has the right to prevent **anyone** from using the property; or

a person who has ownership title of a property has the real rights in property to prevent **anyone** from owning or using the property.

Other examples of real rights in property: right to a servitude or right of way over land, right to mortgage a plot of land, copyright or right in a trademark.

4. A Juristic Act (149 – 153)

- 4.1 A **voluntary** juristic (legal) act whereby its purpose “is to **establish between persons juristic (legal) relations, to create, modify, transfer, preserve or extinguish rights**” Section 149 of the Civil and Commercial Code of Thailand (“CCC”).

Therefore, **the elements of a juristic (legal) act** from a person are:

- (a) Having a declaration of intention to do a juristic (legal) act;
- (b) A voluntary act;
- (c) A lawful act;
- (d) The act has the objective to establish legal relations between persons;
- (e) Having an objective to create, modify, transfer, preserve or extinguish rights; and
- (f) The act cannot be an impossible act, for example, a contract whereby a contractor agrees to catch a dragon for the employer.

4.2 The different types of juristic (legal) acts are:

- (a) One party juristic (legal) act, for example, making a will, setting up a foundation etc.
- (b) Two parties juristic (legal) act, for example, formation of a contract.
- (c) Juristic (legal) acts that are: effective when living, for example, a contract; or effective for the dead, for example, a will.
- (d) Juristic (legal) acts with remuneration or without remuneration, for example, a gift contract. Remuneration can be in the form of benefit, property or payment of money.

- (e) Juristic (legal) acts with a time condition or without a time condition.

4.3 Important juristic (legal) acts

There are many kinds of juristic (legal) acts, however, the law provides for certain important juristic acts:

- (a) Submission of property for sale or lease;
- (b) A written and signed contract, for example, a to sell and to buy house and land contract, sale of moveable property contract (sale price is 20,000 Baht or more) etc.;
- (c) A written and signed document before a government official, for example, a sale and purchase of land contract signed before an official of the Land Office etc;
- (d) A written document and its registration before a government official, for example, a sale and purchase of land contract or a mortgage contract registered in the land title deed before an official of the Land Office; and
- (e) Other special form of documents

Chapter 2

PARTNERSHIPS and COMPANIES

1. Introduction

Operating a business with the objective to gain profit can take two forms:

- (a) A sole proprietorship i.e. a business owned by a natural person with unlimited liability; and
- (b) Jointly with other persons i.e. form and register, jointly with other natural person or juristic person, for example, a partnership or a company.

A partnership or company, **upon registration being made at the Ministry of Commerce**, constitutes a **juristic (legal) person separate from** the partners or the shareholders of whom it is composed.

Note: It is not necessary to join with other person(s) if you want to have complete control over your business and bear all its risk exposure. However, joining with other person(s) allows you to share the risk exposures in the business with other people and increase the capital investment into the business.