

KINGDOM OF SIAM.

DRAFTS

OF

CIVIL AND COMMERCIAL LAWS.

CIVIL CODE: Book on Capacity of Persons.
Law on Family Registration.

CIVIL CODE: Book on Things.
Law on Conflict of Laws.

ANNEXES

Law on Civil Procedure — Bankruptcy Act.

1919

DRAFT CIVIL and COMMERCIAL CODE

BOOK

ON

Capacity of Persons.

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PRELIMINARY.

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1. — There are two kinds of persons: natural persons and juristic persons.

DIVISION I.

NATURAL PERSONS.

2. — In this division person" means only a natural person.

TITLE I.

General Provisions.

CHAPTER I.

AGE.

3. — A person who has not completed his twentieth year of age is a minor.
4. — A person who married before having completed his twentieth year of age ceases to be a minor.
5. — When a person ceases to be a minor he is said to be of full age.
6. — Whenever reference is made in the law to the age of a person, it is meant that the whole number of years referred to shall have elapsed since the birth of such person.
7. — If it is impossible to ascertain the date of the birth of a person, his age shall be calculated from the last day of the official year during which such birth took place.

CHAPTER II.

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NAME.

8. — Every person has a name.

9. — The name of a person consists of a personal name and a family name.

10. — The personal name is the name which has been given to the child at birth.

11. — The family name is the name of the family, which passes from father to child.

12. — A married woman retains her personal name and family name, and adds to them the family name of her husband.

13. — When the father of a person is unknown such person bears the family name of his mother.

14. — Neither a family name nor a personal name can be changed except by special permission given by the Minister responsible for the local administration.

15. — When the family name of a person is changed, every descendant of that person who bears that family name also changes it.

16. — A person to whom a non-hereditary title is granted by His Majesty the King retains his former name for use in his private affairs and for transmission to his descendants.

17. — A person whose name is used by another person who is not entitled to it can apply for an order of the Court restraining such other person from the use of that name. He is also entitled to compensation for any injury which he may suffer in consequence of such use.

18. — The right to apply for an order of the Court or to claim compensation in connection with the unlawful use of a name is extinguished by prescription one year after the day when the plaintiff knew of the use, or five years after the day when the use began.

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DIVISION I. — NATURAL PERSONS.

CHAPTER III.

SIGNATURE.

19. — If a person is in the habit of affixing a seal in lieu of signature, the affixing of such seal is equivalent to a signature.

20. — A finger print, cross or other such mark affixed to a document is equivalent to a signature if it is certified by the signature of two witnesses.

CHAPTER IV.

WITNESSES.

21. — Whenever the law requires that a document, signature, finger print, mark of statement be certified by witnesses, the witnesses shall sign it. Only such persons may be witnesses as are of full age and know how to sign.

CHAPTER V.

RESIDENCE.

22. — The residence of a person is the place where such person dwells.

23. — When a person is engaged in a trade or business his residence, for all purposes connected with his trade or business, is the place where he exercises that trade or business.

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CHAPTER VI.

DISAPPEARANCE.

24. — If a person has left his residence and it is uncertain whether he is living or dead, the Public Prosecutor or any interested person may, after one year has elapsed from the latest intelligence received, apply to the Court for an order appointing a manager of the property of that person.

DIVISION I. — NATURAL PERSONS.

25 — If the absent person had appointed an agent with general authority, the application provided by the foregoing section shall be granted only if it appears that the management of the property by the agent is likely to cause injury to the absent person.

26. — The agent appointed with general authority by the absent person may apply to the Court for an extension of his authority if it is necessary to do any act which is beyond the scope of such authority.

27. — The manager appointed by the Court must make an inventory of the property of the absent person at the time when he assumes its management; such inventory shall be made in the presence of, and signed by, two witnesses.

28. — The manager has the powers of an agent with general authority as described in the Book on Obligations.

He can, with the previous consent of the Court, do any other act relating to the property of the absent person.

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29. — If the absent person had appointed an agent with special authority, the manager cannot interfere with such special agency, but he can apply to the Court for an order removing the agent if it appears that his management is likely to cause injury to the absent person.

30. — The Court may, at any time, of its own motion or on the application of the Public Prosecutor or of any interested person :

- 1) Require the manager to give security for the management and return of the property entrusted to him;
- 2) Require him to give information as to the condition of the same property;
- 3) Remove him for reasonable cause and appoint another manager in his stead.

31. — The Court may order that the manager shall receive a remuneration to be paid out of the property of the absent person.

32. — The authority of the manager is extinguished in the following cases :

- 1) By the return of the absent person ;
- 2) By the death of the absent person being made certain;

DIVISION I. — NATURAL PERSONS.

- 3) By the Court removing the manager ;
- 4) By the resignation or the death of the manager;
- 5) By the declaration of disappearance as provided subsequently.

33. — In so far as they are not contrary to or inconsistent with the provisions of this Chapter VI the provisions of the Book on Obligations concerning Agency apply to the management of the property of the absent person.

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34. — If a person has left his residence and it has been uncertain for seven years whether he is living or dead, the Court may, on the application of the Public Prosecutor or of any interested person, make an order declaring that such person has disappeared.

The above period of seven years is reduced to three years when the last reliable evidence shows that the absent person was in a dangerous peril of his life such as having been involved in a shipwreck or in a war.

35. — When the order of the Court declaring that a person has disappeared has become final, such person is deemed to have died.

His estate shall devolve on his heirs according to the Law on Inheritance.

36. — When the whole or part of the estate of the disappeared person has been transferred to his heirs and the disappeared person comes back, the heirs are bound to return to him such estate or part of the estate according to such provisions of the Book on Obligations concerning restitution for undue enrichment as refer to restitutions made by persons in good faith.

37. — The right to claim the return of the whole or part of the estate as provided by the foregoing section is extinguished by prescription one year after the day when the disappeared person has come back.

DIVISION I. — NATURAL PERSONS.

TITLE II.
Incapacitated Persons.

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CHAPTER I.

MARRIED WOMEN

38. — The capacity of married women is governed by the Law on Family.

CHAPTER II.

MINORS.

I. — REPRESENTATION OF MINORS.

39. — The lawful representative of a minor is the person who exercises parental power over him or, in the absence of such person, his guardian.

1°. REPRESENTATION BY PARENT.

40. — The parental power belongs to the father.

41. — The parental power is exercised by the mother in any of the following cases:

- 1) if the father is unknown;
- 2) if the father is dead;
- 3) if the father is absent, or ill, or deprived of liberty, or otherwise unable to exercise his power ;
- 4) if the father has been deprived of his parental power by an order of the Court;
- 5) in case of divorce, if the minor is in the custody of the mother.

42. — If the parent who exercises parental power illtreats the minor or mismanages his property, or leads a disreputable life, or has been sentenced to imprisonment for more than one year for an offence punishable under Book II. Titles 1, 5, 6, 7, 8 or 9 of the Penal Code, the Court may deprive him of his parental power

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DIVISION I. — NATURAL PERSONS.

on application of the Public Prosecutor or of any person interested.

43. — A person who has been deprived of his parental power may resume it by order of the Court if the reason for such deprivation ceases to exist.

2°. REPRESENTATION BY GUARDIAN.

44. — If, owing to the death of both parents or to any other cause, there is no parent who exercises parental power, the minor must be provided with a guardian.

45. — A guardian can be appointed by will of the parent who last exercised the parental power.

46. — If there is no guardian appointed by will or if the guardian appointed by will refuses the guardianship, the guardian shall be the person who assumes such position by voluntarily taking care of the person and property of the minor.

47. — If no person voluntarily assumes the guardianship, a guardian shall be appointed by the Court of its own motion or on application of the Public Prosecutor or of any interested person.

48. — The order of the Court appointing a guardian to a minor shall be published in the Government Gazette by the care of the Court.

49. — The Court shall appoint as guardian a person fit to take care of the person and property of the minor.

As far as possible, the Court shall appoint as guardian an ascendant or collateral of the minor.

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50. — A guardian may refuse or resign the guardianship.

51. — The Court may, of its own motion or on application of the Public Prosecutor or of any interested person, remove a guardian for reasonable cause and appoint another guardian in his stead.

DIVISION I. — NATURAL PERSONS.

**II. — MANAGEMENT OF THE MINOR'S PROPERTY
BY HIS LAWFUL REPRESENTATIVE.**

1°. MANAGEMENT BY PARENT.

52. — Acts done by the parent who exercises parental power within the limits of his power are binding on the minor.

Notifications made by him or to him are deemed to be notifications made by or to the minor.

53. — The parent who exercises parental power is the manager of the property of the minor.

He must manage such property with the same care as a person of ordinary prudence.

54. — As long as a parent exercises parental power, he is entitled to the earnings of the minor and to the income of the property belonging to the minor.

55. — The parent who exercises parental power cannot enter into any of the following contracts with regard to the property of the minor, except with the consent of the Court:

- 1) Sale or mortgage of immovable property,
- 2) Loan of money,
- 3) Compromise.

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56. — The parent who exercises parental power cannot enter into any contract with the minor, except with the consent of the Court.

The Court shall not give its consent unless it is satisfied that the contract will benefit the minor.

57. — The parent who exercises parental power cannot dispose gratuitously of the property of the minor except for performing on his behalf religious or social duties, according to custom.

58. — The parent who exercises parental power cannot do on behalf of the minor an act which by reason of its nature cannot be done through a representative, such as marrying, or making a will, or tendering an oath.

DIVISION I. — NATURAL PERSONS.

59. — An act done by the parent who exercises parental power without the consent of the Court, when such consent was required (S. 55 and 56), is voidable.

The following persons only can claim cancellation of such act or ratify it:

- 1) A new lawful representative of the minor, provided he is acting with the consent of the Court, or
- 2) The minor himself, after he has become of full age, or
- 3) His heirs.

60. — An act done by the parent who exercises parental power contrary to the provisions of section 57 is voidable. [11]

The following persons only can claim cancellation of such act or ratify it:

- 1) The minor, after he has become of full age, or
- 2) His heirs.

Cancellation may be claimed also by the lawful representative.

61. — The right to claim cancellation of a voidable act done by the parent who exercises parental power is extinguished by prescription five years after the minor becomes of full age.

62. — An act done by the parent who exercises parental power contrary to the provisions of Section 58 is void.

63. — When a parent ceases to exercise parental power, he is bound to return the property which was under his management and to render proper accounts of the management.

He is liable to the minor for any injury resulting from his having not managed the property of the minor with the same care as a person of ordinary prudence. . 64.— The property must be delivered and the accounts rendered to the child if he has become of full age, or to his new lawful representative, or to his heirs, as the case may be.

65. — If the parent who exercises parental power dies, his heirs are bound by the provisions of the two foregoing sections. [12]

66. — An action in connection with the management of the property of a minor

DIVISION I. — NATURAL PERSONS.

by parent can with the consent of the Court be entered by the child, or on his behalf, against the parent.

67. — The right to enter an action in connection with the management of the property of a minor by parent is extinguished by prescription five years after the minor became of full age.

2°. MANAGEMENT BY GUARDIAN.

68. — The guardian of a minor is not entitled to remuneration.

69. — The power of management and representation of a guardian is governed, *mutatis mutandis*, by sections 52 to 62 concerning parental power, but is subject to the limitations provided by the three following sections.

70. — The guardian must make an inventory of the property at the time when he assumes its management : such inventory shall be made in the presence of, and signed by, two witnesses.

71. — The Court may, at any time, of its own motion or on application of the Public Prosecutor or of any interested person, require the guardian :

- 1) to give information as to the condition of the property of the minor ;
- 2) to give security for the management and return of the same property.

72. — The guardian is entitled only to such part of the earnings of the minor and of the income of his property as is necessary for the support and education of the minor.

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He must account to the minor for the surplus.

73 — On extinction of guardianship the return of the property which was under the management of the guardian and the settlement of accounts are governed, *mutatis mutandis*, by sections 63 to 67 concerning parental power.

III. — ACTS DONE BY A MINOR.

74. — In so far as he is admitted to do so by the special laws relating thereto, a minor can do by himself any act which by reason of its nature cannot be done through a representative, such as marrying, making a will or tendering an oath.

DIVISION I. — NATURAL PERSONS.

75. — A minor can do by himself all acts which are customary in the ordinary course of daily life having due regard to his age, means and position.

76. — Acts other than those described in the two precedent sections are valid if done by the minor with the assistance of his lawful representative and, in the cases described in sections 55 and 56, with the previous consent of the Court.

77. — An act done by the minor beyond the scope of his capacity as described by the two precedent sections is voidable only if its consequences are likely to cause injury to the minor.

78. — Cancellation of an act done by the minor beyond the scope of his capacity as provided by section 74 is governed by the special laws relating thereto.

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79. — If the minor has used fraudulent means to cause it to be believed that he is of full age, his act cannot be cancelled on the ground of want of capacity.

80. — If an act done by a minor is voidable the following persons only can claim its cancellation or ratify it :

- 1) His lawful representative ; or
- 2) The minor himself after he has become of full age; or
- 3) His heirs.

81. — The right to claim cancellation of a voidable act done by the minor is extinguished by prescription after five years from the date of such act, subject to the general provisions concerning prescription in the Book on Obligations.

CHAPTER III. PERSONS OF UNSOUND MIND.

I. — REPRESENTATION OF PERSONS OF UNSOUND MIND.

82. — A person of unsound mind must be provided with a lawful representative.

83. — The lawful representative of a person of unsound mind who is married is his or her spouse.

DIVISION I. — NATURAL PERSONS.

If the person of unsound mind is not married, his lawful representative is his father or, if he has no father, his mother or, if he has no parents, his guardian.

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84. — The guardian of a person of unsound mind shall be the person who assumes such position by voluntarily taking care of his person and property.

85. — If no person voluntarily assumes the guardianship, a guardian shall be appointed by the Court, of its own motion or on the application of the Public Prosecutor or of any interested person.

86. — The order of the Court appointing a guardian to a person of unsound mind shall be published in the Government Gazette by the care of the Court.

87. — A guardian may refuse or resign the guardianship.

88. — The Court may, of its own motion or on the application of the Public Prosecutor or of any interested person, remove a lawful representative for a reasonable cause and appoint another lawful representative in his stead.

89. — The duties of the lawful representative of a person of unsound mind are to take care of him, to support him, to keep him in safe custody if necessary, and to manage his property.

II. — MANAGEMENT OF THE PROPERTY OF A PERSON OF UNSOUND MIND BY HIS LAWFUL REPRESENTATIVE.

90. — The Court may order that the guardian of a person of unsound mind shall receive a remuneration, to be paid out of the property of such person.

91. — The power of management and representation of the lawful representative of a person of unsound mind is governed, *mutatis mutandis*, by sections 52, 53, 55 to 62, 70 to 72 concerning parental power and guardianship of minors.

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92. — On extinction of lawful representation, the return of the property which was under the management of the lawful representative and the settlement of accounts are governed, *mutatis mutandis*, by sections 63 to 67 concerning parental power.

DIVISION I. — NATURAL PERSONS.

III. — ACTS DONE BY A PERSON OF UNSOUND MIND.

93. — An act done by a person of unsound mind is voidable.

94. — If an act is done by a person of unsound mind, the following persons only can claim its cancellation or ratify it :

- 1) His lawful representative, or
- 2) The person himself, if he has ceased to be of unsound mind, or
- 3) His heirs.

95. — The right to claim the cancellation of an act done by a person who has been of unsound mind, during his unsoundness of mind is extinguished by prescription after five years from the date of the act, subject to the general provisions concerning prescription in the Book on Obligations.

DIVISION II.

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JURISTIC PERSONS.

TITLE I. General Provisions.

96. — There are no juristic persons except those created by law and those formed in accordance with the provisions of a law.

97. — A juristic person enjoys the same rights and is subjected to the same liabilities as a natural person.

98. — Rights and liabilities which, by reason of their nature, may be enjoyed or incurred by natural persons only cannot be enjoyed or incurred by juristic persons.

99. — The following are juristic persons:

- 1) Public bodies,
- 2) Monasteries,
- 3) Registered partnerships,
- 4) Limited companies,
- 5) Associations,
- 6) Authorized foundations.

100. — The Ministries, Government Departments, Local Administration and Municipal bodies are Public bodies.

101. — The organization of Public bodies is governed by the Laws and Regulations relating thereto.

102. — In its relations with third persons, a Public body is represented by its Head. The Head of every Public body may sue and be sued in such capacity, except that actions by or against a Ministry shall be entered in the name of the Ministry.

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DIVISION II. — JURISTIC PERSONS.

103. — The organization of the monasteries is governed by the Laws and Regulations relating thereto.

The organization of registered partnerships, limited companies and associations is governed by the Book on Obligations.

TITLE II. Foundations.

104. — A "foundation" consists of property appropriated to charitable, religious, scientific, literary or other object for public benefit.

105. — The person who institutes the foundation and provides the property is called the "founder".

106. — No foundation shall exist as a juristic person unless :

- 1) it be created by an instrument in writing :
- 2) it be authorized by the Government.

107. — The instrument creating a foundation must contain the following particulars :

- 1) The name of the foundation,
- 2) Its object,
- 3) The address, if possible, of its principal office,
- 4) The rules for its management,
- 5) The appointment of its first managers.

108. — Authorization of foundation lies entirely in the discretion of the Government.

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109. — Authorization may be granted subject to such conditions as the Government may think fit.

DIVISION II. — JURISTIC PERSONS.

110. — On authorization being granted, the Government shall cause to be published in the Government Gazette a summary of the particulars of the foundation.

111. — In its relations with third persons an authorized foundation is represented by its managers.

The managers may sue and be sued in such capacity.

112. — The relations between an authorized foundation, its managers and third persons are governed by the provisions of the Book on Obligations concerning Agency.

113. — Any vacancy occurring among the managers may be filled by the remaining managers. Questions arising at a meeting of managers shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a casting vote.

114. — Every foundation is subject to supervision of the Government. Any official commissioned to that effect by the Government shall have access to the books and accounts of the foundation at any reasonable time. He can examine the managers and any agents or employees of the foundation on any matters relating to it.

115. — An authorized foundation is dissolved :

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- 1) In the cases provided by the instrument of foundation, or
- 2) On its object being fulfilled or becoming impossible, or
- 3) On the foundation becoming bankrupt, or
- 4) By an order of the Court as provided by the following section.

116. — The Court may, on application of the Public Prosecutor or of any interested person, order an authorized foundation to be dissolved:

- 1) If such foundation commits acts contrary to law or to public policy or to the safety of persons or property, or
- 2) If for any cause whatsoever the foundation cannot be managed any longer, or
- 3) If the foundation acts contrary to the provisions of the instrument of foundation, or to the intention of the founder, or to the conditions under which the Government has granted the authorization.

DIVISION II. — JURISTIC PERSONS.

117. — The provisions of the Book on Obligations concerning liquidation of partnerships and companies apply to the liquidation of foundations, *mutatis mutandis*.

118. — Every order of the Court dissolving an authorized foundation shall contain the appointment of liquidators of the foundation.

119. — After liquidation the remaining assets, if any, shall be transferred to such juristic person as may have been designated by the instrument of foundation.

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120. — If no juristic person has been so designated, the remaining assets become the property of the State.