**Chapter Three**

**Persons**

**Suggested answers to the review questions and case problems**

**1. What is legal personality?**

**Answer:** To have legal personality means to be capable of having legal rights and obligations, such as entering into contracts, suing, and being sued. The Civil and Commercial Code makes a difference between two types of legal persons: natural persons and legal persons. As a consequence, the term person applies to natural persons (human beings) as well as to certain artificial entities with separate legal personality. While legal personality of human beings commences with the full completion of birth as a living child, juridical persons are persons who are given legal personality by law.

**2. Distinguish between legal personality and legal capacity.**

**Answer:** Legal personality is a prerequisite to legal capacity. The capacity of natural and legal persons determines whether they can independently create, modify, transfer, preserve, or terminate their rights, such as getting married, forming companies, making wills, or forming contracts.

The natural person’s capacity to independently acquire civil rights and obligations will depend on the person’s age and competency. As it would be practically impossible to individually establish the existence of everybody’s ability to behave responsibly and look after their own interests, the law automatically recognizes full capacity on completion of 20 years of age.

**3. Identify juridical acts that may be independently carried out by minors.**

**Answer:** In cases prescribed by the law, a minor can independently carry out specific activities. There are four categories of legal acts that the minor can perform without the consent of the legal representative. First are the jurist acts that solely benefit the minor. According to Section 22 of the Civil and Commercial Code, a minor can perform all acts merely intended to acquire a right or to be relieved of a duty. It must be noted that the mere acquisition of a right means that the juridical act must be without condition or encumbrance, such as in case of acceptance of inheritance or acceptance of legacy without charge and condition. By the same token, the juridical act by which a minor is relieved of a duty must be without condition, such as in case of release of debt under Section 340 of the Civil and Commercial Code. Second are the juridical acts which are strictly personal (Section 23 of the Civil and Commercial Code). These rights are very highly related to the personality of each individual such as the right to life, the right to physical and psychological integrity, and the right to make decisions about personal and private matters. Third are the juridical acts required for reasonable needs. The law confers the right to minors to carry out all acts which are suitable to their condition in life and required for their reasonable needs without the consent of their legal representative (Section 24, Civil and Commercial Code). Fourth and last of all, is the execution of a will. Minors, after completing 15 years of age, can make a will without obtaining the consent of their legal representatives (Section 25 of the Civil and Commercial Code).

**4. Define unsoundness of mind and explain how it affects legal capacity.**

**Answer:** People of unsound mind are in a weak position in their transactions with other parties. A person shall be regarded as having an unsound mind in cases of mental disability, insanity, unconscious state or, more in general, if he loses his consciousness regularly to such extent that he is unable to recognize and understand the legal consequences of his actions.

If a person of unsound mind is not adjudged incompetent by the court, his acts are voidable only when two conditions are met, namely, the juridical act must be performed at a time when the person is actually of unsound mind, and in addition the other party must have knowledge of such unsoundness (Section 30, Civil and Commercial Code). Only under these two conditions, can the juridical act be voidable.

**5. Explain whether incompetents and quasi-incompetents have the legal capacity to enter into an enforceable contract.**

**Answer:** Under the Civil and Commercial Code, an incompetent is deemed as a person with no capacity and his juridical acts can only be allowed to be carried out by his guardian. Consequently, juridical acts performed by a person adjudged incompetent are voidable (Section 29, Civil and Commercial Code).

With respect to a quasi-incompetent person, Section 34 of the Civil and Commercial Code provides a list of certain acts which require the consent of the curator such as investing property, accepting the return of the invested property, contracting a loan, lending money, borrowing or leasing value movable, making a gift, constructing buildings, making a compromise, submitting a dispute to arbitration, and others. If these acts are performed by the quasi-incompetent person without the consent of the curator, they are considered voidable. Consequently, only the acts that are not restricted by law can be carried out without the consent of the curator and are considered valid.

**6. Describe the difference between domicile and residence.**

**Answer:** The law distinguishes between the concept of domicile and the concept of residence. Since domicile entails legal consequences, it is of more importance. According to Thai Civil and Commercial Code, a natural person has his domicile in the place in which he has his principal residence (Section 37). Thus, the domicile can be defined as the place of the main and permanent establishment for the life and the activity of a person. For example, domicile can be the place where a person keeps his family and has his office.

Domicile and residence are sometimes used interchangeably but they are not the same. Residence has a more restricted meaning than domicile. It indicates the place where someone lives and is used as a legal concept to fulfill one of the requirements of domicile. For example, if a student with domicile in Thailand decides to reside for four months in Paris for an exchange program, she does not lose her domicile in Thailand provided that she does not have the intention to reside permanently in France.

**7. Illustrate rights and duties of a juristic person.**

**Answer:** Section 67 of the Civil and Commercial Code provides that a juristic person has the same rights and duties as a natural person, except those which, by reason of their nature, may only be enjoyed or incurred by a natural person. Therefore, juristic persons do not enjoy such rights that are exclusive to natural persons, such as the right to life, the rights in connection with marriage, the right to prepare a will, or the right to serve as a guardian. These rights, by definition, could not be applied to juristic persons.

Moreover, Section 66 of the Civil and Commercial Code specifies in its wording that juristic persons have rights and duties in conformity with the provisions of law and within the scope of the objectives set out by the law, regulation, or constitutive act. Thus, the capacity of a juristic person is subject to any restrictions set out in its constitutional documents (such as the memorandum of association of limited companies) or in the provisions of the law.

**8. What does management of a juristic person mean?**

**Answer:** A juristic person must have at least one representative in order to declare its will and take the necessary decisions (Section 70, Civil and Commercial Code). Consequently, all acts of juristic persons are performed by their representatives in conformity with the power and duty normally conferred by the law or defined in regulations or constitutive act. In cases of several representatives, the decisions are taken by the majority of representatives unless it is otherwise provided by the law, regulations, or constitutive act.

In order to avoid conflict of interests between the juristic person and its representatives, the Civil and Commercial Code prohibits from acting on both sides of a transaction. Thus, if the interest of a juristic person conflicts with those of its representative, the latter has no representative power (Section 74, Civil and Commercial Code).

**9. Jane, a minor, enters into a sale contract with June to buy a video game. Jane, then, does not avoid the contract. Read the following scenarios and identify which one can be considered as ratification of the sale contract:**

1. **Upon reaching the age of majority, Jane sends a written document to June and confirms the purchase of the video game.**
2. **Upon reaching the age of majority, Jane continues to use the video game without sending any written document.**

**Answer:** Under the Civil and Commercial Code, a contract which a minor may avoid becomes binding upon him if he ratifies it after he becomes of age. Ratification cannot take place under age. Ratification consists in expressly confirming after majority, a contract made during minority, or in continuing to enjoy its benefits.

In the scenario above, both actions can be considered as ratification of a contract. In particular, in the first case Jane expressly ratifies the contract by giving legal force to an obligation that previously was not enforceable. Jane’s ratification makes the contract valid from its inception (Section 177, Civil and Commercial Code). In the second case, Jane’s ratification is implied from his behavior. The result, however, is the same: the contract is regarded as it was valid and binding from the beginning.

**10. Lek, a 28-year-old drug addict who has been adjudicated quasi-incompetent, enters into a loan agreement with restaurant owner Rot to borrow 10,000 baht. Subsequently, May, Lek’s curator, brings an action seeking a decree of the court to avoid the loan contract. Can May avoid the contract?**

**Answer:** In the case above, Lek’s quasi-incompetency depends upon his inability to understand the nature and consequences of his actions and to act in a reasonable manner. With respect to a quasi-incompetent person, Section 34 of the Civil and Commercial Code provides a list of certain acts which require the consent of the curator including contracting a loan, lending money, borrowing or leasing value movable. If these acts are performed by the quasi-incompetent person without the consent of the curator, they are considered voidable. Consequently, May has the legal right to avoid the Lek’s contract.