**Chapter Four**

**Juridical Acts**

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

**1. Discuss the requirement for forming a fully valid and enforceable juridical act.**

**Answer:** Juridical acts are voluntary lawful acts, having for their immediate object to establish between persons legal relations, to create, modify, transfer, preserve, or terminate rights. Thus, juridical acts refer to lawful acts based on a declaration of intention that produces legal effects. According to the Civil and Commercial Code, a juridical act must fulfill some specific conditions to produce legal effects. More precisely, for a juridical act to be valid and enforceable, the following elements have to be met: actor’s capacity, declaration of intention, form, and object. If only one element is missing, the juridical act is not valid or is void.

**2. Explain whether juridical acts must be evidenced in writing to be valid.**

**Answer:** The actor’s intent can be expressed in several forms. As a general rule, the Thai legal system provides for a principle of freedom of forms with respect to juridical acts. A juridical act can be made by a verbal or written expression (e.g., explicit form), or tacitly by conduct (e.g., implicit form) unless the law requires a specific form. Thus, persons can freely choose the method of expressing their genuine intent for performing a juridical act in writing, orally, or in other forms.

In certain cases, however, the law specifies which particular form must be used to express the intent and the juridical act must conform to it. Hence, the juridical act will produce legal effects only if the form of the act corresponds with the form prescribed by the law. If the required form is not adhered to, the juridical act is void because an essential element is absent (Section 152, Civil and Commercial Code). The law may require a special form and in particular: (1) written form; (2) registration with the competent authority; (3) written form and registration with the competent authority; (4) written notice of the competent authority.

**3. Illustrate in which case a contract may be contrary to public order.**

**Answer:** A juridical act is not lawful when it is contrary to public order. Being contrary to public order means that the juridical act interferes with the capacity of society to function efficiently, such as in the case of a polygamous marriage which allows a person to marry more than one spouse or a contract impeding an athlete from entering a professional competition.

**4. Define in which case a contract may be contrary to good morals.**

**Answer:** An act against good morals is void and without effect. “Good morals” is a term which is extremely difficult to define. Anything which is detrimental to the public morality is deemed contrary to good morals, and this term is extremely elastic and capable of innumerable interpretations. There are, however, several classes of agreements which are generally recognized as being contrary to good morals, and are void for that reason. For example, an agreement to prevent a person from marrying or to break up a marriage would be contrary to good morals and therefore unlawful.

**5. Explain on what grounds juridical acts are void and voidable.**

**Answer:** A void juridical act is one that has no legal effect because it is contrary to the public interest. It is as if no juridical act had been created at all; it is merely an act having no legal effect. An example of a void juridical act is an agreement between drug dealers and buyers for purchasing illegal drugs. If a juridical act is void, it is not binding from the moment it was concluded and its nullity may be alleged at any time by any interested person (Section 172, Civil and Commercial Code).

A juridical act, on the other hand, is voidable if it is contrary to a private interest of one party that is protected by law. In this sense, voidability is a kind of invalidity of a lesser degree than nullity. For example, if a person enters into contract due to mistake, or was induced through fraud or duress, the contract can be annulled upon request of the party who incurred into a so-called defect of intention. A voidable act can be ratified (made valid) or avoided (cancelled) at the demand of a party who stands to benefit from the course of action.

**6. Describe the concept of unenforceability in a juridical act.**

**Answer:** A juridical act that is neither void nor voidable may, nonetheless, be unenforceable. In other words, there are cases where an act that is not in the form prescribed by law is valid but unenforceable. An unenforceable juridical act is one for the breach of which the law provides no remedy. The Civil and Commercial Code requires certain kinds of contracts to be evidenced by a written form to be enforceable. For example, a hire of immovable property is not enforceable by action unless there is some written evidence signed by the party liable (Section 538, Civil and Commercial Code). Written form in these cases is required for the enforcement of the contract and does not affect the validity of the juridical act or modify its effects. Pursuing to Section 653 of the Civil and Commercial Code, a loan of money for a sum exceeding 2,000 baht is not enforceable by action unless there is some written evidence of the loan signed by the borrower. Similarly, a contract of suretyship may be unenforceable because of a failure to satisfy the writing and signature of the surety requirements as provided by Section 680, paragraph 2, Civil and Commercial Code Hence, these contracts are referred to as unenforceable, rather than void or voidable.

**7. Outline the main similarities and differences between conditions and time clauses.**

**Answer:** When a juridical act fulfills all the conditions laid down by the law, then it is valid and able to produce the legal effects desired by the actor. However, such validity does not ensure the immediate enforceability of the act itself. A juridical act may be valid, but have no effect if parties have agreed that its provisions shall only produce effect from a future and certain point in time (e.g., times clause) or that the effectiveness of the provisions shall be subject to a specific, future, and uncertain event (e.g., condition). Although both conditions and time clauses are based on future events, time clauses are to be distinguished from conditions because future events are certain and sure to arrive, while conditions are based upon future uncertain events.

**8. Discuss the main aims of conditions and time clauses in juridical acts and provide examples of situations where it would be useful to stipulate each type of clause in a juridical act.**

**Answer:** A condition is defined under Section 182 of the Civil and Commercial Code as an event whose happening or non-happening determines whether or not the juridical act is effective. Usually, conditions are set forth in language preceded by such words as “on condition that,” “provided that,” “in case of,” or “if.” For example, A agrees to lend money to company B, on condition that the construction project already submitted is approved by the competent authority.

Time clauses are to be distinguished from conditions because future events are certain and sure to arrive, while conditions are based upon future uncertain events. Time clauses concern the dates on which the effects of the juridical act begin or end. Therefore, they can be defined as a limit which makes the passing of a specific period of time the necessary condition for the beginning or the end of the juridical act. For example, A agrees to sell a mobile phone to B on December 3 with delivery to be made by the seller on December 12. A employs B as a waiter for one year starting from September 1 and ending on August 31 of the following year. In these cases it is sure that the contract will start and will end at a specific date.

**9. Suppose Lem is the owner of a car repair business and decides to list his business for sale. Lem tells Faa that during 2015 the business grossed 900,000 baht and netted 300,000 baht. Lem’s statement induces Faa to accept the offer and pay a high price for the car repair business. Subsequently, however, Faa finds out that Lem’s representations were overstated and the net income of the business is substantially lower than 300,000 baht. Discuss the validity of the juridical act between Lem and Faa.**

**Answer:** This is a case of fraud, where a party declares his intention in reliance on a misrepresentation of a material fact. More precisely, Faa’s acceptance is vitiated by contractual fraud. The dishonest behavior of Lem serves to deceive Faa into entering into a contract of sale.

As regards the consequences of fraud, they will depend on the type of fraud committed by Lem. If fraud is essential and the deception used by Lem is such that, without it, the sale contract would not have been performed by Faa, the contract is voidable. On the other hand, if fraud is merely incidental and has induced Faa to accept more onerous terms than she would otherwise have done, the contract is valid but Faa can claim compensation for damage under Section 161 of the Civil and Commercial Code.

**10. Pisak died in 2014 leaving land in Khon Kaen. His daughter Ann listed the property for sale with a real estate professional for 6,000,000 baht specifying that the total size of the land was 5 rai. On January 23, 2015, Pai purchased the land and a contract was signed between the parties. When a survey was done in February 2015, however, Ann was informed that the real size of the land was 6.5 rai. Is the sale contract valid?**

**Answer:** In this case, the contract of sale is vitiated by mistake. Under the Civil and Commercial Code, mistake occurs when a party or both parties’ beliefs are not in accord with the reality. These are situations where the party manifests an intention different from that actually intended (i.e., a mistake resulting from carelessness, mistake in writing, inattention, failure to double check, etc.).

In the scenario above the mistake relates to the quality of the property. According to Section 157 of the Civil and Commercial Code, the juridical act is voidable only if the quality of the property is essential in the ordinary dealings and without such mistake the juridical act would not have been performed. Thus, under the light of the aforementioned considerations, it may be said that the sale contract between Ann and Pai is voidable if Ann can prove that she would not have sold a 6.5 rai land for 6,000,000 baht**.**