**Chapter Eight**

**Torts**

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

**1. What are the main elements of a wrongful act?**

**Answer:** Pursuing to Sections 420 and following of the Civil and Commercial Code, a wrongful act is any act that causes harm to third parties and thereby creates an obligation of compensation. The main elements required for an act to constitute a wrongful act are action, misconduct, unlawfulness, causation and damage.

**2. Define the concept of negligence.**

**Answer:** The term negligence can be defined in a negative way as a non-willful act. Negligence arises when the wrongdoer didn’t wish to cause the injury or loss of the victim or didn’t believe that his actions would lead to such consequences, i.e., the intention of the act is missing. Thus, to commit an act by negligence means to commit an offence unintentionally but without exercising the degree of care and attention that a person must exercise considering his capabilities and the existing circumstances. The author of the act is at fault if he does not apply the level of care required for social interaction. Hence, the evaluation is subjective: the standard is the care exercised by a person of ordinary prudence of the relevant social group of the same age, experience, and intelligence under all the circumstances.

**3. Explain the distinction between causation and foreseeability.**

**Answer:** Under Thai tort law, the victim must show that the wrongdoer’s breach of duty caused the victim’s injury. In other words, there must be a causal link between the wrongdoer’s act and the corresponding damage. This causal link must be analyzed two times: the wrongdoer’s action must be the direct cause of the victim’s harm (i.e. material cause), and the victim’s harm must have led to the damages (i.e. foreseeability). This means that the material cause alone is not sufficient and foreseeability is an essential element of the causation test.

**4. Describe and list the remedies granted to a person suffering physical damage.**

**Answer:** In cases of physical damage, the primary aim of tort liability is to provide for the victim’s compensation, and four categories of damages can be recovered. The first category covers the expenses that the victim has incurred as a result of the injury (Section 444, paragraph 1, Civil and Commercial Code). It includes future medical expenses if further medical treatment is required as well as other expenses depending on the circumstances (hiring a nurse, traveling expenses of nurse, etc.). The second category includes the damages for total or partial disability to work for the present and for the future (Section 444, paragraph 1, Civil and Commercial Code). It includes loss of earnings that the victim will experience during his lifetime. It must not be confused with the disability as non-pecuniary damages that can be claimed separately. The third category includes the compensation of third parties for loss of the injured party’s services (Section 445, Civil and Commercial Code). The fourth and last category of damages is represented by the non-pecuniary damages (Section 446, Civil and Commercial Code). Such damages are not clearly defined in the Civil and Commercial Code. Doctrine and case law have defined non-pecuniary damages as those that cannot be measured by money and cannot be defined in objective and exact terms, e.g., pain, suffering, violation of privacy, disfigurement, disability, and loss of enjoyment. Each category of non-pecuniary damages can be claimed independently of other remedies. In case of disability, for example, the victim can claim damages for pain and suffering as well as for loss of emotional feeling.

**5. Discuss what can be recovered in a wrongful-death action.**

**Answer:** In injury causing death, the defendant can claim exclusively the damages related to the tangible loss that can be measured by money and, in particular, these four categories of damages: funeral or other necessary expenses, medical expenses and loss of earning prior to death, compensation for the third party for loss of the legal support, and compensation for the third party for loss of the victim’s services. If death does not ensue immediately, compensation also includes expenses for medical treatment and damages for the loss of earning on account of disability to work (Section 443, paragraph 2, Civil and Commercial Code). However, non-pecuniary damages are not awarded in case of death.

**6. List the main categories of tort and explain how they differ.**

**Answer:** Thai tort law can generally be divided into three main categories of torts. They are mainly characterized by the different degree of fault. The most common type of tort is the traditional fault liability. The Civil and Commercial Code expressly lists a precise range of interests that deserve protection: rights relating to person (e.g., life, body, health, and liberty) and property.

The second type of tort liability does not require fault: it derives from a rebuttable presumption of fault by the defendant. In the Thai Civil and Commercial Code, there are some particular kinds of torts that require fault by the defendant but which arise from the presumption that such fault exists. In other words, there is a shift of the burden of proof in the victim’s favor. Sections 422, 429, 430, 433, 434, and 437 are part of that category. In such cases, the wrongful act is not based on the negligent or willful conduct of the wrongdoer but on the risk inherent in a specific activity. Therefore, this liability arises even in the absence of negligence or willful behavior.

The third type of tort is liability without fault (also called strict liability). Strict liability creates a preference in favor of some interests over others and, therefore, requires a specific justification. This category is often viewed as an exception to the general rule of fault-based liability of the Civil and Commercial Code but has assumed increasing prominence over the past few years. Liability without fault cases may arise under a number of circumstances, many of which are regulated outside of the Civil and Commercial Code in special statutes.

**7. Write a short note on the following:**

1. **Liability of juristic person**
2. **Employer’s liability**
3. **Agent’s liability**

**Answer:** Under Thai tort law, a juristic person may be held liable for any damage done to other persons by its representatives or the person empowered to act on behalf of the juristic person in the exercise of their functions (Section 76, Civil and Commercial Code). However, the representatives or the person empowered to act on behalf of the juristic person may exercise the right of recourse against any or several or all of the causers of the damage.

With regard to employer’s liability, Section 425 of the Civil and Commercial Code provides that employers are jointly liable with the wrongdoing employees for harm caused in the course of their employment. However, the employer who makes compensation to a third person for a wrongful act committed by his employee is entitled to reimbursement from such employee (Section 426, Civil and Commercial Code).

The same type of liability applies to the relationship between agent and principal. Specifically, Section 427 of the Civil and Commercial Code provides that the principal is jointly liable with his agent for torts committed by the agent in execution of the agency contract.

**8. In a newspaper article, the journalist falsely suggests that a person has committed a crime. Has a tort been committed?**

**Answer:** This action may constitute the tort of defamation. Civil liability for defamation is governed by Section 423 of the Civil and Commercial Code, which states that any person who, contrary to the truth, asserts or circulates as a fact that which is injurious to the reputation or credit of another, or his or her earnings or prosperity in any manner, should compensate the injured party for any resulting damage. Being unaware that a statement is false does not constitute a defense if a reasonable person should have known that it was false.

**9. Pim is a retired coastguard who lives in Ko Lanta. While riding her bicycle with her son, Pim observes a seven-year-old child drowning in a shallow pond. Without hesitation, she slips off her shoes and jumps into the water to rescue the little child. While she is lifting the child out of the pond, however, the child's finger is broken due to Pim's carelessness in pulling out the child. Discuss any potential basis for liability.**

**Answer:** Pursuing to Sections 420 and following of the Civil and Commercial Code, a wrongful act is likely to have been committed. Although Pim did not have any legal duty to rescue the seven-year-old child, he decided to jump into the water and lifted the child out of the pond. Subsequently, the child's finger was broken due to Pim's carelessness. To determine whether Pim’s conduct constitutes negligence, it must be compared to the conduct of a reasonable person under similar circumstances: how a person of ordinary prudence of the same age, experience, and intelligence would have acted under the same circumstances? This case may probably represent negligent misconduct because Pim acted without exercising the degree of care and attention that a person must exercise considering his capabilities, skills and knowledge. On the basis of these considerations, Pim would face potential liability for breaking the child’s finger.

**10. Arm and his wife, Ann, went to the Honey Restaurant in Songkhla to celebrate their 30th anniversary. After eating his dinner, Arm went to use the restroom. As he entered through the restroom door, he slipped and fell backward in a puddle of water. Water was the result of a waiter failing to mop the floor properly. Has a tort been committed?**

**Answer:** In the scenario above, a tort is likely to have been committed. Section 420 of the Civil and Commercial Code establishes a duty of care for all persons to exercise a reasonable amount of care in their interactions with others. The duty of care sets the limit where peoples’ actions do not infringe the interests of others. A failure exercise reasonable behavior leads to a breach of duty of care gives arise to commitment of potentially tortious acts. The person of ordinary prudence standard serves as a means to determine whether the duty of care is breached. The court can ask how a person of ordinary prudence would have acted in a particular situation and evaluate the defendant’s actions against those of a person of ordinary prudence. In this case, the waiter would probably be held liable because he knew or, by using ordinary care, should have known of the dangerous condition of the restroom. Furthermore, the owner of Honey Restaurant would probably be considered as jointly liable with the wrongdoing waiter for harm caused in the course of his employment under Section 425 of the Civil and Commercial Code.