**Chapter Six**

**The Law of Contract**

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

**1. What is the difference between a unilateral and bilateral contract?**

**Answer:** Contracts may be bilateral or unilateral. The more common of the two, a bilateral contract, is an agreement in which parties to the contract assume mutual duties which are related together. For instance, if A says to B, “If you agree to clean my apartment, I will pay you 300 baht” and B accepts, A and B have made a reciprocal contract, each party having both rights and duties. A has the right to demand performance from B and the duty to pay remuneration in exchange. Conversely, B has the right to receive the remuneration and the duty to accomplish a definite work. From this it can be seen that in bilateral contracts each one of the two parties is, at the same time, an obligor and an obligee. Examples of reciprocal contracts are the contract of sale, hire of property, hire of work, and so on.

If a contract creates only obligations on one party and only rights on the other party, this is called a unilateral contract. This is the case of the contract of loan for use. After the contract of loan is concluded, the lender has the right to demand the return of the property.

**2. Describe the special rules governing offer and acceptance.**

**Answer:** An offer is a valid and clear request made by one person to another which manifests a willingness to enter into a contract. Upon receipt, the offer confers on the offeree the power of acceptance, by which the offeree expresses his willingness to comply with the terms of the offer. To have legal effect an offerer must manifest a willingness to enter into a bargain. The *intention* of the offerer is determined objectively from the outward manifestations of his actions, words and conduct. Therefore an offer must be clear and definite, such that the offeree understands the content of the offer. Also, *communication* is another essential element of a valid offer. To have a binding contractual agreement, the offeree must have knowledge of the offer; he cannot agree to something of which he has no knowledge. Therefore, the offerer must manifest his intention to the offeree. *Definiteness* is the third and last essential element of a valid offer. This means that the terms and conditions of a contract must be certain. Elements such as object, parties, quality, quantity, and place of performance should be reasonably enough to provide a basis for determining the existence of a breach of contract.

Because acceptance indicates the offeree’s intention to be bound under the terms of the offer, the offeree must communicate this acceptance to the offerer. Acceptance is the manifestation of intention by which the offeree communicates his consent to the terms and conditions of the offer received. Once an acceptance has been given, the contract is formed. If a contract is between persons at a distance, it comes into existence as soon as the offerer receives notice of acceptance by the other party (Section 361, paragraph 1, Civil and Commercial Code). In the case of reciprocal contracts, acceptance of an offer requires some clear act by which the offeree manifests his agreement to the terms of the offer. On the other hand, in the case of an offer to enter into a non-reciprocal contract, the offeree may refrain from acting as requested or may signify acceptance through performance of the requested act with the intention of accepting.

**3. Explain how offers are terminated by action of the parties.**

**Answer:** As a general rule, the offerer may withdraw an offer at any time before it is accepted by the offeree and the contract is concluded. This is called revocation. The Civil and Commercial Code, however, provides that revocation cannot take place if the offerer has undertaken to keep the offer open for a certain time. In such cases, the Civil and Commercial Code has adopted a rule that treats revocations the same as acceptances, thus making them effective upon dispatch (Sections 354 and 355).

Also, an offeree has the legal right to reject the offer (Section 357, Civil and Commercial Code). The rejection of an offer by the offeree manifests the unwillingness to accept, and terminates the offer. If the offeree decides not to accept the offer, he may perform an act which, in a reasonable view, is an act of rejection, or simply wait until the offer terminates by the lapse of time. From the effective moment of rejection, which is the receipt of the rejection by the offerer, an offer ceases to exist and a person cannot later purport to accept it.

**4. Analyze the meaning of counteroffer and discuss its effects.**

**Answer:** If the offeree does not accept all the terms of the original offer, the additions, restrictions, or other modifications convert the acceptance into a counteroffer which can in turn be accepted or rejected by the other party. According to Section 359, paragraph 2, of the Civil and Commercial Code, a counteroffer is deemed to be a refusal coupled with a new offer. In other words, a counterproposal from the offeree to the offerer operates as a rejection and a new offer. The contract, therefore, is not concluded until the counteroffer is accepted by the original offerer.

**5. Explain whether the death of the offerer after the offer has been sent terminates the offer.**

**Answer:** The death of the offerer after the offer has been sent, does not terminate an offer (Section 169, paragraph 2, Civil and Commercial Code). Nonetheless, if before accepting the offeree has notice of the death of the offerer, all offers are terminated (Section 360, Civil and Commercial Code).

**6. Give an example of a contract for which a third party can claim rights as beneficiary.**

**Answer:** In some cases established by law or private agreement, however, third parties may be affected by the contract. Under Section 374 of the Civil and Commercial Code, if a contract contains some stipulations granting benefits for a third party, the latter has a right to demand such performance directly from the debtor. For example, obligations in favor of C (third party) may arise upon a hire of property agreement between A (the letter) and B (the hirer) by which B is obliged to pay the rent to C for a limited period of time. Consequently, if the agreement between A and B is clearly and deliberately intended to confer a right to C, the latter will become a creditor entitled to demand performance, at the moment when he communicates his acceptance.

**7. Explain the difference between automatic termination and termination by agreement.**

**Answer:** A contract is automatically terminated when the parties have performed their obligations completely according to the objective of the contract. For example, A agrees to sell her car to B for 300,000 baht. If A delivers the property and B pays the price, the contract is automatically terminated by the exact performance of the parties.

On the contrary, termination by agreement applies to cases where contracts are terminated upon the consent of both parties through their negotiations. The termination through mutual agreement of both parties is an application of the principle of the freedom of the contract. There are two main methods to exercise the right of termination. The first method is through the mutual decision of the contractual parties to terminate the contractual relation. For example, a new agreement may discharge the existing contractual relations. Another method of exercising the right of termination by agreement is through the agreed conditions. In particular, the terms of the agreement may allow a party to terminate the contract if a specified obligation is not performed in the designated matter or in the occurrence of events provided for in the contract. For example, in a hire of work contract for the construction of a condominium in Bangkok, the contractor and the employer could agree that, upon delivery of the completed work, the fact that more than 30 doors are missing, will cause the termination of the contract.

**8. Discuss in which case a contract terminates by law.**

**Answer:** The Civil and Commercial Code provides three different types of termination. First, the contract terminates by law in case of non-performance of the obligation. In contracts where both parties commit themselves to render a performance, a contractual party (non-defaulting party) has the right to terminate the contract by law in case the other party (defaulting party) does not perform the obligation. Second, the contract terminates by law in cases where time or period is essential to one party. More precisely, if according to the nature of the contract or the intentions declared by the contractual parties, the object of the contract can be accomplished only by performance at a fixed time or period, and such time or period has passed without the contractual parties having performed, the other party may terminate the contract without any prior notice (Section 388, Civil and Commercial Code). Third, the contract terminates by law when the performance of one party becomes wholly or partly impossible. In the Civil and Commercial Code, supervening impossibility by a cause attributable to the debtor, allows the creditor to terminate the contract (Section 389).

**9. Consider carefully the following scenario and then answer the questions. Suppose that you purchase an expensive watch from Wipada’s shop in Bangkok on January 15 and later on you decide to sue Wipada for breach of contract, claiming that the watch is defective. On March 19, 20 days before the beginning of the trial, Wipada serves on you a letter entitled “Offer to compromise before trial,” which is a settlement offer. Upon receipt of the letter on March 21, you state that you would accept the amount of the settlement but make it contingent upon the execution of different terms and conditions. On March 22, Wipada informes you that she decided to revoke the settlement offer. What would happen if you try thereafter to accept the original settlement offer? Is there a settlement of the lawsuit?**

**Answer:** In the above scenario, there is no settlement of the lawsuit and I would not be able to accept the original settlement offer. In order to determine the conclusion of the contract, acceptance must match the offer, i.e., it has to be an unequivocal acceptance of the original offer by indicating an intention to contract upon the terms and conditions contained in the offer. If the offeree does not accept all the terms of the original offer, the additions, restrictions, or other modifications convert the acceptance into a counteroffer which can in turn be accepted or rejected by the other party. According to Section 359, paragraph 2, of the Civil and Commercial Code, a counteroffer is deemed to be a refusal coupled with a new offer. In other words, a counterproposal from the offeree to the offerer operates as a rejection and a new offer. The contract, therefore, is not concluded and I cannot refer back to the original offer as having a legal power.

**10. Ploy’s restaurant was insured against fire loss under a policy sold by Benz which terminated on December 31, 2014. This policy had no provisions for automatic renewal. Some two months before the expiration date of the policy, Benz wrote to Ploy specifying that the insurance for 2015 should cover an amount of 2,000,000 baht. Ploy replied that she wished to insure her restaurant only up to the 1,000,000-baht outstanding balance on her mortgage and would obtain insurance elsewhere if the 1,000,000-baht coverage could not be arranged. Shortly before the expiration date of the policy, Benz sent Ploy a new policy with a face amount of 2,000,000 baht. This policy contained the provision that it would be automatically accepted unless Ploy notified him to the contrary. Ploy did not respond and was sued for non-payment of premiums which had fallen due under the purported insurance contract. Does a contract exist between Ploy and Benz?**

**Answer:** As a general rule, an offeror cannot stipulate that silence will be deemed to be constitute acceptance and thereby impose upon the offeree a positive obligation to reject. This means that Benz cannot impose an obligation on Ploy to reject his offer and Ploy’s silence does not indicate acceptance. More precisely, according to the Civil and Commercial Code, silence has no legal effect and is not considered as a declaration of intention except for some specific circumstances expressly provided by law or customary practice. Therefore, in the above scenario a contract has not been formed because Ploy is under no legal duty to reply to Benz’s offer.