**Chapter Nine**

**Property**

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

**1. Discuss the main rights accorded to the owner of property.**

**Answer:** Under Section 1336 of the Civil and Commercial Code the main rights accorded to the owner of property are use, disposal, and enjoyment of fruits. In particular, the Code states that the owner of property has the right to use and dispose of it and acquire its fruits within the limits of the law. “Use” indicates here the right to make use of the property while “disposal” is a term that means to take material decisions (e.g., transform the property or destine it to a certain use) as well as legal decisions on the property (e.g., modify the legal status such as sell the property, rent it out, donate it, etc.). “Enjoyment” refers to the possibility of taking any utility from the property, either by collecting the natural fruits yielded by the property or by collecting the legal fruits from the person with whom a right of enjoyment of the property has been established. In other words, the owner is free to do whatever he wants with his property within the limits established by the law.

**2. Describe the methods of acquisition of ownership.**

**Answer:** Contracts represent the main mode of acquiring property. This explains the reason why the contract of sale constitutes one of the most common and well-known types of contract. Also, property can be acquired by succession. When a person dies, he can no longer own property or exercise rights over property. Therefore, property of the deceased is subject to succession, that is, it must pass on to his survivors.

Contracts and succession are methods of acquiring ownership by assignment. This means that the right to be acquired already exists and is transferred from one individual to another. It must be noted, however, that there are other methods of acquiring property by creating a new right such as possession, occupancy, alluvion, accretion, connection and specification. In such cases, the right is not transferred but it is created as new.

**3. Discuss the conditions that are necessary for acquiring property by continued possession.**

**Answer:** One of the most important means of acquiring a right that did not previously exist is by continued possession, physical occupation of the property beyond the lapse of a certain period of time. Specifically, ownership of property belonging to another person can be gained by possession of it for a prescribed period of time ranging from five years in the case of movable property to ten years in the case of immovable property (Section 1382 Civil and Commercial Code).

**4. Distinguish lost property from treasure.**

**Answer:** Under theCivil and Commercial Code, lost property must be handed in to the loser or, if the loser is unknown, to the police. If not reclaimed within a year it becomes the finder’s property. Acquiring property in this way is known as finder’s right (Section 1325, Civil and Commercial Code). If the original owner subsequently claims the property, the finder is entitled to a reward.

Treasure is regulated by different rules. Treasure is defined as movable property of value “which has been hidden or buried, which no person can prove ownership of” (Section 1328, Civil and Commercial Code). The treasure becomes the property of the State. The finder, however, is entitled to receive a reward of one-third of its value.

**5. Explain the difference between ownership and possession.**

**Answer:** Under Section 1336 of the Civil and Commercial Code the main rights accorded to the owner of property are use, disposal, and enjoyment of fruits. In particular, the Code states that the owner of property has the right to use and dispose of it and acquire its fruits within the limits of the law.

The right of possession is different from the right of ownership. The right of possession refers to the fact that an individual has the power over a property, regardless of the circumstances by which he has such power. In other words, it does not matter if he is entitled to have it or not. The Civil and Commercial Code assigns paramount importance to the possession, and several presumptions are applied in favor of the possessor. More precisely, a possessor is presumed to hold the property for himself (Section 1369) and to possess it in good faith, peacefully and openly (Section 1370). Possession is presumed to be continuous: if it is proved that a person possessed the same property at different past times, it is presumed that his possession continued during the two dates (Section 1371). Furthermore, there are other provisions which assist the possessor in acquiring possessory rights and, in particular, Section 1368 of the Civil and Commercial Code which disposes that a possessor may acquire possessory right through another person holding the possession for him.

**6. Identify and explain the elements of possession.**

**Answer:** Under Section 1367 of the Civil and Commercial Code, a person acquires possessory right by holding a property with the intention of holding it for himself. Thus, two elements are necessary: physical control and intention.

Physical control means some exercise of power over the property and, in particular, the state of controlling the property as a matter of fact, whether directly or indirectly. A person may possess a property not only if he holds it by himself (direct possession) but also in cases where the property is possessed through another person (indirect possession). Thus, such an element does not necessarily require physical contiguity between the property and the person.

Intention indicates the attitude in the mind of the actor denying the rights of others to have access to the property. This means that a possessor needs to be aware of the fact that the property is within his power of control and to intentionally exercise this control. In some cases, however, the actor’s attitude may consist in a general intention to control all property within his sphere of influence.

**7. List and illustrate the differences between the right of habitation and the right of superficies.**

**Answer:** Right of habitation and right of superficies are two separate real rights governed by the Civil and Commercial Code. The right of habitation entitles the holder to live in a building as a dwelling place without paying rent (Section 1402, Civil and Commercial Code) while the right of superficies is a property right that separates ownership of the land and anything on the land (a building or a structure) or in the ground (part of plantations). As a consequence, the right of superficies confers a larger power on its holder. The superficiary does not have the mere right to live in the building with his family take natural fruits of the land. He has the right to own, upon or under the land, buildings, structures or plantations.

**8. Describe usufruct.**

**Answer:** Usufruct is a property interest that confers the right to enjoy the property of another person as well as the fruits of it. Under Section 1417 of the Civil and Commercial Code, an immovable property can be subjected to a usufruct by virtue of which the usufructuary is entitled to possess, use, and enjoy the profits of the property.

Usufruct can be constituted by a unilateral or bilateral juridical act. Section 1418 of the Civil and Commercial Code limits the duration of the usufruct to a period that cannot exceed the life of the usufructuary. In case a specific period is fixed, it cannot exceed 30 years, renewable only once for a further 30-year period. In case no period is fixed, it is presumed that the usufruct is for the life of the usufructuary.

**9. On May 2001, Ying inherits her uncle’s stilt house in Udon Thani. At the base of the terraced grounds behind the stilt house, there is a little pond. Ying remembers her uncle using the pond on a regular basis for fishing and irrigation. She and her husband assume that the uncle owned the pond. They decide to move into the house and continue using the pond as an extension of their property. In April 2001, they decide to erect an entrance gate and a fence around the property. On October 2014, Ying and her husband receive a letter from Nattakit with a copy of the title deed of the property informing them that he has the legal ownership of the pond. Advise Ying.**

**Answer:** Under the above scenario, Ying can claim ownership of the property under Section 1382 of the Civil and Commercial Code which states that “Where a person has, for an uninterrupted period of ten years in case of an immovable, or five years in case of a movable, peacefully and openly possessed a property belonging to another, with the intention to be its owner, he acquires the ownership of it.” In this case, Ying’s conduct fulfills all the key requirements of Section 1382 of the Civil and Commercial Code. First, the property belongs to “another person,” it is not Ying’s property. Second, the possession is “open and peaceful” since Ying erects an entrance gate and a fence around the property. Third, the property has been possessed for more than ten years. Fourth and last, there is an “intention to be owner” since Ying assumes that her uncle owned the pond and continues using the pond as an extension of her property.

**10. In April 2014 Fai took possession of a 16-foot fiberglass boat which she found lying beside the roadway in Mae Sot. Seeing two policemen, she stopped them to discuss the boat. After calling in the situation and receiving instructions, the policemen, over Fai’s objections, impounded the boat. Fai then made it clear that if the true owner of the boat was not found she wanted it. No one claimed the boat, and it remains in the custody of the Mae Sot Police Department. Fai claimed the boat as finder. Who wins?**

**Answer:** Under the above scenario, Fai can claim ownership of the property under Section 1325 of the Civil and Commercial Code which states that “If the finder of lost property has complied with the provisions of Section 1323 and the person entitled to receive it has not claimed it within one year from the day of find, the ownership vested in the finder.” In this case, the lost property was handed in to the police and no one claimed the boat within a year. Thus, it becomes the finder’s property.