Chapter 6

Delictual Obligations

The second main category of obligations is that which arises from non-contractual liability for damage, i.e., delicts or civil injuries. A delict may be defined as a breach of legal duty which gives rise to action in favor of the victim. In this area of law, as also in many others, Thai rules are modeled upon the German Civil Code (Bürgerliches Gesetzbuch, or BGB) which grants the right to compensation at the suit of the injured party in case of unlawful infringement of a right. The purpose of delict law is to provide compensation to those who have suffered losses or injuries because of the wrongful conduct of others. With respect to this, Section 420 of the Code states that “A person who, willfully or negligently unlawfully injures the life, body, health, liberty, property or any right of another person is said to commit a wrongful act and is bound to make compensation therefore.” This means that every culpable act that causes damage to another either by commission or omission obliges the person who did it to compensate for it. In this way the legislator wishes to prevent harm as a result of unsafe behavior. Hence, if a person knowingly causes damage to another, he must compensate the injured party. To take a simple case as an example, it is the obligation of a lifeguard to ensure the safety of the swimmers at the pool, supervise the pool area, and instruct people how to swim. If he illegally fails to monitor and observe the pool area for safety, he is answerable in damages resulting from negligence. The wrongdoer is liable towards anyone who has suffered damage by reason of the wrongful act.

There are also cases where a person is strictly liable or absolutely liable, even though the damage to the victim occurred without intention or negligence on his part. For convenience, the issues related to special forms of liability other than liability for fault (fault liability) will be discussed in the next part of this chapter.

Any person who is affected or injured by a wrongful act may bring an action for delict to recover damages by way of compensation. Thus, an artificial person is entitled to sue a wrongdoer in a court for unlawful act or omission which endangers its property or its reputation and may affect its business. In litigation, minors are represented or assisted by their parents or surviving parent, or, in the absence of these, by the legal representatives. Incompetent persons are

---

represented by their guardians while quasi-incompetent persons must obtain the consent of their curators for entering an action in court or undertaking any legal proceedings (Section 34, Civil and Commercial Code).

The claim for compensation of pecuniary damages arising out of a delict may be assigned or inherited upon the victim’s death to heirs or personal representatives. In contrast, the right to compensation for non-pecuniary loss is regarded as a personal right. This means that it is not transferable and does not pass to the heirs of the injured person unless it has been acknowledged by contract or an action on it has been commenced before the death (Section 446, Civil and Commercial Code).

As discussed in Chapter 2, the capacity for committing wrongful acts is governed by different rules than the capacity for juristic acts. Any person may be liable for a wrongful act, even if he did not have sufficient intelligence to understand and appreciate the consequences of his actions. According to the Civil and Commercial Code, a person, even if incapacitated, on account of minority or unsoundness of mind, is liable for the consequences of his wrongful act (Section 429). However, on closer inspection such a difference lacks practical relevance. Under Thai law, neither incapacity nor minority affects the liability for delicts, but as a delict must be caused either willfully or negligently, then it is very unlikely that incapacitated persons may be held liable for an injury they have caused. In other words, it would be very difficult to prove that a minor or an incapacitated adult had the knowledge and experience necessary to foresee the risks or dangers involved with the action. For example, suppose a 5-year-old girl and her mother enter a toy shop to buy a birthday gift for a friend. While walking inside the shop, the girl carelessly breaks a lamp. In this case, it is hardly plausible that a 5-year-old girl would be held liable for the consequences of her conduct.

As regards the wrongdoer, there are also cases of dual and shared liability. Specifically, any person who has in any way aided, encouraged, instigated, or assisted the committing of a wrongful act is deemed to be a joint actor (Section 432, paragraph 2, Civil and Commercial Code). Suppose, for example, that A opens a grill restaurant in Bangkok but his business is not as lucrative as he had hoped. A’s brother, B, suggests using cheap and toxic ingredients in order to reduce costs and maximize profits. If customer C is taken to the local hospital for food poisoning after eating the contaminated food, then A and B are considered to be joint wrongdoers. The example involves two actors, A and B, who have committed the wrongful act together and have thus contributed to the damage’s occurrence.

Joint liability also applies to those cases where several persons assume liability for a separately committed wrongful act leading to one damage to the same victim (Section 432, paragraph 1, Civil and Commercial Code). To take a