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Case Summaries

Supreme Court (Plenary Session) Decisions 2022

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The Supreme Court of Thailand, referred to in the Thai language as "San Dika," is the highest judiciary body of the Court of Justice, playing a prominent role in the Thai legal system. In Thailand, the Court of Justice consists of three main levels: the Court of First Instance, the Court of Appeals, and the Supreme Court. In addition to Court of Appeals cases, cases from the First Instance level may also be directly appealed to the Supreme Court in some circumstances.[1] In any event, cases decided by the Supreme Court are final.[2] Apart from that, legal provisions grant the President of the Supreme Court considerable power, which includes the duty to enact rules for judicial personnel.[3]

The Supreme Court comprises eleven specialized divisions with jurisdiction to consider specific types of cases.[4] There is, for instance, a division for juvenile and family cases, a division for labour cases, and a division for criminal cases regarding

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[1] Law on the Organization of the Court of Justice B.E. 2543 (2000) s 23.

[2] Law on the Organization of the Court of Justice B.E. 2543 (2000) s 23.

[3] For example: Law on the Organization of the Court of Justice B.E. 2543 (2000) s 5.

[4] "อำนาจหน้าที่ศาลฎีกา" ["Competence of the Supreme Court"] *Supreme Court* (2023) <http://www.supremecour.or.th/อำนาจหน้าที่ศาลฎีกา> (Thai).

persons holding political positions.[5] Each division consists of around ten judges, while the overall number of Supreme Court judges is about 160.[6] Yet, the jurisdiction of the Court of Justice is not all-encompassing, as administrative courts, military courts, and the constitutional court have their own areas of competence.[7]

As Thailand has a predominantly civil law legal system, precedents from court cases do not constitute binding law. However, lower court judges tend to follow Supreme Court decisions that are seen as informal precedents, insofar as deviating from past cases may increase the probability that their decisions will be reversed on appeal to a higher court. Therefore, decisions rendered by the Supreme Court are commonly understood as authoritative in the Thai legal fraternity.

Many law commentaries and legal practitioners regularly cite Supreme Court decisions as part of case arguments. Candidates at exams for the Thai bar, prosecutors, and judgeships are all required to have extensive knowledge of notable Supreme Court decisions. Thai bar courses emphasize memorizing and understanding these decisions.

Nevertheless, not all Supreme Court decisions are equally significant. Some may be obsolete due to later reversals, while some reasoning in other decisions may be contradictory, with no clear winner. One line of Supreme Court decisions may have more normative value than others.

Whereas some decisions may be accorded high authoritative value by the landmark nature of the case or its well-crafted legal reasoning, decisions involving the plenary session of the Supreme Court are innately distinguished. The high regard given to decisions involving the Supreme Court in its plenary session, referred to as "Prachum Yai" in the Thai language, is evidenced by their recurring appearance in many written exams for the judicial profession.

Cases at the Supreme Court are normally decided by a panel of at least three judges.[8] The panel is collectively called an "Ong Kha Na," with one judge being designated as the presiding judge.[9] However, the quorum required for a plenary session is extraordinary, consisting of all Supreme Court judges at work on the day the plenary session is called, but not less than half of the overall number of Supreme Court judges.

This higher quorum is due to the importance or complexity of plenary session cases. A plenary session is only called when a specific law requires it, or if the President of the Supreme Court convokes a session to decide on an important matter.[10] In fact,

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[5] "11 Case Divisions in the Supreme Court" *Supreme Court* (2023) <https://iprd.coj.go.th/th/content/category/detail/id/10/cid/10238/iid/171474>.

[6] The number of judges at the Supreme Court level can be inferred from the รายงานประจำปีงบประมาณ พ.ศ. 2564 ศาลยุติธรรมและสำนักงานศาลยุติธรรม [Annual Report B.E. 2564 Court of Justice and Office of the Judiciary] (Office of the Planning and Budget, Office of the Judiciary 2022) 20 (Thai).

[7] ไพโรจน์ วายุภาพ, คำอธิบายระบบศาลและพระธรรมนูญศาลยุติธรรม [Pairoj Wayuparp, *Commentary on the Court System and Law on the Organization of the Court of Justice*] (10th edn, Winyuchon 2022) Chapter 2 (Thai).

[8] Law on the Organization of the Court of Justice B.E. 2543 (2000) s 27.

[9] Civil Procedure Code B.E. 2447 (1904) s 140; Criminal Procedure Code B.E. 2447 (1904) s 187.

[10] Civil Procedure Code, s 140(2).

the number of plenary session decisions in each year from 2012 to 2020, as compiled by the Supreme Court, never exceeded twenty.[11]

In practice, the plenary session does not render a judgement in its own name. Instead, decisions indicate the names of the three judges in the Ong Kha Na that are primarily in charge of the case. Decisions make reference to the plenary session only with respect to the issues that it has deliberated.

This compilation summarizes 13 plenary decisions of the Supreme Court in 2022. While Thai court decisions are increasingly being made available in English, they have yet to acquire the international readership they deserve. Considering their importance, this compilation should facilitate appreciation of Thai legal resources in English, making them more accessible.

Table 1: List of 13 Plenary session decisions by the Supreme Court in 2022

Case No.	**Issue**
92/2565	Form for security agreement under the Security Business Act
272/2565	Punishment most favourable to defendant #1
502/2565	Punishment most favourable to defendant #2
1184–87/2565	Misuse of electronic cards
1685/2565	Easement in debt conditions
2116/2565	Fulfilment debt restructuring agreement
2117/2565	Mortgagee requesting to be preferred judgement creditor
2252/2565	Insured claiming sum that the insurer had not satisfactory paid #1
2253/2565	Insured claiming sum that the insurer had not satisfactory paid #2
2530/2565	Admission of oral evidence
2765/2565	Interpreting insurance contract
2825/2565	Non-compete clause
3018/2565	Reduction of punishment due to giving of information

[11] Supreme Court, รวมคำพิพากษาศาลฎีกา ที่วินิจฉัยโดยที่ประชุมใหญ่ [Compilation of Supreme Court Cases That Were Decided by the Plenary Session] (2020) (Thai).

Case No. 92/2565: Form for security agreement under the Security Business Act

Facts

The issue for the Supreme Court to decide was whether the security business agreement between the Plaintiff, a juristic person with a permit to operate a security business under the Security Business Act B.E. 2558 (2015) ("the Security Business Act"), and the Defendant, was void.

The Plaintiff claimed that the Defendant accepted the security service and received benefit from the Plaintiff according to their agreement; therefore, the Court of Appeal Region 1's strict interpretation of the law did not follow the intent of the law to uphold the parties' relation and intents toward each other. The Plaintiff alleged that because of its business limitations, the Plaintiff had to provide security services to the Defendant before receiving all signatures on the security business agreement.

Decision

Under Section 25 paragraph 1 of the Security Business Act, security service must be done in writing between the security business company and the hirer and must contain the following items . . . ." The Supreme Court opined that the language of the provision signifies that in providing security service, the security business company and hirer must make a written agreement with the signatures of both parties. If one party fails to sign the agreement, the agreement cannot be deemed as one made in writing. Under paragraph 2 of the same section, an agreement prescribed in paragraph 1 not made in writing is void. Although the security service performed by the Plaintiff for the Defendant was a hire of work contract with no formal requirements under Section 587 of the Thailand Civil and Commercial Code ("CCC"), the Security Business Act is a special law enacted to regulate the security business. It is closely related to the life, body, and property of citizens, as well as public order. This law expressly stipulates that the security business agreement is void unless made in writing. Therefore, as the disputed agreement (the "Agreement") only contained the Plaintiff's signature as the contractor, without the Defendant's signature as the hirer, the Supreme Court deemed that the security service was not done in writing and was thus void under the foregoing section.

The Supreme Court ordered the Defendant to return properties derived from such contract to the Plaintiff under Section 172 of the CCC, which was to be done according to the provisions on Undue Enrichment of the Code. As the security service is an act of service by its nature, it falls under the definition of a thing that may be returned under Section 406 of the CCC. The return of service may be done by requiring the Defendant to repay an amount equal to the service it has received from the Plaintiff, and as a monetary debt, the Defendant was also liable to pay interest to the Plaintiff.

Having considered the above, the Supreme Court revised the judgement as follows: the Defendant must pay 236,000 baht to the Plaintiff subject to an interest

rate of 7.5 percent per annum of the principal amount of 236,000 baht from the date of filing the claim to 10 April 2022, and with an interest rate of 5 percent per annum from 11 April 2022 until the payment of debt is complete. If the Ministry of Finance were to change this rate under a Royal Decree, the rate would have to be changed accordingly, but it must not exceed 7.5 percent per annum. The court fees shall not be paid except in case of any change to the judgement by the Court of Appeals Region 1.

Case No. 272/2565: Punishment most favourable to defendant #1

Facts

Two defendants were arrested in their van while travelling with 1,000 methamphetamine pills. They were charged with drug possession for the purpose of selling. The defendants were found liable at both first instance and at the appellate court.

Decision

The first question considered at the Supreme Court stage was whether Defendant 2 was a joint principal with Defendant 1. Here, the Supreme Court considered the context surrounding the facts and found that the statements of Defendant 1 and witnesses, coupled with the Second Defendant's statement during trial, to be admissible under Section 226/3 of the Criminal Procedure Code, B.E. 2477 (1934) in conjunction with Section 3 of the Act on Procedure of Narcotic Case B.E. 2550 (2007).

In considering the evidence, the Supreme Court observed that Defendant 1 would not have travelled alongside Defendant 1 during the night to the same place to deliver the drugs had the former not been acting in tandem with the latter. Moreover, the Supreme Court pointed out that Defendant 2 could have given testimony to protect himself, while Defendant 1 could likewise have given testimony to help his alleged partner-in-crime. Thus, after weighing the Defendants' evidence against the prosecutor's, the Supreme Court found Defendant 2 to be a joint principal with Defendant 1.

For the second question at the Supreme Court stage, the Supreme Court in its plenary session had to consider whether criminal liability within Section 15 in conjunction with Section 66 of the Narcotics Act B.E. 2522 (1979) or criminal liability within Section 145 of the Narcotics Act B.E. 2564 (2021) applied to the case.

For this issue, the Supreme Court first noted that although the Narcotics Act B.E. 2564 (2021) superseded the Narcotics Act B.E. 2522 (1979), Section 21 paragraph 1 of the former law still retained applicability for presumption of sale as stated in the previous legislation. Therefore, the presumption in the Narcotics Act B.E. 2522 (1979) that possession of over 375 milligrams of methamphetamine constitutes possession for the purpose of sale remained applicable.

However, in its plenary session, the Supreme Court denied applicability of criminal punishment within Section 15 in conjunction with Section 66 of the Narcotics Act B.E. 2522 (1979). The reasoning was that the old law imposes a higher punishment by considering the amount of possessed drugs, whereas Section 145 paragraph 2 and paragraph 3 of the Narcotics Act B.E. 2564 (2021) imposes a higher punishment by considering the role of the perpetrator without considering the drug amount possessed. For this reason, the Supreme Court found that the aggravating circumstance in Section 145 of the Narcotics Act B.E. 2564 (2021) should apply instead.

The Supreme Court applied the principle within Section 3 of the Criminal Code that the punishment most favourable to the Defendant should nevertheless be applied. Since punishment under Section 145 paragraph 2(2) of the Narcotics Act B.E. 2564 (2021) (from 2 to 20 years' imprisonment and a 200,000 to 2,000,000 baht fine) is lighter than the sanctions in Section 66 paragraph 3 of the Narcotics Act B.E. 2522 (1979) (life imprisonment and a 1,000,000 to 5,000,000 baht fine), the less harsh punishment in the Narcotics Act B.E. 2564 (2021) applied.

Case No. 502/2565: Punishment most favourable to defendant #2

Facts

Defendant 1, a repeat drug offender, allowed Mr. A to use his house for selling methamphetamine. However, it was not evident at what price Mr. A sold the methamphetamine or to whom.

Decision

During consideration of this case by the Supreme Court, the Narcotics Act B.E. 2564 (2021) came into force. According to the Supreme Court, although the new Narcotics Act B.E. 2564 (2021) superseded Narcotics Act B.E. 2522 (1979), Section 21 paragraph 1 of the new Narcotics Act retained applicability of presumption of sale from the former law. Therefore, classification in the Narcotics Act B.E. 2522 (1979) of methamphetamine as a category one drug and the presumption that possession of over 375 milligrams of methamphetamine constitutes possession for the purpose of sale still applied.

Therefore, under Section 90 of the Narcotics Act B.E. 2564 (2021), the new law, sales of the category one drug is prohibited, whereas Section 145 paragraph 1 specifies a penalty for violating Section 90. Section 104 prohibits the use of classified drugs and Section 162 provides that the use of category one drugs violates Section 104 and will be sanctioned. Therefore, it remained that methamphetamine sales and use still constitute violations of the law under the new statutes. The Narcotics Act B.E. 2564 (2021) has not made the Narcotics Act B.E. 2522 (1979) obsolete in this respect.

However, the Supreme Court in its plenary session denied the applicability of criminal punishment within Section 15 in conjunction with Section 66 of the Narcotics

Act B.E. 2522 (1979). The reasoning was that the former law imposed higher sanctions by considering the amount of possessed drugs, whereas Section 145 paragraph 2 and 3 of the Narcotics Act B.E. 2564 (2021) considers the role of the perpetrator without evaluating the amount of drugs possessed. Therefore, aggravating circumstances under Section 145 paragraphs 2 and 3 of the Narcotics Act B.E. 2564 (2021) were to be considered instead.

As information on price, buyer, frequency, and methamphetamine sales methods remained unclear, criminal liability under Section 145 paragraph 2 could not be established. Instead, general criminal liability within Section 145 paragraph 1 applied. Defendant 1 was thus found to have provided criminal support under Section 145 paragraph 1.

In addition, the Supreme Court declared that the definition of "sales" under Section 1 of the Narcotics Act B.E. 2564 (2021) covers sales and possession for sales, unlike the previous definition in the Narcotics Act B.E. 2522 (1979) that prescribes separate punishment for sales and for possession for sales of drugs. Therefore, Defendant 1's support in sales of some amount of methamphetamine and possession for sales of the remaining amount constituted only one offence. Since criminality under the Narcotics Act B.E. 2522 (1979) that had been in force during commission of the offence differed from criminality under the Narcotics Act B.E. 2564 (2021), in force after the offence was committed, the law most advantageous to the defendant must be applied under Section 3 of the Criminal Code. Therefore, Defendant 1 was only criminally liable for one offence.

As the prosecutor requested additional punishment for Defendant 1 as a repeat offender under Section 97 of the Narcotics Act B.E. 2522 (1979), the Supreme Court in its plenary session deemed that the prosecutor already requested the court to impose additional punishment in compliance with Section 159 paragraph 1 of the Criminal Procedure Code. Therefore, the Court could augment the sanction by one-third for Defendant 1 according to Section 92 of the Criminal Code, a provision of general scope in the Criminal Code. Since this circumstance relates to the nature of the case, the Supreme Court could extend imposition of additional punishment for Defendant 2 to Defendant 4 according to Sections 213 and 225 of the Criminal Procedure Code in conjunction with the Act on Procedure of Narcotic Case B.E. 2550 (2007).

Case No. 1184–87/2565: Misuse of electronic cards

Facts

The Defendants twice conspired larcenously to deprive an injured person of 200,000 baht and 70,000 baht. The issue before the Supreme Court was whether any grounds for a criminal offence may be found on the part of the Defendants in misusing the Co-Plaintiff's electronic card, possibly causing damage to the Co-Plaintiff.

The Co-Plaintiff opened a deposit account, receiving a username and password from the bank. The Co-Plaintiff used this information to purchase goods, services, pay

debts instead of by cash, transfer money from his account to the other accounts, withdraw cash, and other digital platform transactions.

Decision

The Supreme Court found that these actions amounted to the use of an electronic card under the definition in Section 1(14)(b) of the Penal Code. The information that the Co-Plaintiff received from the bank was an agreement on the use of an electronic card (e-card), which the Co-Plaintiff had to keep confidential. The Co-Plaintiff, rightful owner entitled to use the e-card, gave the information to Defendant 2, an employee under his orders. Defendant 2 was permitted to use this e-card, being told information about the deposit bank account and instructed to enter into transactions on the program by the Co-Plaintiff, Therefore, Defendant 2 was not judged as using the e-card beyond the Co-Plaintiff's orders.

However, the Supreme Court defined Defendant 2's act in using the information to transfer money from the Co-Plaintiff's account to Defendant 1's account without the Co-Plaintiff's order as an unauthorised act without the Co-Plaintiff's consent, causing damage to the Co-Plaintiff who lost deposited amounts.

The Supreme Court saw the offence of wrongfully using an e-card belonging to another person under Section 269/5 of the Penal Code as punishing the possessor or holder of a genuine e-card of another person and using it for personal gain without being entitled to do so, or stealthily take electronic information, a type of e-card, belonging to another individual for personal use. Therefore, this amounted to misuse of the Co-Plaintiff's e-card.

The Supreme Court thus reversed the prior acquitting judgement, found Defendant 1 and Defendant 3 guilty under Section 335(7) paragraph 1 (old) in conjunction with Section 83 of the Penal Code, and found Defendant 2 guilty under Section 269/5 in conjunction with Section 269/7, and Section 335(7)(11) paragraph 2 (old) in conjunction with Section 83 of the Penal Code. The actions of all three Defendants were several distinct and different offences; thus, the Supreme Court inflicted the punishment prescribed for each count of the offence to each offender according to Section 91 of the Penal Code.

Case No. 1685/2565: Easement in debt conditions

Facts

On 25 April 1996, Mr. A and Plaintiff 2, Mr. Udom and Mr. Chaiyut, registered a mortgage on the disputed land to secure debt of the loan, debt from check receivable discounted, and all other types of debts that the mortgagor and/or Mr. Chaiyut owed to Finance and Securities Company R, the mortgagee, for 26,000,000 baht and interest calculated at the rate of 25 percent per annum.

There was an agreement that the mortgagor was to be jointly liable with the debtor. Afterwards, the right to receive this mortgage was transferred to Finance and Securities Company G, Bank T, and Asset Management Company T, respectively. On 28 December 2004, Mr. Udom and Mr. Chaiyut were placed under absolute receivership in Red Case No. 5223/2547 of the Central Bankruptcy Court, in which Asset Management Company P was creditor and plaintiff. On 29 June 2005, Asset Management Company T filed a notice for the payment of debt. On 8 February 2006, Mr. A and Plaintiff 2 made a memorandum of agreement (MoA) with Asset Management Company T, with the following content: On 30 June 2003, Mr. Chaiyut became a debtor of Asset Management Company T, transferee of the right to claim the principal amount of 14,928,650.68 baht and accrued interest under the right in the amount of 14,462,794.99 baht, for a total of 29,391,445.67 baht. Mr. A and Plaintiff 2 agreed to repay the debt to Asset Management Company T of 15,200,000 baht, which may be divided into the principal amount of 14,928,650.68 baht and the interest of 271,349.32 baht.

On the date of the agreement, the principal amount of 200,000 was repaid and Mr. A agreed to auction the mortgaged land for a price of at least 15,000,000 baht. If the auctioned price was lower than this limit, Mr. A and Plaintiff 2 agreed to repay the remaining debt so that the total debt of 15,00,000 baht would be satisfied. After repaying the debt, Asset Management Company T agreed to release the mortgage security to Mr. A and Plaintiff 2. On 7 September 2007, the official receiver in the stated bankruptcy case sold the disputed land in a public auction for a price of 29,020,000 baht. On 10 May 2011, Mr. A and Plaintiff 2 filed a claim to request the sales proceeds from the auction exceeding the debt amount. However, on 30 January 2012, Asset Management Company T filed a counterclaim. On 22 January 2013, the official receiver waited for payment of sales proceeds from the public auction share in which Mr. A and Plaintiff 2 held ownership rights (12,068,678.35 baht and 3,900,769.25 baht, respectively).

The Defendant, transferee of the right to claim from Asset Management Company T and subrogated Asset Management Company T to claim such rights already, received debt repayment from the sales proceeds of the public auction in the amount of 11.277.358.84 baht.

Under Clause 2 of the additional MoA for the debt restructuring agreement between Mr. A and Plaintiff 2, and the Thai Asset Management Company T ("Company T"), the purpose of the agreement shall include the capacity of Mr. A and Plaintiff 2 to repay the debt, and shall only be considered as acknowledgement of debt agreement and/or easement in conditions of debt repayment, not a release from the original debt.

The original debt including securities still exists without being affected. Under Clause 1 of the additional memorandum of agreement, "original debt" means "the right to demand under different types of credit agreement that the transferor institution has against the debtor . . ." and the Asset Management Company has transferred such right under the transfer of asset agreement. Mr. A and Plaintiff 2 have acknowledged the original debt in Clause 3, which states that on 30 June 2003, C is the debtor of the

original debt in the amount of 29,391,445.67 baht. Under Clause 4, Mr. A and Plaintiff 2's obligation to repay the debt was eased to 15,200,000 baht.

Decision

The issue before the Supreme Court was whether, and how much, the Plaintiffs were obliged to repay as debt to the Defendant.

The Supreme Court interpreted the MoA for the benefit of Mr. A and Plaintiff 2, the injured party in relation to the debt, under Section 11 of the CCC, with the view that the agreement was only an acknowledgement of debt in the amount of 15,200,000 baht as construed in Clause 4 of the agreement, and the two plaintiffs must still be liable for the remaining amount of 3,722,641.16 baht.

According to the Supreme Court in its plenary session, the MoA that Mr. A, and Plaintiff 2, as persons with ownership rights, including the mortgagors, made was an easement in conditions of debt repayment amounting to acknowledgement of the original debt of 29,391,445.67 baht. It bound Mr. A and Plaintiff 2 to repay only the partial amount of 15,200,000 baht but did not release the remaining debt to persons with ownership rights and all mortgagors.

Therefore, when Mr. A and Plaintiff 2 repaid only 200,000 baht, they retained an outstanding obligation to repay 15,000,000 baht. To do so, Mr. A and Plaintiff 2 had to use sale proceeds from auctioning the mortgaged land according to their ownership shares to repay the Defendant fully according to the MoA.

Under Clause 21 of the debt restructuring agreement, when Mr. A and Plaintiff 2 satisfied their obligations under the additional MoA, Mr. A and Plaintiff 2, as guarantor and mortgagor, would be released from liability of the original debt. This clause does not specify releasing D, another mortgagor, or C, another debtor, as well because the debt has not been fully paid. Therefore, both Plaintiffs must still repay the debt to the Defendant under the MoA. Insofar as both Plaintiffs requested to repay the debt only in the amount of 3,722,641.16 baht, the Defendant has the right to refuse such partial performance. The Defendant's objection and demand to receive sale proceeds from the auction of the land owned by both Plaintiffs is not contrary to the MoA.

Case No. 2116/2565: Fulfilment debt restructuring agreement

Facts

According to the Debt Restructuring Agreement, it was deemed that, after Mr. Aor. and the second respondent successfully complied with the conditions stated in the Debt Restructuring Agreement, Mr. Aor., the second respondent, guarantor, and mortgagor were released from the original debt.

Decision

The Supreme Court in its plenary session opined that the condition in the Debt Restructuring Agreement that did not indicate that the second and fourth defendants and other mortgagors be released from the original debt was the declaration of intent of Company Tor., a creditor and asset management company, that it did not wish Mr. Aor. and the second respondent to be bound to affect the entire performance of the original debt under Section 291 of the CCC. Therefore, the second and fourth defendants were still bound to the original debt.

However, Mr. Aor. and the second respondent paid only 200,000 baht to Company Tor., which did not cover the entire debt specified by the conditions in the Debt Restructuring Agreement. The petitioner, who was the new creditor assigned the right to claim, including the right as mortgagee from Company Tor., did not receive another 15,000,000 baht to cover the entire debt. Subsequently, even though more parts of the debt were paid by public auction of properties owned by the second and fourth defendants, the payment still did not cover the entire debt; only an additional 11,277,358.84 baht was paid. The Supreme Court in its plenary session opined that Mr. Aor. and the second respondent did not successfully comply with the conditions of the Debt Restructuring Agreement. Therefore, the first respondent, administrator of the estate of Mr. Aor., and second respondent were not released from the liability because the amount of debt specified by conditions of the Debt Restructuring Agreement was not totally paid. Therefore, the first respondent, as administrator of the estate of Mr. Aor., and the second respondent were liable to pay the debt to the petitioner. The petitioner also had the right to be paid the remaining debt according to the amount of the original debt from Mr. Aor. and the first and second respondents according to the Debt Restructuring Agreement from the public auction of mortgaged land by the first and second respondents. The petitioner had the priority to be paid from this sale before other creditors in accordance with land ownership by the first and second respondents and within the scope of mortgage that did not exceed the actual obligations of the first and second respondents towards the petitioner.

Case No. 2117/2565: Mortgagee requesting to be preferred judgement creditor

Facts

The Defendant was the administrator of the estate of the deceased, while the Plaintiff was the judgement creditor against the deceased. The Defendant and Plaintiff co-owned a plot of land and building, whereas the petitioner was a bank to whom the deceased had mortgaged the land and building.

Before the dispute, the petitioner had already obtained an enforcement judgement from the court against the deceased's land. At the time of the dispute, the

court enforcer had put on public action the land and building belonging to the estate of the deceased person.

Decision

The Supreme Court, in its plenary session, opined that under Section 702 paragraph 2 of the CCC, the petitioner, as mortgagee and judgement creditor against the deceased, has the right to be paid from the mortgaged property before other ordinary creditors, notwithstanding the mortgaged land having already been transferred to a third party. Moreover, the estate must first be used to pay debts of creditors according to Section 1739 of the CCC. Therefore, according to the plenary session, the petitioner has the right to have the mortgaged debt be paid from the estate of the deceased before other creditors and before the heirs of the deceased.

Regarding the defendant's claim that the 15 percent annual default interest charged by the petitioner was disproportionate, the Supreme Court in its plenary session stated that the interest was part of the debt arising from a previous judgement by the Court of First Instance. Thus, the 15 percent annual default interest bound the plaintiff and defendants, who were also parties in that previous judgement, according to Section 145 of the Civil Procedure Code.

Furthermore, it was found that the petitioner was also entitled to deduct from the proceeds the public auction mortgage enforcement fees as prescribed by Section 715(3) of the CCC.

The Supreme Court in its plenary session noted that the petitioner had the prior right to be paid before other creditors under Section 324 paragraph 1 of the Civil Procedure Code, which provides that the mortgagee is entitled to a portion of the public auction of the debtor's property.

Still, according to the plenary session, Section 324 paragraph 1 only applies in the situation when enforcement of pecuniary debt is requested by the judgment creditor and the court enforcer is requested to enforce the property for the purpose of debt repayment. However, in this case, the court enforcer took the land and put it through public action for the purpose of distributing money to the Plaintiff and the Defendant in their capacities as co-owners, not as judgment creditors or debtors [*Since both parties co-own land and buildings, Section 1364 of the CCC applies, and public auction proceeds will be given to the Plaintiff and Defendant proportionately*]. Therefore, this particular case does not concern a request to enforce property under previous judgments obtained by the petitioner under Section 324 of the Civil Procedure Code. So, the petitioner may not use this particular judgement as basis for his request. Instead, the petitioner must enforce his right under the previous judgement obtained.

Yet the petitioner, as mortgagee creditor, was still entitled to be paid before other creditors. Therefore, the money received from public auction must be withheld until the petitioner, as mortgagee creditor, requested debt payment through the proper channels.

Case No. 2252/2565: Insured claiming sum that the insurer had not satisfactory paid #1

Facts

Plaintiff 1 was a saving cooperative. Plaintiff 2 had made a suretyship contract with Plaintiff 1 to guarantee the debt that Defendant 1 owes to Plaintiff 1. Plaintiff 2 had further concluded an agreement with Defendant 2 under Defendant 2's "insurance scheme for sureties."

In short, the term of reference of the agreement between Plaintiff 2 and Defendant 2 was that Defendant 2 must pay Plaintiff 1 on Plaintiff 2's behalf if Defendant 1 failed to pay Plaintiff 1.

The issue at the Supreme Court level mainly concerned Defendant 2's liability.

Decision

The Supreme Court first considered the issue of prescription of claims by looking at the nature of the disputed agreement between Plaintiff 2 and Defendant 2 under the insurance scheme for sureties. If the disputed agreement were an insurance contract, the prescription of two years after the loss under Section 882 of the CCC would apply.

However, the Supreme Court pointed out that the disputed agreement is not an insurance contract as defined by Section 861 of the CCC.

Section 861 of the CCC states that a "contract of insurance is one in which a person agrees to make compensation or to pay a sum of money in case of contingent loss or any other future event specified in the contract, and another person agrees to pay a sum of money, called premium." Thus, parties to an insurance contract may agree to prescribe conditions for compensation to be paid as contingent losses or other future events.

Section 869 of the CCC collectively defines "loss" under Title XX, Chapter 2 on insurance against loss as "any injury which may be estimated in money." Such contingent loss must be a cause or danger leading to damage and not a liability between parties of a contractual nature.

However, under this particular disputed agreement, the debt under suretyship that Plaintiff 2 owed to Plaintiff 1 was a condition for liability of Defendant 2. The Supreme Court considered this as only being a contract whereby Defendant 2 agreed to pay compensation for a future even in case of a breach of contract (by Defendant 1); this was not an agreement to pay when there was a loss. Thus, the contract between Plaintiff 2 and Defendant 2 was not an insurance contract and the two-year prescription under Section 882 did not apply. The applicable prescription was instead the ten-year general prescription under Section 192/30 of the CCC from the date on which rights under the disputed contract were exercisable under Section 193/12.

Another main issue in this case was whether Defendant 2 was also liable to Plaintiff 2. For this issue, the Supreme Court in its plenary session opined that although the disputed agreement between Defendant 2 and Plaintiff 2 benefited a third party, Plaintiff 1 in his capacity as third party had not yet exhausted the full extent of

the sum insured by Defendant 2. Moreover, Defendant 2 had also refused to pay compensation to Plaintiff 1, causing Plaintiff 2 to pay to Plaintiff 1 instead. Hence, Plaintiff 2, in his capacity as a contracting party to the disputed agreement, had the right to claim the insured money from Defendant 2.

The Supreme Court considered the contents of the disputed agreement and facts surrounding the case and found that Defendant 2 had already received the payment request from Plaintiff 1, but had not paid the amount. Thus, Defendant 2 was found to be liable to Plaintiff 1. However, the default interest rate that Defendant 2 was liable to Plaintiff 1 for was at 2 percent monthly, or 24 percent annually, was a disproportionate stipulated penalty. So, the Supreme Court could reduce the stipulated penalty under Section 383 paragraph 1 of the CCC. The Supreme Court then exercised its discretion and reduced the stipulated penalty to 12 percent annually.

During the Supreme Court's consideration of this case, the Emergency Decree Amending the Civil and Commercial Code B.E. 2564 (2021) was enacted. Sections 3 and 4 of the Emergency Decree changed the default interest rate as prescribed by law from 7.5 percent per annum to a rate as prescribed by Royal Decree plus two percent per annum, which at the time was five percent per annum. Section 7 of the Emergency Decree also provided that the new interest rate applied for debt that is due from the date of the Emergency Decree's enforcement onwards, on 11 April 2021. Hence, the new interest rate of five percent per annum applied to liabilities of the Defendants from 11 April 2021 onward.

Case No. 2253/2565: Insured claiming sum that the insurer had not satisfactory paid #2

Facts

The issue before the Supreme Court was whether Plaintiffs 2 and 3 were interested parties in the insurance contract entitled to demand reimbursement of their payment from Defendant 2 as Defendant 1's guarantors.

Decision

The Supreme Court first determined the nature of the disputed contract. Section 861 of the CCC states that a "contract of insurance is one in which a person agrees to make compensation or to pay a sum of money in case of contingent loss or any other future event specified in the contract, and another person agrees to pay a sum of money, called premium." Thus, parties to an insurance contract may agree to prescribe conditions for compensation to be paid as contingent losses or other future events.

Moreover, Section 869 of the CCC collectively defines "loss" under Title XX, Chapter 2 on insurance against loss as "any injury which may be estimated in money." Therefore, such contingent loss must be a cause or danger leading to damage and not a liability between parties of a contractual nature. Plaintiff 2 and 3's debt to Plaintiff 1 was a condition in which Defendant 2 agreed to pay compensation to Plaintiff 1 on

behalf of Plaintiffs 2 and 3. Such agreement had a contractual nature whereby Defendant 2 agreed to pay compensation in the case that a future event resulting in a breach of contract occurs; it was not a condition reliant on loss to occur. Therefore, it was not insurance against loss prescribed under Title XX, Chapter 2 of the CCC. It was rather a contract of insurance against breach of contract, which was deemed to be other future events. As the law did not specify a period of prescription of this type of contract, the general prescription period applies. Pursuant to Section 193/10 of the CCC, the general prescription period is 10 years from the date that the Plaintiffs can exercise rights under the insurance contract under Section 193/12. The Plaintiffs filed a lawsuit in relation to the insurance contract against Defendant 2 within the 10-year prescription period.

Plaintiffs 2 and 3 entered into a guarantee agreement with Defendant 1 for his loan agreement with Plaintiff 1. Therefore, if Defendant 1 defaulted on this loan agreement, Plaintiffs 2 and 3 must also be jointly liable in the same position as joint debtors to Plaintiff 1. Therefore, Plaintiffs 2 and 3 were considered interested persons in the event insured against under Section 863 of the CCC. Even though Defendant 1 paid for the insurance premium, such payment was first made on behalf of Plaintiffs 2 and 3 as the assured, and secondly, a matter exclusively between Defendant 1 and Plaintiffs 2 and 3, which is inconsequential to Plaintiffs 2 and 3's status as interested persons. Therefore, the insurance contract between Plaintiffs 2 and 3, and Defendant 2 was legally binding.

In Defendant 2's counterclaim that Plaintiff 1's power of attorney to file a lawsuit was contrary to the law and did not conform with Plaintiff 1's regulations, Defendant 2 did not specify what was contrary to such regulations. Moreover, in Defendant 2's counterclaim that Plaintiff 1 did not notify Defendant 2's default of payment of the loan agreement within 45 days from the date of default of the first instalment, Defendant 2 did not specify the effects. Both of Defendant 2's claims were deemed unclear claims under Section 177 paragraph 2 of the Civil Procedural Code in conjunction with Section 7 of the Consumer Case Procedure Act B.E. 2551 (2008; "Consumer Case Procedure Act"), and therefore did not require the Supreme Court's judgment.

On the issue of whether and how Defendant 2 must be liable to Plaintiffs 2 and 3, the Supreme Court in its plenary session opined that even though the insurance contract between Plaintiffs 2 and 3, and Defendant 2 was a contract for the benefit of a third party, and Plaintiff 1 was the beneficiary under such contract who declared his intent to accept the benefit, the compensation that Plaintiff 1 claimed from Defendant 2 did not cover the full amount of compensation under the insurance contract. In addition, after receiving the notice, Defendant 2 refused to pay compensation to Plaintiff 1; this was Defendant 2's breach of the insurance contract, causing Plaintiffs 2 and 3, as guarantors of Defendant 1, to be jointly liable with Defendant 1 for the principal amount, accrued interest, and subsequent interest. As the facts appeared that Plaintiffs 2 and 3 had already partially paid these amounts, Plaintiffs 2 and 3, as parties to the insurance contract, were entitled to demand Defendant 2, as the assured, to

reimburse them to such an amount remaining under the insurance contract in equal shares. Therefore, Defendant 2 was liable to reimburse Plaintiffs 2 and 3 for such amount with a default interest at the rate of 7.5 percent per annum from the date of default. As Plaintiffs 2 and 3 had not yet notified Defendant 2 to repay the debt, Defendant 2 was only liable to pay default interest from the date that the lawsuit was filed, which was deemed the date of default.

As Plaintiff 1 petitioned for Defendant 2 to be jointly liable with Defendant 1, the Supreme Court adjudged that this was a case containing a prayer for relief whose value cannot be ascertained. Plaintiff 1 therefore bore the court fee of 200 baht rather than all three Plaintiffs bearing court fees based on the proportion of the value of their claims. Plaintiffs 2 and 3 were consumers exempted from all fees under Section 18 of the Consumer Case Procedure Act and had to return all paid fees to the three Plaintiffs.

Case No. 2530/2565: Admission of oral evidence

Facts

Defendant 1 had used co-ownership of land and house with Defendant 2 as security for a loan from the Plaintiff. However, after Defendant 1 defaulted on the loan, he transferred his part of land and house ownership to Defendant 2. Although the Defendants registered their transfer, the plaintiff claimed that the transfer was gratuitous, which would cause the transfer to be cancellable.

Decision

The Supreme Court in its plenary session had to decide whether the oral evidence given by Defendant 2 was admissible. Section 94(b) of the Thai Civil Procedure Code bars the admission of oral evidence from altering the content of written evidence.

In this case, the Plaintiff requested the Supreme Court to revoke the Juristic Act 2 whereby Defendant 1 gratuitously transferred ownership of part of the land and house that Defendant 1 owned to Defendant 2. According to the plenary session, this was not a claim to enforce a contractual obligation between parties. In other words, the Supreme Court saw that the content of the contract, as written evidence, was not what it had been asked to enforce. Therefore, the Supreme Court found that Section 94(b) of the Civil Procedure Code did not apply. Thus, oral evidence given by Defendant 2 was found to be admissible.

On the issue of substance, the Supreme Court had to consider whether solely the debtor's knowledge would suffice for applicability of Section 237 of the CCC. Section 237 paragraph 1 provides that:

> The creditor is entitled to claim cancellation by the Court of any juristic act done by the debtor with knowledge that it would prejudice his creditor; but this does not apply if the person enriched by such act did not know, at the time of the act, or the facts which could make it prejudicial to the creditor, provided, however, that in case of gratuitous act the knowledge on the part of the debtor alone is sufficient.

In this case, the Supreme Court found that the intention of Defendant 1's transfer of ownership in his part of the land and house prejudiced the Plaintiff. The Supreme Court also found, based on the evidence submitted, that the transfer was gratuitous. Therefore, the Supreme Court concluded that Section 237 paragraph 1 applied and ordered cancellation of the ownership transfer.

Case No. 2765/2565: Interpreting insurance contract

Facts

The Plaintiff's wife died in a motorbike accident. The person who caused the accident was accused by the police of manslaughter, but was injured in the accident and died before being prosecuted.

Since the Defendant as a company had insured, in accordance with the Protection of Road Accident Victim Act B.E. 2535 (1992), against an accident related to the motorbike of the Plaintiff's wife, the Plaintiff tried to claim compensation from the Defendant. The Plaintiff was successful in claiming basic compensation. However, his claim for excess damages was not approved by the Defendant. The Plaintiff therefore decided to sue the Defendant.

Decision

To determine whether the insurance scope between parties covered excess damages, the Supreme Court had to interpret the Defendant's insurance policy. The insurance policy contained a clause providing approximately that "in case the Victim is the driver of the insured car and is the person responsible for the accident or there is no one responsible to the Victim (driver), the Company is only liable to pay basic compensation."

The Supreme Court in its plenary session then observed that under this contract's term, two situations would exempt the Company from having to pay an amount exceeding the basic compensation: 1) the Victim is the driver responsible for the accident; or 2) no one is responsible to the Victim driver in the accident. In interpreting this clause, the Defendant alleged a clause in the insurance policy providing that the insurance policy was to be interpreted according to opinions by the insurance registrar (the Office of Insurance Commission). However, the Supreme Court responded that the guidebook approved for use by the insurance registrar provided an interpretative guidance in a way causing the situation whereby "there is no one responsible to the Victim driver in the accident" to solely cover situations where the responsible person is unknown.[12] As the responsible party in this particular case

[12] The guidebook provides approximately as follows: "In case no one is legally liable to the victim as driver, for example when the car that caused the accident left the scene and could not be followed or identified as legally liable."

was known, although dead, the clause limiting the Defendant to only pay basic compensation did not apply.

Regarding the amount of the Defendant's liability, the Defendant cited a term in the insurance policy to argue that it was guarantee insurance, meaning that the insurer should reimburse only when the insured was the party responsible for the injury. However, the Plaintiff cited a clause in the insurance policy agreement defining "Victim" as the one entitled to reimbursement covering both the insured and the counterpart in an accident.

Although the Supreme Court viewed the Defendant's argument as cohering with the guarantee insurance principle and the insurance registrar's opinion, the Supreme Court sided with the Plaintiff's interpretation. According to the Supreme Court, the contract was formed by the intention of the parties. The interpretation of an insurance contract, the content of which was unilaterally determined without the insured person in his capacity as consumer could not be amended and must entail understanding and expectation of the consumer in entering the contract. Therefore, although the Supreme Court viewed that the term cited by the Defendant made the contract similar to guarantee insurance, the Supreme Court opined that such a term was only part of an insurance contract concluded under the Protection of Road Accident Victim Act B.E. 2535 (1992). Therefore, after considering other parts of the agreement, the Supreme Court differentiated this particular agreement from guarantee insurance. Moreover, the Supreme Court stated that the law obliged every automobile owner to have accident insurance to compensate the victim created an expectation for law-abiding citizens that one will be fully reimbursed by the insurer after an accident without fault. From these considerations, the Supreme Court found the content of the agreement to be vague, causing interpretation problems.

To solve this problem, the Supreme Court found that this was a standard-form insurance contract under Section 3 of the Unfair Contract Terms Act, B.E. 2540 (1997) since the main content of the contract was predetermined. Therefore, Section 4 paragraph 2 of the Unfair Contract Terms Act, B.E. 2540 (1997) would apply to cause the standard form contract to be interpreted to the advantage of the party that did not predetermine the contract's content. Therefore, the Supreme Court sided with the Plaintiff's position and ordered the Defendant to pay full compensation to the Plaintiff.

Case No. 2825/2565: Non-compete clause

Facts

The Plaintiff was a limited company with objectives including, but not limited to, operating a chemical product sales business. The Defendant was a shareholder of the Plaintiff. On 14 April 2004, shareholders of the Plaintiff and the Plaintiff agreed to prohibit any shareholders of the Plaintiff to operate the business in a way deemed to be competitive to the business operated by the Plaintiff, potentially making the Plaintiff suffer damages either in the present or the future, together with imposing

penalties on shareholders violating this agreement, losing shareholder rights and status to the Plaintiff and agreeing to return possession of the shares to the Plaintiff and paying the stipulated penalty of 100 times of pecuniary damages suffered by the Plaintiff. On 12 May 2014, the Defendant established Company Tor, with the objective of operating a chemical product sales business.

Decision

There were two main issues for consideration. The first issue was whether establishment of Company Tor by the Defendant was deemed to be competitive with the business operated by the Plaintiff according to the prohibition under the agreement between the Plaintiff and the shareholders. The Supreme Court affirmed the decision of the Appeal Court that establishment of Company Tor by the Defendant was deemed competitive with the business operated by the Plaintiff according to the prohibition under the agreement between the Plaintiff and shareholders for the following reasons: First, the Defendant testified that customers of the Plaintiff supported the Defendant's new business in establishing Company Tor because they knew about the conflict involving the Plaintiff's shareholders that caused the Defendant to establish a new company and operate his own business. The Supreme Court agreed that the Defendant's testimony indicated that he was already aware that Company Tor shared the same customer base as the Plaintiff, although the Company Tor head office was located in Bangkok and the Plaintiff's in Samut Prakan, a different geographical area. Therefore, due to potentially sharing the same customers, Company Tor was deemed capable of operating businesses seen as competitive with the business operated by the Plaintiff, which is prohibited under the agreement between Plaintiff and shareholders.

The second issue was whether the Appeal Court decision was sound, ordering the Defendant to return all shares held in the Plaintiff, with such shares ordered to be sold at public auction for use in compensating Plaintiff damages arising from the Defendant's breach of the shareholder agreement. The Defendant had claimed that the Appeal Court imposed excessive compensation and the stipulated penalty did not conform with actual damages that the Plaintiff had suffered.

The Supreme Court in its plenary session decided that this agreement, indicating the compensation that shareholders, who breached the agreement by doing business competitive with the business conducted by the Plaintiff, must pay to the Plaintiff by means of terminating the rights of such shareholders that they have against the Plaintiff, was an agreement made by valid consent and was not contrary to public order. Thus, the agreement was not void and was enforceable.

Since the Supreme Court had already decided that the Defendant was a shareholder violating such agreement, the Defendant must pay compensation to the Plaintiff according to the agreement, where such indication of compensation was not considered to be the stipulated penalty not conforming with actual damages suffered by Plaintiff. Even though Company Tor suffered losses during 2007 and 2008 and such losses could not be used to calculate actual damages that the Plaintiff endured,

Company Tor's business operation and customers shared with the Plaintiff should have directly affected the Plaintiff's business operations. In conclusion, the Appeal Court's decision was considered sound.

Case No. 3018/2565: Reduction of punishment due to giving of information

Facts

The police performed an undercover operation to buy 400 tablets of amphetamines from the defendant near the house where the incident occurred, causing the defendant to be arrested while the tablets were seized as exhibits. The police continued to search the surrounding area of the house but no further illicit property was located. Meanwhile, the defendant informed the police that more amphetamine tablets were buried underground near the house at a specific location. The police duly found an additional 600 amphetamine tablets buried underground behind the house and 1,000 amphetamine tablets underground 20 metres away. The administrative official stated that had the police not received the information regarding the location of the additional 1,600 hidden amphetamine tablets, they would not have been found as evidence. Thus, receiving such information from the defendant expanded the effect, enabling the police to seize large numbers of additional amphetamine tablets as evidence that might have been a significant public danger if distributed.

Decision

The Supreme Court in its plenary session opined that, had the defendant not given the information regarding the location of the additional 1,600 hidden amphetamine tablets, the police would not have located them as evidence. Therefore, reception of this information from the defendant was essential for suppressing the commission of narcotics offences by administrative officials that need not be information relating to other narcotics or illicit conduct relating to narcotics. Moreover, the giving of such information was not considered an extenuating circumstance wherein the defendant assisted an official due to repentance or voluntarily surrendering to an official, becoming entitled to reduced sanctions under Section 78 of the Thai Penal Code as claimed by the plaintiff. The Supreme Court, in its plenary session, agreed with the Appeal Court's decision to exercise its discretion in inflicting the reduced punishment of a fine rather than the minimum sanction provided for such offences committed under Section 100/2 of the Narcotics Act B.E. 2522 (1979).

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* **Indexing Thai names.** "Although family names are used in Thailand, Thais are normally known by their given names, which come first, as in English names. The name is often alphabetized under the first name, but practice varies." *The Chicago Manuel of Style* (17th edn, University of Chicago Press 2017) §16.85.