

ABSTRACT

Thesis Title : Problems Related to Mortgagor's Liability: A Study of the
Exception Agreement, Section 733 of the Civil and Commercial
Code and Unfair Contractual Terms

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It is a generally accepted fact, that today, the business sector plays an increasingly important role in the socio-economic development of Thailand. Capital money used for the day-to-day operation of business normally comes from borrowing. Under the practice of banking rules, a financial institution lender requires the placement of security as collateral against the requested loan. In the event that direct borrower cannot provide the collateral, a third party, known as mortgagor, becomes an important party to the transaction.

This thesis focuses upon the liability of the mortgagor, in the event the borrower fails to fulfill his obligation according to contractual terms.

Under current contractual law, mortgagor enjoys no limit of liability towards creditor, in the event all collateral securities are sold to cover the debt incurred by the borrower. This thesis reviews the questionable and unfair practice of the creditor requiring the mortgagor to assume unlimited liability. Unlimited liability is a result of

the written contractual conditions being biased in favour of the lender. The in depth analysis in this thesis highlights the amendment of certain clauses including;

1. Adjustment of certain provisions under the acts of Civil and Commercial Code, to fully identify the extent of liability of the mortgagor towards the creditor.

2. To ensure the application of fairness and justice for the mortgagor during the pending deliberation of the aforementioned law. To apply wherever possible, the relevant law, known as the Unfair Contractual Terms Act, B.E. 2540.