

SUCCESSION LAW

A Lecture by Dr. Carlo Filippo Ciambrelli

GENERAL PRINCIPLES

- ❖ Section 1599 (TCCC) “when a person dies, his **estate** devolves on (to) his heirs.
- ❖ Law of succession regulates the property of the deceased.
- ❖ The Principles of law of succession are linked to **Thai culture***. (Buddhist monks, Exclusion due to **unworthiness***)

A decorative white floral border with intricate scrollwork and leaf patterns surrounds the central text area.

GENERAL CONSIDERATIONS

- ❖ Law of succession also has restrictions:
- ❖ It does not apply to Islamic people (in 4 provinces located in the south of Thailand)
- ❖ It does not apply to juristic persons

TERRITORIAL RESTRICTION

- ❖ Act on the Application of Islamic Law in the Areas of Pattani, Narathiwat, Yala and Satun Provinces, B.E. 2489 (1946)
- ❖ Section 3 When addressing an action involving Islamic family or succession in which both the plaintiff and the defendant are Muslim or, if the action is non-contentious, the petitioner is Muslim, a court of first instance in the Province of Pattani, Narathiwat, Yala or Satun shall adhere to the Islamic Law on family and succession in lieu of the pertinent provisions of the Civil and Commercial Code, save those governing succession prescriptions, whether the cause of action comes to pass prior to or following the coming into force of this Act.

TERRITORIAL RESTRICTION

❖ Conditions:

- ❖ 1. The deceased must be a Muslim
- ❖ 2. All parties must be Muslims

MAIN DIFFERENCE BETWEEN ISLAMIC LAW AND PRINCIPLES IN THE TCCC

Islamic Law

- A son has a larger share than a daughter by one half.
- If the de cujus has only a daughter, the de cujus' brothers shall also have a share in the estate.

Principles of the TCCC

- Both son and daughter have equal share
- If the de cujus has a child, the brothers of the de cujus who are in a lower class shall not inherit anything.

The background features a large, ornate, light-colored frame with intricate scrollwork. Inside the frame, a skeleton with large, dark wings is depicted in a standing position, holding a long, thin staff or scepter. The skeleton is positioned in the center-left. In the bottom right corner, a small, dark, classical-style statue of a woman is visible. The overall color palette is dark, with the text and frame elements in light colors.

DEATH

CAUSA MORTIS

- ❖ Natural death (aging, illness)
- ❖ Abnormal natural death (**Murder***)
- ❖ Civil Death – consequence as for the adjudication of disappearance

ADJUDGED DISAPPEARED



Conditions:

❖ 1. Went missing and not seen for 5 years. In the case of “peril of life” (plane crash), 2 years. (section 61)



Legal effect

- Once adjudged disappeared, such person is deemed to have died at the completion of 5 years period or 2 years period. (section 62)

SECTION 61

- ❖ **Section 61.** If a person has left his domicile or residence and it has been uncertain for five years whether he is living or dead, the court may, on the application of any interested person or of the public prosecutor, adjudge that such person has disappeared.
- ❖ The period of time under paragraph one shall be reduced to two years;
- ❖ As from the day when the battle or war comes to an end and the person who had been engaged in such battle or war has been disappeared therein;
- ❖ As from the day when the vehicle on which the person had been traveling was lost or destroyed;
- ❖ As from the day when any peril of his life other than those mentioned in (1) or (2) has passed and the person had been in such peril.

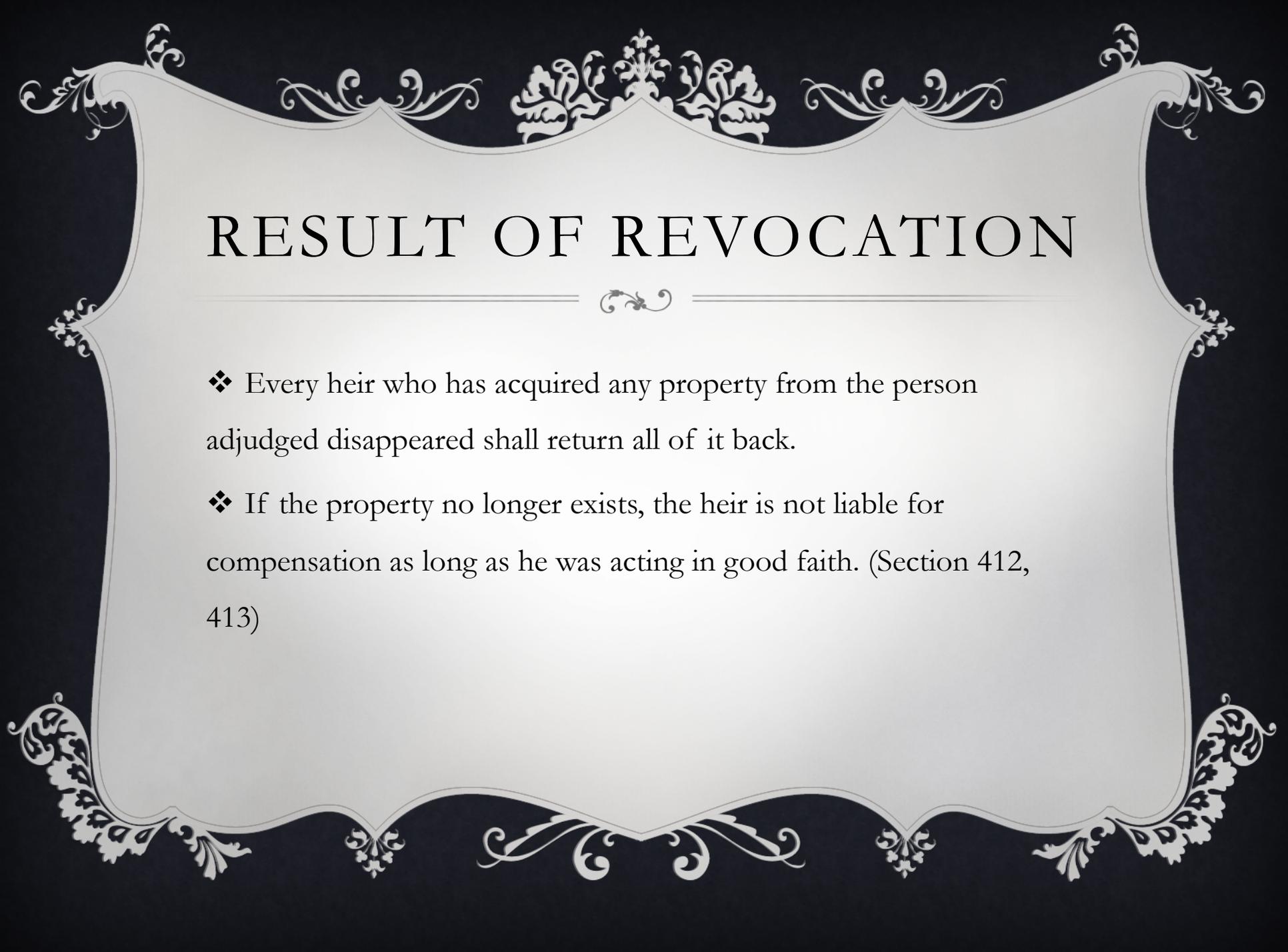


TSUNAMI

❖ Exception

❖ An application for an adjudication of disappearance may be applied against a person having been lost in a tsunami disaster.

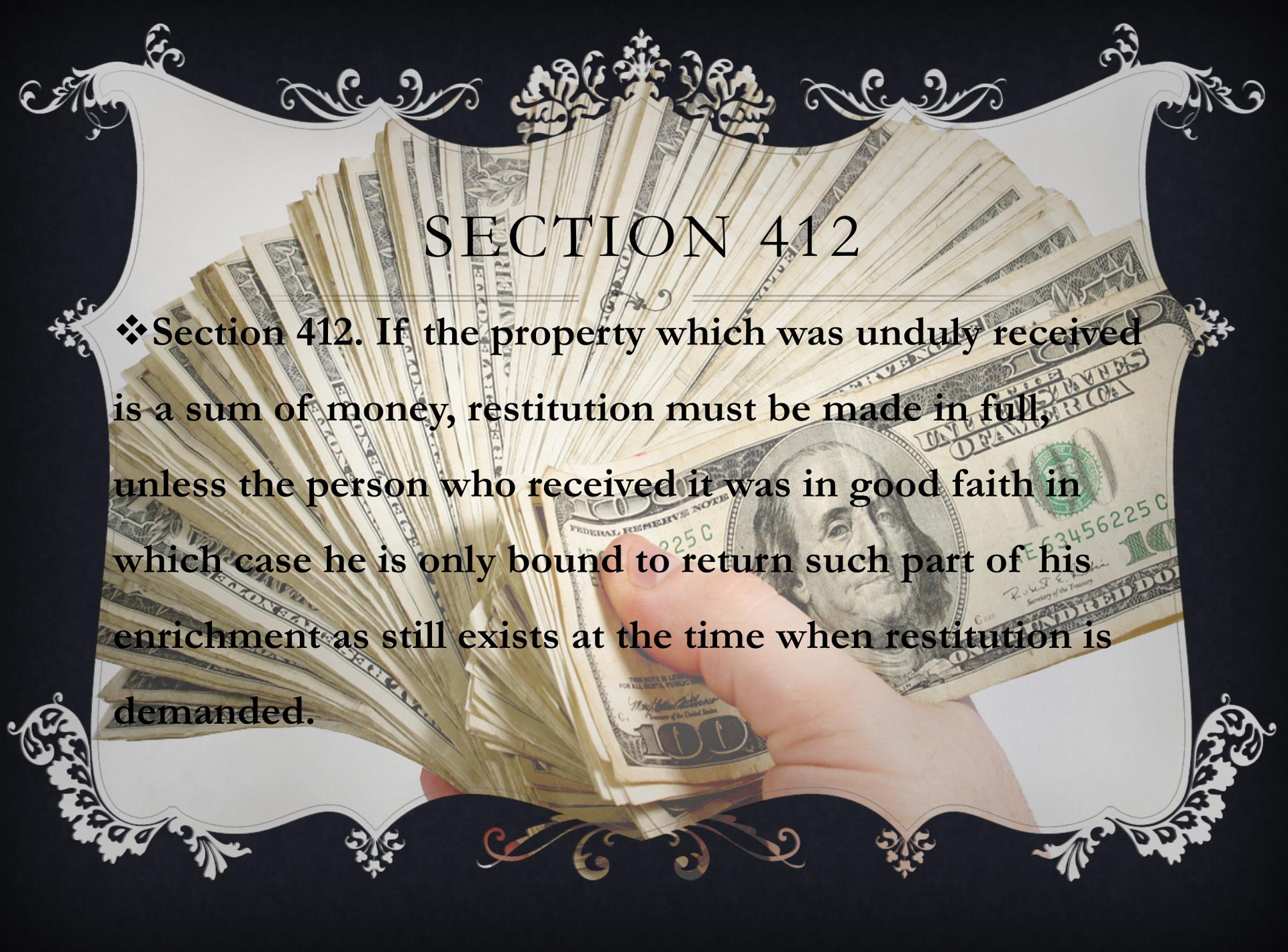
❖ There is no need to wait 2 years in such case.



RESULT OF REVOCATION



- ❖ Every heir who has acquired any property from the person adjudged disappeared shall return all of it back.
- ❖ If the property no longer exists, the heir is not liable for compensation as long as he was acting in good faith. (Section 412, 413)

A hand is shown holding a large fan of US dollar bills, including several \$100 bills. The bills are fanned out, showing the portrait of Benjamin Franklin on the \$100 bill. The entire scene is framed by a decorative white border with intricate scrollwork and floral patterns. The background is dark, making the white border and the yellowish-green of the money stand out.

SECTION 412

❖ Section 412. If the property which was unduly received is a sum of money, restitution must be made in full, unless the person who received it was in good faith in which case he is only bound to return such part of his enrichment as still exists at the time when restitution is demanded.

SECTION 413

❖ Section 413. When the property which must be returned is other than a sum of money and the person who received it was in good faith, such person is only bound to return it in such condition as it is and is not responsible for loss or damage to such thing, but he must return whatever he has acquired as compensation for such loss or damage. If the person who received the property was in bad faith he is fully responsible for the loss or damage even caused by *force majeure*, unless he proves that the loss or damage would have happened in any case.



ESTATE

❖ What is the meaning of “estate”

Section 1600. Subject to the provisions of this Code, the estate of a deceased includes his properties of every kind, as well as his rights, duties and liabilities, except those which by law or by their nature are purely personal to him.

ESTATE

❖ Property of every kind (moveable property/ immovable property/
profit from such property)

❖ Duties and liabilities (debts/ tax)

Heirs shall not be liable in excess of the property devolving them –

Section 1601

❖ Rights (Shares)



PROHIBITED PROPERTIES

-Absolutely prohibited by law (cocaine/ heroin/ military tank)

Not capable of succession

-Not absolutely prohibited by law (Guns)

Capable if have a permit



PERSONAL PROPERTIES

❖ Personal by nature (Betrothal/ permit for gun possession)

❖ Personal by law (hire of service)

Section 584. If a hire of services is one in which the personality of the employer forms an essential part such contract is extinguished by the death of the employer.

PURELY PERSONAL BY LAW

❖ Are rights of a lessee purely personal?

Yes, because the qualification of the lessee is of the essence.

Therefore, the lease ends upon the death of the lessee.

This does not apply to Hire-purchase

RIGHTS OF LESSOR

❖ If a lessor dies, will the contract end?

No, because the qualifications of the lessor are not of the essence.

As a result, the lease does not end upon the death of the lessor.



TO END...OR TO BEGIN!

The Statutory Heirs

En Ventre sa Mère

Unworthy Heirs

The Executor



THANK YOU

Now...

Q&A sorry... Q&Q

...for the questions never end!