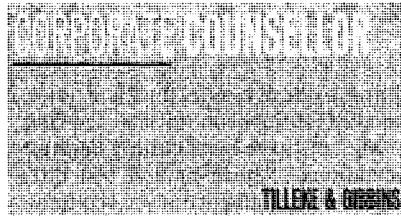


# CONSUMER PROTECTION AND PUNITIVE DAMAGES

In today's world of fast-moving consumer goods and services, disputes between consumers and business operators are commonplace. Given the increasing importance of consumer goods and services in our everyday lives, it is no surprise that many of these disputes find themselves before the Thai courts, where determinations of liability and damages are ultimately made. This increase is also driven by recent passage of consumer protection and product liability laws, which increase access to the courts, streamline adjudication of claims and increase damage recovery options for injured consumers.

While consumer protection cases historically cover a full range of commercial disputes, there is an ever-increasing number before the courts relating to sales and services of property and luxury goods. Whether based upon theories of contract breach or theories in tort, consumers are entitled to file lawsuits seeking damages for the defendant's breach or wrongdoing. Upon proof, such damages may include a refund of payments made, orders for strict performance of contract terms, payment for remedial work, or orders to compensate the consumer for the full or partial loss suffered. Such "actual damages" are deemed compensatory and must arise proximately from breach and/or wrongdoing of the defendant.

The traditional limitation on actual damages for consumer protection claims has been lifted with recent consumer protection and product liability legislation. The most significant change brought by such consumer protection legislation is that punitive damages are now available to an injured consumer. Specifically, in consumer protection cases brought under the Consumer Case Procedure Act B.E. 2551 (2008), in addition to the decision to order a



business operator to compensate for actual damages caused to a consumer, the court may, at its own discretion, permit an award of punitive damages to compensate consumers in excess of consumers' provable injuries, but not more than two times the actual damages fixed by the court. If the actual damages fixed by the court do not exceed 50,000 baht, the court has the power to award punitive damages of up to five times actual damages.

In determining whether to also award punitive damages in consumer protection claims, the court will consider the actions of the business operator. If it believes the operator acted with deliberate intent to take advantage of or cause damage to the consumer, acted with gross negligence or breached a professional or public trust, then the court has the discretion to award such punitive damages. In considering whether to order such relief, the court will also focus on the fact that punitive damages are exemplary damages aimed to punish and deter business operators from engaging in conduct similar to that which formed the basis of the lawsuit.

In the short period of time since the punitive legislation passed, there have been numerous consumer protection cases filed. What follows is an example of how the Thai courts have begun to evaluate determinations for punitive damage liability.

In a recent case for breach of a condominium sales agreement, the court

ruled that the project owner (the defendant) breached the agreement and was liable for actual damages caused to the buyer (the plaintiff). The court then evaluated the conduct of the defendant and determined that in selling the same condominium to a third party instead of rectifying defects in the property for the plaintiff, the defendant acted with deliberate intent to harm the plaintiff. As such, the court deemed it expedient to award punitive damages in excess of actual damages with the specific purpose of punishing the defendant for its inappropriate actions. Early trends indicate the courts will apply punitive damages where the actions of defendants warrant punishment.

Under consumer protection laws it is established that, in addition to proof of liability, the injured party must prove to the satisfaction of the court the amount of damages suffered. Where punitive damages are to be considered by the court, adequate proof of the behaviour of the business operator must also made to substantiate punitive damages. The injured consumer is obligated to produce evidence and/or witnesses to support that the business operator should be subject to punitive damages.

This proof must go beyond merely showing that the business operator breached the contract or acted with negligence. It must, as a matter of law, show the business operator acted with malicious intent, gross negligence or breached a professional or public trust. If the evidence supports such a determination, then it is likely that the court will exercise its discretion and order punitive damages.

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