

THE LAW OF SUCCESSION

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OUTLINE

- 1. Estate of a Deceased
- 2. Heirship
- 3. Wills

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1. ESTATE OF A DECEASED

- Estate of a Deceased Includes
 - 1.1 Properties of Every Kind
 - 1.2 Rights
 - 1.3 Duties and Liabilities
 - 1.4 Exceptions of Things that are not Estate of a Deceased

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IMPORTANCE OF ESTATE OF A DECEASED

- When a person dies, his or her estate devolves on the heirs.

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TWO KINDS OF DEATH

- Natural Death
- Disappearance = The law deems to be death

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NATURAL DEATH

- Factor to Determine if a person is dead = Brain Stem Death

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DISAPPEARANCE

- A person has left his or her domicile or residence
- It has been uncertain for five years (whether he is living or dead)
- on the application of any interested person or of the public prosecutor,
- The court may adjudge that such person has disappeared

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- The period of time is reduced to two years in these cases;
 - 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 or her life other than those mentioned in (1) or (2) has passed and the person had been in such peril.

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1.1 PROPERTIES OF EVERY KIND

- All kinds of property including intellectual property (copyright, trademark and patents)



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1.2 RIGHTS

- Rights mean personal rights/rights of claim
- E.g. Mr. A entered into a hire purchase contract of a car with Mr. B, the owner of the car
- When Mr. A passes away, his heir inherits the right in the hire purchase contract (that is, to use the car, as the lessee)



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1.3 DUTIES AND LIABILITIES

- Basically, this means obligations of the deceased that occurred during his or her lifetime



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NOTE

- Property of every kind and rights that are regarded an estate of a deceased must exist at least at the time that a person dies



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NOTE

- If the deceased has a spouse, his or her estate covers
- *Sin Suan Tua* (personal property)
- *Sin Somros* (property between husband and wife) that is already divided between them (normally 50:50)

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CASE STUDY 1

- 01/01/20 Mr. A bought a lottery
- 14/01/20 Mr. A dies
- The lottery is an estate of Mr. A and his heirs inherit the lottery
- 16/01/20 It is announced Mr. A's lottery is the winning number
- Mr. A's heirs are entitled to get the reward because they are now the joint owners of the lottery

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THEREFORE

- Property or rights received after the death of the deceased are not his or her estate

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CASE STUDY 2

- 01/01/20 Mr. A bought a life insurance (note: in law, it's not a sale contract)
- 01/02/20 Mr. A dies
- 01/03/20 The insurance company is ready to pay the benefits (e.g. money) to the beneficiary
- The benefits from life insurance are not Mr. A's estate

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1.4 EXCEPTIONS

- rights, duties and liabilities that, by law or by their nature, are purely personal to the deceased
- (although they already existed before the deceased passed away)

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(1) BY LAW

- Examples
- National Reserved Forest Act, B.E. 2507 (1964).
- If a permitted person is death, any person in his or her family who live with him or her shall have right to utilize or live in such land but not exceeding one hundred and eighty days as from the date of his or her death.

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- **STUDENT LOAN FUND ACT**
- When the borrower dies, the contract of loan, and the borrowers' duties and liabilities are extinguished

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(2) PURELY PERSONAL RIGHTS

- They are rights that are absolute personal to a person, cannot be transferred to another person
- Usually relate to life, body, health, liberty and personal qualification of a person

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EXAMPLE

- When a fiancé dies, his heir does not inherit right to marry

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2. HEIRSHIP

- 2.1 Kinds of Heirship
- 2.2 Division into Portions between Several Classes and Degree of Statutory Heirs
- 2.3 Division into Shares between the Statutory Heirs in Each Class and Degree
- 2.4 Representation for the Purpose of Receiving Inheritance

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2.1 KINDS OF HEIRSHIP

- 2.1.1 STATUTORY HEIRS
 - (1) Cousins
 - (2) SPOUSE
- 2.1.2 Legatees

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RELEVANT LAW

- **Section 1603.** An estate devolves on the heirs by statutory right or by will.
- Heirs who are so entitled by law are called 'statutory heirs'.
- Heirs who are entitled by will are called 'legatees'.

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2.1.1 STATUTORY HEIRS

(1) COUSINS

- There are six classes of statutory heir
- 1) descendants
- 2) parents
- 3) brothers and sisters of full blood
- 4) brothers and sisters of half blood
- 5) grandparents
- 6) uncles and aunts

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1) DESCENDANTS (THAI : ผู้สืบสันดาน)

- descendants include children, grandchildren, great-grandchildren
- If the deceased still has children, only children would inherit his or her properties
- (grandchildren would inherit only if there is no children)

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CHILDREN

- Father and Mother are married
- Adopted child
- Father and Mother are not married
 - the subsequent marriage of the parents,
 - or by the registration made on application by the father,
 - or by a judgment of the Court.
- De facto Certification

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DE FACTO CERTIFICATION

- The father financially supports the child
- The father consents the child to use his surname
- The father introduces to his family that the child is his son

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2) PARENTS

- Mother is always legitimate
- Father is legitimate if he is married to the mother

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3) BROTHERS AND SISTERS OF FULL BLOOD

- Siblings who are born from the same parents

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4) BROTHERS AND SISTERS OF HALF BLOOD

- Siblings who are born from either the same father or mother

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5) GRANDPARENTS

- Grandparents (Parents of father and parents of mother)

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6) UNCLES AND AUNTS

- Legitimate Uncles and Aunts
- (Brothers/Sisters of Father and Mother)

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2.1.1 STATUTORY HEIRS (2) SPOUSE

- The surviving spouse is also a statutory heir

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2.1.2 LEGATEES

- Legatees have better rights than statutory heirs

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EXAMPLE

- Mr. A has 5 children (who are his statutory heirs)
- Mr. A made a will to give all of his properties to Mr. B
- When Mr. A dies, Mr. B inherits all of Mr. A's properties

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2.2 DIVISION INTO PORTIONS BETWEEN SEVERAL CLASSES AND DEGREE OF STATUTORY HEIRS

- Rule
- So long as there is any heir surviving or represented in a class, the heir of the lower class has no right at all to the estate of the deceased.
- Exception
 - (1) Parents
 - (2) Spouse

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EXAMPLE

- Mr. A has 2 brothers, 2 grandparents and 2 uncle and 2 aunts
- If Mr. A dies, the grandparents, aunts and uncles are not entitled to his estate

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EXCEPTIONS

- (1) Parents
- (2) Spouse

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(1) PARENTS

- Descendants does not prevent Parents from inheriting the deceased's estate
- Example
 - Mr. A has 1 children, 2 parents, 2 brothers, 2 grandparents and 2 uncle and 2 aunts
 - If Mr. A dies, both the child and parents are entitled to his estate

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(2) SPOUSE

- A living spouse always inherits the deceased's estate
- (See example in the next topic)

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2.3 DIVISION INTO SHARES BETWEEN THE STATUTORY HEIRS IN EACH CLASS AND DEGREE

- Rule
 - The statutory heirs of the same class in any of the classes are entitled to equal shares. I
 - If there is only one statutory heir in such class, he or she is entitled to the whole portion.

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NOTE

- If there are classes 1-2 and a living spouse
- Class (1) and Class (2) and living spouse are deemed to be the same class

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EXAMPLE

- Mr. A has 2 children, 2 parents and a wife
- If Mr. A dies, his estate is divided into 5 portions

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- If there are class 1 and a living spouse
- The living spouse inherits 50% and the descendants inherit the other 50%

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EXAMPLE

- Mr. A has 2 children and a wife
- If Mr. A dies, his estate is divided into 3 portions
- The wife receives 1/3, each child receives 1/3

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- If there are class 2 and a living spouse
- The living spouse inherits 50% and the parents inherit the other 50%

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- If there are class 3 and a living spouse
- The living spouse inherits 50% and the descendants inherit the other 50%

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EXAMPLE

- Mr. A has 2 brothers and a wife
- If Mr. A dies, his estate is divided into 2 portions
- The wife receives 50%, the brothers receive 25% each

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- If there are classes 4 or 5 or 6 and a living spouse
- The living spouse inherits 2/3 and the statutory heir
- Receive 1/3

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- If there is only a living spouse
- The living spouse inherits all the estates

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2.4 REPRESENTATION FOR THE PURPOSE OF RECEIVING INHERITANCE

- If any person who would have been an heir in Class (1), (3), (4) or (6) is dead or has been excluded before death
- his or her descendants represent him/her for the purpose of receiving inheritance.

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- Therefore, Class 2 and 5 are not applicable here.
- For example, if the parents had died before the deceased, none of the parent's descendants could inherit the deceased's estate. This is because actually the parent's descendants are the deceased's brothers or sisters.

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3. WILLS

- 3.1 Characteristics
- 3.2 Capacity
- 3.3 Forms of Wills

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3.1 CHARACTERISTICS

- Any person may, in contemplation of death, make a declaration of intention by will concerning dispositions as to his property or other matters which shall take effect according to the law after his or her death.

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- The declaration of intention in contemplation of death shall be the latest one in imperative term provided by will.

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NOTE

- A gift/donation intended to be effective during lifetime is not a will

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DIFFERENCE BETWEEN GIFT AND WILLS

- Gift (intended to be effective during lifetime) requires the delivery of the property given
- Wills require forms (the easiest form is to be made in writing)

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3.2 CAPACITY

- The capacity of the testator must be considered only as at the time when the will is made.
- The capacity of the legatee must be considered only as at the time when the testator dies.

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THE CAPACITY OF THE TESTATOR

- Consider whether, at the time when the will is made, the testator has a full capacity or not

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- A minor, after completing fifteen years of age, can make a will.
- A will done by a person adjudged incompetent (คนไร้ความสามารถ) is **void**.
- A will done by a person by a quasi incompetent person (คนเสมือนไร้ความสามารถ) is **valid**.

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THE CAPACITY OF THE LEGATEE

- Consider whether, at the time when testator dies, the legatee has a full capacity or not

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3.3 FORMS OF WILLS

- A will may be made in the 5 following forms, otherwise it is void (no legal effect)

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(1) ORDINARY WILL (พินัยกรรมแบบธรรมดา)

- must be made in writing
- dated at the time of making of will
- signed by the testator (ผู้ทำพินัยกรรม) before at least two witnesses present at the same time
- Two witnesses sign their names certifying the signature of the testator

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(2) HOLOGRAPH DOCUMENT WILL

(พินัยกรรมแบบเขียนเองทั้งฉบับ)

- the testator writes with his or her own hand the whole text of the document
- the date and signature are required

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WRITER/WITNESS

- A writer and a witness of a will cannot be a legatee

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(3) PUBLIC DOCUMENT WILL (พินัยกรรมแบบเอกสารฝ่ายเมือง)

- (1) the testator must declare to the **Kromakarn Amphoe*** before at least two other persons as witness present at the same time what dispositions he/she wishes to be included in this will;

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- (2) the **Kromakarn Amphoe** must note down such declaration of the testator and read it to the latter and to the witnesses;
- (3) the testator and the witnesses must sign their names after having ascertained that the statement noted down by the **Kromakarn Amphoe** corresponds with the declaration made by the testator;

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- (4) the statement noted down by the **Kromakarn Amphoe** shall be dated and signed by such official who shall certify under his/her hand and seal that the will has been made in compliance with the foregoing Subsections 1 to 3.

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- A will made by a public document may, upon request, be made outside the **Amphoe Office**.

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(4) SECRET DOCUMENT WILL (พินัยกรรมแบบเอกสารลับ)

- (1) the testator must sign his/her name on the document;
- (2) he/she must close up the documents and sign his/her name on the document;

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- (3) he/she must produce the closed document before the **Kromakarn Amphoe** and at least two other persons as witnesses and declare to all of them that it contains his/her testamentary dispositions; and if the testator has not written with his/her own hand the whole text of the document he must state the name and domicile of the writer;

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- (4) after the **Kromakarn Amphoe** has noted down upon the cover of the document the declaration of the testator and the date of the production and has affixed his seal thereupon, the **Kromakarn Amphoe**, the testator and the witness must sign their names thereon.

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RULE

- A will made by a public document or by a secret document shall not be divulged by the **Kromakarn Amphoe** to any other person during the lifetime of the testator, and the **Kromakarn Amphoe** is bound to hand over such will to the testator whenever the latter shall require him to do so.

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(5) ORAL WILL (พินัยกรรมแบบทำด้วยวาจา)

- When under exceptional circumstances such as imminent danger of death, or during an epidemic or war, a person is prevented from making his will in any other of the prescribed forms, he or she may be make an oral will.

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- For this purpose, he or she must declare his intention regarding the dispositions of the will before at least two witnesses present at the same time.

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EXCEPTIONAL CIRCUMSTANCES

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- Such witnesses must without delay appear for the **Kromakarn Amphoe** and state before him the dispositions which the testator has declared to them orally, as well as the date, place and exceptional circumstances under which the will was made.

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WITHOUT DELAY

- The first chance that the witnesses can visit the **Kromakarn Amphoe**

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- The **Kromakarn Amphoe** shall note down the statement of the witnesses and such two witnesses shall sign the statement or, failing that, may make an equivalent to signature only by affixing a finger-print certified by the signatures of two witnesses.

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LENGTH OF VALIDITY

- The oral will loses its validity one month after the time when the testator has again been placed in a position to make a will in any other of the prescribed forms.

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OTHER IMPORTANT RULES

- The writer of the will or a witness thereof cannot be a legatee under such will.
- The rule also applies to the spouse of such writer of witness.
- The competent official recording the statement made by witnesses in the case of public document Will is deemed to be a writer

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THE FOLLOWING PERSONS CANNOT WITNESS AT THE MAKING OF A WILL;

- (1) persons not *sui juris* (minor)
- (2) persons of unsound mind or persons adjudged quasi-incompetent;
- (3) persons who are deaf or dumb or blind

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