



TU 122 LAW IN EVERYDAY LIFE

Introduction to Thai Law

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What is “law”?

Is law a ruler’s orders?

Does law represent the will of the Government only?

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Development of Law in General

Close connection between law and society

“Ubi societas ibi ius”
If there's a society, law will be there.

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Development of Society

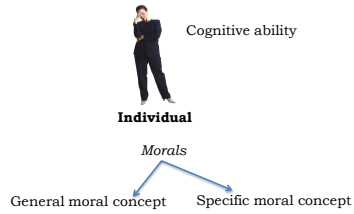


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Development of Law

What is the origin of law?



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Development of Law

What is the origin of law?



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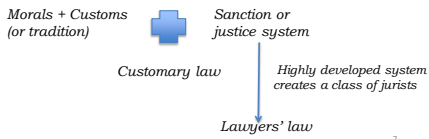


Development of Law

What is the origin of law?



Towns, cities, and states





Three-layer of Law Theory





Three-layer of Law Theory

Stages of Development	Forms	Reasons	Origins
Customary law	Customs	Common sense	(1) Morals and (2) a certain legal practice is observed and the relevant actors consider it to be law
Lawyers' law	Legal principles	Juristic reasons	Legal opinions and court decisions
Legislation	Statutes / written law	Technical reasons	Will of the ruler / government policy



Examples

CIVIL AND COMMERCIAL CODE

Section 20 A person, on completion of twenty years of age ceases to be a minor and becomes *sui juris*.

Section 21 For the doing of a juristic act, a minor must obtain the consent of his legal representative. All acts done by him without such consent are voidable unless otherwise provided.

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Examples

CIVIL AND COMMERCIAL CODE

Section 5 Every person must, in the exercise of his rights and in the performance of his obligations, act in good faith.

Section 150 An act is void if its object is expressly prohibited by law or is impossible, or is contrary to public order or good morals.

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Examples

PENAL CODE

Section 288 Whoever, murdering the other person, shall be imprisoned by death or imprisoned as from fifteen years to twenty years.

Section 334 Whoever, dishonestly taking away the thing of other person or which the other person to be co-owner to be said to commit the theft, shall be imprisoned not out of three years and fined not out of six thousand Baht.

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Examples

PENAL CODE

Section 60 Whenever any person intends to commit an act against a person, but the effect of the doing of such act occurs to another person through a slip, it shall be deemed that such person intentionally commits such act against the person who suffers from the bad effect of such doing. But, in case of the law provides for the infliction of heavier punishment on account of individual status or the relation between the doer and the person suffering from the bad effect, such law shall not be applied so as to inflict the heavier punishment on the doer.

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Sources of Thai Law

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Section 4 of TCCC

The law must be applied in all cases which come within the letter or the spirit of any of its provisions.

Where no provision is applicable the case shall be decided according to the local custom.

If there is no such custom, the case shall be decided by analogy to the provision most nearly applicable, and, in default of such provision, by the general principles of law.

(Copied from Section 1 of the Swiss Civil Code)

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Definition

Sources of Law

- Where you can find law
- Types of law applicable in a legal system

Why do we need to know sources of law?

- We can identify and interpret what is recognised as law in a legal system (*practical purpose*)
- We can identify a legal family of that legal system (*academic purpose*)

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Sources of Thai Law

1. Written law

- 1) Primary legislation
 - Emergency Decree
 - Delegated or secondary legislation
- 2) Executive legislation
 - Delegated or secondary legislation
- 3) Bylaw

2. Unwritten law

- 1) Traditional (or customary) law
- 2) General Principles
- 3) Court decisions?

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1. Written Law

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Legislation

TERMINOLOGY

“legislation”, “statue” and “act”

Legislation – a law or set of law which is enacted by a legislative body

Statue – a law which is formally written down

Act (or Act or Parliament) – a law is enacted by Parliament - A draft piece of legislation is called a bill

What do you call a law which is enacted by Parliament in Thailand?

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Enactments of Acts

(See Sections 142-155 of the Constitution of 2007)

- A bill is introduced to the House of Representatives
- The Lower House considers the bill
- The approved bill goes to the Senate
- The approved bill is presented to the King for signa

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Emergency Decrees

Section 184 For the purpose of maintaining national or public safety or national economic security, or averting public calamity, the King may issue an Emergency Decree which shall have the force as an Act.

The issuance of an Emergency Decree under paragraph one shall be made only when the Council of Ministers is of the opinion that it is the case of emergency and necessary urgency which is unavoidable.

In the next succeeding sitting of the National Assembly, the Council of Ministers shall submit the Emergency Decree to the National Assembly [Parliament] for its consideration without delay.

Two conditions must be satisfied

- (1) Subject matter
- (2) Emergency

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Delegated or Secondary Legislation

Delegated or secondary legislation is "law made by an executive authority under powers delegated from a legislature by enactment of primary legislation; the primary legislation grants the executive agency power to implement and administer the requirements of that primary legislation".

Secondary legislation cannot be contrary to the primary legislation or legislation of higher ranks

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Delegated or Secondary Legislation

Examples of secondary legislation

- Royal Decrees
- Ministerial Rules
- Ministerial Declarations
- Department Declarations
- Etc.

Question: Is a Royal Decree dissolving the House of Representative genuinely a royal decree?

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Municipal Bylaw

Bylaw is a rule or law established by an organization to regulate itself, as allowed or provided for by some higher authority.

Local government bylaw is a bylaw issued by local governments (Municipalities, Provincial Administrative Organisations, District Administrative Organisations, Bangkok Metropolitan Administration, Muang Pattaya)

Question 1: Can local government bylaws categorised as secondary legislation?

Question 2: Can local government bylaws establish or constrain rights and freedom?

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Hierarchy of Written Law

Tier 1 National Government Level

1. Constitution
2. Acts / Emergency Decrees
3. Secondary Legislation

Tier 2 Local Government Level

1. Constitution
2. Acts concerning local governments
3. Local government bylaws

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2. Unwritten Law

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Customary Law

Roles of customary law in the Thai legal system

1. Secondary source – supplement to written law (See Section 4)
2. Primary source – customary law can be applied as a primary source of law
 - 1) Explanatory – Engagement
 - 2) Contradictory – The Voluntary Principle

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Customary Law

Section 1437 "Betrothal is not valid until the man gives or transfers the property which is Khongman to the woman as evidence that the marriage shall take place."

Section 420 "A person who, wilfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore."

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General Principles of Law

"General Principles of Law" is general principles of fairness and justice which are applied universally in legal systems around the world

Ex Thai Constitution 2007

Section 7 "Whenever no provision under this Constitution is applicable to any case, it shall be decided in accordance with the constitutional convention in the democratic regime of government with the King as Head of State."

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General Principles of Law

Question: Can a court reject to decide a case on the grounds that there is no law to apply to it.

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