



# **TU 122 LAW IN EVERYDAY LIFE**

## **Sources of Law – Unwritten Law**

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## Today's Agenda

1. Review – Sources of Thai Law – Written Law
2. Sources of Thai Law – Unwritten Law
3. Classification of Thai Law



# Sources of Thai Law

## *Section 4 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.



# Sources of Thai Law

## 1. Written law

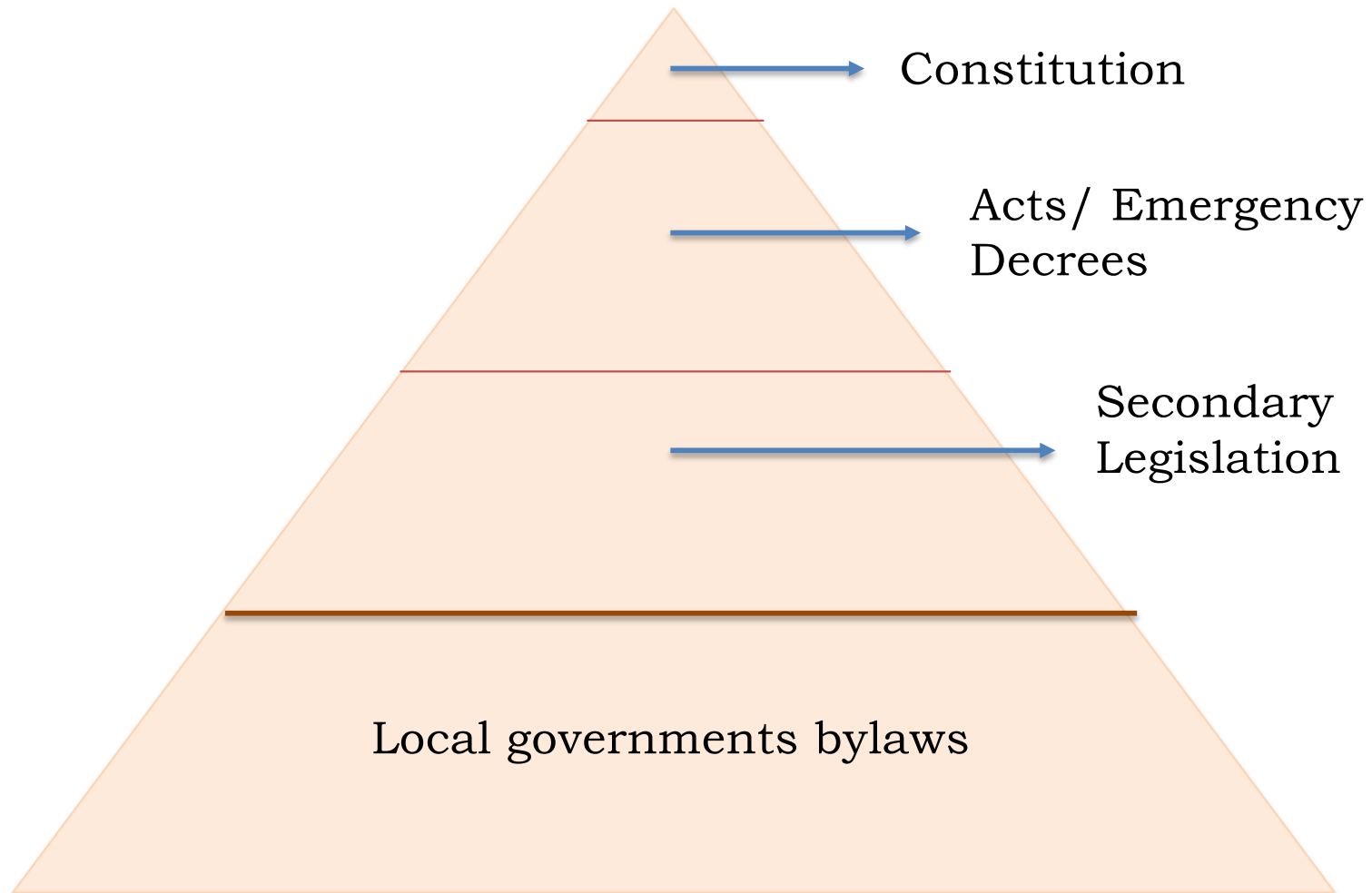
- 1) Primary legislation
- 2) Executive legislation
- 3) Bylaw passed by local authorities

## 2. Unwritten law

- 1) Traditional (or customary) law
- 2) General Principles



# Hierarchy of Written Law





# Question from Last Week

Q: The length of Constitution?

The Constitution of the United States (4 pages, 7 Articles) <https://www.archives.gov/founding-docs/constitution>

The Constitution of Thailand 2017 (90 pages, 279 Sections)

Q: Examples of Written Law (PDF)

Q: The Thai Civil and Commercial Code (TCCC) belongs to which hierarchy of written law?



# Unwritten Law



# Sources of Thai Law

## 1. Written law

## 2. Unwritten law

- 1) Traditional (or customary) Law
- 2) General Principles of Law



# Customary Law

Customs can be regarded as customary law must fulfill two elements:

- (1) Social practice
- (2) Binding force *per se* (by itself)



# Attitudes towards Customary Law

Two schools of thought on WHY customs can be regarded as law:

- (1) Historical School: Customs are binding *per se*
- (2) Legal Positivism: Customs are binding because they are approved by the State, e.g. TCCC Section 4



# Customary Law

## Roles of customary law in the Thai legal system

1. Secondary source – supplement to written law  
(Section 4 TCCC)
2. Primary source – customary law can be applied as a primary source of law
  - 1) Explanatory – Engagement (Betroth)
  - 2) Contradictory – Athlete



# Example of Customary Law

Before the amendment of TCCC in B.E. 2519 (1976), Thai judges looked at the custom of *Khongman* (Engagement gift) and decided that the Engagement would be valid only if the man gave *Khongman* to the woman.

Section 1437 TCCC “Betrothal is not valid until the man gives or transfers the property which is *Khongman* (Engagement gift) to the woman as evidence that the marriage shall take place.”



# Example of Customary Law

Section 295 The Penal Code of Thailand (PCT)  
“Whoever causes injury to the other person in body or mind is said to commit bodily harm, and shall be punished with imprisonment not exceeding two years or fined not exceeding four hundred thousand Baht, or both.”

**Question:** Thai boxing?

Pub fight?



# General Principles of Law

## *Section 4 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.



# General Principles of Law

“General Principles of Law” are common abstract ideas behind a set of legal provisions. This means a set of legal provisions may differ in detail, but they are built upon the same abstract idea. Those abstract ideas generally reflect principles of fairness and justice which are applied universally in legal systems around the world.

Ex Promise must be kept

Principle of consent for medical treatment

Fairness and Justice



# General Principles of Law

Example: What is the general principle of law behind TCCC Sections 362, 454, 526?



# General Principles of Law

## TCCC Section 362

A person who by advertisement promises that he will give a reward to whoever shall do a certain act is bound to give such reward to any person who does the act, even if such person did not act with a view to the reward.



# General Principles of Law

## TCCC Section 454

A previous promise of sale made by one party has the effect of a sale only when the other party has given notice of his intention to complete the sale and such notice has reached the person who made the promise.



# General Principles of Law

## TCCC Section 526

If a gift or a promise for a gift has been made in writing and registered by the competent official and the donor does not deliver to the donee the property given, the donee is entitled to claim the delivery of it or its value, but he is not entitled to any additional compensation.



# General Principles of Law

What happens if one cannot find a common concept behind legal provisions to apply to the case?

A judge will have to rely on “natural justice”, which may refer to fairness, a sense of right or wrong (conscious), or rational (nature of things).



# General Principles of Law

There is a general principle of law about consent to medical treatment.

**Question:** How about consent to assisted suicide (euthanasia)?



# Thai Penal Code

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



# National Health Act B.E. 2550 (2007)

Section 12 A person shall have the right to make a living will in writing to refuse the public service which is provided merely to prolong his/her terminal stage of life or to make a living will to refuse the service as to cease the severe suffering from illness.

The living will under paragraph one shall be carried out in accordance with the rules and procedure prescribed in the Ministerial Regulation.

An act done by public health personnel in compliance with the living will under paragraph one shall not be held an offence and shall not be liable to any responsibility whatsoever.



# Sources of Law

**Can a court reject to decide a case because there is no law to apply to it?**

*Civil Procedure Code, Section 134*

In no case shall the Court in which a case has been entered refuse to pronounce a judgment or order disposing of the case on the ground that there are no provisions of law applicable to the case or that the provisions of law to be applied is obscure or incomplete.



# Case Law?

Thailand operates in the Civil Law system. Unlike the Common Law system, case law is theoretically not regarded as source of law in Thailand.

One argues that, in general, case law is only an example of how the law is applied in Thailand.

However, some explains that in some instances, case law can be regarded as “judicial precedent” (คำพิพากษาบรรทัดฐาน) and followed by subsequent court decisions.



# Example of Judicial Precedent in Thai Law

## *TCCC Section 1627*

An illegitimate child who has been legitimated by his father and an adopted child are deemed to be descendants in the same way as legitimate children within the meaning of this Code.



# Example of Judicial Precedent in Thai Law

3 ways an illegitimate child can be legally legitimated [TCCC Section 1547]:

- (1) The father subsequently marry the mother;
- (2) Registration by the father; or
- (3) Court order



# Example of Judicial Precedent in Thai Law

## *Supreme Court Decision 1601/B.E.2492*

The court established that a child who has been *de facto* approved by his father is regarded as a legitimate child and is deemed to be a descendant. This can be done by introducing the child to the family as friends as his child, allowing him to use his surname and providing life and educational support. Subsequent case law has followed this decision.



# Classification of Thai Law



# Classification of Thai Law

## 1. Private law

Law concerns relationships between individuals.

### **Important examples:**

- (1) Contract law
- (2) Tort law
- (3) Property law
- (4) Family law
- (5) Law of succession
- (6) Commercial law (or business law)



# Section 458 of TCCC

The ownership of the property sold is transferred to the buyer from the moment when the contract of sale is entered into.



# Classification of Thai Law

## 2. Public law

Law governs relationships between individuals and the government, and those relationships between individuals which are of direct concern to the society

### **Notable examples:**

- (1) Constitutional law defines the relationship of different entities within a state, namely, the executive, the legislature, and the judiciary.
- (2) Administrative law governs the activities of administrative agencies of government
- (3) Tax Law
- (4) Criminal law?



# Classification of Thai Law

## **Criminal law**

Law relates to crime and punishment.

Criminal punishment

(1) Capital punishment (2) Imprisonment (3) Detention  
(4) Forfeiture of property (5) Fine

Any legal rule which includes a criminal punishment can be considered criminal law.



# Penal Code of Thailand

Section 273 Whoever forges the registered trade-mark of other person, whether to be registered inside or outside the Kingdom, shall be imprisoned not exceeding three years or fined not exceeding sixty thousand Baht, or both.



# Classification of Thai Law

Labour law?

Environmental law?