

TU 122 LAW IN EVERYDAY LIFE

Private Law Rights

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Today's Agenda

Basic terminology concerning “rights”

Public Law Rights

*Private Law Rights

Terminology

Rights (สิทธิ) – something that you are legally allowed to do.

Duty (หน้าที่) – something that you have to do because it is legally right. (See “obligation”)

Freedom (เสรีภาพ) - the right to do what you want without being controlled or restricted by anyone.

Liability (ความรับผิดชอบ) – legal liability for something, especially for damage or injury

Privilege (เอกสิทธิ์) – An exemption from substantive law that is given only to one person or a group of people

Immunity (ความคุ้มกัน) – the rights of being protected from procedural laws.

Right and Duty, e.g., Section 194 TCCC

“By virtue of an obligation the creditor is entitled to claim performance from the debtor. The performance may consist in a forbearance.”

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Freedom

Article 18 (1) International Covenant on Civil and Political Rights (ICCPR)

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

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Liability, e.g., Section 420 TCCC

A person who, willfully 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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Privilege, e.g., Section 124 para. 1 Constitution

“At a sitting of the House of Representatives or the Senate or at a joint sitting of the National Assembly, words expressed in giving statements of fact or opinions or in casting the votes by any member are absolutely privileged. No charge or action in any manner whatsoever shall be brought against such member.”

Immunities, e.g., The Act on Privileges and Immunities for International Organizations and International Conferences in Thailand 2018

Section 6 Staff of international organizations may enjoy privilege and immunity as follows:

- (1) Exemption from income tax, only of the salary received from such international organization or her own government; ...
- (5) Immunity from arrest, confinement and seizure of personal belongings...

Rights

1. Rights under public law
2. Rights under private law

Concepts of Rights in Public Law

Rights in public law (especially under the constitution)

- Fundamental rights, e.g.,
 - Right to liberty (สิทธิและเสรีภาพในชีวิตและร่างกาย)
 - Right to due process of law (สิทธิในกระบวนการยุติธรรม)
 - Right to freedom of movement (เสรีภาพในการเคลื่อนไหวในการเคลื่อนย้ายและการเดินทาง)

Concepts of Rights in Public Law

- Right to freedom of thought (เสรีภาพทางความคิด)
- Right to freedom of religion (เสรีภาพในการถือศาสนา)
- Right to freedom of expression (เสรีภาพในการแสดงความคิดเห็น)
- Right to peaceably assemble (เสรีภาพในการชุมนุมโดยสงบ)
- Right to ownership (สิทธิในทรัพย์สิน)

Constitution 2017

Section 39 “No person of Thai nationality shall be deported or prohibited from entering the Kingdom. The revocation of Thai nationality acquired by birth shall not be permitted.”

Constitution 2017

Section 29 para. 1 “No person shall be subject to a criminal punishment unless he or she has committed an act which the law in force at the time of commission provides to be an offence and prescribe a punishment therefor, and the punishment to be imposed on such person shall not be of greater severity than that provided by law in force at the time of the commission of the offence.”

Rights under Private Law

Classification of Private Law Rights

The classification of private law rights varies depending on the criterion employed. Different criteria give different classifications.

Basic Classifications

- Classification by the subject matter protected by the rights
- Classification by the person who has a duty to respect the rights
- Classification by the enforcement of the rights

Classification by the Subject Matter Protected by the Right

1. Rights related to things

1. Real rights (rights *in rem*)

- a. Absolute real right – ownership
- b. Limited real right - habitation, superficies, servitude, usufruct, etc.

2. Concession

3. Intangible assets (especially IP rights)

4. Obligatory rights (rights *in personam*)

2. Rights related to persons

1. Rights to life

2. Rights arising from status

Ownership (กรรมสิทธิ์)

Section 1336 TCCC. Within the limits of law, the owner of property has the right to use and dispose of it and acquires its fruits; he has the right to follow and recover it from any person not entitled to detain it, and has the right to prevent unlawful interference with it.

Habitation (สิทธิอาศัย)

Section 1402 TCCC. A person who has been granted a right of habitation (arsai) in a building is entitled to occupy such building as a dwelling place without paying rent.

Superficies (สิทธิเหนือพื้นดิน)

Section 1410 “The owner of a piece of land may create a right of superficies in favour of another person by giving him the right to own, upon or under the land, buildings, structures or plantations.”

Usufrucht (สิทธิเก็บกิน)

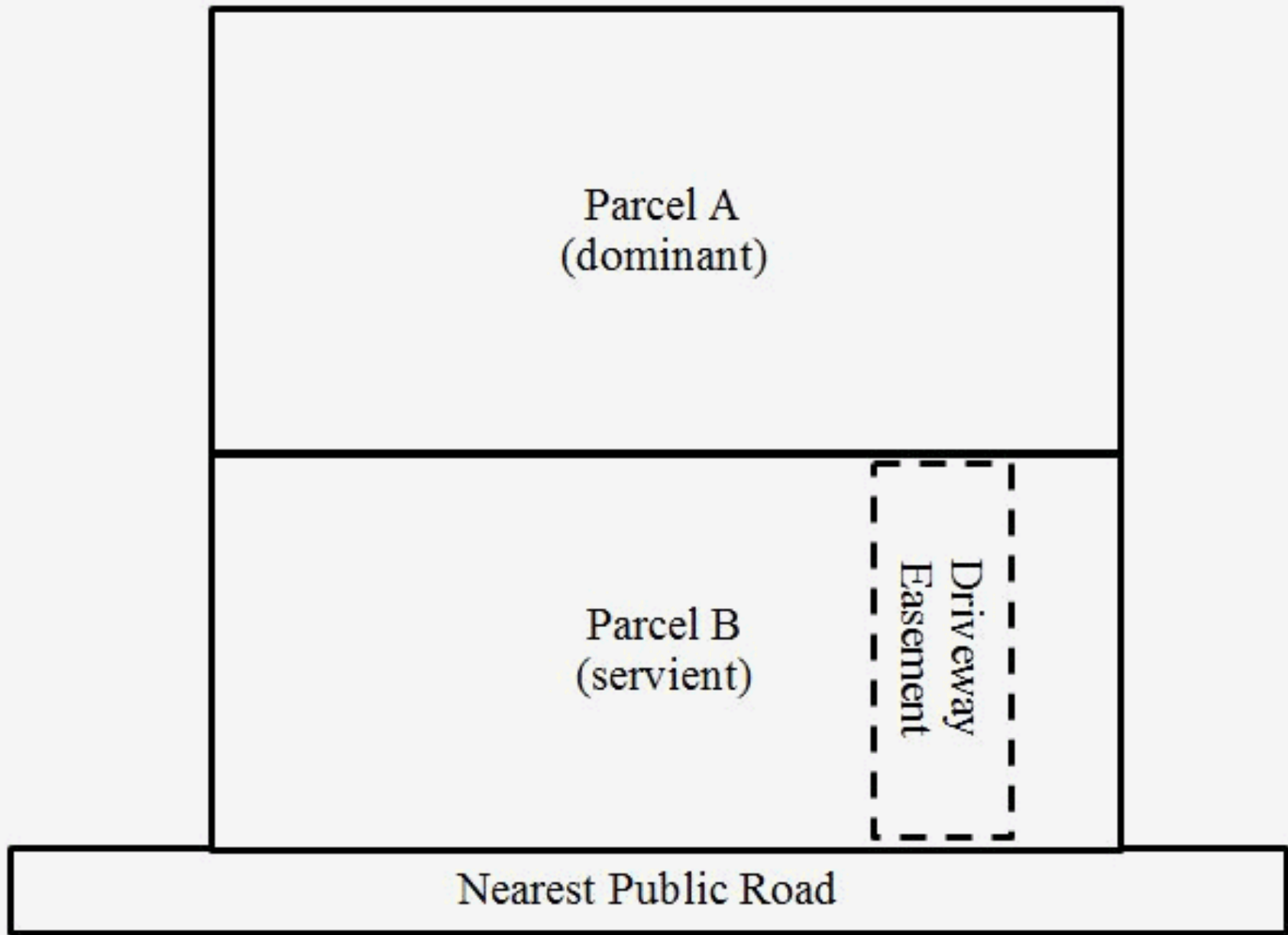
Section 1417 “An immovable property may be subjected to a usufrucht by virtue of which the usufructuary is entitled to the possession, use and enjoyment of the property.

He has the right of management of the property.

The usufrucht of a forest, mine or quarry entitles the usufructuary to the exploitation of the forest, mine or quarry.”

Servitude (ภาระจำยอม)

Section 1387 “An immovable property may be subjected to a servitude by virtue of which the owner of such property is bound, for the benefit of another immovable property, to suffer certain act affecting his property or to refrain from exercising certain rights inherent in his ownership.”



Source: Stoel.com

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Concession

E.g. concession certificate issued for mining within the specified area and selling minerals indicated in the concession certificate

(Section 59 Minerals Act B.E. 2560 (2017))

พระราชบัญญัติแร่ พ.ศ. 2560

มาตรา ๕๙ ผู้ถือประทานบัตรมีสิทธิในเขตเหมืองแร่ ดังต่อไปนี้

(๑) เตรียมการเพื่อการทำเหมือง เช่น การปลูกสร้างอาคาร การก่อสร้างหรือการติดตั้งเครื่องทุ่นแรง ในการทำเหมือง ขุดทางน้ำ ทำถนนบ หรือทำการอย่างหนึ่งอย่างใดในเขตประทานบัตรเพื่อประโยชน์แก่ การทำเหมือง

(๒) แต่งแร่ หรือประกอบโลหกรรม หรือทิ้งมูลดินทราย

(๓) ทำเหมืองในเขตประทานบัตร และขายแร่ที่ระบุนไว้ในประทานบัตร รวมถึงแร่อื่นที่เป็น ผลพลอยได้จากการทำเหมืองนั้น

ความใน (๒) มิให้ใช้บังคับกับผู้ถือประทานบัตรทำเหมืองใต้ดิน เว้นแต่เป็นการกระทำในเขตพื้นที่ ที่ตนมีกรรมสิทธิ์หรือสิทธิครอบครอง

การใช้สิทธิของผู้ถือประทานบัตรตาม (๑) (๒) หรือ (๓) เมื่อสิ้นอายุประทานบัตรแล้ว ไม่เป็นเหตุ ให้ผู้ถือประทานบัตรได้มาซึ่งสิทธิครอบครองที่ดินนั้น

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3. Intangible assets (especially IP rights)
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2. Rights related to persons

1. Rights to life
2. Rights arising from status

Intangible Assets e.g. IP Rights

Intellectual property rights (IP Rights), e.g.

Copyright

Patent

Trademark

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Obligatory Rights

Section 537 TCCC. A hire of property is a contract whereby a person, called the letter, agrees to let another person, called the hirer, have the use or benefit of a property for a limited period of time and the hirer agrees to pay rent therefore.

Obligatory Rights

Section 546 TCCC. The letter is bound to deliver the property hired in a good state of repair.

Section 553 TCCC. The hirer is bound to take as much care of the property hired as a person of ordinary prudence would take of his own property, and to do ordinary maintenance and petty repairs.

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1. Rights to life, liberty, privacy, etc.
2. Rights arising from status

Rights arising from Status

Section 1564 TCCC. Parents are bound to maintain their children and to provide proper education for them during their minority.

When children are *sui juris*, parents are bound to maintain them only when they are infirm and unable to earn their living.

Sui juris means [Latin “of one’s own right”; independent] of full age and capacity [Black’s Law Dictionary]

Classification by the Person Who Has Duty to Respect the Right

1. **Absolute right** (can be invoked against everyone)
2. **Relative right** (can be invoked only against a specific person(s))

Are they absolute or relative right?

- a. Real rights
- b. Intangible rights
- c. Obligatory rights
- d. Right to life
- e. Right arising from status?

Rights arising from Status

Section 1567 TCCC “A person exercising parental power (natural guardian) has the right:

1. To determine the child’s place of residence;
2. To punish the child in a reasonable manner for disciplinary purposes;
3. To require the child to do such work as may be reasonable to his ability and condition in life;
4. To demand the return of the child from any person who unlawfully detains him.”

Rights arising from Status

Section 1446 TCCC “A man or a woman who is betrothed may, without requiring him or her to renounce the betrothal agreement, claim compensation from any person who has sexual intercourse or attempted to have sexual intercourse with the betrothed against his or her will, and the fact that the man or the woman had been betrothed has been known or ought to have known to that person.”

Classification by the Enforcement of the Right

1. Self-enforcing, including self-defense
2. Claim
3. Refusal
4. Nullification

Self-enforcing

Section 1336 TCCC. Within the limits of law, the owner of property has the right to use and dispose of it and acquires its fruits; he has the right to follow and recover it from any person not entitled to detain it, and has the right to prevent unlawful interference with it.

Question: Any limits?

Claim

Section 215 TCCC. When the debtor does not perform the obligation in accordance with the true intent and purpose of the same, the creditor may claim compensation for any damages caused thereby.

“Same” means the very thing just mentioned or described; it or them
[Black’s Law Dictionary]

Refusal

Section 193/10 TCCC. After the lapse of the period of prescription for claims, the debtor is entitled to refuse performance.

E.g. Tax – 10 years; salary – 5 years, etc.

Nullification

Section 19 TCCC. A person, on completion of twenty years of age, ceases to be a minor and becomes *sui juris*.

Section 21 TCCC. 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.

“Voidable” means valid until annulled; esp., (of a contract) capable of being affirmed or rejected at the option of one of the parties.

“Void” means of no legal effect; null. [Black’s Law Dictionary]

Nullification

Section 24 TCCC. A minor can do all acts which are suitable to his condition in life, and actually required for his reasonable needs.

Section 26 TCCC. When the legal representative permits a minor to dispose of property for a purpose specified by him, the minor may, within the limits of such purpose, dispose of it at his pleasure. He may do the same as to property which he has been permitted to dispose of without any purpose being specified.

Exercise

A driving negligently hit B, a minor, who was crossing a street. B's parents had to pay 100,000 THB for this treatment. They would like to sue A to claim damages for such wrongful act. Please answer:

- a. What rights of B were violated?
- b. By suing A, what rights are the parents exercising?

Tort

Section 420 TCCC. A person who, willfully 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.