

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 (Thai: กองมรดก) 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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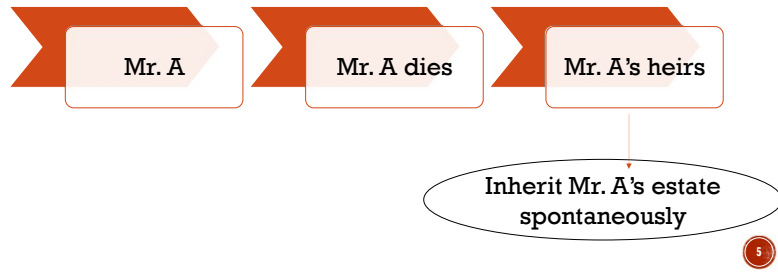
IMPORTANCE OF ESTATE OF A DECEASED

- Section* 1599 “When a person dies, his or her estate devolves on the heirs.”
- * All sections in this presentation refers to sections under the Thai Civil and Commercial Code (Thai: ประมวลกฎหมายแพ่งและพาณิชย์)

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NO GAP IN ONE'S OWNERSHIP



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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
- (Section 61 (Civil and Commercial Code))

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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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SECTION 1602 (CIVIL AND COMMERCIAL CODE)

- When a person is deemed to have died under the provisions of Section 62* of this Code shall, the estate devolves on the heirs.
- If it is proved that such person is living or that he died at a time different from that specified in the adjudication of disappearance, the provisions of Section 63* of this Code shall apply as regards his heirs.

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SECTION 1600. (CIVIL AND COMMERCIAL CODE)

- Subject to the provisions of this Code, the estate of a deceased includes his properties of every kind, as well as his rights, duties and liabilities, except those which by law or by their nature are purely personal to him.

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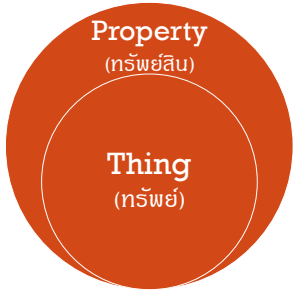
1.1 PROPERTIES OF EVERY KIND

- All kinds of property including intellectual property (copyright, trademark and patents)
- Movable properties e.g. cars, motorbikes, laptops, smartphones, etc.
- Immovable properties e.g. houses, lands, condominiums, etc.

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PROPERTY IS BROADER THAN THING



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1.2 RIGHTS

- Rights in this context mean personal rights/rights of claim

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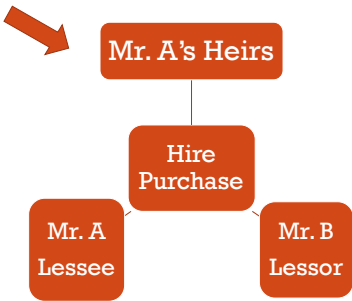
EXAMPLE

- Mr. A entered into a hire purchase contract (Thai: เช่าซื้อ) of a car with Mr. B, the owner of the car
- When Mr. A passes away, his heirs inherit the right in the hire purchase contract (that is, to use the car, as the lessee)
- Note: In hire purchase contract, the ownership of the property hired is not transferred to the lessee until the lessee makes the last payment.

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WHEN MR. A DIES



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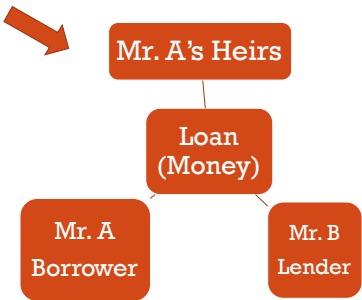
1.3 DUTIES AND LIABILITIES

- Basically, this means obligations of the deceased that occurred during his or her lifetime
- As a result, when a person dies, his/her obligation does not extinguish

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WHEN MR. A DIES



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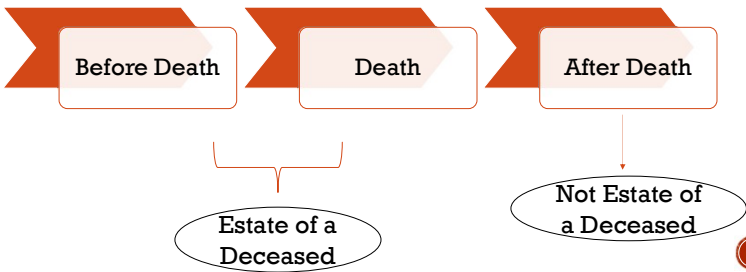
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NOTE

- 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/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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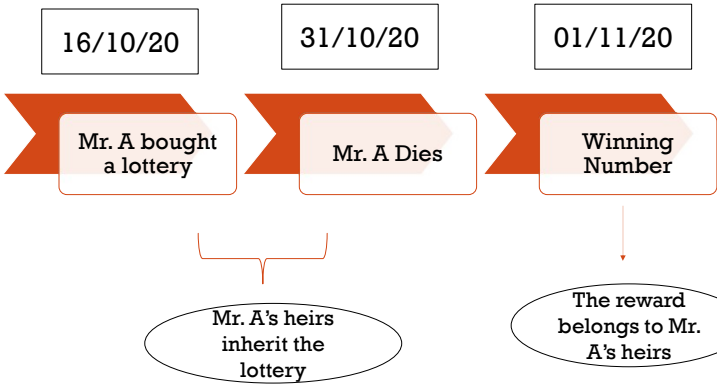
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CASE STUDY 1

- 16/10/20 Mr. A bought a lottery
- 31/10/20 Mr. A dies
- The lottery is an estate of Mr. A and his heirs inherit the lottery
- 01/11/20 It is announced Mr. A's lotter 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
- E.g. benefit from life insurance contract

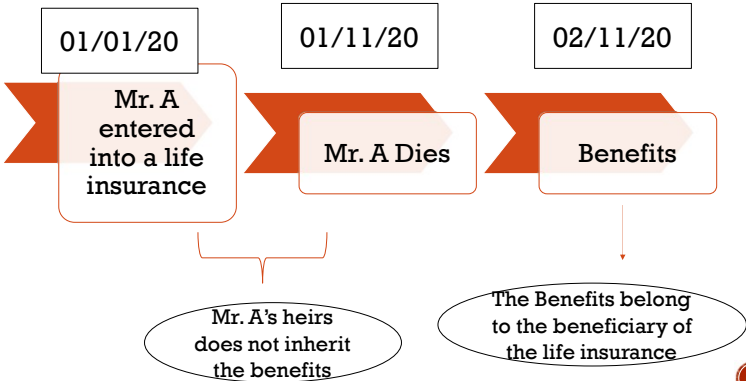
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CASE STUDY 2

- 01/01/20 Mr. A entered into a life insurance (note: in law, it's not a sale contract)
- 01/11/20 Mr. A dies
- 02/11/20 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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LIABILITY OF AN HEIR

- An heir shall not be liable in excess of the property devolving on him/her. (Section 1601)

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EXAMPLE

- Mr. A dies
- Mr. B inherits Mr. A's property of 1 million baht
- Mr. B also inherits Mr. A'S obligation of 2 million baht
- Mr. B is bound to pay the debt for only 1 million baht

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1.4 EXCEPTIONS

- rights, duties and liabilities that, by law or by their nature, are purely personal to the deceased ARE NOT estate of a deceased
- (although they already existed before the deceased passed away)

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EXCEPTIONSARE NOT ESTATE OF A DECEASED



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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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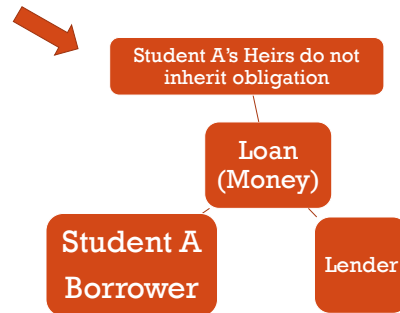
EXAMPLES

- STUDENT LOAN FUND ACT
- When the borrower dies, the contract of loan, and the borrowers' duties and liabilities are extinguished
- Note: Different from other kinds of loan

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WHEN STUDENT A DIES



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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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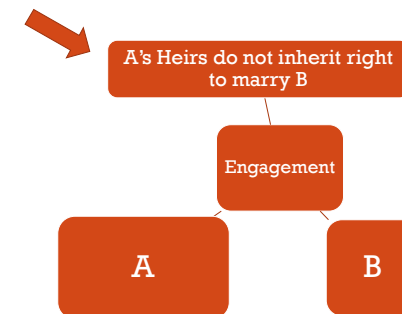
EXAMPLE

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

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WHEN A DIES



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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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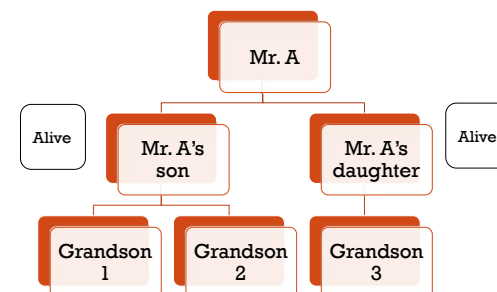
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1) DESCENDANTS (THAI : ผู้สืบสันดาน)

- 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)

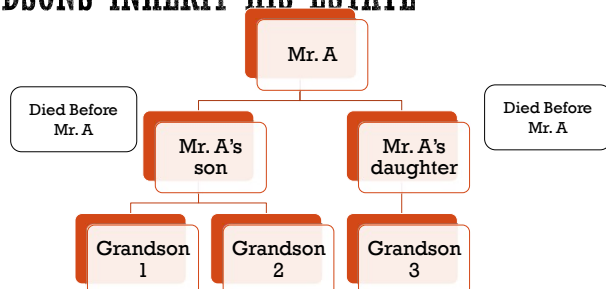
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WHEN MR. A DIES, ONLY HIS SON AND DAUGHTER INHERIT HIS ESTATE



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IF HIS SON AND DAUGHTER ALREADY DIED BEFORE HIM, WHEN MR. A DIES, HIS GRANDSONS INHERIT HIS ESTATE



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WHO ARE CHILDREN??

- ONLY Legitimate Children (Thai: บุตรชอบด้วยกฎหมาย) are classed as Descendants (Thai: ผู้สืบสันดาน)

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WHO ARE LEGITIMATE CHILDREN? FOR WOMEN

- For Woman (either unmarried or married)
- → All children born from the woman are her legitimate children = **descendant**

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WHO ARE LEGITIMATE CHILDREN? FOR MARRIED MEN

- For married men
- → All children are legitimate children = **descendant**

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WHO ARE LEGITIMATE CHILDREN? FOR UNMARRIED MEN

For unmarried men

→ children are illegitimate children. **≠ descendant**

the children will later become the father's legitimate children...;

- By the subsequent marriage of the parents, or
- by the registration made on application by the father, or
- by a judgment of the Court.

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NOTE: ADOPTED CHILDREN AND ILLEGITIMATE CHILDREN WHO HAVE BEEN DE FACTO CERTIFIED BY THE FATHER

Section 1627. (Civil and Commercial Code)

- 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

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EXAMPLES OF 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 (THAI: ผู้รับพินัยกรรม)

- Legatees have better rights than statutory heirs



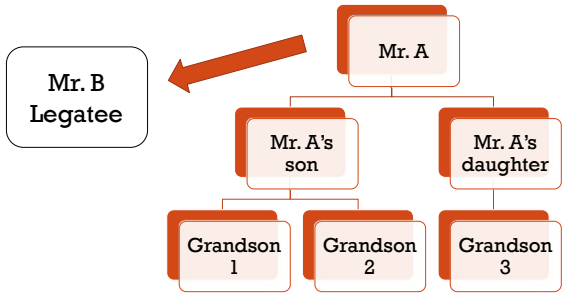
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EXAMPLE

- 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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WHEN MR. A DIES, ONLY MR. B INHERITS MR. A'S ESTATE



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

- Rules
- 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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6 CLASSES OF STATUTORY HEIRS

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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EXAMPLE

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

- Rules
- The statutory heirs of the same class in any of the classes are entitled to equal shares.
- 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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PROPORTION SPOUSE (SECTION 1635)

- (1) If there are class 1 and a living spouse
- The living spouse inherits the same share as an heir in the degree of children

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EXAMPLE 1.1

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

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EXAMPLE 1.2

- Mr. A has 3 children and a wife
- If Mr. A dies, his estate is divided into 4 portions
- The wife receives $\frac{1}{4}$, each child receives $\frac{1}{4}$

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- (2) 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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EXAMPLE 2

- Mr. A has a wife, but has no child
- Mr. A has parents
- If Mr. A dies, his estate is divided into 2 portions
- The wife receives 50%, parents receives 25% each

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- (3) If there are class 3 and a living spouse
- The living spouse inherits 50% and the brothers/sisters inherit the other 50%

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EXAMPLE 3

- Mr. A has 2 brothers (full-blood) and a wife
- If Mr. A dies, his estate is divided into 3 portions
- The wife receives 50%, the brothers receive 25% each

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- (4) 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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EXAMPLE 4.1

- Mr. A has 2 brothers (half-blood) and a wife
- If Mr. A dies, his estate is divided into 3 portions
- The wife receives 2/3, the brothers receive 1/3 (together)

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EXAMPLE 4.2

- Mr. A has 2 grandparents and a wife
- If Mr. A dies, his estate is divided into 3 portions
- The wife receives 2/3, the grandparents receive 1/3 (together)

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EXAMPLE 4.3

- Mr. A has 2 uncles and a wife
- If Mr. A dies, his estate is divided into 3 portions
- The wife receives 2/3, the uncles receive 1/3 (together)

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- (5) 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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OUTLINE (DR KORRASUT’S PART)

- Characteristics of Wills
- Capacity of Testators and Legatees
- Forms of Wills
- Writers of Wills
- Witness of Wills
- Witness at the Making of a Will

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LAST WILL AND TESTAMENT OF MICHAEL JOSEPH JACKSON

- I, MICHAEL JOSEPH JACKSON, a resident of the State of California, declare this to be my last Will, and do hereby revoke all former wills and codicils made by me.
- I declare that I am not married. My marriage to DEBORAH JEAN ROWE JACKSON has been dissolved. I have three children now living, PRINCE MICHAEL JACKSON, JR., PARIS MICHAEL KATHERINE JACKSON and PRINCE MICHAEL JOSEPH JACKSON,II. I have no other children, living or deceased...

<https://www.livingtrustnetwork.com/estate-planning-center/last-will-and-testament/wills-of-the-rich-and-famous/last-will-and-testament-of-michael-jackson.html>

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1. CHARACTERISTICS OF WILLS

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RELEVANT PROVISION

- **Section 1646**
- 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 death.
- **Section 1647**
- The declaration of intention in contemplation of death shall be the latest one in imperative term provided by will.

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PRETEST : ARE THESE CONSIDERED AS A WILL?



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SUPREME COURT DECISION NO. 2874/B.E. 2517

- *"I, monk Rat Opaso, wish to give Chaokhun Phra Samutmethacharn, all of my property while I am the monk. Any of my cousins must not get involved"*
- "กระผม พระรัตน์ โอภาโสขอมอบถวายท่านเจ้าคุณพระสมุทรมหาจารย์ เรื่องทรัพย์สินสมบัติทุกอย่างที่มีอยู่ในขณะเป็นพระนี้ทั้งหมดห้ามมิให้ญาติผู้ใดมาเกี่ยวข้องด้วยโดยเด็ดขาด"

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SUPREME COURT DECISION NO. 6628/B.E. 2549

- *"Tell Aoey (plaintiff) to work hard. Tell him/her to come home early, do not come late as he usually does. Give him/her half of the land, so that he/she does not oppose us."*
- "บอกเอ๋ (โจทก์) ให้ขยันทำงานบ้าง ไปไหนให้กลับเร็วหน่อย อย่ากลับช้าอย่างที่เคยทำให้แบ่งที่ดินให้เอ๋ครึ่งหนึ่ง เขาจะได้ไม่คัดค้านเรา"

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SUPREME COURT DECISION
NO. 680/B.E. 2540

- “Mr. A (the deceased) promised Mrs. D (the plaintiff) that he has no wife/children, so Mrs. D cohabited with him. If he has wife/children, he will let Mrs. D take all of his properties and his mother’s properties.”
- “นาย ก. (หมายถึงผู้ตาย) สัญญากับนาง ด. (หมายถึงโจทก์) ว่าไม่มีลูกเมียนางด. จึงอยู่กินฉันสามีภริยาฯลฯถ้ามีลูกเมียเมื่อไหร่ยอมให้ยึดทรัพย์สินของข้าพเจ้าและของแม่ทั้งหมดฯลฯ”

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SUPREME COURT DECISION
NO. 619/B.E. 2491

- “When I die, give all of the aforementioned properties to my grandchildren, as already mentioned. Anyone or Mr. Krachang, my son, cannot get involved, etc.”
- “เมื่อนั้นตายไปแล้วก็ขอให้ทรัพย์สินทั้งหมดดังกล่าวแล้ว ตกเป็นกรรมสิทธิ์แก่เด็กหลานของฉันตามที่กล่าวมาแล้วผู้ใดอื่นหรือนายกระจางซึ่งเป็นบุตรของฉันจะมาเกี่ยวข้องด้วยไม่ได้เป็นอันขาดฯลฯ”

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- If a will is void, it affects all testamentary disposition
- If a testamentary disposition, it does not affect other testamentary dispositions

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IMPORTANCE OF A WILL

- Legatees (Thai: ผู้รับพินัยกรรม) have better rights than statutory heirs

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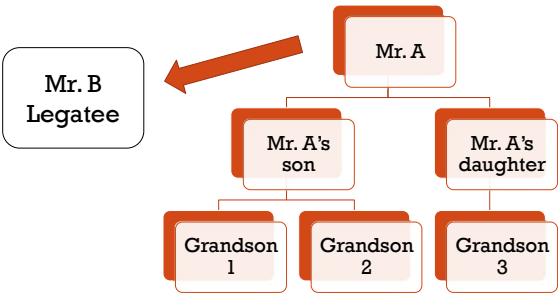
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WHEN MR. A DIES, ONLY MR. B INHERITS MR. A'S ESTATE



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- (1) Declaration of intention
- (2) An Order
- (3) Intended to take effect after death
- (4) Disposal of the testator's property
- (5) Disposal of other matters

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(1) DECLARATION OF INTENTION

- A will is a result of declaration of intention intended to have legal effect
- In law, it is a so-called “juristic act” (Section 149)

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SUPREME COURT DECISION NO. 6297/B.E. 2556

- A will is a declaration of intention, in contemplation of death, concerning dispositions as to his property
- In this case, it was found that during the process of making a will, the deceased was not aware of his action, unconscious, could not speak and could not control his body
- The texts of the will was not the true intention of the deceased
- It was unenforceable

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(2) AN ORDER

- It is theoretically explained that the will must be made in the form of an “ORDER”
- Expectation or hope are not considered as a will

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EXAMPLE - ORDER

- When I die, I want to give my property to....
- When I die, give my property to....
- Upon my death, I give my property to...

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HOPE / EXPECTATION

- When I die, I hope Mr. A would accept my property....
- When I die, I wish Mr. A would accept my property...

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(3) INTENDED TO TAKE EFFECT AFTER DEATH

- The will must contain the words like “When I die, If I die, Upon my death, ...” or similar terms
- Or the clauses like “I wish to make a will...” , “This is my last will...” are fine

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DISTINCTION BETWEEN GIFTS/PROMISES OF A GIFT AND WILLS

- Both are cases where the owner of property intends to transfer the ownership to another
- Gifts/promises of a gift intended to take effect during the owner's lifetime
- Wills intended to take effect after the owner's death

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DIFFERENCE BETWEEN GIFTS/PROMISES OF A GIFT AND WILLS (IN TERMS OF REQUIREMENTS)

- Gift (intended to be effective during lifetime) requires the delivery of the property given (Section 523)
- Promise of a gift requires to be made in writing registered in order to be enforceable (Section 526)
- Will requires forms (the easiest form is to be made in writing)

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WHAT ABOUT GIFTS/PROMISES OF A GIFT INTENDED TO TAKE EFFECT AFTER DEATH?

- Section 536.
- A gift to take effect at the death of the donor is governed by the provisions of Law concerning Inheritance and Wills.

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- *Court's opinion : This was not a will*

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SUPREME COURT DECISION NO. 619/B.E. 2491

- *“When I die, give all of the aforementioned properties to my grandchildren, as already mentioned. Anyone or Mr. Krachang, my son, cannot get involved, etc.”*
- *Court’s opinion : This was a will*

109

109

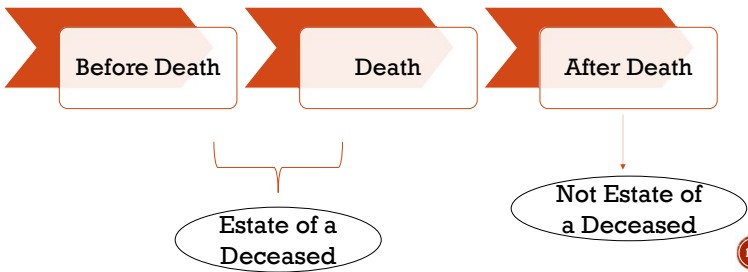
(4) DISPOSAL OF THE TESTATOR’S PROPERTY

- Properties of the testator is the same as estate of the deceased (studied with Ajarn Kittipob)
- Includes “future property” (E.g. Supreme Court Decision No. 3523/B.E. 2532)

110

110

ESTATE OF A DECEASED



111

111

FUTURE PROPERTY

- 01/01/20 Mr. A made a will stating that he wants to give all of his properties to Mr. B
- At that time he has property worth 1 million baht
- 01/11/20 Mr. A dies → At that time he has property worth 2 million baht
- Mr. B is entitled to get property worth 2 million baht

112

112

THEREFORE

- Property or rights received after the death of the deceased are not his or her estate
- E.g. benefit from life insurance contract

113

113

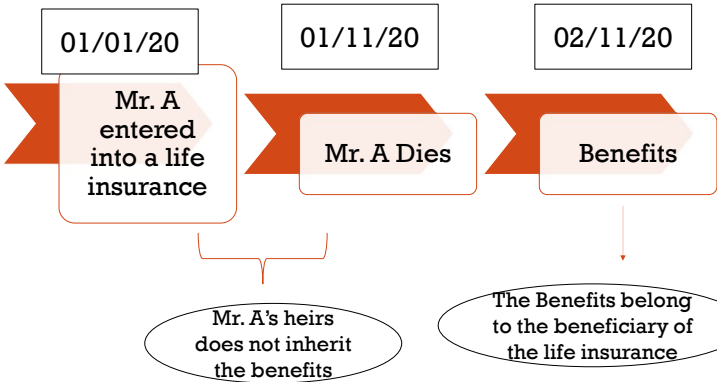
CASE STUDY

- 01/01/20 Mr. A entered into a life insurance (note: in law, it's not a sale contract)
- 01/11/20 Mr. A dies
- 02/11/20 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

114

114



115

115

THEREFORE

- A person who is an insured cannot give benefits in life insurance to another by way of making a will

116

116

(5) DISPOSAL OF OTHER MATTERS

Examples of other matters that the testator may include in a will

- Funeral
- Body
- Guardian
- Administrators of an estate

117

117



1. Capacity of Testators

2. Capacity of Legatees

118

118

RELEVANT PROVISION

- **Section 1654**
- 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.

119

119

1. CAPACITY OF TESTATORS

- "The capacity of the testator must be considered only as at the time when the will is made."
- Consider whether, at the time when the will is made, the testator has a full capacity or not

120

120

CAPACITY OF TESTATORS

- (1) Minors
- (2) Adjudged incompetent persons
- (3) Persons of unsound mind
- (4) Quasi incompetent persons
- (5) Spouses

121

121

(1) MINORS

- **Section 25.** A minor, after completing fifteen years of age, can make a will.
- **Section 1703.** A will made by a person who has not completed his fifteenth year of age is void.

122

122

(2) ADJUDGED INCOMPETENT PERSONS

- **Section 1704.** para 1
- A will made by a person adjudged incompetent is void.

123

123

(3) PERSONS OF UNSOUND MIND

- **Section 1704.** para 2
- A will made by a person, who is alleged to be of unsound mind but not adjudged incompetent, may be annulled only if it is proved that at the time of making the will the testator was actually of unsound mind.

124

124

(4) QUASI INCOMPETENT PERSONS

- **Section 34.**
- A quasi incompetent person must obtain the consent of his curator for doing the following acts:

125

125

SUPREME COURT DECISION NO. 177/B.E. 2528

- In this case, the will was done when the deceased was conscious, though he was a quasi incompetent person
- The will is strictly personal act
- The testator must declare his intention by himself
- And in this case, the curator also gave the consent
- The will was legally valid

126

126

(5) SPOUSES

- **Section 1481.**
- Neither spouse is entitled to dispose of the **Sin Somros** by will in favour of the other persons to an extent exceeding his or her own portion thereof.

127

127

2. CAPACITY OF LEGATEES

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

128

128

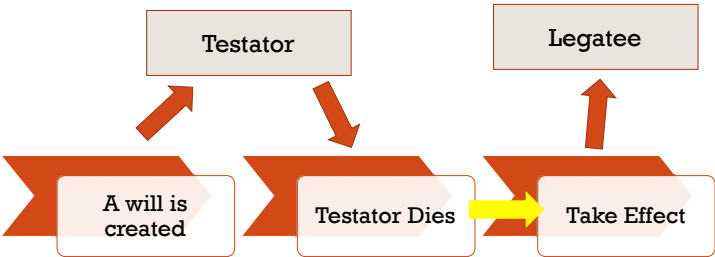
SECTION 1604.

- A natural person can be an heir only when he has, at the time of the *de cujes* death, personality or is capable of rights under Section 15 of this Code.
- For the purpose of this section, a child shall be deemed to have been *en ventre sa mere* at the time of such death if he is born or alive within three hundred and ten days after such time.

129

129

CAPACITY



130

130

PERSONS INVOLVING IN MAKING A WILL



131

131

WHY IS THERE A WRITER?

132

132

WHY IS THERE A WITNESS?

- What is the difference between witness of a will and witness at the making of a will?

133



134

134

WITNESS OF A WILL (พยานในพินัยกรรม)

- Part of formality requirement
- Is a juristic act per se
- Must know that the testator makes a will
- Must be with the testator all the time of making the will

135

135

WITNESS AT THE MAKING OF A WILL (พยานในการทำพินัยกรรม) (WHO IS NOT WITNESS OF THE WILL)

- Is not part of formality requirement
- Does not need to know that the testator makes a will
- Only need to know that he/she certifies the testator's finger print
- Does not need to be with the testator all the time of making the will

136

136

CAPACITY OF WITNESS

- **Section 1670.** The following persons cannot witness at the making of a will;
- (1) persons not *sui juris*
- (2) persons of unsound mind or persons adjudged quasi-incompetent;
- (3) persons who are deaf or dumb or blind

137

137

(1) PERSONS NOT *SUI JURIS* (MINOR)

138

138

(2) PERSONS OF UNSOUND MIND OR PERSONS ADJUDGED QUASI-INCOMPETENT;

139

139

(3) PERSONS WHO ARE DEAF OR DUMB OR BLIND

140

140

- **Section 1653.** The writer of the will or a witness thereof cannot be a legatee under such will.
- The forgoing paragraph shall also apply to the spouse of such writer of witness.
- The competent official recording the statement made by witnesses under Section 1663 is deemed to be a writer within the meaning of this section.

141

141



142

142

FORMS OF WILLS

(1) Ordinary Will
(พินัยกรรมแบบธรรมดา)

(2) holograph document Will
(พินัยกรรมแบบเขียนเองทั้งฉบับ)

(3) public document Will
(พินัยกรรมแบบเอกสารฝ่ายเมือง)

(4) secret document Will
(พินัยกรรมแบบเอกสารลับ)

(5) ORAL WILL
(พินัยกรรมแบบทำด้วยวาจา)

143

143

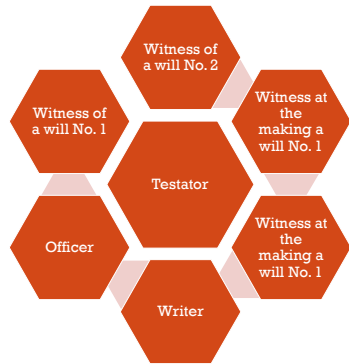
FORMS OF WILLS

- **Section 1648.** A will must be made according to the forms prescribed in Chapter II of this Title.
- **Section 1655.** A will may be made only in any one of the forms prescribed in this Chapter.
- **Section 152.** An act which is not in the form prescribed by law is void.

144

144

RECALL: PERSONS INVOLVING IN MAKING A WILL



145

145

(1) ORDINARY WILL
(พินัยกรรมแบบธรรมดา)

- Section 1656.
- A will may be made in the following form, that is to say, it must be made in writing, dated at the time of making of will and signed by the testator before at least two witnesses present at the same time who shall then and there sign their names certifying the signature of the testator.
- No erasure, addition or other alternation in such will is valid unless made in the same form as prescribed by this section.

146

146

PERSONS INVOLVING IN MAKING AN ORDINARY WILL



147

147

CONDITIONS

- (1) made in writing
- (2) dated at the time of the making
- (3) signed by the testator
- (4) signed by two witnesses

148

148

(1) MADE IN WRITING

- An ordinary will must be made in writing
- On any materials (e.g. papers, walls, leathers, woods, etc), except electronic means
- except electronic forms
- Written by any instrument e.g. pens, pencil

149

149

- transactions prescribed by the Royal Decree as being exempted from the application of the Electronic Transactions Act
- (1) Transactions relating to family law
- (2) Transactions relating to succession law

150

150

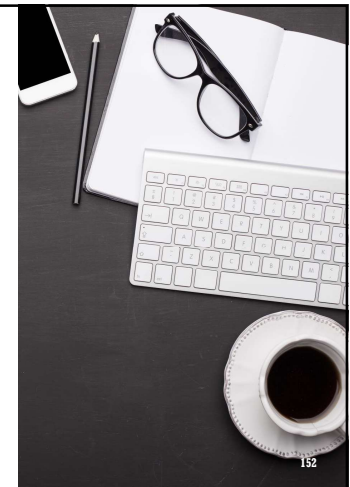
WHY ARE THESE TWO KINDS OF TRANSACTION NOT PERMITTED TO MAKE BY ELECTRONIC MEANS?

151

151

TYPING OR HANDWRITING?

- Typing?
- Handwriting ?
- Mixed?

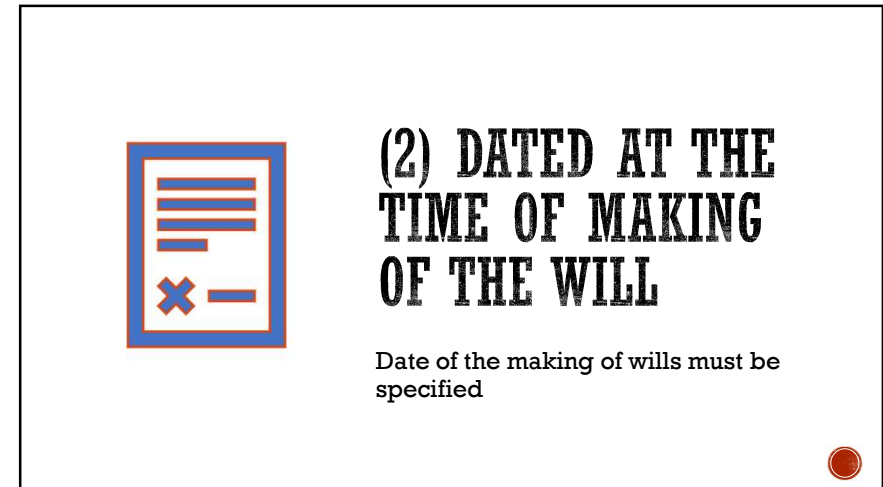


152

152



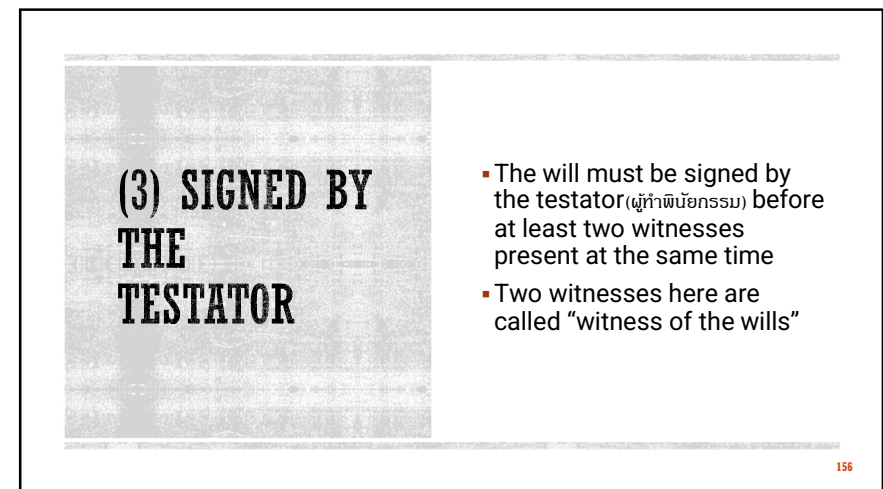
153



154



155



156

SIGNATURE OF THE TESTATOR

- Signed by him/herself; or
- Fingerprint certified by the signature of two witnesses (two witnesses here are called “witness at the making of the will)

157

157



Two witnesses must sign their names certifying the signature of the testator



Fingerprint is not permitted

(4) SIGNED BY TWO WITNESSES

158

158

CAN WITNESS OF WILL AND WITNESS AT THE MAKING BE THE SAME PERSONS?



159

159

RECALL:

- Witnesses of the will and their spouses cannot be a legatee
- Witnesses at the making of the will can be a legatee

160

160

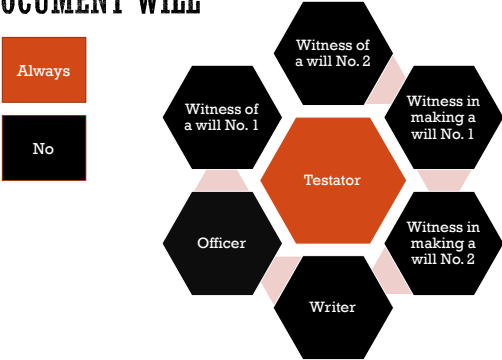
(2) HOLOGRAPH DOCUMENT WILL

(พินัยกรรมแบบเขียนเองทั้งฉบับ)

- **Section 1657.**
- A will may be made by an holograph document, that is to say , the testator must write with his own hand the whole text of the document, the date and his signature.
- No erasure, addition or other alteration in such will is valid unless made by the testator's own hand and signed by him.
- The provision of Section 9 of this Code shall not apply to a will made under this section.

161

PERSONS INVOLVING IN MAKING AN HOLOGRAPH DOCUMENT WILL



162

CONDITION

- (1) made in writing
- (2) dated at the time of the making
- (3) signed by the testator

163



Rules regarding to be Made in writing are the same as the case of ordinary will



the testator writes with his or her own hand the whole text of the document

(1) MADE IN WRITING

164

TESTATOR WRITES WITH HIS OR HER OWN HAND

- What if the writer uses other organs??

165

165



(2) DATED AT THE TIME OF THE MAKING

166

166

IMPLIED DATE?

- This will is made on my 15th birthday
- This will is made on the new year day of 2021
- This will is made on the final exam date of LB304, semester 2/2020

167

167



The will must be
signed by the testator



Finger print is not
permitted

(3) SIGNED BY THE TESTATOR

168

168

(3) Public Document Will

(พินัยกรรมแบบเอกสารฝ่ายเมือง)

169

Section 1658.

A will may be made by a public document, that is to say:

(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 wishes to be included in this will;

(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;

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

No erasure, addition or other alternation in such will is valid unless signed by the testator, the witness and the **Kromakarn Amphoe**.

170

PERSONS INVOLVING IN MAKING A PUBLIC DOCUMENT WILL

Always

Maybe

No

Witness of a will No. 1

Witness of a will No. 2

Testator

Officer

Writer

Witness in making a will No. 1

Witness in making a will No. 2

171

CONDITIONS

(1) the testator declares his/her intention to make a will to the officer

(2) the officer writes down the contents of the will

(3) signed by the testator and two witnesses

(4) dated and signed by the officer

172

(1) THE
TESTATOR
DECLARES
HIS/HER
INTENTION TO
MAKE A WILL
TO THE
OFFICER

- the testator declares his/her intention to make a will (including its details) to the officer (the **Kromakarn Amphoe**)
- At least two other witnesses must be there

173

173

(2) THE
OFFICER
WRITES DOWN
THE CONTENTS
OF THE WILL

- The officer (**Kromakarn Amphoe**) notes down the details of the declaration of the testator
- Read it to the testator
- Read it to the witnesses

174

174

(3) SIGNED BY
THE TESTATOR
AND TWO
WITNESSES

- the testator and the witnesses sign their names if they are certain that the statement noted down by the officer corresponds with the declaration of the testator

175

175

WITNESS OF WILL AND WITNESS AT THE MAKING
CAN BE THE SAME PERSONS

The diagram illustrates the roles of three individuals: Mr A (Testator), Mr B (Witness of a will), and Mr C (Witness at the making a will). Mr A is the central figure, surrounded by Mr B and Mr C. Mr B is shown as a witness of the will, and Mr C is shown as a witness at the making of the will. The diagram also includes the Officer, who is responsible for writing down the contents of the will.

176

176

SIGNATURE OF THE TESTATOR

- Signed by him/herself; or
- Fingerprint certified by the signature of two witnesses (two witnesses here are called "witness at the making of the will)
- Witness at the making of the will may be the same person as witness of the will

177

177



Signed by him/herself



Fingerprint is not permitted

**SIGNATURE OF
THE WITNESS**

178

178

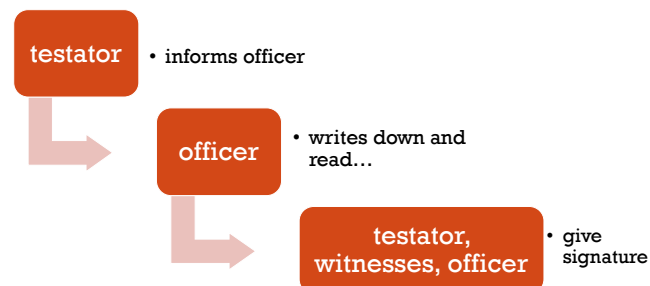
(4) DATED AND SIGNED BY THE OFFICER

- The statement noted down by the officer is dated and signed by him/her
- The officer certifies under his hand and seal that the will has been made in compliance with the law

179

179

PROCESS OF PUBLIC DOCUMENT WILL



180

180

Places where the will is made

Duties of the officer

Rights of the testator

OTHER IMPORTANT RULES OF PUBLIC DOCUMENT WILL

181

181

RELEVANT PROVISIONS

- **Section 1659.** A will made by a public document may, upon request, be made outside the **Amphoe Office**.
- **Section 1662.** 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.
- If the will has been made by a public document the **Kromakarn Amphoe** shall, before handing over such will, make a copy thereof under his signature and seal. Such copy may not be divulged to any other person during the life of testator.

182

182

PLACES WHERE THE WILL IS MADE



THE AMPHOE OFFICE



OTHER PLACES, UPON
REQUEST OF THE TESTATOR

183

183

DUTIES OF THE OFFICER

- The officer is prohibited to divulge the details of the public document will during the testator's lifetime
- Violation causes the will lose its legal effects

184

184

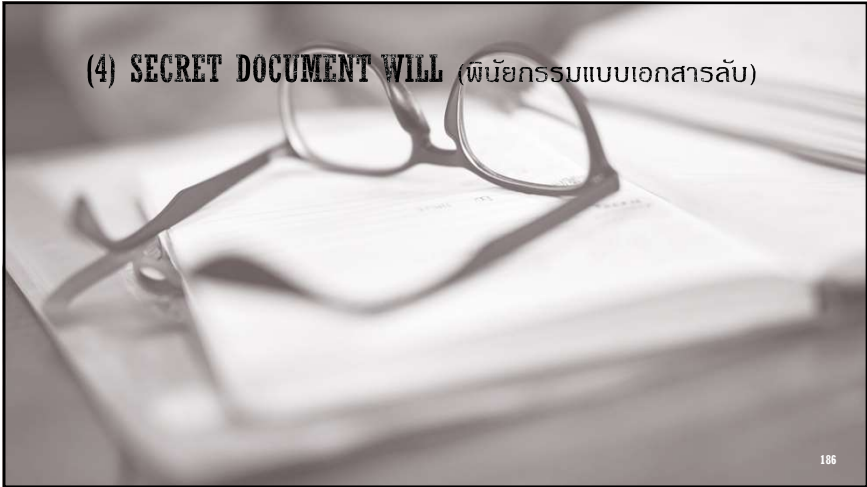
RIGHTS OF THE TESTATOR

- the **Kromakarn Amphoe** is bound return the secret document will to the testator whenever the tester makes a request
- Whenever means during office hours
- Before the officer returns it to the testator, a copy of the will should be made, with the signature and seal of the officer and seal



185

(4) SECRET DOCUMENT WILL (พินัยกรรมแบบเอกสารลับ)



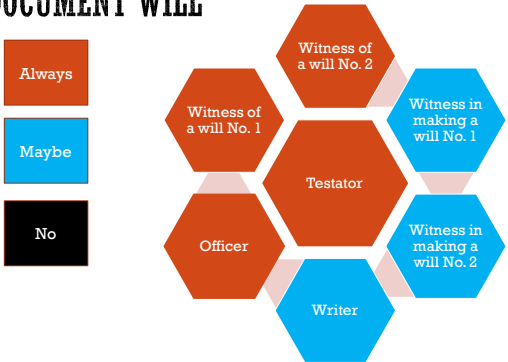
186

- Section 1660.
- A will may be made by a secret document, that is to say:
 - (1) the testator must sign his name on the document;
 - (2) he must close up the documents and sign his name on the document;
 - (3) he 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 testamentary dispositions; and if the testator has not written with his own hand the whole text of the document he must state the name and domicile of the writer;
 - (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.
- No erasure, addition or other alternation in such will is valid unless signed by the testator.

187

187

PERSONS INVOLVING IN MAKING A SECRET DOCUMENT WILL



188

188

CONDITIONS

- (1) The testator makes a will
- (2) The testator closes up the documents and sign his/her name on the document
- (3) The testator takes the closed document to the officer along with two witnesses
- (4) The officer, the testator, the two witnesses sign their names

189

189

(1) THE TESTATOR MAKES A WILL

- The testator makes a will (it must be a will according to the characteristics of will)
- The testator may write it by himself, or ask someone to write it for him/her
- The date is not necessary
- The testator must sign his/her name

190

190

SIGNATURE OF THE TESTATOR

- Signed by him/herself; or
- Fingerprint certified by the signature of two witnesses (two witnesses here are called "witness at the making of the will")

191

191

(2) THE TESTATOR CLOSES UP THE DOCUMENTS AND SIGN HIS/HER NAME ON THE DOCUMENT

- The testator put the will in an envelope, and seal the envelope + sign across the seal area

192

192

SIGNATURE OF THE TESTATOR

- Signed by him/herself; or
- Fingerprint certified by the signature of two witnesses (two witnesses here are called "witness at the making of the will")

193

193

(3) THE TESTATOR TAKES THE CLOSED DOCUMENT TO THE OFFICER ALONG WITH TWO WITNESSES

- The testator takes the closed document to the officer
- At least two other persons as witnesses must be present
- The testator declares to the officer and the witnesses that the document contains his/her testamentary dispositions
- If it is written by another person, the testator must inform the name and domicile of the writer

194

194

IF THE TESTATOR IS UNABLE TO SPEAK

- **Section 1661.** If a person, who is deaf-mute or unable to speak, desires to make his will by a secret document, he must instead of making the declaration required in Section 1660 (3) write with his own hand, in the presence of the **Kromakarn Amphoe** and of the witnesses, on the cover of the document, a statement that the enclosed document is his will and add the name and the domicile of the writer of the document, if any.

195

195

SIGNATURE OF THE TESTATOR

- Signed by him/herself; or
- Fingerprint certified by the signature of two witnesses (two witnesses here are called "witness at the making of the will")

196

196

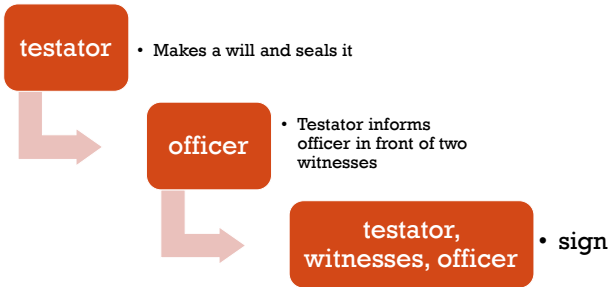
(4) THE OFFICER, THE TESTATOR, THE TWO WITNESSES SIGN THEIR NAMES

- The officer 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 **officer**, the testator and the witness must sign their names thereon.

197

197

PROCESS OF SECRET DOCUMENT WILL



198

198

OTHER IMPORTANT RULES REGARDING PUBLIC DOCUMENT WILLS



199

199

RELEVANT PROVISIONS

- **Section 1662.** 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.
- If the will has been made by a public document the **Kromakarn Amphoe** shall, before handing over such will, make a copy thereof under his signature and seal. Such copy may not be divulged to any other person during the life of testator.

200

200

PLACES WHERE THE WILL IS MADE



ONLY AT
THE AMPHOE
OFFICE



OTHER PLACES, UPON
REQUEST OF THE
TESTATOR IS NOT
APPLICABLE

201

201

DUTIES OF THE OFFICER

- The officer is prohibited to divulge the details of the public document will during the testator's lifetime
- Violation causes the will lose its legal effects

202

202

RIGHTS OF THE TESTATOR

- the **Kromakarn Amphoe** is bound return the secret document will to the testator whenever the tester makes a request
- Whenever means during office hours
- The officer does not make a copy of the will, unlike the case of the return of public document will

203

203

(5) ORAL WILL (พินัยกรรมแบบ ทำด้วยวาจา)

204

204

- **Section 1663.**
- 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 if the prescribed forms, he may be make an oral will.
- For this purpose, he must declare his intention regarding the dispositions of the will before at least two witnesses present at the same time.
- 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.
- 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.

205

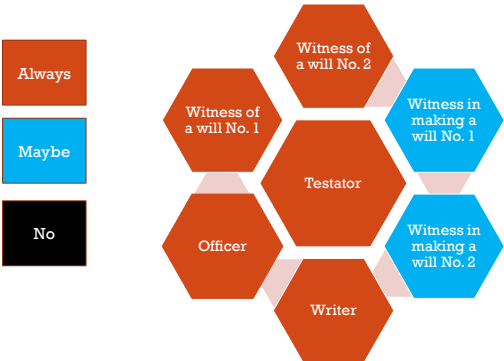
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- **Section 1664.** A will made under the forgoing section loses its validity one month after the time when the testator has again been placed in a position to make a will in any other of the prescribed forms.

206

206

PERSONS INVOLVING IN MAKING AN ORAL WILL



207

207

CONDITIONS

- (1) The testator verbally makes a will under exceptional circumstances
- (2) The testator declares the intention to at least two witnesses
- (3) The witnesses go to inform the officer without delay
- (4) The officer writes down the contents of the will
- (5) The witnesses sign their name

208

208

**(1) THE TESTATOR
VERBALLY MAKES A
WILL UNDER
EXCEPTIONAL
CIRCUMSTANCES**

- exceptional circumstances such as imminent danger of death, or during an epidemic or war, etc
- the testator cannot make a will in any other forms

209

209

IMMINENT DANGER OF DEATH

▪ Examples

- Earthquake
- Burning building
- Illness

210

210

**(2) THE TESTATOR DECLARES THE INTENTION
TO AT LEAST TWO WITNESSES**

- There must be at least two persons who are capable of being a witness with the testator

211

211

**(3) THE
WITNESSES GO
TO INFORM
THE OFFICER
WITHOUT
DELAY**

- The witness must without delay go to inform the officer regarding the details of the will
- Details include date, place and exceptional circumstances

212

212

(4) THE OFFICER WRITES DOWN THE CONTENTS OF THE WILL

- The officer writes down the statement of the witnesses
- The officer is deemed to be writer of the will
- "Section 1653 para 3: The competent official recording the statement made by witnesses under Section 1663 is deemed to be a writer within the meaning of this section.)

213

213

(5) THE WITNESSES SIGN THEIR NAME

- The two witnesses sign the statement

214

214

SIGNATURE OF THE WITNESS

- Sign by himself/herself
- Fingerprint is permitted but it must be certified by the signatures of two witnesses

215

215

LENGTH OF VALIDITY

- An oral will loses its validity one month after the time when the testator is capable of making a will in any other forms
- Note: There's no provision dealing with amendments of oral will

216

216