**Chapter Two**

**Thai Legal System**

**Suggested answers to the review questions and case problems**

**1. Describe the historical foundations of Thai law.**

**Answer:** The distinctive features of the Thai legal system arise in large part from the reforms instituted by King Chulalongkorn (King Rama V) at the turn of the 19th century. King Chulalongkorn enacted many reforms of the Thai legal system, such as the establishment of the Ministry of Justice and the first law school in Thailand; he also started the codification of written laws. By the fact of its codification, Thailand is generally considered as a civil law system and its written constitution stands alone as the supreme law in the country.

**2. State and clarify the primary sources of law in Thailand.**

**Answer:** Under the Thai legal system, there is one formal source of law that is supreme and overrides all other laws to the contrary. This is the Constitution of the Kingdom of Thailand. The Constitutionis the primary source of law and prevails over other laws. The Constitution provides a set of fundamental ground rules setting out the powers of the different branches of government and how they interact with each other through a system of checks and balances. The Constitution also provides basic principles, such as fundamental freedoms, rights, and duties of the people.

**3. Explain what is meant by subordinate legislation.**

**Answer:** Under the Thai legal system, subordinate legislation includes Royal Decrees, Ministerial Regulations, Ministerial Notifications, Law of Municipality, and Rules and Regulations. The role of subordinate legislation is to prescribe the criteria and details in support of the legislation.

**4. Discuss the structure of the Civil and Commercial Code.**

**Answer:** Following the civil law tradition, the Civil and Commercial Code is divided into six books categorized under the headings General Provisions, Obligation, Specific Contracts, Property, Family, and Succession. Book I of the Civil and Commercial Code is entitled “General Provisions” and poses several principles that apply to all relationships between natural persons. These principles represent common values for the entire body of private law. The special part contains rules for specific categories that are regulated individually for each subject matter of private law. The purpose of this classification is to clarify the distinction between different bodies of law.

**5. Explain the following:**

1. **Law of obligation**
2. **Contract law**
3. **Property law**

 **d. Family law**

 **e. Law of succession**

**Answer:** Under Book II Obligations of the Civil and Commercial Code, the legislator organizes and regulates the rights and duties arising between individuals. An obligation is a legal duty which necessarily obliges one or more parties to do or not to do a certain thing. Thus, it contains rules that are *relative*: they are available only against particular persons. On the other hand, in other areas of private law, rules of law are *absolute* because they are enforceable against the whole world. Ownership or personal rights, for example, are absolute rights because they can be upheld against everyone; whereas contracts create relative rights that apply only to the parties.

Contract law is the subject of Book III. A contract is an agreement between two or more parties that creates an obligation enforceable at law. Under the Civil and Commercial Code there are a variety of different types of contracts used for different purposes including sale, exchanges, gift, hire-purchase of property, hire of service, hire of work, carriage, loan, deposit, suretyship, mortgage, pledge, agency, brokerage, insurance, and bills. These contracts will be discussed in further chapters of the book.

Ownership, possession, and other real rights are regulated under Book IV Property. It contains the rules on acquisition, extent, and exercise of ownership as well as possession, servitudes, habitation, superficies, and usufruct.

Family law is the traditional area of the law that regulates family-related matters and domestic relations. Book V Family deals with specific issues of marriage—promise to marry in the future, marriage conditions, rights and obligation within marriage, matrimonial property regime, void of marriage, and divorce. A specific part of Book V regulates parentage, guardianship, and adoption. Also, family law covers issues regarding maintenance obligations arising from a family relationship(e.g., spousal maintenance and child maintenance).

Succession law is regulated in the sixth and last book of the Civil and Commercial Code: Book VI Succession. It is the branch of law dealing with issues related to assignment and distribution of property upon the death of an individual. The two main areas of succession law are testamentary succession (when the person leaves a will on death) and intestate succession (when the person does not leave a will on death). Consequently, if the defunct has not left a will, the estate will be distributed to his heirs according to the rules laid down by law.

**6. What is the difference between a court of first instance and an appeal court?**

**Answer:** Courts of justice consist of three levels: the courts of first instance, the courts of appeal and the Supreme Court of Justice. All cases, both criminal and civil, start at the court of first instance. In criminal cases, prosecution is brought by a public prosecutor who represents the state against a person for some criminal offences. In civil disputes, courts consider cases involving private legal relationships between people.

The appeal of the judgment of the court of first instance can be submitted to the courts of appeal for both civil and criminal matters. These courts consider appeals and objections against decisions or court orders of first instance rulings within their jurisdiction. They are classified as general appellate courts and regional appellate courts and consist of at least three judges.

**7. Briefly describe the general functions of the Supreme Court of Justice.**

**Answer:** The Supreme Court of Justice is the highest court with national jurisdiction and represents the court of final appeal in all civil and criminal cases in the whole Kingdom. It is composed of a president who is the head of the courts of justice, vice presidents, a secretary, and a number of justices.

The Supreme Court has jurisdiction on *questions of law* and, under specific circumstances, on *questions of fact* from the courts of appeal. The decision of the Supreme Court is final and cannot be further appealed. As mentioned previously, there are some cases provided by the law where it is possible to directly appeal to the Supreme Court on the decisions of the courts of first instance, bypassing the courts of appeal, including cases on tax, business bankruptcy, labor, intellectual property, and international trade.

**8. Define the following terms:**

1. **Statutes**

 **b. Emergency Decrees**

 **c. Treaties**

**Answer:** Statutes, emergency decrees and treaties represent the second source of law and take priority over sources of law other than the Constitution. Statutes include codes, bills, and acts of parliament made in conformity with the procedures laid down in the constitution. Under Section 15 of the new Interim Constitution B.E. 2557 (2014), the Prime Minister presents the bill or organic law bill approved by the National Legislative Assembly to the King for His signature within 20 days as from the date of receiving such a bill from the National Legislative Assembly, and the bill comes into force as an Act or Organic Act upon its publication in the Government Gazette.

With regard to emergency decrees they are a have the same force as legislation. In particular, the King may issue an emergency decree only for the purpose of maintaining national safety, public safety, and national economic security; for preventing public calamity; and in cases where it is necessary to have a law on taxes, duties, and currency which requires an urgent and confidential deliberation (Section 21 of the Interim Constitution). The emergency decree must be subsequently approved by the National Legislative Assembly. If it is approved, it will continue to have the force as an Act. If it is not approved, it will cease to have effect.

Under the Constitution, the King has the prerogative to conclude a peace treaty, armistice, and other treaties with other countries or international organizations. However, treaties that change the territories over which the Kingdom of Thailand has sovereignty or jurisdiction; or that have extensive impacts on the country’s economic and social stability; or that have significant bindings on trade, investment, or national budget, must be approved by the National Legislative Assembly (Section 23 of the Interim Constitution).

**9. The executive director of Hotel ABC in Phuket negotiates a service contract with certain suppliers in Bangkok even though she knows she will not conclude any contract with them. The reason behind this is that she wants to keep the suppliers busy and prevent them from contracting with a competitor, Hotel XYZ, in Phuket. Discuss the potential for liability.**

**Answer:** In Thai legal system, individuals have the obligation to act in good faith during the exercise of their rights and the performance of their duties (Section 5, Civil and Commercial Code). As a general rule, good faith is always presumed and the absence of good faith has to be proven (Section 6, Civil and Commercial Code).

In the scenario above, the executive director’s behavior would be considered as contrary to pre-contractual good faith because she entered into negotiations without having any intention of making a contract. The reason behind this is that she wants to keep the suppliers busy and prevent them from contracting with a competitor. A party who protracts negotiations after having decided that she will not conclude any contract with her partner is liable for expenses and lost opportunities.

**10. Pop was badly beaten up. He suffered injuries including splintered teeth, rib contusions and cuts to his head. An ambulance took him to a local hospital in Surat Thani, where doctors managed to stop the bleeding and treat the wounds. Within a few months, he was discharged from the hospital in good condition. However, Pop refused to pay the hospital’s bill and the hospital sued Pop for the full amount. Without discussing applicable legal rules, explain which court will have authority to hear this case.**

**Answer:** Thailand has a dual court system in which civil and criminal matters are separated from administrative matters. Administrative courtjurisdiction includes administrative disputes between State entities, officials, and private individuals, or between State entities. More precisely, administrative courts decide on all matters of administrative law disputes including disputes relating to contracts with government entities. Civil courts, on the other hand, consider cases involving private legal relationships between private people.

In the scenario above, the jurisdiction of the court will depend on the legal status of the hospital that healed Pop. Specifically, if the local hospital in Surat Thani is a public hospital, the Administrative Court of First Instance will decide the case. On the contrary, if the local hospital in Surat Thani is a private hospital, the jurisdiction will belong to the court of first instance.