

IDE Asian Law Series No. 23

Doing Legal Research in Asian Countries

**China, India, Malaysia,
Philippines, Thailand, Vietnam**

INSTITUTE OF DEVELOPING ECONOMIES (IDE-JETRO)

March 2003

JAPAN

PREFACE

The evolution of the market-oriented economy and the increase in cross-border transactions have brought an urgent need for research and comparisons of judicial systems and the role of law in the development of Asian countries. The Institute of Developing Economies, Japan External Trade Organization (IDE-JETRO) has conducted a three-year project titled “Economic Cooperation and Legal Systems.”

In the first year (FY 2000), we established two domestic research committees: Committee on “Law and Development in Economic and Social Development” and Committee on “Judicial Systems in Asia.” The former has focused on the role of law in social and economic development and sought to establish a legal theoretical framework therefore. Studies conducted by member researchers have focused on the relationship between the law and marketization, development assistance, trade and investment liberalization, the environment, labor, and consumer issues. The latter committee has conducted research on judicial systems and the ongoing reform process of these systems in Asian countries, with the aim of further analyzing their dispute resolution processes.

In the second year (FY 2001), we established two research committees: the Committee on “Law and Political Development in Asia” and the Committee on “Dispute Resolution Process in Asia”. The former committee focused on legal and institutional reforms following democratic movements in several Asian countries. The democratic movements in the 1980’s resulted in the reforms of political and administrative system to ensure the transparency and accountability of the political and administrative process, human rights protection, and the participation of people to those processes. The latter committee conducted a comparative study on availability of the court system and out-of-court systems (namely Alternative Dispute Resolutions), with the purpose of determining underlying problems in the courts. As social and economic conditions drastically change, Asian countries face challenges to establish systems for fairly and effectively resolving the variety of disputes that arise increasingly in our societies.

This year (FY 2002), based on the achievements of the previous years, we carefully reorganized our findings and held a workshop entitled “Law, Development and Socio-Economic Change in Asia” with our joint research counterparts to develop our final outcome of the project. Also, we extended the scope of our joint research and

added some new countries and topics. This publication, titled ***IDE Asian Law Series***, is the outcome of latter research conducted by the respective counterparts (please see the list of publications attached at the end of this volume). This volume in particular provides basic information for legal research in the Asian countries concerned, to facilitate better understanding among us Asian law scholars and practitioners, and to promote future comparative legal studies on Asian law.

We believe that this work is unprecedented in its scope, and we hope that this publication will make a contribution as research material and for the further understanding of the legal issues we share.

March 2003

Institute of Developing Economies

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CHINA

HOW TO FIND LAWS IN CHINA

By

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Ding Ke^{**}

INTRODUCTION

Strengthening the legal system and building a country governed by rule-of-law has been an integral part of the overall Reform and Open Door Policy of China since late 70's. In comparison with history, it is fair to say that China has made remarkable progress and achievements in building its capacity of carrying out rule-of-law, to the extent that it took most western countries several decades to get there.“ There must be rules to observe, rules must be observed, enforcement of rules must be strict, the those who violate the rules must be punished” was a goal proposed by Deng Xiaoping in early 80's throughout the country, and is now partly reality.

Before the reform, laws played a very marginal role in China and the country was famous for its “Rule-of-man” model. For more than 30 years, China in fact had very few laws, and the term “rule-of-law” was foreign to many people. The strict centrally - planned economy and the resulting social structure left small room for law to play. For instance, in a society where there was no private property, where labor was treated like a chess on the chessboard, where one was allocated no more economic resources than necessary to feed oneself, there was no need for civil law; where all the economic activities were organized and managed by governments, where economic parties were seen as players of the state functions, economic law were not needed. There were no soil for administrative law too because under a ideology that gave government a

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position to represent people and to exercise all kinds of rights on behalf of the people, individual rights and freedoms were neglected too.

Since early 80's, in the course of its further opening and reform, construction of a new legal system has become part of China's modernization process, By the year 2001, the National People's Congress had passed more than 400 new laws, the State Council and its various ministries had enacted more than 4000 regulations, local People's Congress and local governments had adopted more than 7000 local regulations.

It is against this background that "how to find laws in China" become an issue, not only for foreign legal academics, business, but for Chinese as well.

I. SOURCES OF LAW AND TYPES OF LEGISLATION: CIVIL LAW TRADITION AND SOCIALIST LEGAL CONSTRUCTION

A. Sources of law

Generally speaking, Chinese legal system belongs to civil law family, that is to say law only refers to statutes, not cases. The system was first established in later last century and early this century. Combine ancient Chinese legal system with the imported forms through Japan from Germany, Chinese legal system was a federal one before People's Republic of China is founded. The first thing for P.R China was to abolish all the laws existed before in order to establish a new legal regime. Soviet Union was the only model for China to follow in the first years, and even after the broke up. Law was seen as the instruments of the ruling class to oppress the ruled.

Given the above historical bearing, and as a society undergoing rapid changes with the trend of pluralism in the society, the administrative mechanism governed for so long is no longer effective. "Rule of law" is on one hand the social demand, and it is a very complicated task on the other. Meeting with the demand, and with more than 20 year's effort on track, the 15th Communist Party's Congress took place in September 1997 announced "to run the country by law and to build up a socialist rule of law State" for the first time in China's history. It is a commitment by the ruling Party, and it is considered a milestone, given the "rule of man" culture and its legacy in China's modern history.

China is now undergoing the period of transformation. Economically, China is changing from an agrarian society to a modern, industrialized country; and politically, from centralism to a more democratically oriented system. These changes could also be reflected in changes in the legal system. Due to some special features of this nation, such as large population, with 80% of the population in the countryside, and unbalanced economic development between different regions, the legal system of China has become rather unique, possessing outstanding “Chinese characteristics”. When specifying aspects of law-making, purpose and content of law, means to execute law or procedure for any changes in law, the legal system of China is not a fixed one, in the sense that there are many factors contributing to the legal development everyday.

According to the constitution adopted in 1982, the overall pattern of the legal system of China works as follows:

1. Legislative Powers China is practicing a multi-level legislative system. At central government level, the National People’s Congress and the Standing Committee exercise national legislative power. The legislative power of the NPC includes: revising the constitution, supervising the enforcement of the constitution, enacting and revising criminal and civil laws, laws governing state organs, and some other basic laws. The legislative power of the Standing Committee of the NPC includes interpreting laws, supervising the enforcement of the constitution; enacting and revising laws other than those enacted and revised by the NPC; and when NPC adjourned, partially supplementing and revising the laws enacted by the NPC, but not violating the fundamental principles set aside in those laws; interpreting the law; revoking any executive regulations, decisions, and orders formulated by the State Council however contravening the constitution and laws; revoking any local laws and regulations drawn up by organs of state power in provinces, autonomous regions and government-controlled municipalities however contravening the constitution, laws and executive regulations.

The State Council has the power to enact executive laws and regulations. The decisions and orders issued by the State Council bear equal legal statues as the executive rules and regulations.

At local levels, the people's congresses and their standing committees in provinces and government-controlled municipalities can enact local laws and regulations under the pre-condition that these laws do not conflict with the constitution, laws and executive regulations. These local regulations should be submitted to the Standing Committee of the NPC for record.

The people's congresses in autonomous regions have the power to enact autonomous provisions and/or decrees and independently implemented provisions. These provisions and decrees shall be submitted to the Standing Committee of the NPC and deemed valid upon approval. The autonomous/independently implemented provisions enacted by the autonomous areas and counties should be submitted to the people's congress at provincial or autonomous-regional levels and shall be deemed valid upon approval. These provisions should also be submitted to the Standing Committee of the NPC for record.

The people's congresses of provincial capital cities where the provincial or autonomous regional governments are located and of State Council-endorsed cities, also have the power to enact local laws and regulations under the precondition that they do not violate the constitution, laws, executive regulations and local rules and regulations.

2. Executive Powers The executive power is exercised by the State Council. As the highest executive body of the state, the State Council, except for the power to formulate executive laws and regulations which we already mentioned, also has the power to submit resolutions to the NPC and its Standing Committee; to alter or revoke any inappropriate orders, instructions and decisions drawn up by various ministries, state commissions and executive agencies at local levels.

3. Judicial Powers In the Chinese legal system, the concept of judicial power bears a very special connotation. It would mean the power to give final judicial verdict, but it also would cover the meaning of authority to supervise legal work. The judicial organs, together with the body for legal supervision, should all be responsible for the NPC, so as to make sure that laws are properly and correctly enforced. The highest judicial organ of the state is the Supreme People's Court, and highest body for legal

supervision is the Supreme People's procuratorate. What need to mention is that all the organs bears some kind of rule-making capacity.

B. Types of legislation

Constitution and Constitutional laws

Basic Laws

Laws

Administrative Regulations

Local Regulations

Implementation Rules

C. The hierarchy of legal rules

The hierarchy of legal rules

The constitution	National People's Congress
Basic Laws	National People's Congress and its Standing Committee
Administrative rules and regulations	The State Council
Local regulations	Local NPC and their Standing Committee

II. CURRENT SITUATION OF LEGAL TEXT PUBLICATIONS: HOW TO FIND LAWS IN CHINA

A. The situation of national legal text publication

1. Compilation by legislature

So far as the statutory laws are concerned, the situation is like this:

It is stipulated in clause 52 of the legislative law that law should be published in NPC's standing committee gazette and national wide newspapers in time after be signed

and issued. The legal text published in NPC's standing committee gazette is the standard version which comprises laws, acts, decisions, and international conventions, bilateral agreements and part of important administrative laws and regulations enacted by the state council, also the China Military Committee.

Other than the gazette, the NPC sub-divisions are also compile law books either in general terms or in their respected working areas, such as criminal laws by the Criminal law research section, and civil laws by the Civil law research section. For example, the *Compilation of laws and regulations of the P.R.C* has been a popular one among users because it bears the authority of the National Legislature.

2. The State Council Gazette

State Council Gazette publishes administrative laws and decrees as well as legislation by the NPC.

The constitution confers the State Council and its subordinate department the function power to enact administrative laws and regulations and directives. It is our social present and decided by our political and economical circumstance. There is principle requirement for the sign, the name, the form, and the publication of administrative laws and regulations in relevant clause of our legislative law and administrative laws and regulations making procedure regulations issued by the State Council recently. It should be published in the State Council Gazette and national wide newspapers after signed and issued by government departments, and legal affairs office of the State Council should edit and publish state formal text. The State Council Gazettes are standard version of administrative laws and regulations.

Corresponding to the State Council legislative power, the subordinate ministries have more widely, more concrete and more operational power.

It is specifically stipulated in clause 71 of the Law for Legislation: ministries and committees under the State Council, the People's Bank of China, the State Auditing Bureau and affiliate organs with administrative function shall make rules within the limit of their respected authority according to law and administrative laws and regulations of the State Council. It should be published in the State Council Gazette, ministry Gazette and national wide newspapers.

It is a special phenomenon in China that government is conferred with rulemaking power. They enact a great deal of standardized document such as directives and decrees. In general the ministry directive decrees have three tasks:

First, the aim of rulemaking is to implement national law, especially some special terms of administrative laws and regulations which largely implement by directives under the principle of laws and regulations.

Second, government ministries are the functional departments in specific work areas, the directives and decrees would enrich administrative rules and practice.

3. Ministry Gazettes

A large number of directives or decrees are issued in ministry gazettes. Those gazettes are published in regular bases and enjoy great number of readers because it concentrated on certain issues. The famous ones are:

Gazette of State Bureau for Copyright

Gazette of State Bureau of Forestry

Gazette of State Administration of Quality and Quarantine Supervision and Inspection

Gazette of the Ministry of Personnel

China Price Control Communiqué

Gazette of Ocean Environmental Quality, China Sea Level Communiqué

Gazette of Ocean Calamity

Gazette of China Environmental Status

Public Announcement of State Stock Supervision Committee,

Public Announcement of State Economic and Trade Commission

Public Announcement of China Patent Bureau

Public Announcement of Taxation Laws and Regulations

Public Announcement of China Trademarks

Public Announcement of Finance and Economic Audit Laws and Regulations

Public Announcement of ocean navigational affairs

Proclamation of Ministry of Finance

Proclamation of the People's Bank

Proclamation of the Ministry of the Foreign Trade and Economic Cooperation

One could tell by the names of the publications to know which Governmental Agency is the subject.

4. Regular publication in Ministry periodicals

Communications, loose-leaves and national organizational periodicals by various Ministries are common in China. For example: special periodical of Labor and Social Security Regulation and Policy, Government Gazette of Ministry of Education, Land and Resource Communication, China Public Health Legislation, Administration for Industry and Commerce of PRC, Customs Laws and Regulations loose-leaf of PRC, Environmental Protection Communication, China Tobacco, China Civil Affairs, and China Water Resource. Those names are well-known among area users, they provide more recent information, legal directives and policy documents of the ministry are publicized for public reference.

5. Professional newspapers

In addition to publications mentioned above, it is stipulated both in our legislative law and rulemaking procedure regulations that all laws and regulations should be published in comprehensive or special newspaper of national wide in time at the same time laws and regulations be issued in the State Council gazette or Ministry Gazette. For example: China Culture Relic Newspaper, China Labor and Safety Newspaper, China Environment Newspaper, China Medicine Newspaper, China Taxation Newspaper, China Gold Newspaper, China Nationality Newspaper, all of the papers carry the task to gave access to the public the legal documents.

B. The situation of Local regulation text publication

Local regulation texts chiefly refer to local laws and regulations, local government directives and decrees. It is stipulated in Law for Legislation of PRC that the NPC and it's standing committee of province, autonomous region, and municipal directly under the central government can enact local law under legal premise, some big cities and their NPC and standing committee can enact city's law under legal premise, the governments of those places can enact local government directive accord to laws and

regulations, and the principal of local law. It stipulated also in the same law that local government decrees and ministry directives has equal legal effect, and be carry out in each area.

All the local NPC and their standing committees in those places where meet the standards for local legislative power should edit and issue NPC periodicals and regular Gazettes. However, these Gazettes are not open to the public and only for reference and to record whenever there is need.

C. Judicial interpretations

China is a civil law country, strongly against “judge-made laws” in its legal ideology, because judges were not trusted for so long. But it has been changing since later 1970’s with the open up and reform policy. As a matter of fact, both common law system and civil law system have had great influence in the legal reform process. With a great number of scholars returned from abroad, they brought back what they have learned from the hosting country. Of course most of them are common law system. Another reason is that in the market reform and the complication of the social life, precedents are in high demand simply because legislators could not march the high speed development no matter how busy they keep themselves.

According to the Constitution, the Supreme Court of China enjoys the power to make judicial interpretations in order to correctly implement the laws, and the Supreme Procuratorate enjoys the power to interpret the laws relating to supervision. Officially speaking, those interpretations could only serve as references, not rules. However, judicial interpretations play active role, and their function are changing. The Supreme Procuratorate in 1996 and the Supreme Court in 1997 enact regulations by themselves stipulating that their interpretations shall have legal effect.

1. Judicial Gazette

The two major publications to search for judicial interpretation are the Gazette of the Supreme Court of China and the Gazette of the Supreme Procuratorate. Their carry mainly interpretation, sometime also legislation. Other than the two gazettes, both of the

Supreme Court and the Supreme Procuratorate publish selected documents as well, but the Gazettes serve as the standard version.

2. Judicial newspapers

The People's Courts daily by the Supreme Court and the People's procurators daily by the Supreme Procuratorate are also major sources for legal documents research, especially for judicial interpretations.

III. WHERE TO FIND LAWS IN CHINA

A. Variety of law compilations

Most of those law compilations are compiled by relevant Governmental Agencies, some are by scholars. There are too many to buy or to read in book stores. What we recommend are:

- a) Announcement for the most recent legislation and Judicial interpretation
(Bimonthly)
Examined and approved by the Legal Working Committee of the Standing Committee of NPC
Published by the Law Press
- b) Newly edited compilation of laws, regulations, decrees and judicial Interpretations
Examined and approved by the Legal Working Committee of the Standing Committee of NPC
Published by the Publishing House of China University of Politics and Law

There are many kinds of separated legal documents compilations edited mainly by governmental agencies in their respected areas such as:

- Compilation of Auditing laws and regulations
- Compilation of Intellectual Property laws and regulations
- Compilation of Economic and Trade laws

Compilation of Insurance laws and regulations
Compilation of Security laws and regulations
Compilation of Foreign related laws and regulations
Compilation of Laws and Regulation related to Future Goods and Securities
Compilation of Administrative laws and regulations
Compilation of Military laws and regulations
Compilation of Customs laws and regulations
Compilation of Laws and Regulations related to Women's Rights and Interests

B. Judicial interpretations

Judicial interpretations are published mainly by the two publishers, one is the publishing house of the Supreme Court, and another is the publishing house of the Supreme Procuratorate. It is a different system, compare with other countries, that judicial organs have their own publishing house. It is very easy for a new comer, or a new user, in searching for legal documents, to just visit the book store of that publishing house for certain kind of legal documents.

C. Relevant State organ and Scholar edited law compilation

1. Law text compilation of P.R.C

Chief edited by Xiao Yang, president of the Supreme Court, is taken as the authority's one. The compilation collected all the laws and regulations since P.R.C founding. It was checked by the legal working committee of the standing committee of the NPC. It is a very useful instrument.

2. Full collection of Chinese Laws

More than 4000 laws, administrative regulations, decrees. Judicial interpretations are collected. It divided all the legal text into 9 areas for the convenience of users.

3. Interpretation of laws of P.R.C

Edited by the Criminal Law division of the legal working committee of the NPC. It offers jurisprudential interpretation of legal text.

D. Law yearbooks

Law yearbooks have become a popular instrument of legal research. Each year the yearbook collects new legislation, new judicial interpretation, new reforms took place in legal areas within the year, and with statistics on matters such as cases filed and cases judged, etc. Now the most authentic ones are:

1. China Law Yearbook

Edited by the editing committee under China Law Society. It carries all legal data of the year.

2. China Judicial Yearbook

Edited by the Supreme Court of China, stressing on information related to judicial matters, with some typical cases and applications of law, is very useful for those who wants to learn about judicial system in China.

3. China Procurators Yearbook

Edited by the Supreme Procurators Office, Stressing on information related to legal supervision and the law implementation, with statistics on cases dealt by procurators at all levels, and is very useful for those who want to learn about law supervision.

E. Local law gazettes

All provinces, municipalities, even counties, publish local law gazettes even though some local regulations are not showed in the national legal structure, so there is a term “normalized documents”, which refers to those documents with legal characters. Local law gazettes are useful in the sense that it usually includes national laws and regulations

on certain areas, and local rules to implement them as well. So one could not only see the legal framework, but also the local practice.

Gazettes by local Standing Committee of the NPC in municipalities directly under the Central Government are four:

Gazette of the Standing Committee of the NPC, Beijing municipality

Gazette of the Standing Committee of the NPC, Shanghai municipality

Gazette of the Standing Committee of the NPC, Tianjin municipality

Gazette of the Standing Committee of the NPC, Chongqing municipality

Gazettes of the Standing Committee of the NPC in other provinces, take the form of monthly publication. We are not going to list all the names of those gazettes, just remember that all provinces publish gazettes as one of the means to direct the society.

F. Legal data discs

Currently most used Legal data discs are:

1. Full collection of Chinese Laws and regulations, produced by Beijing University legal information center.
2. Compilation of Chinese Laws and regulations. Produced by the information center of legal affairs office under the State Council.
3. Legal Star --- Chinese Law research data.
4. Data base of Chinese Laws and regulations
5. Chief Judges --- Chinese Law data base.
6. China Law Yearbook --- Chinese Law data base.

G. Law libraries

Including University libraries and special law libraries, the former like the State library in Beijing, and Beijing library, Shanghai library, other provincial libraries, the later include library of the Institute of Law under Chinese Academy of Social Sciences, library of Beijing University law school, library of Qing Hua law school, library of the University of politics and law, etc.,

H. Book stores and law book stores

All book stores have law book section. It has become a tendency that some book stores are specialized in laws books. Many law book publishers opened their own book store.

The most popular book stores for law book are:

Xin Hua Book Store (they have branches in all the cities and towns)

China Law books corporation (affiliated to Law press)

Readers service for the Supreme Court publishing house

Readers service for the Supreme procuratorate

Book store of the Mass Publishing House

Book store of the Publishing House of China University of Politics and Law

Reader's club of the Publishing House of Democracy and Legality

Reader's club of the Publishing House of the University for Public Security

I. Internet resources

Many public internet website carries legal information. But there are not well organized sometimes. Users must search for the ones that are more useful.

1. Official website

The National People's Congress, The State Council, all government ministries, The Supreme Court, the Supreme Procurator, all established their official website. They provide legal information related to their working areas. All the provinces, municipalities have their official website as well. What we could provide are:

<http://www.npcnews.com.cn/>

<http://www.chinacourt.org/>

http://www.legalinfo.gov.cn/gb/home/node_96.htm

<http://www.court.gov.cn>

<http://www.sdpc.gov.cn>

<http://www.setc.gov.cn>

<http://www.moe.edu.cn>

<http://www.most.gov.cn>
<http://www.costind.gov.cn>
<http://www.seac.goc.cn>
<http://www.gab.mps.gov.cn>
<http://www.mca.gov.cn>

To search for Ministries' website, one can use common website, such like

http://search.sina.com.cn/search_dir/zf/official_org/national/bw/
<http://www.beijing.gov.cn>
<http://www.shanghai.gov.cn>

To search for local government legal information, one can also use:

http://search.sina.com.cn/search_dir/zf/official_org/area/df/

2. General legal information website

The website can provide more general and new legal information. Most popular ones are:

<http://www.chinalawinfo.com>
<http://www.law-star.com>
<http://www.chinalaws.com/gb/>
<http://www.sinolaw.net.cn/>
<http://www.ceilaw.com.cn/>
<http://www.lawbase.com.cn/>
<http://www.clol.com.cn/>
<http://www.lawhighway.com.cn/>
<http://www.we18.com/>
<http://www.law999.net/>
<http://www.online148.com/index.php>
<http://www.yalaw.com/>
<http://www.lawchina.com/index.htm>
<http://www.chinajudge.com/>
<http://www.civillaw.com.cn/>

3. Special law website

Those website provide legal information on certain areas. It is more concentrated on certain legal issues. What listed below are those special law website:

<http://www.jluil.com>

(Insurance law review)

<http://www.lawstudy.com.cn/>

(Legal construction and legal theory information)

<http://www.qinbing.com/index.asp>

(204 lawyers group)

<http://www.smuiml.net/>

(Maritime law forum)

<http://www.cmla.org.cn/>

(China Association of Maritime Law)

<http://www.cmac.org.cn/>

<http://songcs.533.net/>

<http://www.ecupleconomiclaw.com/>

<http://www.elaw.net.tf/>

<http://www.com-law.net/>

<http://saminey.myrice.com/>

<http://person.zj.cninfo.net/~lukejun/>

<http://www.liuo.net/>

<http://corporatelawyer.my163.com/>

<http://netrule.126.com/>

<http://www.law-ec.org/>

<http://www.angelaw.com/weblaw/index.htm>

<http://www.cqi.gov.cn/>

<http://www.criminallaw.com.cn/>

<http://www.cnipr.com/>

J. Case books

Case books provide legal cases in different legal areas.

Implementation of the Security law --- typical cases
--- selected cases

Cases on Intellectual property protection

Cases of Criminal Law

Cases relating to civil litigation

Selected new cases of civil and commercial law

Case study related to financial laws

Selected cases of second instance on economic disputes by the Supreme Court

K. Other ways and means to legal information

1. General Law dictionaries

There are different kinds of law dictionaries published since 1980's. As the legal construction goes in depth, and changes take place everyday, there are social demands for more up-dated Law dictionaries. Now the most accepted ones are:

Big Law dictionary

By Shanghai Law dictionary Compilation Committee

Law dictionary

By Law dictionary Compilation Committee in the Institute of Law,
Chinese Academy of Social Sciences

2. Separated Law dictionaries

Separated Law dictionaries on specific legal areas, such as criminal law dictionary, civil law dictionary. Law dictionary on public administration, etc.,

3. Law journals

How many law journals are there in China? It is a hard question to answer, because there are new ones every month. According to statistics, there are more than 300 law schools and law departments, and some of them publish its own law journals. If they do

not have independent law journal, then share a section in the university review, which is common in all universities.

Some of the law journals are very good, enjoy high academic prestige. They are published by famous law schools, research institutions or law societies. For example:

Law Studies

By the Institute of Law, Chinese Academy of Social Sciences

China's legal studies

By China Law Society

Legal Sciences

By Beijing University Law School

Global Law Review

By the Institute of Law, Chinese Academy of Social Sciences

Politics and Law

By Southwest University law School

Legal Sciences

By Northwest University of Politics and Law

Application of Laws

By Supreme Court of China

Modern Jurisprudence

By Fu Dan University School of Law

People's Judiciary

By Supreme Court of China

Legal Forum

By the Law Society of Shandong Province

Law Review

By the Law Society of Beijing Municipality

INDIA

BASIC INFORMATION FOR LEGAL RESEARCH

By

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I. OVERVIEW OF THE INDIAN LEGAL SYSTEM

India has one of the oldest legal systems in the world. Its law and jurisprudence stretches back into the centuries, which has grown with diverse cultures and traditions of its people. Ancient law was based on *Dharmasastras* and *Smritis*, which laid down the basis of social and legal order.

During ancient times,¹ administration of justice in India was one of the main functions performed by the king. In those days, the king was neither fountain of law nor above law, but was subject to law. He, however, was regarded as the fountain of justice. During the medieval period, Muslim System of government came to be established in several parts of India. The judicial system was mainly based on Islamic law,² although non-Muslims continued to be governed by their laws based on *Dharmasastras* in personal matters. Here also like Hindus, the Muslim never regarded king as fountain of law, but as fountain of justice.

During the British rule in India for about 200 years, the traditional Indian judicial system was re-organized by the British authorities on the basis of Anglo-Saxon jurisprudence. The Royal Charter of 1726, during the reign of George-I, established Mayor's courts in the Presidency towns of Madras, Bombay and Calcutta. The Regulating

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Act, 1773 established the Supreme Court at Calcutta. The Indian judicial system during this period consisted of two systems of courts: Supreme Courts in the Presidency Towns of Calcutta, Madras and Bombay and *Sadar* Courts in the provinces. In 1861, three high courts were established at Calcutta, Madras and Bombay.³ In tune with the changing needs and times, a well-structured legal and judicial system developed. Legal system introduced by the British, became the harbinger of the modern legal system of the country, which it inherited from the British on attaining independence in 1947. The British system, based on common law, became a part and parcel of Indian judicial system. India is a common law country, like other British colonies in Asia and Africa.

The Constitution of India, adopted on January 26, 1950, declared India a **sovereign socialist secular democratic republic**,⁴ which shall strive to achieve justice, liberty and equality for all its citizens. Part III of the Constitution guarantees Fundamental Rights to all persons, which are enforceable through the Supreme Court and high courts. Part IV (Directive Principles of State Policy) enjoins the State to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life.⁵ Besides, a provision on “Fundamental Duties” (Article 51-A) was inserted in the Constitution by the 42nd Amendment Act in 1976.

The Constitution of India, however, did not make any fundamental change in the legal system left behind by the Britishers. Article 372(1) of the Constitution, explicitly states that:

Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

The relevant expression “law in force” under Article 372 of the Constitution includes not only statutory law, but also custom or usage having the force of law and as such, it must

be interpreted as including the common law of England which was adopted as the law of this country before the Constitution came into force.⁶

The Indian Constitution is basically federal in character, marked by the salient features of a federal system, namely, supremacy of the Constitution, division of power between the centre and the state governments, the existence of an independent judiciary and a well-defined procedure for the amendment of the Constitution. It establishes a system of legislation / administration and clearly defines the spheres of authority between the Union and the states, each endowed with sovereign powers to be exercised in fields assigned to them respectively. There is a fine-tuning of the center-state relations. An amendment in the respective jurisdictions of the Union and the states can be brought about through a special procedure in Parliament and ratification by a majority of the states thereto.⁷ The mode of establishment and jurisdiction of courts and the appointment of judges are also defined therein.

The Indian Constitution provides for a parliamentary form of government. There is a separation of powers between the legislative, executive and judiciary. The executive power of the Union vests in the President and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution.⁸ The officers subordinate to him also includes a minister.⁹ The President is also the supreme commander of the defence forces, but this power is subject to laws made by the Parliament.¹⁰ Besides, there are several other provisions which mention specific functions of the President.¹¹ The President in the exercise of his functions acts on the advice of the Council of Ministers, which is headed by the Prime Minister.¹² All executive actions are taken in the name of the President,¹³ though such power, in practice, is exercised by the Council of Ministers.

Legislative activities in India are carried out at the Centre by the Parliament and in the states by the state legislatures. At the Centre, the legislative body consists of the *Lok Sabha*, *Rajya Sabha* and the President of India (who is also empowered to promulgate ordinances – a law making function). It is essential that all enactments must have the approval of these three organs before they become Acts.¹⁴ Except the finance bill, and bills relating to the financial matters, all the bills can be introduced either in the *Lok Sabha* or in the *Rajya Sabha*. However, the finance bill and the bills relating to the financial matters

must be introduced in the *Lok Sabha* only.¹⁵ The same is the position in the states also.¹⁶ Annexure I and II provide an overview of the powers of the Legislature and the Executive at the Central and State levels.

Indian Judicial System

India's court system is a coordinated, pyramid structure of judicial authority. At the head is the Supreme Court with a high court for each state or group of states. Under the high courts, subordinate courts, including district and sessions courts, function, and, at the grass-root level, in some states, *Nyaya panchayats* decide petty civil and criminal matters. Subordinate judiciary is divided into civil and criminal courts, presided over by a district (civil matters) and/or sessions (criminal matters) court judge. Below district and sessions courts are courts of civil jurisdiction, known as *munsifs* or civil judges, and magistrates courts that exercise criminal jurisdiction. Small causes courts have been established in some districts. Courts apply central and state law, as the case may be. Annexure III gives the court hierarchy of Indian Judicial System.

Though the country has a vibrant legal system with progressive laws, well established institutions, independent judiciary and private activists organizations (NGOs), but the system faces few insurmountable challenges, viz., huge backlog of court cases, delay in dispensing justice, lack of accountability and transparency, high cost of litigation and large scale acquittals in the criminal cases. Among these, the greatest challenge is the failure of the judiciary to deliver justice expeditiously. There are more than 20 million cases pending with the subordinate judiciary, 3.6 million in different high courts and 23,000 in the Supreme Court.¹⁷

Reasons for backlog and delay are linked to a plethora of problems, viz., poor infrastructure; minimal access to new technology, such as computerization in every segment of the justice delivery system, including courts; inadequate resources; procedural complexity; outdated laws or provisions in certain laws, particularly in the Indian Evidence Act, Code of Civil Procedure, 1973, Code of Criminal Procedure, Indian Penal Code, etc; inadequate, inequitable and arbitrary implementation of laws and judicial decisions; lack of training in the law enforcement agencies; inadequate remuneration, with no accountability

mechanism for judicial acts. There is also the ineffective alternative dispute resolution (ADR) machinery, viz., *Nyaya Panchayats*, arbitration, conciliation, etc. leading to cramming up of the court-dockets, and insufficient/incomplete legal aid for the poor. Delay, procedural complexity and unlimited appeal mechanisms also make litigation costly.

The report of the Arrears Committee, 1989-90 had also highlighted and identified some of the causes. Though this report is not based on any scientific study, it opined that unfilled vacancies in the high courts largely accounted for the accumulation of cases. It also emphasized on the settlement of cases by mutual compromise as a better method than seeking adjudication in the adversary system.¹⁸

The National Judicial Pay Commission, in its first report submitted in 1999, examined the work methods and environment in courts and noted following difficulties faced in court system that affect the interests of litigant public:

- (i) The Courts are over burdened with work. The experience is that even at the stage of framing of issues, there is no assistance from advocates in most of the courts. Interrogatories are seldom resorted to and very often documents are filed after the commencement of trial with an application seeking permission.
- (ii) Advocates produce hindrance in observing the procedure and a very insisting officer is likely to be harassed in many ways.
- (iii) Considerable long time is being wasted in securing the presence of the parties for the purpose of admission and denial and seeking reply to the interrogatories.
- (iv) Language of the courts is an additional problem. In almost all states, the judicial proceedings in lower courts are recorded in local language of the state concerned. Proceedings, including evidence, are recorded by the *Peshkar* (Reader) in vernacular while the presiding officer records the proceedings in English. On account of implementation of transfer policy of judges of the high courts, generally judges in a high court are from outside the state concerned, who are not familiar with local language of the state and face considerable difficulty in dealing with cases when the records are only in local language. The translation of all the records into English is an enormous task besides the cost factor and even if it be done, it would cause delay in disposal of cases.¹⁹

The number of judges required in the justice delivery system is also very low which affects the speedy disposal of cases. The ratio of judges per million population in India is the lowest in the world. In 1987, India had only 10.5 (presently, it is 11) judges per million as against 41.6 in Australia, 75.2 in Canada, 50.9 in England and 107 in USA.²⁰ However, it is not merely the raising of strength of the judges in the subordinate courts and the high courts that is needed, it is equally crucial that the right appointments are made, based on merit, suitability, ability and integrity. The job of judgeship needs to be made attractive to have the best brains and persons with integrity on the Bench. It is a known fact that the leading members of the Bar are always reluctant to adorn the mantle of judgeship.

The procedure for disposal of cases is another area of concern, which needs to be made more exact and time bound. Too many appeals and revisions against even interim orders help vested interests to prolong litigation. The Government of India amended the Code of Civil Procedure in 1999 in order to speed up the justice delivery system by settling cases within a time-frame, with minimum adjournment on stated grounds and a limited right to appeal. The Act is in operation since July 2002.²¹

On the criminal side, often, investigating (police) and prosecuting agencies are not well equipped with modern means and scientific training to deal with the volume and types of crimes occurring, which leads to rising crime and acquittal rates. The average conviction rate is of 39.02 as per the information from the National Crime Records Bureau.²² The reasons for poor conviction rate are attributed to the nature of the procedural laws and practices followed by criminal courts. It is also to a great extent because of improper and deficient investigations. Speedy trial holds the key to the sentencing policy. In this regard, the Indian Penal Code, Evidence Act and Code of Criminal Procedure are in many respects antiquated laws. Heavy back-log of cases, increasing rate of acquittal, lack of trained police staff lead to overcrowding of jails as well.²³ There are an estimated two lakhs under-trials in different jails of the country on which states spend more than 461 crores annually.²⁴ Sentencing ought to be strict with limited alternatives to incarceration. Corruption within the police and among lower-level court administrators is said to be quite widespread.

A Code of Criminal Procedure (Amendment Bill), 1994 proposed an overhaul of criminal procedure law and practice. Various government committees and the Law Commission of India²⁵ have over the past forty years produced comprehensive reports and recommendations for reform of India's criminal law and procedure. Different stakeholders in the criminal administrative system, including the Supreme Court, high courts and sessions courts, prison authorities and legal services authorities – constituted under the Legal Services Authorities Act, 1987, have implemented a variety of *ad hoc* measures within their jurisdictions to reduce delay and increase efficiency. However, no coordinated and comprehensive plan to reform criminal law and procedure led by the Government of India has been initiated. Presently, Justice Malimath Committee, constituted on 28.11.2000, is looking into different aspects of criminal justice system.

The delay in the disposal of cases, is, to an extent, also “judge-made”. Lack of punctuality, laxity and lack of control over the case file and court proceedings contribute in no small measure to the delay in the disposal of cases. Habitually coming late in court or rising early or failing to deliver judgments for long periods of time are some of the malaises afflicting the judiciary, which in no small measure compound the problem of justice delivery system and compromise the image of the judiciary. Slow motion justice is no justice, particularly when significant rights of the parties are involved in litigation.

Appointment of Judges in the Courts

Only a citizen of India who has been: (i) a judge of a high court for at least 5 years or (ii) an advocate of high court for 10 years or (iii) a person, who in the opinion of the President, a distinguished jurist - can qualify for appointment as a judge of the Supreme Court of India.²⁶ Similarly, to be a judge of the high court, one must be a citizen of India and (i) held a judicial office in India for 10 years or (ii) practiced as an advocate of a High Court for a similar period.²⁷ For recruitment to the subordinate judiciary, known as the State Judicial Service, one has to appear in the examination conducted by the Union Public Service Commission or High Court of State and he should just possess a degree in law and should not be more than 32 years of age.²⁸

A judge of a high court or the Supreme Court can be removed from service only through impeachment by the Parliament.²⁹ The legal mechanism needs to be devised through law to deal with less serious cases, not deserving impeachment, by an independent judicial body. Judges of subordinate courts can be removed by the High Court to which they are subordinate.

Alternative Dispute Resolution Mechanism

In order to meet the challenge of monumental backlog of cases in courts, and also to dispense speedy justice the Government is increasingly resorting to alternative dispute resolution (ADR) mechanism. The necessary laws have been enacted towards this end and tribunals and forums have been constituted. There are family courts, consumer forums, administrative service tribunals, railway claims tribunals, Motor Accident Claims Tribunals, etc. An appeal may lie against their rulings to a high court or to the Supreme Court.

In the new economy, the ADRs will have the central role in the quick disposal of cases, where the parties will not be saddled too much with the dilating court procedure. They give the party a certain degree of control over the procedure, law, venue and speed in the disposal of a commercial dispute. The Government, in 1996, enacted Arbitration and Conciliation Act, replacing thereby the earlier laws on arbitration – the Arbitration Act, 1940; the Arbitration (Protocol and Convention) Act, 1937; and the Foreign Awards (Recognition and Enforcement) Act, 1961. The new Act (now under amendment) is based on the UNCITRAL's Model Law on International Commercial Arbitration, 1985, to repose the confidence of the foreign entrepreneurs in the legal system. The award of the arbitral tribunal may, however, be challenged before the high court or the Supreme Court on specified grounds as mentioned in the Act. It may, however, be noted that to make the ADR system to work effectively, there should be minimal intervention from the court. Once the appeal comes before the court, there are all the chances that it will take years to settle. Annexure III gives an overview of the ADRs in the appellate set-up.

Lok Adalats and Nyaya Panchayats

The Legal Services Authority Act, 1987 has constituted the National Legal Services Authority (NALSA) and state legal services authorities, which provide legal aid to poor and hold *Lok Adalats* for quick disposal of cases. These authorities, function under the Supreme Court and respective high courts. Through their legal aid programmes, they help in spreading the legal literacy among the masses about their rights. In contrast to other ADRs, the cases disposed of by *Lok Adalats* are final, with no right to appeal. At present, these *Lok Adalats* are limited mainly to road accident and matrimonial cases, primarily to marginalized groups. Under the amended Civil Procedure Code, 1999, the permanent Lok Adalats could be constituted at the discretion of the Chief Justice of India. Besides, permanent and continuous Lok Adalats have been set-up in every district throughout the country which meet regularly.

Similarly, *Nyaya Panchayats*, mainly operating in villages and constituted under the 73th Amendment of the Constitution in 1992,³⁰ be assigned an accelerated role in dispute settlement, whose judgement should have the sanctity of a court verdict and right to appeal against such settlements be restricted.

In order to lessen the burden of the courts, it is also imperative to enhance the powers and jurisdiction of different tribunals, constituted for various purposes such as tax, administrative matters, debt relief, consumer, labour etc., with a very restricted right to appeal to the Supreme Court.

Fast-Track Courts

To reduce the backlog of cases in the courts³¹ and in pursuance of the recommendations of the 11th Finance Commission, in the year 2001, proposed to establish 1,734 additional courts, known as fast track courts, to expedite the disposal of long pending cases in district and subordinate courts. The Government sanctioned Rupees 5029 million for the same. In these courts, priority is to be given to sessions (criminal) cases and cases involving under-trials in jails. These courts will continue till March 2005 and are expected to dispose of about two million cases. But the progress in starting up these courts has been for from

satisfactory. Up to January 1, 2003, about 1,300 fast track courts have become functional and over 60,000 criminal cases have been disposed of by these courts.³²

II. SOURCE OF LAW AND TYPES OF LEGISLATION

A. Source of Law

In India, the main sources of law are:

- i. Constitution
- ii. Legislation
- iii. Ordinances
- iv. Precedents (Judicial decisions)
- v. Custom
- vi. International Conventions / treaties ratified by the Government

Constitution

In India, like many other countries, Constitution is the *grundnorm* (in Kelsen's term), i.e., the supreme law of the land and all the three organs of the State - legislature, executive and judiciary derive their powers from and act under the limitations imposed by the Constitution. Constitution consists of rules, which establish and regulate or govern the government.

Legislation

Legislation, in the form of Acts, statutes etc., is another source of law. It consists of formal declaration of legal rules by a competent authority duly empowered by the Constitution. Legislation lays down the general rules of conduct for the society in a given situation. Legislature may enact, modify or repeal the existing laws or lays down new rights and duties. Unlike a unitary Constitution, like Britain, where law-making power for the whole country is vested in one central legislative body, and federal Constitution like that of the United States, where power is divided subject-wise between the central legislature on the

one hand, and the state legislatures on the other, in India, the law-making power of the legislature is not unlimited. The Constitution of India lays down the precise power and procedure of law making between the Centre and states. Besides, it guarantees fundamental rights, to which the legislation, central or state, has to conform. Any law inconsistent with such constitutional provisions is declared invalid and unenforceable by the courts.

(a) Central Legislation: The law making power is divided between the Centre and States as per the constitutional scheme under Schedule VII. There are three lists incorporated therein, namely, Union, State and Concurrent lists. The power to make laws for the whole or any part of the territory of India³³ is vested in the Union Legislature, called the Parliament.³⁴ This power, however, extends only to such subjects of legislation as are enumerated in the 'Union List'³⁵ and 'Concurrent List'³⁶ of the Seventh Schedule to the Constitution and such matters as are not enumerated in any of the three lists in the Seventh Schedule (residuary power).³⁷ Fundamental Rights³⁸ and Freedom of Inter-State Trade and Commerce³⁹ are other important provisions of the Indian Constitution imposing express limitations on the legislative power of the centre. The laws made by Parliament of India are known as Central Acts or Central Statutes. The Parliament has also been empowered to make laws on any of the matter of the 'State List' under the following conditions: *First*, if the *Rajya Sabha* has declared, by resolution supported by not less than two thirds of the members present and voting, that it is necessary or expedient in the national interest that Parliament should make laws with respect to specified matters from the State List. The resolution will remain in force for one year unless relaxed.⁴⁰ *Second*, Parliament may legislate on any matter in the State List while a relevant proclamation of emergency is in force.⁴¹ *Third*, Parliament may legislate for two or more States by their consent. Such legislation shall apply to those States and any other state that adopts it afterwards.⁴² *Fourth*, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with other countries or any decision made at an international conference.⁴³

(b) State Legislation: The power to make laws for the whole or any part of the state is vested in the State legislature, which may make laws on such subjects as are enumerated in the State List and Concurrent List. In case a law made by the State legislature on a matter enumerated in the Concurrent List is inconsistent with a Union Law on the same matter, the State Law will be inoperative to the extent of inconsistency.⁴⁴ There is, however, one exception. In case a law made by the state legislature is inconsistent with the Union Law, the State Law will prevail over the Union Law if the same has been referred for consideration of the President and it has received his assent.⁴⁵ The State legislatures, too, are subject to the limitations imposed by the fundamental rights and freedom of inter-State trade and commerce.⁴⁶ The laws made by the State Legislature are known as State Acts or State Statutes.

Ordinances

In addition to the enactments passed by the Parliament or the State Legislatures, the President⁴⁷ of India and the Governor⁴⁸ of a state may issue ordinances when the Parliament or the State Legislature is not in session. An ordinance automatically lapses at the expiration of six weeks from the reassembly of Parliament.⁴⁹ These ordinances partake legislative character and are made in the exercise of legislative powers, within the contemplation of the Constitution.⁵⁰ The laws passed or ordinances issued, however, are subject to the judicial review of the higher judiciary to see their corrections in the context of the Constitution.⁵¹ The Supreme Court has used this power of judicial review to venture into judicial activism going far beyond the traditional view that courts should only interpret the law and not make law. Judgments of the Supreme Court in public interest litigation, cases have verged on legislation.⁵²

Precedents

Judicial precedents are considered to be an important source of law, which enjoy high authority at all times and in all countries. In common law system, which is adhered by India, theory of precedents enjoys a pivotal place among the sources of law, wherein the decisions laid down by the higher courts are binding on lower courts. Before Independence, the

highest court was the Privy Council and later the Federal Court. The decisions of these highest tribunals were binding on all the high courts and the courts subordinate to them in India. Under the Constitution of India, the highest court is the Supreme Court. Article 141 of the Constitution makes the law declared by the Supreme Court binding on all the courts within the territory of India,⁵³ even though they are contrary to the decisions of the House of Lords or the Privy Council.⁵⁴ However, the Supreme Court is not bound by its own decisions.⁵⁵

The Supreme Court would not ordinarily upset its own previous decision and, in practice, the Supreme Court has observed that earlier decisions of the Court cannot be departed from unless there are extra-ordinary or special reasons to do so.⁵⁶ If the earlier decision is found erroneous and is thus detrimental to the general welfare of the public, the Supreme Court will not hesitate in departing from it.⁵⁷ In case of conflict between the decisions of the Supreme Court itself, it is the latest pronouncement which will be binding on the inferior courts, unless earlier was of a larger bench. The Supreme Court, however, is not bound by the decisions of the Privy Council or Federal Court.⁵⁸

The decisions of a high court are binding on all the subordinate courts and tribunals within its jurisdiction under its power of superintendence over all courts (Art. 227).⁵⁹ In a high court, a single judge constitutes the smallest bench. A bench of two judges is known as Division Bench. Three or more judges constitute a Full Bench. A decision of such a Bench is binding on a smaller bench of the same high court. Thus, a decision by the Bench of a high court should be followed by other Benches unless they have reason to differ from it in which case the proper course is to refer the question for decision to a Full Bench. However, judgments of one high court are not binding on another high court or on courts subordinate to another high court.⁶⁰ They, however, have persuasive value.

Judgments of foreign courts are also of persuasive value. These judgments are normally cited before / by the Supreme Court and before / by in the high courts in the absence of Indian judgments on the point involved. Foreign judgments are seldom cited before the subordinate courts. In practice, the Supreme Court of India, to justify its decision on a given issue, often refers to the decisions of the Supreme Court of the United States of

America, House of Lords and Court of Appeal of the United Kingdom, or other common law countries, either to draw analogy or for showing distinction.⁶¹

Custom

In the early evolution of human society, the custom was the most important, and in some cases, the sole source of law. Over the period, its significance gradually diminished, and legislation and judicial precedents became the main sources. In every legal system, at different stages of legal development, there have been certain customs binding on the society, but in advanced societies they are more rationalized and are certain and definite.⁶²

Custom, as a source of law, involves the study of a number of its aspects: its origin and nature, its importance, reasons for its recognition, its classification and the essentials of a valid custom. Requisites of a valid custom are stated to be:

- (i) *Reasonableness*: A custom must be reasonable. The authority of usage is not absolute but conditional on certain measure of conformity with justice, public policy and utility. It is reasonable if found to be in consonance with reason and its origin and continuance are capable of being explained. Thus, the “Sati Pratha”, could not take the place of a legal custom due to its being repugnant to the logical sense of justice and goodness in man.
- (ii) *Conformity with statute law*: No custom or prescription can take away the force of an Act of Parliament. The custom in order to be a source of law must not conflict with statute law.
- (iii) *Observance as of right*: It must have been observed as of right. Mere practice of a voluntary nature would not make custom valid.
- (iv) *Immemorial antiquity*: A custom to be valid must be immemorial. Recent and modern custom is of no account. It must have been observed for such a long time that “the memory of man runneth not to the contrary”.
- (v) *Continuity*: A custom to be valid must have continued, without interruption since time immemorial.
- (vi) *Peaceable enjoyment*: It must have been peaceably enjoyed, as custom owes its origin to common consent.

(vii) *Certainty*: Custom to be a source of law must be definite.

Customs have played an important role in moulding the ancient Hindu Law. Most of the law given in *Smritis* and the *Commentaries* had its origin in customs. The *Smritis* have strongly recommended that the customs should be followed and recognized. Customs worked as a re-orienting force in Hindu Law. In modern India also, in personal laws, despite being codified since 1950s, custom is an important source of law. In the case of Hindus and Muslims, personal laws, which are based on revealed truths in scriptures, i.e., *Dharmasastras*—in the case of Hindus, and *Shariat* - in the case of Muslims, commentaries and customs constitute important primary materials to the extent to which they have not been displaced by statutes. Mohammadan law, which is administered in respect of property and personal rights of the Muslims in India, is totally a customary law.⁶³

Custom of the community or the personal laws of the parties have been accorded due recognition by both legislature and judiciary. The courts have relied upon the customs pleaded by parties while arriving at a decision. Parties in the court are also allowed to adduce evidence as to existing of any custom on which they place reliance in the suit.⁶⁴ Thus the expression “law in force” in Article 327 of the Constitution includes not only statutory law, but also custom or usage having the force of law.⁶⁵ However, custom can be abolished by statute either by express words or by use of words inconsistent with continued existence of the custom.⁶⁶ Therefore, even if there was a custom that has been recognized by law with regard to a hereditary village office, that custom may have to yield to a fundamental right.⁶⁷

It is settled rule of procedural law of the country that in the matter of custom, a party has to plead in specific terms as to what is the custom pleaded by him.⁶⁸ The courts, in disputes and issues related to religious and charitable endowments, completely fall back on usage and custom of the institution to give justice to the parties before them.⁶⁹ Usage or customs is not restricted to sphere of application to personal laws only but even labour laws of the country also take note of customs, practices, etc. to determine the number of paid festival holidays per year.⁷⁰

Tribal customary laws: India hosts number of tribes in different parts of the country. In tribal societies, the role of custom is quite significant. They rely on customs in every walk of their life. The customs are prevalent and are being followed among the tribes in matters of succession and inheritance apart from in marriage, divorce, etc. The framers of the Constitution recognized the need for a separate political and administrative structure for the tribes. Special provisions were made to prevent encroachment on their land, personal rights and other customs. In spite of the assimilation of tribal communities into the system of the state laws, there remains in tribal society a large residual area of autonomy in many matters of civil and social nature. The tribal council functions effectively in such cases even today. Tribal customary laws are ubiquitous, existing in all tribal groups, cherished, adapted and regarded as intrinsic to tribal identity. This body of law survives even among the numerically small, fragile tribal communities, facing the threat of extinction or dwindling of numbers. In spite of the lessening authority of the traditional jural authority, an attempt is made to preserve and uphold traditional norms.⁷¹ The Supreme Court in *Madhu Kishwar v. State of Bihar*,⁷² declined to declare the custom of inheritance/succession of the Schedules Tribes, which deny tribal women right to succession, as unconstitutional. They have nearly acquired the status of law among tribes.

Treaty, Convention and other obligations under International law

Unlike many other Constitutions in the world, treaties are not a source of law in India unless legislated by the Parliament. Article 253 of the Constitution empowers the Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. There is no constitutional provision, making the treaties/conventions as a part of the municipal law automatically. Even if an international covenant or convention is ratified by the Government of India and such ratification is approved by the Parliament, it would still not be equated with the legislation⁷³ and would not be binding on the courts; they will have the persuasive value only and courts do rely on them while deciding a case. The Supreme Court, in many cases has referred to international treaties, declarations, in support of its

judgments.⁷⁴ In Vishakha's case,⁷⁵ the Court has laid down that any international convention not inconsistent with the fundamental rights and is in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. The Supreme Court, however, have referred only to human rights treaties to expand the scope of Article 21, i.e., "right to life."

B. Types of Legislation

Broadly speaking legislation may be divided into two categories:

- (i) supreme legislation
 - (ii) subordinate legislation
-
- (i) Supreme legislation is that which proceeds directly from the supreme or sovereign power in the State. It is supreme because no other authority can anul, modify or control it. Legislation by any other authority is subordinate legislation and is capable of being controlled by the supreme authority. In India, as already observed, the Constitution is the supreme law of the land. There are Central and state laws, enacted by the Parliament and the state legislature, as the case may be, in accordance with the constitutional scheme.
 - (ii) Subordinate legislation derives its authority to legislate only by delegation, express or implied, under an Act/statute of the Parliament or the state legislature. Municipal corporations, university bodies, railway companies and clubs get powers to make rules and orders governing themselves and their members under these Acts/statutes.

Subordinate legislation, may broadly be categorized as under:

- a. Executive Legislation – It is legislation by the executive of a State meant for supplementing the statutory provisions by the issue of more detailed regulations pertaining to the subject, viz., Trademarks Act, Plant variety and Farmers' Right Act.
- b. Judicial Legislation – It is the rule-making power of the courts for the regulation of their own procedure.

- c. Municipal Legislation – The bye-law making power of municipal authorities is another form of subordinate legislation.
- d. Autonomous Legislation – Legislation by autonomous bodies like universities or railway companies is also termed subordinate legislation.

Delegated Legislation

Delegated Legislation as mentioned earlier is a kind of subordinate legislation. In a welfare state, the functions of the Legislature get enormously increased, with the result that it becomes rather impracticable for the legislature to make laws on all matters in detail. The legislature, therefore, defines and lays down the fundamental principles and policies in the legislation and delegates powers to subordinate bodies or administrative authorities to lay down the details. The body to which the power is delegated acts as the delegate of and within the limits of the power conferred by the legislature. This process is known as delegated legislation. Legislation so made is known by the names of (i) rules, (ii) regulations, (iii) schemes, (iv) notifications, (v) orders and (vi) bye-laws.

However, beyond a certain limit there can be no delegation of power by the legislature. The majority judgment in *re: Delhi Laws Act*,⁷⁶ settled that a legislature cannot delegate its *essential powers* of legislation, which includes its functions of laying down legislative policy in respect of a measure and its formulation as rules of conduct. Thus, in India, the legislature cannot delegate its essential functions or power to the executive. The essential function of the legislature is the determination of the legislative policy and enacting that policy into a binding rule of conduct. This function of laying down of policy and enacting it, therefore, cannot be delegated. But when the legislature has once laid down the policy and a standard is established by the statute, the executive may be given the power to make subordinate rules within that limit. Such delegation is not unconstitutional. In other words, where the law lays down the principles and affords guidance to the subordinate law-making authority, details may be left for being filled up by the executive or by other authorities vested with quasi-legislative power.⁷⁷

The Acts passed by the Parliament may delegate powers to the Central Government, the State Governments and to other authorities. A few Acts, which delegated powers to

such authorities, are Defence of India Act, 1939 (delegation to the Central Government, to Provincial Governments or to any other authority), the Essential Supplies Act, 1946 (delegation to the Central Government-Provincial Government), the Essential Commodities Act, 1955 (to their officers) and Central Sales Tax Act, 1956 (delegation to Central Government and State Government).

Delegation of powers under the Central Acts is made to the local bodies of the centrally-administered territories of Lakshdweep, Andaman, Nicobar, Manipur etc. Under Central Acts, many public corporations in India have been established and they, being more or less independent statutory bodies, have been vested with wide rule-making powers regarding their organizational and business activities. The Central Acts also delegate powers to the Central Government to make rules in respect of public corporations. For example, under section 59 of the Damodar Valley Corporation Act 1948, the Central Government is empowered to make rules with respect to all or any of the matters of D.V.C. Similar instances may be found in the Indian Lac Cess Act, 1930 under section 9; the Tea Act, 1953 under Sec. 50 and the Coir Industry Act 1953 under section 27.

Where a statute passed by a State Legislature delegates powers to administrative authorities in order to supplement the statute in necessary details, it is known as State Delegated Legislation. State Governments, mostly in respect of their activities in relation to the items mentioned in List II of the Constitution of India, have been delegated powers under the Acts passed by their respective legislatures. Section 237 of the U.P. *Kshettra Samittees and Zila Parishads* Act, 1961, delegates powers to the State Government to make rules. Similarly, under the U.P. Panchayat Raj Act, 1947; the U.P. municipalities Act 1916 and the U.P. District Board Act, 1922, the State Government has been delegated powers to make rules. The local bodies created under these Acts have been delegated powers to make bye-laws. State Legislation may also delegate powers to public corporations. Under their respective State statutes, public corporations like U.P. Warehousing Corporation and Calcutta State Transport Corporation have been delegated powers to make rules.

C. Hierarchy of Law

The above discussion has made it clear that in India, Constitution is the supreme law of the land. Laws are enacted by the Parliament and the state legislatures as per the constitutional scheme. Rules, regulations, bye-laws can be framed under these laws by the executive in the form of subordinate legislation which is a prominent source of law. Together with the ordinances issued by the President or the Governor of a state, they constitute the primary sources of law and can be over ruled by another properly enacted law on the same subject.

The decisions of the Supreme Court are the law of the land and binding on all the courts, unless over-ruled through an enactment by the Parliament. Similarly, custom and common law, unless in conflict with a statutory law, are other important sources. International treaties / conventions are only of persuasive value in India, unless legislated. Though they constitute important sources of law under the Constitution, but statutory law gets precedence over them. Broadly the hierarchy of law is as follows:

- I. Constitution of India
- II. Legislation
 1. Central & State Legislation
 2. Subordinate Legislation
 3. Ordinances
- III. Precedent (Judgements of the Supreme Court)
- IV. Customs
- V. Common Law
- VI. Conventions/ Treaties, if legislated (otherwise only have persuasive value)

Sources III, IV and V are law and followed by courts unless legislated otherwise by the Parliament.

III. HOW TO FIND LEGISLATION

A. Legislation Material

There are official and unofficial sources to access the legislative material. The most important official publication is the Gazette of India, which publishes all the legislation brought out by the Central Government. A state gazette publishes state Acts.

Official publications

- (i) The Constitution: An official copy of the Constitution of India is available with the office of the Controller of Publications (Government of India, Delhi) and at its branches and authorised agents. As the amendments are quite frequent, it is always advisable to check further amendments, if any, after the date of publication of the new edition. For this purpose, one has to consult the Acts-section of the *Gazette of India*.
- (ii) Gazette of India: The legislative material, i.e., Bills, Acts, rules, notifications, orders etc. are published in the **Gazette of India**. The following table shows the details of the publication of the material in the Gazette:

PART I -

Section 1 = Notifications relating to non-statutory rules, regulations, orders, and resolutions issued by the ministries of the Government of India (Other than the Ministry of Defence) and by the Supreme Court.

Section 2 = Notifications regarding appointments, promotions, leave, etc. of Government officers issued by the ministries of the Government of India (Other than the Ministry of Defence) and by the Supreme Court.

Section 3 = Notifications relating to non-statutory rules, regulations, orders, and resolutions issued by the Ministry of Defence.

Section 4 = Notifications regarding appointments, promotions, leave, etc. of officers issued by the Ministry of Defence.

PART II -

Section 1 = Acts, ordinances and regulations.

Section 2 = Bills and reports of the select committee on bills.

Section 3(i) = General statutory rules (including orders, byelaws etc. of general character) issued by the ministries of the Government of India (Other than the Ministry of Defence) and by central authorities (other than the administrations of Union territories).

Section 3(ii) = Statutory orders and notifications issued by the Ministries of the Government of India (Other than the Ministry of Defence) and by the central authorities (other than the administrations of Union territories).

Section 4 = Statutory rules and orders notified by the Ministry of Defence.

PART III-

Section 1 = Notifications issued by the Auditor General, Union Public Service Commission, Railway Administration, high courts and the attached and subordinate offices of the Government of India.

Section 2 = Notifications and notices issued by the Patent Offices, Calcutta.

Section 3 = Notifications issued by or under the authority of Chief Commissioners.

Section 4= Miscellaneous notifications including notifications, orders, advertisements, and notices issued by statutory bodies.

PART IV-Advertisements and notices by private individuals and private bodies.⁷⁸

(iii) Codes

India Code- This is the official publication containing all the Acts in force in India without commentaries. This is kept up-to-date by issuing correction slips from time to time.

Acts of Parliament- This is an official annual publication containing all the bare Acts passed in a particular year.

Non-official Publications - There are many private publications, which are brought out at regular intervals and contain the central as well as the state legislative

materials. Some publications also contain the rules issued by the central and state governments, for example, A.I.R. Manual (22 volumes) (3rd ed. 1969-75) published by the All India Reporter Ltd., Nagpur, *Civil Court Manual* – Published by the Madras Law Journal Ltd., Madras.

B. Places of Research

Law libraries and other useful places for legal research

Law Libraries are the important places for legal research, which hold the research materials with them. A law library is different from others in the sense that, by its nature, it has to be a reference library. Mainly it is a research library where one reference leads to another and, therefore, a reader has to consult a number of books / periodicals simultaneously to conduct research on a particular issue/problem. Another peculiar nature of a law library is that it has to keep its collection up-to-date.⁷⁹ Beside legislative material and the law reports, other material for reference is also available therein, like newspaper reports, government reports (e.g. reports of various Commissions appointed by the Government of India or state governments), magazines (both Indian and foreign), etc.

In India, all categories of libraries are more or less departmental libraries and hence it is natural that they are located in the department which they are supposed to serve. The various categories of law libraries are (i) the law college libraries; (ii) the Supreme Court and high court libraries (iii) the law ministry and the legal remembrancer's libraries (iv) the bar association libraries and, among others, the libraries owned by many law firms and individual lawyers. Quite apart from these, library of the Indian Law Institute caters the needs of persons interested in legal research. It is one of the leading law libraries of the country. It has over 65,000 volumes and receives about 263 current legal periodicals, on a regular basis. A plan for automation of the library is in progress. The library will be totally computerized & placed on website very soon.

Apart from the law libraries, the following are other useful places for legal research from where valuable information or data may be collected and used, particularly in empirical research:

- (i) Government Departments
- (ii) National Archives
- (iii) Social and Welfare Organizations, such as the Indian Social Institute
- (iv) Non-Governmental Organizations, viz., Lawyers Collective, Kali's Yug, Haq, Prayas, etc.
- (v) Law Commission of India, Human Rights Commission, Schedule Caste & Schedule Tribes Commission, Minority Commission, etc.

C. Citation of Legislation

1. Citation of the articles of the Constitution

The provisions of the Constitution of India are cited by articles and clauses. In footnotes, the symbol "Art." is generally used and if more articles are to be mentioned, it is cited as "Arts." One refer to "Constitution" only if reference is to the Indian Constitution; otherwise the Constitution is specified, viz., "the U.S. Constitution".⁸⁰ However, where it refers to certain amendments made in the Constitution, one mentions the amendment therein, for example, Art. 43A of the Constitution (42nd Amendment) Act, 1976. If a reference is to be made to the Constitution Assembly Debates, it is cited by referring to volume and pages, for example, as *Constituent Assembly Debates*, Vol. III, P. 488.

2. Citation of sections of the Legislation

In India, there are both Central and State legislations. While referring to Central legislation, only the name of the Act followed by the year of passing of such legislation is mentioned. Wherever applicable, the section is also referred to. In the footnotes, for section and sections generally "S" and "Ss" are used. Wherever a mention has to be made to the amended Act, the reference to the amendment must be mentioned, for example, Indian Divorce (Amendment) Act, 2001. In case of State Acts, the name of the State Acts must be mentioned, for example, Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

3. Mode of Citation of various legislation

There is no uniform system of citation of legislation followed in India. There are, however, certain common abbreviations for some legislations, as mentioned below:

IPC	-	Indian Penal Code, 1860
Cr. PC	-	Code of Criminal Procedure, 1973.
CPC	-	Code of Civil Procedure, 1890
IDA	-	Industrial Disputes Act, 1947.
IESOA	-	Industrial Employment (Standing Orders) Act, 1946.
TUA	-	Trade Unions Act, 1926
CLRA Act	-	Contract Labour (Regulation & Abolition) Act, 1970
I T Act	-	Income Tax Act
CST Act	-	Central Sales Tax Act
PBA	-	Payment of Bonus Act
PGA	-	Payment of Gratuity Act, 1972
PWA	-	Payment of Wages Act, 1936.
WCA	-	Workmen's Compensation Act, 1923.

IV. HOW TO FIND CASE LAW (PRECEDENT)

A. Case Law Material

Cases decided by the Supreme Court and high courts, if certified, are published in official and unofficial reports. Decisions of the lower courts are not published. One may access these judgments from the registry of the respective courts. The decisions rendered by Tribunals or Consumer forums are published by the private publishers.

Official reports

- (i) *Federal Court Reports* (11 volumes) (1939-50) (Manager of Publications, Delhi) – This is the official publication of the cases decided by the Federal Court which was abolished with the setting up of the Supreme Court in 1950.

- (ii) Supreme Court Reports, (since 1950) (Manager of Publications, Delhi) – This is a monthly publication reporting cases, decided by the Supreme Court.
- (iii) *Cyclostyled Judgments* – The Supreme Court Registry, with the permission of the Chief Justice, also supplies copies of the judgments to a few select libraries, like the Library of the Indian Law Institute.
- (iv) *Indian Law Reports*- These are the official publications for the state high courts, published monthly and cited, for example, as “I.L.R. Allahabad”, “I.L.R. Bombay”, after the name of the concerned High Court.

Unofficial reports

All India Reporter (A.I.R.) - Among the private law reports, the most commonly used and relied upon, even by the courts, is the A.I.R. Apart from the Supreme Court and high court cases, it contains several useful features such as the tables of cases cited and cases reversed or affirmed. It is published every month.

Other reports - There are few law reports exclusively devoted to Supreme Court cases, such as, Supreme Court Journal (published since 1950 by Madras Law Journal Ltd., Madras), Supreme Court Cases (published since 1969 by Eastern Book Co., Lucknow), and SCALES (published by National Law Review, New Delhi).

High Court reports

Apart from the A.I.R., almost in each state at least one law report containing cases decided by the High Court of that state are published as High Court Reports. Some of the reports of long standing are Allahabad Law Journal, Bombay Law Reporter, Calcutta Weekly Notes and Madras Law Journal.

Specialized law reports

These law reports specialize in cases pertaining to particular branches of law. They report cases decided by the Supreme Court, high courts and tribunals. Some of the popular ones are Labour Law Journal, Labour and Industrial Cases, Industrial Court Reporter, Labour

Law Reporter, Criminal Law Journal, Income Tax Reports, Company Cases and Sales Tax Cases, Patent and Trademark cases.

B. Citation of Cases

Case Citations

The core of a case citation consists of:

=> the parties' names - names are underlined or italicized

- a lower case "v." replaces "versus"
- names are followed by a comma

=> an address for the case consisting of:

- reporter volume number
- reporter name (abbreviated)
- the first page of the case in that volume
- if the reference is to a portion of the opinion, the page or pages of that part will follow the first page, set off by a comma

=> in most situations only one address is required, in a single preferred reporter

Citation of law reports

Citations may sometimes be confusing and, therefore, it may become difficult to know the exact location of the case. For example, the same report may be cited differently or two reports may be cited in the same way. For example, A.I.R. which is usually cited as A.I.R. 1966 S.C. 1466 may also be cited at times as A 1966 S.C. 1466, or I.L.R. may be cited as I.L.R. (1966) All. 141 or (1966) I.L.R. All. 141. Similarly, A.L.J. could be read as *Allahabad Law Journal*. The names of reports of cases are cited in abbreviated form only. A list of some of the law reports, publishing cases, is given below:

A C J	Accident claims Journal (Monthly): 12 Malka Ganj, Delhi – 110 007.
A I R	All India Reporter (Monthly): All India Reporter Ltd., Post Box No. 209, Nagpur- 440 012.

An L T	Andhra Law Times (Weekly): Andhra Law Times, 16.11.418/3 Balaji Sadan, Dilsukhnagar, Hyderabad – 500 035.
Arb L R	All India Arbitration Law Reporter (Monthly): 27-28, Gokhale Market, Opp. Tis Hazari Court, Delhi – 110 054.
C P R	Consumer Protection Reporter c/o Vinod Publications. P.B. No. 1002, Church Road, Kashmiri Gate, Delhi 110 006.
Cri L J	Criminal Law Journal (Monthly): All India Reporter Ltd., Post Box No. 209, Nagpur- 440 012.
C L T	Cuttack Law Times (Fortnightly): The Law Times Press, Cuttack – 753 002.
Exc L T	Excise Law Times (Fortnightly): Central Law Office, 1512-B, Bhishm Pitamah Marg, (Opp. P.T. College, Defence Colony) New Delhi – 110 003.
G L T	Gauhati Law Times (Monthly): North Eastern Law House, Gandhi Basti, Guwahati 781 003.
Kar L J	The Karnataka Law Journal (Weekly): No. 5, 2 nd floor, Sujatha Complex, 1 st Cross, Gandhi Nagar, Bangalore – 560 009.
K L T	Kerala Law Times (Fortnightly): Kerala Times Press, Ernakulam, Kerala.
Lab I C	Labour and Industrial Cases (Monthly): All India Reporter Ltd., Post Box No. 209, Nagpur – 440 012.
M L J	Madras Law Journal (Weekly): M L J Office, Post Box No 604, Mylapore, Madras – 600 004.
S C C	Supreme Court Cases (Fortnightly): Eastern Book Company, 34, Lal Bagh Lucknow - 266 001.
S C J	Supreme Court Journal (Monthly): Orient Law House, B-12, Amar Colony, Lajpat Nagar IV, New Delhi.
S C R	Supreme Court Reports: The Controller of Publications, Delhi 110 001.
Tax L R	Taxation Law Reports (Monthly): Post Box No. 209, Nagpur – 440 012.

V. OTHER MATERIALS

A. General

Law has an intimate connection with other disciplines like history, economics and politics. For example, if the economic policy of a village is being mapped out, the question would arise as to how such taxes should be collected and what would be the machinery to collect them. Here the law of taxation comes in and works side by side with the economic policy to make the scheme a success. In these circumstances, it is natural that many treatises published, articles written and data collected in these subjects, will be of great help in legal research. Such material, referred to as non-legal material, is an important source of information to legal researcher. For example, if an article in an “Economic Times” deals with the impact of taxation, will be equally helpful not only to a student of economics but to a law student who has taken up taxation. Similarly, many treatises and articles treat various topics in a non-legal fashion, but they are, nevertheless, a source of valuable information to a person conducting legal research.

Value of Non-Legal Materials: Though the value of non-legal materials is undisputable in legal research, especially to those who are writing a legal paper or a thesis, it is, however, not possible to give any clue as to where the non-legal materials can be found. One who is doing research on a specific branch of law like taxation, labour and commercial law could look up publications in the allied fields of Economics and Commerce or a student working in Constitutional law may consult publications in History and Political Science. In empirical research, the importance of non-legal material is unparalleled.

B. Law Dictionary

The law dictionary defines and illustrates the meaning of words terms and phrases which are legal or have a legal stant. These words are listed in alphabetical order and the authorities for their definitions are cited or quoted. It is, however, not considered as a legal authority. It is not intended to state the law, but to define common meanings of words and terms of legal import. Even when it cites authority, it is not to be relied upon entirely, as the

authority cited defines each word or term only in its special context, and the meaning may be modified as conditions change. Nevertheless, the law dictionary is indispensable because it gives workable definitions which are necessary for the understanding of any legal work. Since most definitions cite their authority, a student may look up the cases themselves and find out how and why that particular meaning has been used.

A legal dictionary is a must for every law student and he should refer to it frequently so that he may get the correct meaning of the words and phrases he has been reading. Since India follows the common law system, the maxims, phrases and words as defined under the English law are part and parcel of the Indian law. The legal dictionaries used in England or the United States are quite popular with the legal practitioners and students. The most commonly used law dictionaries are: Black's Law Dictionary, Legal Thesaurus by William C. Burton, the Law Lexicon by T.P. Mukherjee and K.K. Singh, Concise Law Dictionary by Aiyer, etc., which are invariably found in every law library in India.

C. Law journals and Legal Periodicals

Legal periodicals or reviews constitute one of the important groups of material of secondary authority. A legal periodical is very useful to students, practitioners and researchers in law. It is the most versatile among all the materials available in a law library. It represents diverse points of views and examine various legal topics.

The legal periodicals or reviews contain discussion, analysis and review of case law and statutes and highlights the emerging legal issues of the day. Since the writers of good articles in periodicals generally select a very narrow field of law to write on, like a court decision or a statute or a current legal problem, they are able to offer a thorough critical analysis of the topic, which is generally not to be found in any other media or books. These articles present a closer approach to the legal bases and juristic philosophy which underlie the changes in the social and economic life of the society. Thus, they reflect the changed concept of social justice which the general law books ordinarily do not do. The legal periodical discusses the law as it was, as it is, and as it ought to be with a thoroughness and thoughtfulness. They are also referred by the higher judiciary in its judgments.

The value of a legal periodical might well be judged in the context of the following:

- (a) The standing of the publication.
- (b) The learning ability of the writer.
- (c) The authenticity of its data.
- (d) The inherent reasonableness of his deductions in the light of legal history, existing social conditions and the known truths of all sciences affecting human conduct.

Classification of Periodicals or Reviews: Legal periodicals published in India, may be conveniently divided into three groups:

- (a) University/College/Law School reviews and journals
- (b) Private Reviews
- (c) Review published by Research Institutes

(a) *University/College/Law School reviews and journals:* These publications belong to the academic class. Their function is to express current legal criticism and to interpret trends of modern juristic philosophy which underline the present day court decisions. Often they reflect the scholarly character of attainment of their respective colleges. A list of some of the journals are given below:

Ban. L.J.	Banaras Law Journal, Banaras Law School
D L R	Delhi Law Review, Delhi University
K.u. L.J.	Kurukshetra Law Journal, Kurukshetra University
K U L R	Kashmir University Law Review
L R	Law Review: Shri Jai Narain Post Graduate College, Lucknow University
M O L	March of the Law, National Law School of India University, Bangalore
N C L J	National Capital Law Journal, Law Centre-II, Faculty of Law, University of Delhi

N L S J National Law School Journal, National Law School of India University,
Bangalore

(b) *Private Reviews*: They contain articles of every branch of law, for example, the Indian Law Review, or it may deal only with a special field of law as the Indian Year Book of International Affairs. Each legal periodical has its own purpose to fulfil and its own function to perform. A list of some of the Journals are given below:

C M L J Civil & Military Law Journal (Quarterly): D-124, Rajouri Garden, New Delhi – 110 027.

Corp L Ad Corporate Law Adviser (Monthly): R.B.S. Publishing, 158, Basant Enclave, Palam Road, New Delhi – 110 057.

E N C Encounter (Bi-Monthly): Upalabdh Trust for Developmental Initiatives. C-9, East of Kailash, New Delhi-110 065.

E P W Economic and Political Weekly (Weekly): Skylark, 284 Shahid Bhagat Singh Road, Bombay – 400 038.

Kali Yug Kali's Yug: Warlaw Trust, 9-10, Bahadurshah Zafar Marg, New Delhi – 110 001.

Law Col The Lawyers Collective, (Monthly): 818 Stock Exchange Towers, Delhi – 110 001.

Mah L J The Maharashtra Law Journal: Chandurkar Publishing House, Road No. 12, Dhantolia, Nagpur – 440 012.

Mains Mainstream (Weekly): F-24, Bhagat Singh Market, New Delhi-110 001.

M & C Management on Change: 3, Lodhi Institutional Area, Lodhi Road, New Delhi – 110 003.

PRP JHR The PRP Journal of Human Rights (Quarterly): No. 101, A-14, Bhandari House, Dr. Mukherjee Nagar, Delhi – 110 009.

R L R Religion and Law Review: Institute of Objective Studies (IOS): 162, Jagapal Extension, Jamia Nagar, New Delhi – 110 025.

(c) *Review published by Research Institutes:* Several Research Institutes in India bring out legal periodicals which contain articles, case notes, reviews and other information. A list of some of the Journals are given below:

A d m	The Administrator (Quarterly): Lal Bahadur Shastri National Academy of Administration, Mussorie. (U.P.) 248179.
A S I L	Annual Survey of Indian Law (Annual): The Indian Law Institute, Bhagwan Das Road, New Delhi – 110 001.
C I L Q	Central India Law (Quarterly): The Central India Law Institute, 1601, Kasturba Primary School Bldg., Wright Town, Jabalpur – 482 002.
C S	Chartered Secretary (Monthly): 22 Institutional Area, Lodhi Road, New Delhi – 110 022.
F T R	Foreign Trade Review (Quarterly): Indian Institute of Foreign Trade, B-21, Institutional Area, South of IIT, New Delhi – 110 016.
Guj L H	Gujarat Law Herald: City & District Law Library, Bhadra, Ahmedabad 380 001 (Gujarat)
Helpage India RDJ	Helpage India: Research and Development Journal, Head Research and Development Helpage India, C-14, Qutab Institutional Area, New Delhi – 110 016.
I A	The Indian Advocate (Quarterly): The Bar Association of India, Room No. 20, Supreme Court Building, New Delhi – 110 001.
Ind Bar Rev	Indian Bar Review (Monthly): The Bar Council of India Trust, AB/21, Lal Bahadur Shastri Marg, Facing Supreme Court Building, New Delhi – 110 001.
I A S S I Q	IASSI Quarterly: Indian Association of Social Science Institutions (IASSI) Institute of Applied Manpower Research, Indraprastha Estate, New Delhi – 110 001.
I I C Q	India International Centre Quarterly: 40, Max Muller Marg, New Delhi – 110 003.
I J C C	The Indian Journal of Criminology & Criminalistics (Quarterly): The Controller, Department of Publications, Civil Lines, Delhi – 110 054.

I J I L	Indian Journal of International Law (Quarterly): Indian Society of International Law, 7-8, Scindia House, New Delhi – 110 001.
I J I R	Indian Journal of Industrial Relations (Quarterly): Sri Ram Centre for Industrial Relations and Human Resources 4E/16, Jhandewalan Extension, New Delhi – 110 055.
I J P A	Indian Journal of Public Administration (Quarterly): Indian Institute of Public Administration, Indraprastha Estate, Ring Road (East), New Delhi – 110 002.
I J S W	Indian Journal of Social Work (Monthly): Department of Publications, Tata Institute of Social Science, Deonar, Bombay – 400 008.
I Q	India Quarterly (Quarterly): Indian Council of World Affairs, Sapru House, New Delhi – 110 001.
I S L J	Indian Socio-Legal Journal (Annually): Indian Institute of Comparative Law, Bhardwaj Bhawan, Rani Bazar, Bikaner – 334 001 Rajasthan.
J C P S	Journal of the Institute of Human Rights: Institute of Human Rights, Jarikatha, Nagpur – 440 014.
J I L I	Journal of the Indian Law Institute (Quarterly): The Indian Law Institute, Bhagwan Das Road, New Delhi – 110 001.
J P I	Journal of Parliamentary Information (Quarterly): Lok Sabha Secretariat, Parliament House, New Delhi – 110 001.
P C I R	The Press Council of India Review (Quarterly): Faridkot House, New Delhi – 110 001.
S A	Social Action (Quarterly): Indian Social Institute, Lodhi Road, New Delhi – 110 003.

Authority of Periodicals: Legal periodicals are only persuasive in value. No court ever cites a law review article as mandatory authority, but they are frequently referred to in opinions and footnotes in such a manner as to leave no doubt as to their persuasiveness.

D. Internet, CD-ROMS, Etc.

Now a days, computers are being considered as valuable aids in the law teaching and legal research. As a matter of fact, there are so many ways in which computers can be of a great help and utility in the modern legal education.⁸¹ Faculties, institutions, departments concerned with law have realized the importance of internet revolution.

As for legal research, computers and internet can eliminate the need of physical presence in the library to do research, as library sources can be simulated on the computer.⁸² Realizing the potential of internet, many law colleges, law institutes and law faculties have launched their own websites and provide their useful links and search engines. For instance, Dr.Ambedkar Law University, Chennai is using computer for the creation of data base for books and journals. The Supreme Court Case Finder (CD-ROM), with updated versions, is available for use by lawyers, law faculty members and research scholars. Direct Taxes Ready Reckoner on CD is available in the library.

A Lucknow-based law publishing company –Messrs Eastern Book Company Ltd. has also successfully ventured in this field. It has introduced, “Extremely user friendly” and a revolutionary research tool for the legal community-a computerized law information database. The said company has come out with a unique Case Finder –SCC Online. This software package is in the form of a Compact Disc-Read Only Memory (CD-ROM) that contains the case law on all topics right from the year 1950 with a regular update service. It can be installed on one’s personal desktop or portable computer. This package is not only useful for lawyers but for scholars, jurists, teachers, researchers, students, social scientists as well. Most of the law libraries have either acquired this package or are in the process of acquiring it.⁸³

Legal Resource Links: Besides, there are many useful websites designed by the Government as well as private organizations, institutes, lawyers’ firms and textbook publishers that are good source for a legal research. The site www.nic.in is the product of National Informatics Centre, Department of Information Technology under the Ministry of Communication and Information Technology. On “search” option provided by this site, one may have access to number of useful information in the field of law, in html format as well

as in pdf. format. Then, after clicking on:: Parliament and Apex Institutions one may find listed along with other apex organization of the country, Supreme Court of India. On clicking mouse on this site, one gets web addresses of the Supreme Court of India, i.e., <http://supremecourtsofindia.nic.in> On this site, various links could be found. The link of Constitution gives information as to the constitution of the court and its various departments, officers, types of advocates entitled to practice before it, etc. On opening the link of jurisdiction one would be able to find very useful and detailed information about jurisdiction of the court. It does not limit there but proceeds to give full write-up on the aspects of Public Interest Litigation, Legal Aid, Amicus Curiae, Lok Adalats, High Courts, etc. Similarly, there are other useful links provided by this site which are very useful, informative and helpful to legal luminaries as well as scholars, practitioners, clients, editors, etc. These are:

“Golden jubilee”, “Rules”, “Former CJI’s”, “CJI and Judges”, “Calendar”, “Indian Courts”, “JUDIS”, “Daily Orders”, “Case Status”, “Cause list”, “Courts web-sites”, “Indian Code”.

Link of “Rules” contains the Supreme Court Rules, 1966 along with (i) Regulations regarding advocates-on-record examination, (ii) Rules to regulate proceedings for contempt of the Supreme Court, 1975 and (iii) the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. Every provision is listed and could be copied from there in any word file.

Laws passed by the Parliament are easily accessible at India Code which is a subscription site. www.judis.nic.in is a subscription site. www.supremecourtsonline.com and www.mahalibrary.com are free sites. The AIR (All India Reporter) Manual of Central Laws is an exhaustive collection of laws enacted by the Parliament together with decisions of the Supreme Court and the high court on these laws. The AIR manual can be a good starting point for research on the laws enacted by the Union. This site, however, is not easily accessible. Laws passed by the states are more difficult to access. The states are slowly attempting to launch web sites and may take sometime to complete. For the present, state laws are accessible through book sellers in India.

Other Legal Sites: Other Indian legal sites are <http://lawsinindia.com> and vakilno1.com (free sites), lexsite.com and indlaw.com (subscription sites).⁸⁴

Then there are private law firms that have come together and opened up firms which run pay sites or subscription sites as they are commonly referred with the objectives:

- 1) To collect, analyse, process, store, generate, retrieve and transmit full and updated information related to law and other connected fields.
- 2) To disseminate and/or make available the aforesaid information to all concerned, in India and overseas. All these service providers charge fee for queries.

Examples of such service providers are:

DIAL-N - from ignorance to knowledge

Daily Indian Abridged Legal-News - Date and subject-wise legal news as available from the judgements of Supreme Court, Bar and leading newspapers.⁸⁵

SPOTLAW - from the ocean of chaos - a pearl of wisdom: It is largest reservoir of database in India of case law. Not merely a text search software but interlinked data relating to Cause Title, Corresponding Citations, Noter/Follow up, Statute Index, Subject Index, Books and Periodicals, Maxims, Words and Phrases and Random Search with respect to the judgments of the Supreme Court and high courts of India and of the courts of Australia, Canada, United Kingdom, U. S. A and others considered therein.

E. Text Books or Treatises

Text books have long been accorded an important place in the literature of law. When treatises are mentioned in opinions and briefs it is because the judge or attorney citing them adopts their reasoning or statements, with accompanying citations to authority, as their own. But it is the cases which are the authority, not the author's analysis.

F. Encyclopaedias

While a text book deals with one subject or one branch of a subject of law, an encyclopaedia treats all subjects. It is like a comprehensive treatise on the entire field of law. However, legal encyclopaedias are not primary authority, but only guides to it and they are at most persuasive.

G. Digests

Besides the local statutes, text books and law reports no group of law books is more frequently consulted than the digests. A digest is a subject index to the rules of law raised or discussed in reported cases. The common form of a legal digest presents a collection of paragraphs containing concise statements of legal principles arranged under a heading of classified headings. These principles may be deducted from statutory enactments to form a digest of statute law, or may be gathered from careful study of the decisions to form a digest of case law. The digest, however, is not an authority but only a guide to it. Its purpose is to serve as a topical index of the decisions or as a “handle to be used in picking up the law”.

H. Press Reports

The important cases decided by Supreme Court or High Court are published and also commented upon in standard English and some Hindi Daily newspapers as soon as the judgment is delivered by the court concerned. These cases, however, are not exhaustively reported, and for this purpose law reports are the useful reference.

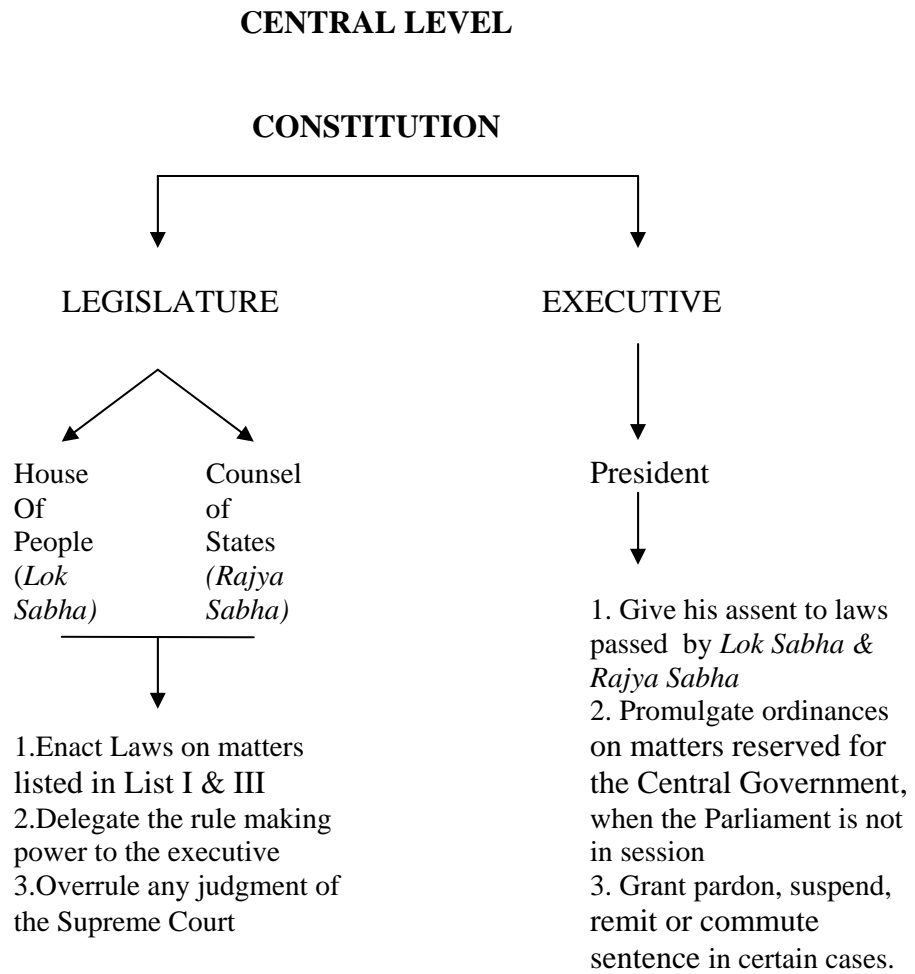
ENDNOTES

- ¹ Between 6th century B.C. to 6th century A.D., See Dr. Birendra Nath, *Judicial Administration in Ancient India*, Janaki Prakashan, 1979, p. 2.
- ² The Muslim Rule of India commenced from 1192 A.D. and continued until the East India Company came and started developing legal institutions in 1600 A.D. See M.P. Jain, *Outlines of Indian Legal History*, 5th Ed., N.M. Tripathi Pvt. Ltd., Bombay, 1990, p. 1.
- ³ M.P. Jain, *Supra* note 1, at 276.
- ⁴ Words *socialist* and *secular* were inserted by the Constitution (Forty-Second Amendment) Act, 1976.
- ⁵ Article 38 of the Constitution reads as:
(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
- ⁶ *Director of Rationing v. Corpn. of Calcutta* (1961) 1 SCR 158, at 173.
- ⁷ The Constitution of India, Article 368.
- ⁸ *Id.*, Article 53(1).
- ⁹ *Emperor v. Shibnath*, A.I.R. 1945 P.C. 163.
- ¹⁰ The Constitution of India, Art. 53(2).
- ¹¹ *Id.*, Arts 72, 77, 75, 155, 124(2), 217, 316, 76(1), 324(2), 148, 324, 280, 339(1), 340, 344(1), 352-360, 123, 242, 244, 111, 85(2), 86, 87, 112, 117, 200, 286(3), 288(2), 31(3), 304 (proviso).
- ¹² *Id.*, Art. 74(1).
- ¹³ *Id.*, Art. 77.
- ¹⁴ *Id.*, Art. 107.
- ¹⁵ *Id.*, Article 109.
- ¹⁶ *Id.*, Articles 196-207.
- ¹⁷ J. Venkatesan, "Expedite process of filing judges' vacancies: Centre", *The Hindu*, 8.1.2003; Jana Krishnamurthy in the *Navbharat Times*, January 20, 2003.
- ¹⁸ Constituted by the Government of India in 1989 on the recommendation of the Chief Justices' Conference, published by the Supreme Court of India, 1990, at p. 109.
- ¹⁹ *Ibid.*
- ²⁰ Krishan Mahajan, "Judges the right number", *Indian Express*, p.8, 18 May, 2000
- ²¹ Act 46 of 1999, Bill No. 50 of 1999, which received the assent of the President of India on December 30, 1999.
- ²² Low Conviction Rate in Criminal Cases, PIB Release, August 22, 2001, Govt. of India.
- ²³ In Tihar Jail, Delhi, as against the sanctioned capacity of 3,300, there are 9,000-10,000 inmates, out of which 90% are undertrials. This is against the Supreme Court decision on speedy trial in *Hussainara Katoon v. State of Bihar* (1980) 1 SCC 81.
- ²⁴ See *The Hindu*, June 15, 2002, p.8.
- ²⁵ See 113th Report of the Law Commission of India (1985); 154th Report on the Code of Criminal Procedure, in two volumes (1996).
- ²⁶ The Constitution of India, Art 124 (3).
- ²⁷ *Id.*, Art 217 (2).
- ²⁸ In *All India Judges' Association v. Union of India* (2002) 4 SCC 247 the Supreme Court directed the high courts and the state governments to amend rules to enable even a fresh law graduate to compete for and enter judicial service. Accordingly all the high courts in the country have amended the rules in November 2002 so as to enable fresh law graduates entry into judicial service.
- ²⁹ The Constitution of India, Arts. 124(4) and 217 (1)(b).
- ³⁰ The Amendment became effective on April 20, 1973.
- ³¹ As on June 30, 2001, approximately 20.3 million cases were pending in the subordinate courts in the country.
- ³² J. Venkatesan, "Centre to frame rules for permanent Lok Adalats", *The Hindu*, December 31, 2002.

- ³³ According to Article 245(2) of the Constitution declares that no law passed by Parliament can be declared invalid on the ground that it would apply out-side the territory of India.
- ³⁴ This power is given under Article 245(1).
- ³⁵ Union List (List I) contains 97 items of legislation e.g. Defence of India; Foreign Affairs; Railways, Airways; Posts and Telegraph; Currency coinage and legal tender; Trade and Commerce with foreign countries; Banking; Insurance; Income Tax; Duties of custom including export duties.
- ³⁶ Concurrent List (List III) contains 47 items of Legislation e.g. Criminal Law; Criminal Procedure; Transfer of Property; Contracts; Civil Procedure; Economics and Social Planning; Trade Union and Industrial and labour disputes; Price Control; Electricity.
- ³⁷ The Constitution of India, Art. 248, and entry 97, List I.
- ³⁸ As enumerated in Part III of the Constitution.
- ³⁹ As provided in Part XIII of the Constitution.
- ⁴⁰ *Id.*, Art. 249.
- ⁴¹ *Id.*, Art. 250.
- ⁴² *Id.*, Art. 252.
- ⁴³ *Id.*, Art. 253.
- ⁴⁴ *Id.*, Art. 254 (1).
- ⁴⁵ *Id.*, Art. 254 (2).
- ⁴⁶ See Part III and Part XIII of the Constitution.
- ⁴⁷ *Id.*, Article 123.
- ⁴⁸ *Id.*, Article 213.
- ⁴⁹ *Id.*, Article 123 (2).
- ⁵⁰ *A.K. Roy v. Union of India* (1982) 1 SCC 271.
- ⁵¹ *S.R. Bommai v. Union of India* JT (1994) 2 S.C. 215.
- ⁵² *PUDR v. Union of India* (1982) 3 SCC 235; *D.S. Nakara v. Union of India* (1983) 1 SCC 305; *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161; *D.C. Wadhwa v. State of Bihar* (1987) 1 SCC 378; etc. etc.
- ⁵³ Art 141: "The law declared by the Supreme Court shall be binding on all courts within the territory of India."
- ⁵⁴ *IT Comm. v. Shrinibhai* AIR 1965 Bom 586; *Dwarka Das v. Sholapur Spinning Co.*, AIR 1954 SC 119.
- ⁵⁵ *Bengal Immunity Co. v. State of Bihar* A.I.R. 1955 S.C. 661.
- ⁵⁶ *Union of India v. Subramaniam* (1976) 3 S.C.C. 677, (para 12).
- ⁵⁷ *Sajjan Singh v. State of Rajasthan*, AIR 1965 S.C. at P. 845.
- ⁵⁸ See the observations of Krishna Iyer in *K.C. Dora v. G. Annamaniaidu* AIR 1974 S.C. 1061.
- ⁵⁹ Cf. *East India Commercial Co. v. Collector of Customs*, AIR 1962 SC 1893.
- ⁶⁰ *Rupa Ashok Hurra v. Ashok Hurra* (2002) 4 SCC 388.
- ⁶¹ For instance see the *Christian Medical College Hospital Employees' Union and another v. Christian Medical College Vellore Association and others*, AND *State of Tamil Nadu v. Christian Medical College and others*. (1987) 4 SCC 691.
- ⁶² The customs may be divided into two classes:
- (1) Customs without sanction -which are non-obligatory and are observed due to the pressure of public opinion.
- (2) Customs with sanction - which are enforced by the State.
- ⁶³ *Bhagwati Prasad Sah v. Bhagwati Prasad Sah* (1964) 5 SCR 105.
- ⁶⁴ *Bhagat Singh v. Jaswant Singh*, AIR 1966 SC 1861.
- ⁶⁵ *Builders Supply Corpn. v. Union of India*, AIR 1965 SC 1061.
- ⁶⁶ *Darshan Singh v. Ram Pal Singh* 1992 Supp (1) SCC 191.
- ⁶⁷ *Gazula Dasaratha Rama Rao v. State of A.P.*, AIR 1961 SC 564.
- ⁶⁸ *Kochan Kani Kumjuraman Kani v. Mathevan Kani Sankaran Kani* (1971) 2 SCC 345.
- ⁶⁹ *Bihar State Board Religious Trust v. Mahant Sri Biseshwar Das* (1971) 1 ACC 574.
- ⁷⁰ *Bijli Cotton Mills (P) Ltd. v. Presiding Officer, Industrial Tribunal II* (1972) 1 SCC 840.

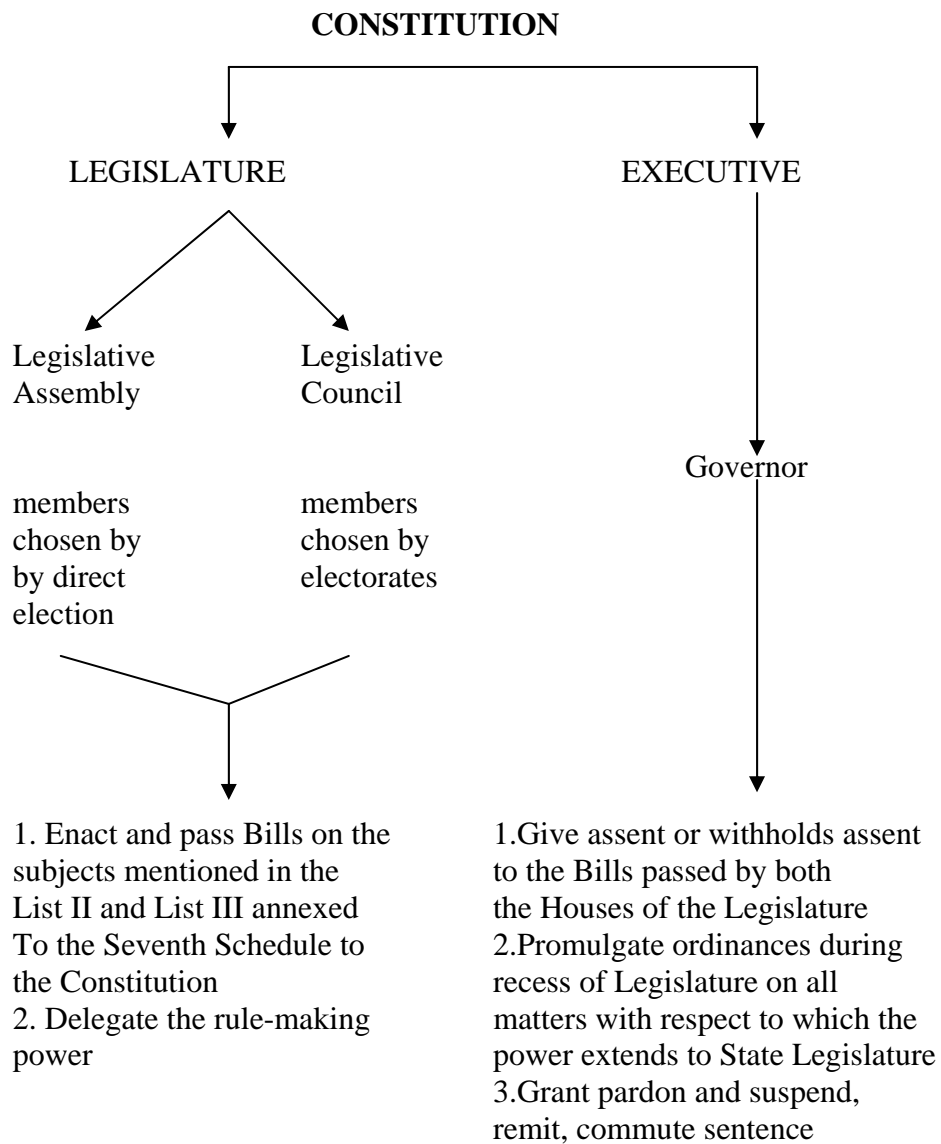
- ⁷¹ K. S. Singh, *Tribal Ethnography Customary Law and Change*, (Concept Publishing Co., New Delhi, 1993) at 17-20.
- ⁷² (1996) 5 SCC 125 at 158, para 46.
- ⁷³ *People's Union for Civil Liberties v. Union of India* (1997) 3 SCC 433.
- ⁷⁴ *Jolly George Verghese v. Bank of Cochin* AIR 1980 SC 470; *Francis Coralie Mullin v. The Adm. Union Territory of Delhi* AIR 1981 SC 746; *ADM Jabalpur v. Shukla* AIR 1976 SC 1207; *Kesavananda Bharati v. State of Kerala* AIR 1973 SC 1461, and so on.
- ⁷⁵ *Vishaka & Others v. State of Rajasthan & Others* (1997) 6 SCC 241; ***Apparel Export Promotion Council Vs. A.K. Chopra*** JT 1999 (1) S.C. 61.
- ⁷⁶ A.I.R. 1951 SC 332.
- ⁷⁷ *Corporation of Calcutta v. Liberty Cinema*, A.I.R. 1965 S.C. 1107.
- ⁷⁸ See H.C.Jain, *Law Library Administration and Reference*, Metropolitan Book Co. (P) Ltd., Delhi, 1972, p. 37.
- ⁷⁹ *Id.*, at.1.
- ⁸⁰ Miles O Price & Harry Bitner, *Effective Legal Research* (4th ed.), Little, Brown & Co., Boston, USA, 1979, p. 266.
- ⁸¹ Gurjeet Singh, "Role of Computers in the fields of Legal Education and Research", (Ed. by S.K. Verma & M.A. Wani), *Legal Research and Methodology*, Indian Law Institute, New Delhi, 2000, p. 717.
- ⁸² Magga & Morgan, *Computer-Based Legal Education at the University of Illinois: A Report of Two Years' Experience*, 27 J. Legal Educ. 138 (1975), at 141.
- ⁸³ The Indian Law Institute, New Delhi and Judges Library of the Supreme Court of India already possess these.
- ⁸⁴ *Ibid.*
- ⁸⁵ <http://www.indiaconnect.com/dialn.htm>

Annexure I



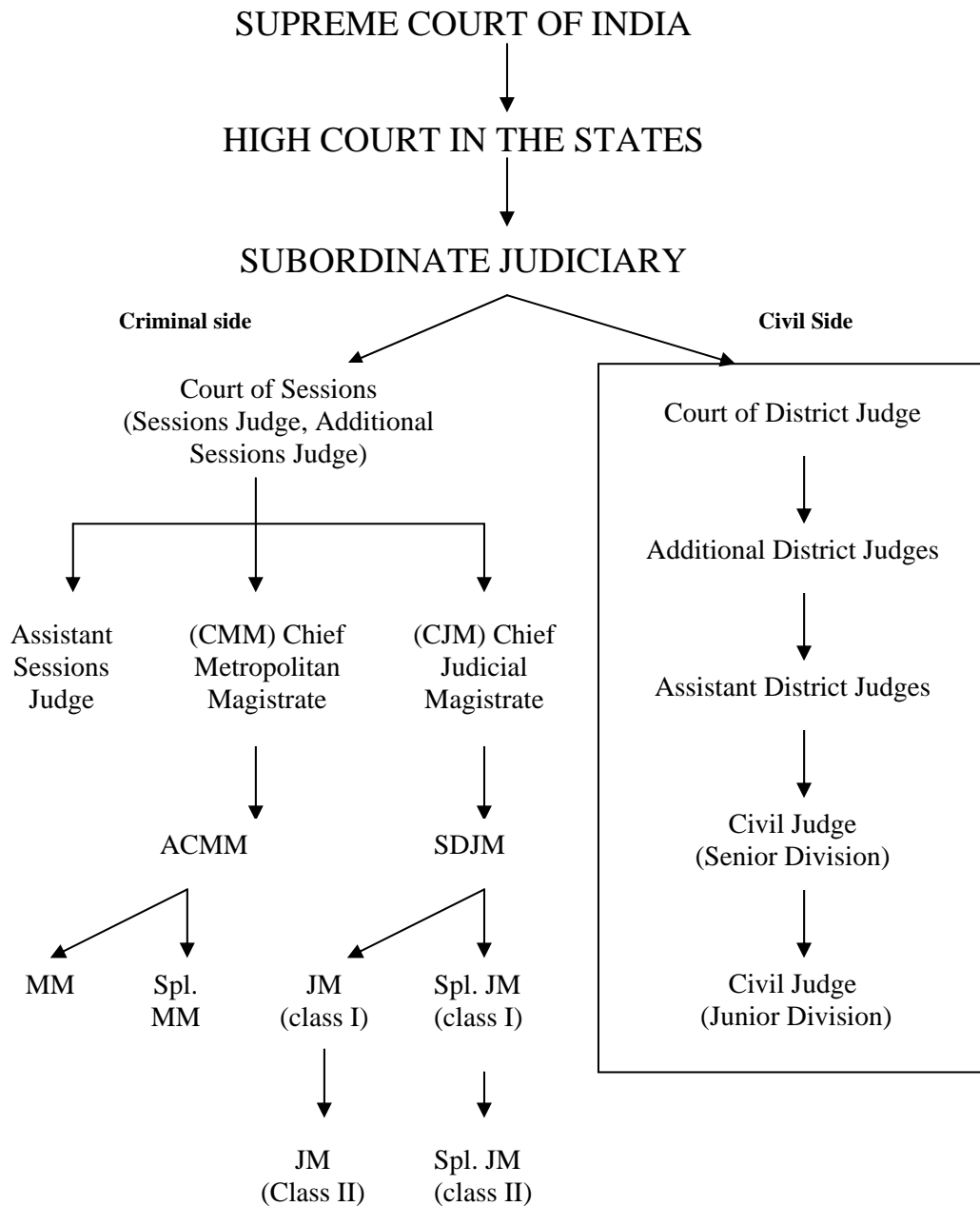
Annexure II

STATE LEVEL



Annexure III

REGULAR COURT HIERARCHY



MALAYSIA

BASIC INFORMATION FOR LEGAL RESEARCH IN MALAYSIA

By

Mercy Selvaratnam *

Hulwana Mohd Labib **

(Librarians, Lee Hishammuddin)

INTRODUCTION

“It must be remembered that the freedom to which we aspire is the freedom to govern ourselves under a system in which parliamentary institutions shall be exclusively representative of the people's will”. Tunku Abdul Rahman, subsequently the first Prime Minister of the Federation, moving the second reading of the Federal Constitution Bill, August 15, 1957 ¹.

Verdant Malaysia, shaking off the shackles of British colonialism in 1957, marched on to mould a plural society of varied races, founding a vibrant nation of variegated character, governed by a viable political and legal system. Malaysia's colonial past and political developments coloured the legislative output and attendant system of administration of justice. These events need to be traced briefly to put in perspective the current legal system and sources of law.

A The Hindu, Portuguese and Dutch Era, 1500 - 1824

The Malay Peninsular with its strategic location in the pathway of the east -west sea trade attracted powerful early civilizations in particular, the Indian and to a lesser extent Chinese. Around the turn of the fifteenth century an Indian Prince Parameswara founded the Sultanate of Malacca, which flourished as an important commercial market. It later became the main center for diffusion of Islam when Parameswara embraced the religion. In the time of his grandson, Muzzaffar Shah (1446 - 1459) the influence of Malacca spread to other states of Perak, Pahang, Terengganu and Kedah. The advent of Islam had far reaching effect in the *lex loci* of Malaysia. Islamic laws were increasingly applied alongside Malay customary law (Adat). Several formal legal texts were compiled during this era and these sources are:

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1. Hukum Kanun Melaka or Risalat Hukum Kanun²
2. Undang-undang Laut Melaka³
3. Pahang Legal Digest-prepared for the Sultan Abdul Ghafur (1592-1614A.D)⁴
4. Kedah Law⁵
5. Majallat al-Ahkam⁶
6. Ahkam Shariyyah⁷

The influence of the early Indian Kingdom is even now reflected in the absorption of Indian royal salutations and Sanskrit terminologies in palace rites and language⁸.

Subsequently Malacca was captured by the Portuguese in 1511 and they held sway until 1641 when they were ousted by the Dutch who remained in power till 1795. Thereafter the British seized control for several years but the Dutch regained the territory in 1801. However it was formally handed over to the British under the terms of The Anglo - Dutch Treaty, 1824. The treaty in fact carved up the region between the two European powers to operate and consolidate their activities in the agreed portions - the Dutch in Indonesia and the British in the Malayan Peninsular and Singapore. In the island of Borneo, the division was such that the eastern part (now Indonesian Kalimantan) fell to the Dutch while the western sector (North Borneo now Sabah and Sarawak) came under the British control.

Both the Portuguese and Dutch occupancy did not seem to have left any indelible mark in the Malaysian legal system. However today, a thriving Portuguese community centred in Malacca is a living testimony of that nation's link to Malaysian history.⁹ The Dutch, reputed to have a profound respect for law established a Court of Justice in Malacca. Law books containing a collection of regulations applicable in Java were sent to Malacca but dearth of written records of how justice was administered has left no sources of law to posterity. Reference was been made in the case of "*Rodyke v Williamson*"¹⁰ to "Dutch law at Malacca" and Sir Walter John Napier in his treatise¹¹ expressed the view that "there can be no doubt, that, in principle, the English Courts should have administered the Dutch Law previously administered by the Dutch courts".

B. The British Era, 1824-1957

With the British occupancy, the whole scenario changed and to day the Malaysian legal system remains deeply rooted in the English legal traditions although the grip is being loosened with the replacement of English with national language (Bahasa Melayu) as the official language, promotion of Islamic legal doctrine and abolition of appeals to the Judicial Committee of the Privy Council as the final court of appeal.

A brief review of the political developments is necessary to place the current legislative pattern in proper perspective. Today, Malaysia is a federation of thirteen states, which historically developed in isolation until the Japanese occupation of Malaya in 1941 during World War II. Upon Japanese surrender in 1945, the British Military Administration governed the country as a single administrative unit. The aforementioned political development can be diagrammatically represented thus:

Malaysia - Federation of 13 States			
Straits Settlements	Federated Malay States	Unfederated Malay States	Borneo States
1. Penang (Prince of Wales Island) 2. Malacca	3. Perak 4. Pahang 5. Selangor 6. Negeri Sembilan	7. Kedah 8. Perlis 9. Kelantan 10. Terengganu 11. Johor	12. Sabah (North Borneo) 13. Sarawak

The present day legislation devolved from the legal administration of each of the above components which were eventually amalgamated to form the federation of Malaya in 1957 and Malaysia in 1963. A short legislative history of each component follows.

Straits Settlements

The colony of Straits Settlements established by the British comprised Penang (then known as The Prince of Wales Island), Malacca and Singapore. These entities came under direct British administration and English law was made applicable by three Charters of Justice introduced in 1807, 1826 and 1855. Cases which considered the impact of the three Charters of Justice in the Straits Settlement are listed in E.R. Keok's *"Tables of Written Law, 1808 - 1898"*¹². In the early days, the Straits Settlements was treated as part of the British Indian Empire and came under the legal, political and executive sovereignty of the Bengal Presidency. This explains why some areas of current Malaysian laws, notably contract, evidence and penal provisions are patterned on the Indian Codes.

The Straits Settlements ceased to be part of the Indian administration from April 1867 with the passing of the Government of the Straits Settlements Act 1866 (29 & 30 Victoria c. 115), whereunder the Legislative Council of the Straits Settlements was endowed with legislative authority. Ordinances began to be promulgated and published with the initiation of the Straits Settlements government gazette on 1 April 1867. In 1946¹³ the Straits Settlements was disbanded following the brief formation of the Malayan Union (discussed hereafter) comprising the nine Malay States and the colonies of Penang and Malacca. Singapore was excluded from the Union and remained a British colony until it gained independence in 1963 when it became a constituent state of the Federation of States of Malaysia but broke away from Malaysia in 1965 and became completely autonomous and independent country.

The Sources of Straits Settlements laws are:

1. Malacca Naning Customs (On Land Law)¹⁴
2. Chinese Customary Law¹⁵
3. Mulla on Hindu Law¹⁶
4. Indian Acts passed during the period extending from the 22nd day of April 1834 to the 31st day of March 1867, and now in force in the Colony of the Straits Settlements as determined by the Commissioners appointed by His Excellency the Governor of the Straits Settlements under the provisions of the Statute Law Revision Ordinance 1889¹⁷
5. J. A. Harwood's *Acts and Ordinances of the Legislative Council of the Straits Settlements from the 1st April 1867 to 1st June 1886 together with certain Acts of Parliament, Orders of Her Majesty in Council, Letters Patterns, and Indian Acts in force in the Colony of the Straits Settlements*¹⁸

6. Garrard, *The Acts and Ordinances of the Legislative Council of the Straits Settlements from the 1st April 1867 to 7th March 1898*. It contained in chronological order, the unrepealed Acts and Ordinances of the Straits Settlements as of 7 March 1898 ¹⁹
7. *The Laws of the Straits Settlements*, Revised Edition, 1835-1919, published in five volumes in 1920 excluding war and emergency legislation, known as the Braddell Edition ²⁰
8. William Murrison, *Laws of the Straits Settlements*, 2nd rev. ed., 1926-contained all the Ordinances of the Straits Settlements revised up to and including the last day of December 1925 ²¹
9. *The Laws of the Straits Settlements*, Edition of 1936, consisting of five volumes of the legislation in force on 31 December 1935 ²². Section 5 of the Revised edition of the Laws (Annual Supplement) Ordinance 1936 provided for the publication of annual cumulative supplements of the law right up to 1940. These cumulative supplements superseded all previous annual supplements. The supplements for 1941 and 1942 on the other hand contained only the legislation passed during those years ²³
10. Subsidiary legislations made under powers conferred by Straits Settlements Acts and Ordinances published in the Gazette by the Government Printer from 1889-1940 ²⁴ which had various titles. Subsidiary Legislation for the years 1889-1897 were entitled *Ordinances and Rules and Regulations by His Excellency the Governor in Council during the years 1889-1897* ²⁵. Volumes for 1898 to 1907 were *Orders, Rules and Regulations, etc., 1898-1907* ²⁶. From 1908 to 1914, the volumes of subsidiary legislation were issued under the title *Orders of the Governor in Council, Rules and Regulations and By-laws* ²⁷. For 1915 to 1939, it was entitled as *Royal Proclamation Orders by the King in Council, Proclamations and Orders by the Governor in Council: Rules, Regulations and Bye-laws*, published in the Government Gazette ²⁸ while volume for 1940 was published under the title *Proclamations and Orders by the Governor in Council: Rules, Regulations and Bye-laws* ²⁹
11. Peter Benson Maxwell, *An Alphabetical Index to the Acts of the Legislative Council of India which apply to the Settlement of Prince of Wales' Island, Singapore and Malacca*, 1867 ³⁰
12. Moore, *Index to the Unreported Ordinances of the Colony of the Straits Settlements from 1867 to 1872: with a list of the Orders in Council, Proclamations and Notifications*, 1873 ³¹
13. Noronha, *List of Ordinances or Portions of Ordinances of the Colony of the Straits Settlements which have been repealed, amended or substituted from April 1, 1867 to December 13, 1880, showing by what other Ordinance the repeal, etc., has been effected*, Singapore, 1881 ³²
14. Kyshe, *Index to the Laws of the Straits Settlements from April 1867 to 28th February 1882, 1882-3*. The second edition was published in one volume in 1893 entitled *Chronological Table and Index of the Acts and Ordinances in force in the Colony of the Straits Settlements. Second edition to the end of 1892* ³³
15. Buckley, *Alphabetical Index to the Acts and Ordinances in force in the Straits Settlements on 1st January 1897. Alphabetical Table of Acts and Ordinances wholly repealed after the publication of Harwood's revised edition of the Ordinances. Chronological Table of the Acts and Ordinance 3 of 1886* ³⁴
16. Bourne, *Alphabetical Index to Acts and Ordinances in force in the Straits Settlements, August 1907, 1907* ³⁵
17. Sir William George Maxwell, *A Chronological List of the Imperial Acts applicable to the Straits Settlements and of the Indian Acts in force in the Straits Settlements and of the Acts*

and Ordinances of the Straits Settlements, together with Orders in Council, Rules, Regulations and By-Laws made thereunder and in force on 31st December 1907. With alphabetical index of the Indian Acts and Local Ordinances ³⁶ The 14th edition of this series was published in 1926. The 15th edition published in 1927 was divided into two volumes. Volume 1 was entitled *The Chronological Table of Straits Settlements Laws*. It contained lists of the Imperial and Indian Acts applicable to the Straits Settlements (Part I) and the Straits Settlements Ordinances in four parts:- (a) A list of the annual ordinances up to the end of 1925 (Part II); (b) Ordinances included in the Revised Edition of 1926 showing former legislation (Part III); (c) Ordinances prior to 1926 but not included in the Revised Edition of 1926 which were still in force on 31st December 1926 (Part IV) and (d) Ordinances 1926 (Part V). Volume II was entitled *The Chronological Table of Straits Settlements Laws*, which consisted of a list of the Straits Settlements Ordinances together with the Proclamations, Notifications, Rules, Regulations and By-Laws made thereunder and in force on the 1st January 1927, which was produced with an alphabetical index ³⁷ After that, no further editions of volume I were published. Only volume II resumed its publication. The last pre-war edition was the twenty-fifth which was produced in 1941.

18. A pamphlet periodically published entitled *Index to Straits Settlements Laws* with alphabetical format ³⁸
19. Braddell, *Index to the Revised Laws of the Straits Settlements*, 1924 ³⁹
20. Aloysius de Mello, *De Mello's Manual of the Law of Extradition and Fugitive Offenders-applicable to the Eastern Dependencies of the British Empire*, 2nd edition, 1933 ⁴⁰

Federated Malay States

Unlike the Straits Settlements which were colonies under direct British rule, in the Malay States, British authority rested upon agreements concluded with the rulers of the respective states. In return for British protection, each ruler retained sovereignty in his state but was bound to accept British advice on all matters except Malay custom and religion. Thus with the signing of the Treaty of Federation 1895, ⁴¹ in return for military protection, four states namely, Perak, Selangor, Negeri Sembilan and Pahang became Protected States or more commonly termed the Federated Malay States. Administrative co-ordination was achieved by the Governor of the Straits Settlements being concurrently designated the High Commissioner for the Federated Malay States. Legislation was enacted by the Federal Council constituted in 1909 ⁴² with the rulers as members of the Council. This arrangement continued until the amalgamation of all the States by the British Military Administration in 1946, to form the Malay Union.

The Laws promulgated and sources for tracing the same are as follows:

1. *Enactments Passed in the Federal Council* published annually from 1910 to 1941 ⁴³
2. A. B. Voule's *Laws of the Federated Malay States, 1877-1920*, published in three volumes in 1921. The first volume was divided into five parts: part 1 consisting of state laws prior to the Federation, and parts 2 to 5 contained laws of each of the four States of Perak, Selangor, Negeri Sembilan and Pahang ⁴⁴
3. William Sumner Gibson, *Laws of the Federated Malay States, and of each of them in force on the 31st day of December, 4 vols., 1934* ⁴⁵ Five supplements to this were published between 1937 and 1939 with title *1937 Supplement to the Laws of the Federated Malay States, containing the Enactments of the Federated Malay States enacted between the 1st January, 1935 and the 31st December, 1936* ⁴⁶ In 1938 and 1939, four supplementary volumes (loose-leaf), entitled *Supplement to the Revised Edition of*

the Laws of the Federated Malay States were published, with updates by means of supplementary pages until 1941⁴⁷ Separate supplement of State legislation was also issued in 1940⁴⁸

4. L. A Allen's compilation of two volumes of the state subsidiary legislation entitled *Reprint of the Rules, Regulations, Orders and By-laws, made under the Laws of the Federated Malay States* in 1927, revised up to 31 December 1926⁴⁹. Another revised edition published in 1938, comprised of seven loose-leaf volumes were entitled *Proclamations, Orders, Notices, Rules, Regulations, Declaration, Appointments, Forms and By-laws, in force on the 31st day of December 1935, made under the Federated Malay States and of each of them*⁵⁰
5. Government Press's *State Subsidiary Legislation... Made under Principal Enactments which have been passed by the State Councils of Perak, Selangor, Negri Sembilan and Pahang since December 31, 1934* published in 1941⁵¹
6. Indices to the laws of the Federated Malay States entitled *Chronological List of Federal Enactments, 1909-1934, with Rules*⁵² and H. A. Forrer's *Chronological Lists of State and Federal Laws, 1877-1934, with Rules* [No. 13] published in 1935⁵³.

Unfederated Malay States

Five States, namely, Kelantan, Kedah, Perlis, Terengganu and Johore anxious to maintain their autonomy in local issues, concluded various agreements with the British whereby the respective rulers were promised protection in return for control of their foreign affairs and considerable influence in their governments. These five states termed the Unfederated Malay States were administered by the Governor of the Straits Settlements who acted as the High Commissioner of these States.

Legislation was enacted by the State Council of each state. The laws passed by the various Unfederated Malay States are recorded in the following sources:

1. Enactments of Johore from 1907-1942 published annually by the Government Printing Office in Johore Bahru from 1908-1942
2. W. Pryde's *The Laws of Johore, Revised Edition*, in three volumes, covering period from 1910-1927, and was published according to The Revised Edition of the Laws of Johore Enactment 1926⁵⁴
3. W. H. Thorne and M. C. Hay, *The Laws of the State of Johore, in force on the 1st day of January, 1935*⁵⁵
4. *Chronological Table of Johore Enactments, together with appointments, rules and notifications thereunder in force on the 21st day of December 1919*⁵⁶ and *Chronological Table of Johore Enactments, in force on October 31, 1938*⁵⁷
5. *The Government of Kedah Enactments*, in Jawi and English, published in Alor Star from 1906 to 1928. Between years 1929 and 1938, ten further volumes entitled *State of Kedah Enactments* were published⁵⁸
6. G. B. Kellagher's *The Laws of the State of Kedah, which contained laws in force on 30 Rabialawal 1353* [July 13, 1934], 1934⁵⁹ and Supplements entitled *Supplement to the Laws of Kedah*, compiled from 1937-39⁶⁰
7. C. W. Dawson's two volumes of subsidiary legislation entitled *Rules, Regulations and Notifications made under the Kedah Enactments (in force on 1st Rabialawal 1355)* [22nd May 1936]⁶¹ and two supplements by S.N. King and I.W. Blelloch in 1939 and 1941⁶²

8. *Index to Kedah Enactments, actually in force on the 1st day of the year A.H. 1353 (April 16, 1934) together with rules, orders and regulations made thereunder.*
9. *Enactments of the State of Kelantan*, published annually from 1904 to 1941 and *Legislation in Kelantan*, which contained Enactments, Proclamations and subsidiary legislation which was also published in Malay (Jawi script) entitled *Kerajaan Kelantan*
10. *Selected Laws, 1911-1939 (including all amendments in force on 1st January, 1953* ⁶³
11. *Chronological List and Index to the Laws of Kelantan, 1322 A.H. to 1352 A.H. (1904 A.D.-1932 A.D.), revised to December 31, 1932* ⁶⁴, and *Index to the Laws of Kelantan in force on May 1, 1937* ⁶⁵
12. *The Enactments of Perlis*, published annually by the Government Press, most written in Jawi and English, from 1909 to 1942
13. *Chronological List of the Laws of Perlis from the year 1326 A.H. (1909) till the end of the year 1334 A.H. (1916)* ⁶⁶
14. *Annual volumes of Trengganu Enactments*, published from 1904 to 1914
15. J. Calder, *Laws of Trengganu, in force on the 20th day of Muharram, 1358 A.H. [1939], Revised edition* ⁶⁷
16. *Provisional List with Index of the Laws of Trengganu in force on the 1st day of Muharram 1358 A.H. corresponding to the 20th day of February 1939 A.D.*, Singapore, 1939.

The Malayan Union 1946 - 1948

The foregoing state of affairs continued substantially until 1946. Following the surrender of the Japan and the end of the Japanese occupation of Malaya (1942-1945), the British government mooted the idea of a Malayan Union comprising all the Malay States and the Settlements of Penang and Malacca as a unitary state. However, the Malayan Union proved abortive as the Malays objected vehemently to the liberal franchise laws which eroded their special position as sons of the soil and the sovereignty of the rulers. After a lapse of two years a more acceptable political arrangement was devised by the British. The alternative chosen was the Federal system comprising the Malay States and the settlements of Penang and Malacca resulting in the formation of Federation of Malaya in 1948.

The Malayan Union government Press published the following laws:

1. *The Malayan Union Government Gazette* published from 1 April 1946 and 31 January 1948 (Kuala Lumpur: Malayan Union Government Press, 1946-48)
2. *Ordinances passed during the years 1946-1947 and Rules thereunder* ⁶⁸
3. *Malayan Union and Federal Ordinances and State and Settlements Enactments passed during the year 1948* ⁶⁹

C. Federation of Malaya 1948 - 1963

The formation of the Federation marked a landmark in the political and legal history of Malaysia. It was set up to secure twin objectives, namely a central Federal Government but preserving the integrity of the individual states and their Rulers. The Federation of Malaya Agreement 1948⁷⁰ signalled the constitutional progress towards eventual self-government. The Constitutional Conference held in London in 1956 settled that full self-government and independence for the Federation within the Commonwealth should be proclaimed. A new Federation of Malaya

Agreement 1957, revoking the previous Agreement 1948 brought into force a new Federal Constitution on August 31, 1957 and the birth of independent Malaya.

Laws that were promulgated at Federal and State levels were all published as part of the respective Federal and State Gazettes. The initial volumes for the year 1948 also included the Ordinances of the Malayan Union. For the years 1949 to 1957 the volumes were published as Federal Ordinances, State and Settlement Enactments.

Federal legislation even after independence in 1957, continued to be termed Ordinances because of the provisions of Article 164⁷¹ of the Federal Constitution which expressly provided for the Legislative Council set up under the Federation of Malaya Agreement 1948 to continue functioning until 1959. The Council was dissolved in 1959 by proclamation and Federal legislation⁷² thereafter came to be termed Acts when the first Parliament began sitting on 11 September 1959.

Sources for tracing Federal Acts are:

1. The Federation of Malaya Ordinances, State Enactments and subsidiary legislation which commenced publication in February 1948. From 1949-1957, they were published as *Federal Ordinances and State and Settlements Enactments*⁷³
2. *Ordinances and Acts passed during the year 1959*⁷⁴ which were later issued as *Acts of Parliament passed during the years 1960-1963*⁷⁵
3. *Federal Subsidiary Legislation, 1947-1963*⁷⁶ and *State Subsidiary Legislation, 1957-1963*⁷⁷
4. *State and Settlements Subsidiary Legislation* for the years 1951-56⁷⁸

D. Sabah & Sarawak

Sabah (earlier known as British North Borneo) and Sarawak fell into the hands of the British under the Anglo - Dutch treaty 1824 mentioned earlier. Labuan which was a British protectorate was amalgamated with British North Borneo to comprise the present state of Sabah which today is a constituent state of Malaysia.

Sarawak, originally a dependency of Brunei, was ceded to James Brooke, the first Raja of Sarawak in 1841. It was made a colony by the Sarawak Order in Council 1946⁷⁹ and Sarawak joined the Federation of Malaysia in 1963 subject to special constitutional provisions.

Compilations of Laws of Sabah & Sarawak are:

1. E. P. Gueritz's *Proclamations and Notifications of the State of North Borneo, 1883-1902*, published in 1902⁸⁰
2. S.S. Cookson's *The Ordinances of the State of North Borneo, 1881-1941*, 1915⁸¹ which was revised by J. Maxwell-Hall in 1929⁸² and C.F.C. Macaskie in 1937⁸³
3. *A Reprint of the Laws of that part of the Colony of North Borneo, in force on the 31st day of December 1946*, comprising of three volumes⁸⁴
4. G. Bannerman Kellager, *Laws of North Borneo, in force on the 30th June 1953, Revised edition*, 1954⁸⁵ It had six volumes: volumes I-IV contained Ordinances, volume V, subsidiary legislation, while volume VI included a reprint of Imperial Statutes. Volumes VII, a Supplement to the Revised Edition prepared by J.M. Maxwell-Hall, contained the Ordinances and subsidiary legislation enacted between July 1953 and the last day of December 1954⁸⁶

5. *The Laws of North Borneo*, published annually ⁸⁷. From 1963-66, these volumes were produced as *The Laws of Sabah* ⁸⁸. From 1967 onwards, they were known as Sabah Enactments, and were issued as the First Supplement to the Sabah Government Gazette ⁸⁹
6. *Orders* issued by the Rajah of Sarawak, covered the period of 1863-1922 ⁹⁰
7. *State Orders* (the Green Book) published by authority in Kuching in 1933. From 1936-1941, six annual volumes of *State Orders* were produced ⁹¹
8. T.S. Boyd, *The Laws of Sarawak, 1927-1935 (the Red Book)*, 1936 ⁹²
9. R.Y. Hedges, *Laws of Sarawak, in force on the second day of July 1947*, Revised edition, 1948, produced in three volumes ⁹³
10. G. E. Strickland, G.B. Kellagher and G.V. Chichester Young, *The Laws of Sarawak, Revised Edition, 1958* ⁹⁴ which comprised of nine volumes and included Ordinances, treaties, Imperial Statutes, subsidiary legislation and an Index
11. *The Laws of Sarawak, Revised Edition of Local Subsidiary Legislation*, 3 vols., 1963 ⁹⁵
12. *The Reprint of Sarawak Laws Declared to be Federal Laws* ⁹⁶
13. *Reprint of State Laws of Sarawak*, prepared in accordance with the provisions of the Reprint of State Laws Ordinance 1967, published in two loose-leaf volumes ⁹⁷
14. *Cases on Native Customary Law in Sabah*
15. *Cases on Native Customary Law in Sarawak*

I. MALAYSIA 1963

The concept of a closer association encompassing the Federation of Malaya, Singapore, Sabah, Sarawak and Brunei was mooted as early as 1961. To realize the concept of Malaysia, lengthy negotiations and referendums were held and paved the way for the signing of the Malaysia Agreement 1963. ⁹⁸ However, Brunei backed out at the closing stages of the negotiations. The Malaysia Act 1963 ⁹⁹ of the Federation of Malaya came into force on September 16, 1963 whereby a Federation by the name of Malaysia was constituted and the eleven states of the Federation of Malaya, Sabah, Sarawak and Singapore became the States of Malaysia. In 1965 Singapore ceased to be part of Malaysia and became an independent sovereign state.

Malaysian legislation comprises:

- (1) The Federal Constitution
- (2) State Constitutions of each of the 13 states of Malaysia
- (3) Federal Acts of Parliament
- (4) State Enactments
- (5) Subsidiary Legislation under (3) and (4) above

A. The Federal Constitution

Malaysia is a federation of thirteen states with a written constitution, The Federal Constitution. It has been declared the supreme law of the land and any law inconsistent therewith is void. ¹⁰⁰ Each state has a constitution of its own besides Federal Constitution. The Federal Constitution introduces a parliamentary form of government based on the British module. Legislative authority of the Federation is vested in Parliament which is a bi-cameral body comprising the *Dewan Rakyat* (House of Representatives) and *Dewan Negara* (Senate).

The territorial limits on the legislative authority of the States and demarcation of subject matters between the Federal and State legislatures are spelt out in the Ninth Schedule to the Constitution. It comprises three lists namely:

1. List I - The Federal List. Subjects include such matters as external affairs, defence, internal security, education and penal laws.
2. List II - The State List. Subjects include land, agriculture, forestry, local Government, riverine fishing, Islamic Law etc.
3. List III - The concurrent list, which include social, welfare, scholarships, town and country planning, protection of wild life etc.

The Malaysian Parliament is the primary legislative body. Malaysian statutes comprise Federal Acts, Ordinances and subsidiary legislation which are published in the Federal Gazette.

B. The Malaysian Gazette

Federal Gazettes

The format and mode of publication of the official gazettes are stipulated in section 18 of the Interpretation Act 1948 and 1967 (Act 388). The said section provides that the Federal Gazette shall be published in five parts namely;

1. Main gazette (Warta Kerajaan): Published fortnightly every alternate Thursday embodies all matters which require public notification (e.g. Acquisition of land, unclaimed moneys etc) or which the government considers necessary to be published for general information (e.g. petitions for winding - up of companies etc.), excluding matters which are required to be published in the supplements mentioned hereafter.
2. Acts Supplement (Tambahan Akta): Published as and when necessary containing all principal Acts passed by Parliament, and such Acts as are revised pursuant to the Revision of Laws Act 1968 (Act 1). Amendments Acts are also published in this part of the gazette.
3. Legislative Supplement A (Tambahan Perundangan A): Published as and when necessary embodying all subsidiary or delegated legislation, royal proclamation, orders etc.
4. Legislative Supplement B (Tambahan Perundangan B). Published as necessary to contain all subsidiary legislation other than required to be published in Legislative Supplement A. This supplement carries notifications *inter alia* of appointments to public and judicial posts, date of coming into force of laws and lists of licensed institutions issued by the National Bank of Malaysia (Bank Negara).
5. Bills Supplement (Tambahan Rang Undang - Undang): Published as and when necessary to contain all Bills introduced in Parliament after the first reading. By convention this Supplement is published in blue paper.

State Gazettes

The State gazettes of each of the eleven States of Peninsular Malaysia are published in four parts namely:

1. Main gazettes of each of the eleven States of Peninsular Malaysia
2. Enactments Supplement containing the principal laws and amendments
3. Legislative Supplement comprising subsidiary legislation
4. Bills of Supplement containing the bills presented to the State Legislature

Sabah and Sarawak Gazettes

The situation in Sabah and Sarawak is slightly different from the Peninsular State gazettes.

1. Sabah gazettes consist of six parts:
 - (a) Main Gazette
 - (b) First Supplement (Enactments)
 - (c) Second Supplement (Subsidiary Legislation)
 - (d) Third Supplement (Bills)
 - (e) Fourth Supplement (Local government matters)
 - (f) Trade Mark Supplement
2. Sarawak gazettes are published in five parts:
 - (a) Part I (Ordinances)
 - (b) Part II (Legislative Supplement)
 - (c) Part III (Bills)
 - (d) Part IV (Local Government Supplement)
 - (e) Part V (Sarawak Government Gazette)

With the exception of Sarawak, all parts of the Federal and State Gazettes are now published in both English and the national language (Bahasa Melayu) in accordance with the provisions of the National Language Act 1963/1967 (Act 32) ¹⁰¹. The national language text is authoritative, unless otherwise prescribed by the Yang di-Pertuan Agong ¹⁰².

C. Laws of Malaysia

Since 1969 all Federal Acts are issued under Laws of Malaysia series by virtue of the provisions of Revision of Laws Act 1968 (Act 1). This Act empowered the Commissioner of Law Revision to revise as well as print such laws as the Commissioner deems fit ¹⁰³. A new practice of sequentially numbering the Acts was adopted beginning with the said Revision of Laws Act 1968 as Act 1. The year following the title of the Act denotes the year of original enactment. The earlier practice of commencing a new series of numbers for the Acts enacted for each year was discontinued. Similar practice of sequential numbering of amendment Acts was also adopted but with insertion of prefix “A” before the numbers to differentiate these amending laws from the principal Acts ¹⁰⁴.

The most recent reprint of the entire Laws of Malaysia was undertaken by the Commissioner of Law Revision between the years 2000 - 2002. The entire series from Act 1 - Act 615 has been issued in loose leaf format. The Federal constitution has been similarly reprinted ¹⁰⁵.

Subsidiary legislation continues to be issued for each current year as Supplement A and B (*Tambahan Perundangan A and B*). These Supplements are given new series of numbers each year and are distinguished by the prefixes P.U. (A) ¹⁰⁶ and P.U. (B) respectively.

D. State Laws

State Laws are termed Enactments and subsidiary legislation and are published in the state gazettes from time to time. Enactments are numbered consecutively with commencement of fresh numbering each year. State subsidiary legislations are published along similar lines.

E. Retrieval Tools

Laws of Malaysia (Federal)

Title	Scope
1. Table of Laws - Reprint, 2002 ¹⁰⁷	Mere listing of the 615 Acts which have been reprinted between 1999 -2002 in alphabetical and numerical order. Lacks annotation of amendments since date of reprint
2. Federal Statute Law Referencer: Index to Federal and State Laws as at 30 June 2002 ¹⁰⁸	The most comprehensive index available to date. Lists the laws alphabetically with annotation of all amendments to each Act as at cut off date. Chronological list of principal and amending laws are included.
3. Index to Federal Subsidiary Legislation, 1946 - 65, 1966 - 82, 1983 - 93, 1994 – 96 and 1997 - 99 in 5 volumes ¹⁰⁹	Lists Subsidiary Legislation in chronological order and alphabetical listing with relevant subsidiary legislation subsumed under the principal Acts.
4. Index to Federal Acts, Amendments Act and Subsidiary Legislation 2000-2001 [with notes] ¹¹⁰	Alphabetical listing with the relevant subsidiary legislation subsumed under the principal Acts

State Laws

Title	Scope
Index to State Enactments and Subsidiary Legislation, 1986-1995 ¹¹¹	Chronological and alphabetical listing. No update issued yet.

II. THE JUDICIAL SYSTEM AND THE DOCTRINE OF JUDICIAL PRECEDENT

Laws enacted by Parliament will remain buried in the statute books until they are interpreted and applied by the judges in adjudicating cases brought before the courts. The judiciary plays a pivotal role in the administration of justice and judge made law or case law under the doctrine of judicial precedent together with statutory law is the backbone of the legal system.

The Federal Constitution establishes a hierarchical judicial system. The judicial power of the Federation, the constitution of the superior courts and the appointment and powers of the judiciary are clearly enunciated in the Constitution ¹¹² and the Courts of Judicature Act 1964 ¹¹³. Since the Federal Constitution is regarded as the supreme law of the land, the courts have power to declare a law as unconstitutional and void, although the courts have used these powers sparingly.

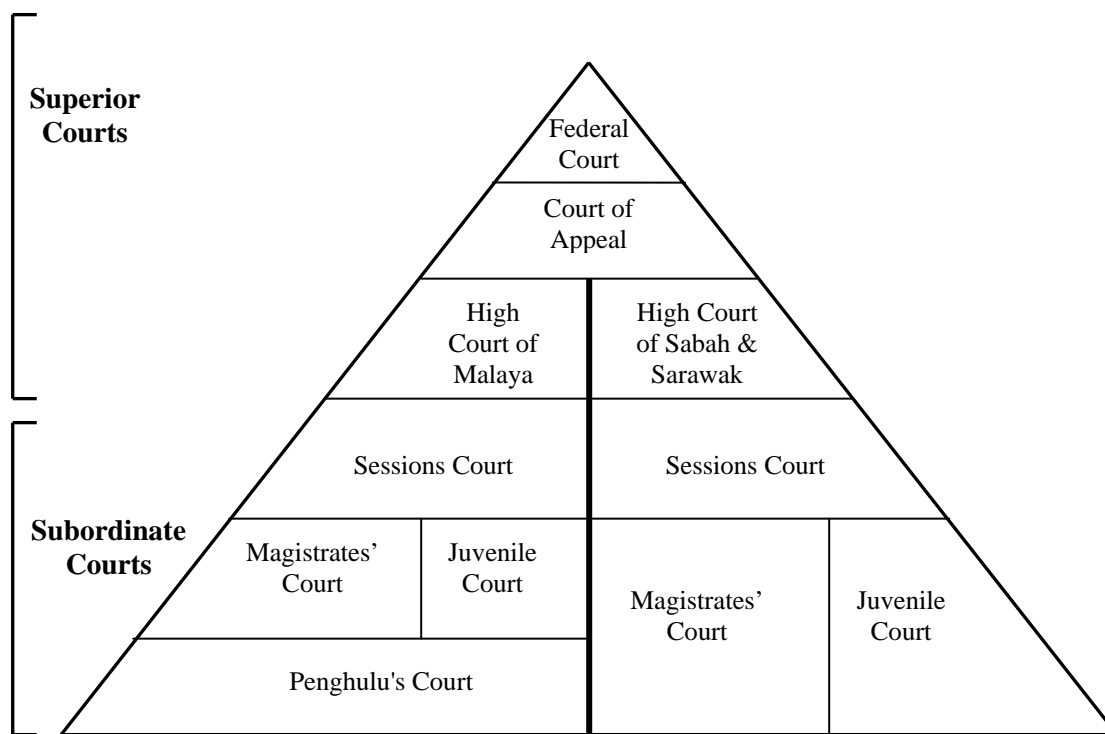
Each time a change in the constitutional structure of what is now known as Malaysia occurred during the past century and a half (i.e. from Federated and Unfederated Malay States to Malayan Union, to Federation of Malaya to Federation of Malaysia) continuity was maintained as each new system adopted (with modifications) all existing statutes and case law created under the previous administration. This incremental inheritance encompassed decisions of all the courts under the previous systems. For this reason, the historical devolution of the court hierarchy is traced to identify sources of law emanating from the law reports published during successive developmental stage.

Following the British intervention in the Malay States there gradually emerged a modern system of courts and law reporting. The first formal court established in the Straits Settlements was the Court of Judicature of Prince of Wales ' Island (as Penang was then officially known) constituted by the first Charter of Justice, 1807. Subsequently with transfer of the Straits Settlements from the India Office to the Colonial office in 1867, the Court of Judicature was abolished and replaced by the Supreme Court of the Straits Settlements established by the Supreme Court Act 1867 ¹¹⁴ and Supreme Court Ordinance 1868 ¹¹⁵. The second Charter of Justice extended the courts jurisdiction to cover Singapore and Malacca. The Supreme Court thus constituted, albeit with several changes in matters of detail, remained in existence until 1942, and the outbreak of World War II. In 1946 with the disbandment of the Straits Settlement under the Malayan Union Government, the Courts Ordinance, 1946 was enacted establishing the constitution and powers of the civil and criminal courts.

Similar patterns of judicial development occurred with the various realignments of the Malay States. Originally, each State had its own Courts Enactment but in the sweeping changes effected by the Malayan Union Government in 1946, the Courts Ordinance 1946, constituted uniform civil and criminal courts with substantially the same powers as were formerly exercised in the territories included in the Malayan Union (i.e. the Federated and Unfederated Malay States, Penang and Malacca)

With establishment of the Federation of Malaya, the Courts Ordinance 1948 was passed consolidation the law relating to the court system throughout the Federation and repealing all previous laws relating thereto.

The present Court structure (represented diagrammatically below) set forth in the Federal Constitution, is organized in a hierarchical judicial system with the Federal Court at the apex.



The hierarchy is an integral part of the appeals system. It provides the necessary tiers and distinguishes between appellate and lower courts. The appeal system is the bedrock on which the doctrine of binding precedent evolved based on the premise that decisions of higher courts would bind all lower courts in the hierarchical structure ensuring a degree of certainty in adjudication.

A. Judicial Committee of the Privy Council

Prior to 1985, the Judicial Committee of the Privy Council based in London was the final court of appeal. Technically, the appeals from the Federal Court were made to the King (Yang di-Pertuan Agong) but were in fact heard and disposed of by the Privy Council. This practice emanated from the provision in the First Charter of Justice of 1807 for appeals from the Court of Judicature of Prince of Wales's Island be routed to the King in Council in the United Kingdom. Similar right of appeal to the Privy Council seems to have been established in the other Malay States through the uniform policy adopted by the British via the advisory and protectorate status. With the attainment of independence, the desire for full judicial autonomy soon set in motion steps to eliminate the last vestige of colonial legal legacy ¹¹⁶.

With effect from 1 January 1978, appeals to the Privy Council from the Federal Court of Malaysia were abolished in criminal and constitutional cases ¹¹⁷. Appeals in civil cases, however continued to be routed to the Privy Council until 1985 when such appeals were also abolished by the Constitution (Amendment) Act 1983 (Act A566).

The abolition however, does not affect the doctrine of binding precedents in respect of past Privy Council decisions which continue to bind all courts in Malaysia below the level of the Federal Court. This fact has been affirmed in a very recent case ¹¹⁸ by the Court of Appeal where the judge averred " In our view the present appeal is already covered by high authority which is binding upon us. It is the decision of the Privy Council ..." The Federal Court, now the final court of appeal, considers such decisions as "persuasive" ¹¹⁹, only and are followed where compatible with Malaysian social and economic policy.

A comprehensive four volume compilation of all decisions of the Privy Council, on appeal from Malaysia as from 1875 to the last appeal heard in 1989 have been published as an enduring record of a long chapter in Malaysian judicial history ¹²⁰.

B. Law Reports and Digests

As law reports record the judgments delivered by the courts and tribunals in legal proceedings, the history of law reporting follows closely the development of the courts and the judiciary. The inherent authority of the law reports rests in their being permanent records of pronounced judgements vital to the legal practitioner for citation in court as binding judicial precedents. This mandates the need for both accuracy of reporting and quality of editors composing the catch words and head note which prefaces the full judgment.

Unfortunately in Malaysia there is not to date an official law report as exists in the United Kingdom where the Law Reports published by the Incorporated Council of Law Reporting for England and Wales in designated the "official law reports" by means of a Practice Direction ¹²¹. In a further development the British courts, gearing for the publication of judgments in electronic format have issued a recent Practice Direction ¹²² whereby "neutral" form of citation has been devised "to facilitate the publication of judgments in the World Wide Web".

Law reporting in Malaysia began in the latter part of the nineteenth century when a more regulated court system and judiciary was in place and a need for a record of judge made law was evident ¹²³. From the first published report in printed for private circulation in 1869 (see sources listed below), law reporting in Malaysia has progressed to the issuance of three major reports (Malayan Law Journal, Current Law Journal and All Malaysia Reports) serving a legal fraternity of almost ten thousand six hundred lawyers and substantial judicial personnel. Competition among the commercial publishers of the law reports has led to proliferation in the number volumes published each year, often reporting cases which do not expound any significant proposition of law. Law reports are also available in electronic devices and on -line databases as listed hereafter, but the local courts have not to date formally accepted production of print-out from on-line sources.

Early law reports:

1. *Wood's Oriental Cases: A Selection of Oriental Cases Decided in the Supreme Courts of the Straits Settlements, 1842-1869.* Collected and arranged by Robert Carr Woods, 1 vol., Penang. Printed for Private Collection, 1869. Reprinted by Sweet & Maxwell Ltd, London
2. Stephen Leicester, *Straits Law Reports; a Report of Cases Decided in the Supreme Court of the Straits Settlements, Penang, Singapore and Malacca [1827-1877].* With an analytical index, Penang: Commercial Press, 1877

3. *Straits Law Reports, New Series* ¹²⁴
4. *Magistrates Appeal Cases; Straits Settlements, 1884-1891*, 1 vol., Penang
5. *Kyshe's Reports: Cases Heard and Determined in Her Majesty's Supreme Court of the Straits Settlements, 1808-1890*. Edited and reported by James William Norton Kyshe, 4vol., Singapore: Singapore & Straits Printing Office, 1885-1890 ¹²⁵
6. *Straits Law Journal and Reporter, 1888-1892*, 5 vol., Singapore: W. Makepeace, 1888-1892 ¹²⁶
7. *Straits Settlements Law Reports, 1893-1931*, 15 vol., Singapore: Committee of the Singapore Bar, 1893-1931 ¹²⁷
8. *Straits Settlements Law Reports, Supplement No 1* ¹²⁸
9. *Straits Settlements Law Reports, New Series, 1926-1942*, 17 vol., Singapore: Government Printing Office, 1927-1950 ¹²⁹
10. John Robert Innes, *A Short Treatise on Registration of Title in the Federated Malay States with Reports of Cases under the Land and Mining Laws from 1907-1913*, Kuala Lumpur: F.M.S. Government Printing Office, 1913
11. R. St. J. Braddell, *The Laws of the Straits Settlements; a Commentary*, Kuala Lumpur: Oxford University Press, 1982. A reprint of the 1915 edition
12. *Federated Malay States Law Reports, 1906-1941*, 15vol., Kuala Lumpur: Federated Malay States Government Printing Office, 1922-1941 ¹³⁰
13. *Quarterly Notes of Cases Decided in the Supreme Court of the Straits Settlements, 1 January 1926-30 September 1927*, 1 vol., Singapore: Government Printing Office, 1927 ¹³¹
14. Evan Nuttall Taylor, *The Customary Law of Rembau (Containing Cases)*, Singapore: Malayan Branch, Royal Asiatic Society, 1932
15. R.St.J. Braddell, *Common Gaming Houses [With an Appendix of Unreported Cases, 1886-1925]*, 2nd edition, Singapore: Kelly & Walsh, 1932
16. Aloysius De Mello, *A Manual of the Law of Extradition and Fugitive Offenders Applicable to the Eastern Dependencies of the British Empire (The Straits Settlements, Hong Kong, India, Ceylon and the Protected States of Malaya and Borneo)*, 2nd edition, Singapore: Government Printing Office, 1933 (With an appendix of cases decided in the Straits Settlements.)
17. *Malayan Cases; Being a Collection of Old and Important Cases which are Still Law*, Edited by Bashir A. Mallal and Nazir A. Mallal, Singapore: Malayan Law Journal Office, 1939-, 4vol. to date; vol. 4 comp. by Al-Mansor Adabi, 1980 ¹³²
18. *Johore Law Reports, 1915-1940*, 2vol., Singapore: Published by Authority, 1939-1941
19. *Law Reports of the Malayan Union, 1946-1947*, 2 vol., Kuala Lumpur: Government Press, 1948-1950
20. *Journal of the Malayan Branch Royal Asiatic Society* ¹³³
21. *Malayan Law Reports, 1950-1954*, 5vol., Kuala Lumpur: Government Press, 1951-1954. (With Supplement for 1952, 1vol.) ¹³⁴
22. *Sarawak, North Borneo and Brunei Supreme Court Reports, 1928-1963*, 8 vol., Kuching Government Printers, 1955-1964 ¹³⁵

Current law reports:

1. Law Reports of the Commonwealth (1980-) ¹³⁶
Citation: [1980] LCR (Comm)

2. Malayan Law Journal (1932-) ¹³⁷
Citation: [2003] 1 MLJ 12
3. Malayan Law Journal 1948-49 Supplement ¹³⁸
Citation: [1948-49] MLJ Supp
4. Malayan Law Journal 1949 Supplement
Citation: [1949] MLJ Supp
5. Malaysian and Singapore Company and Securities Law Reports
Citation: [2003] 2 CSLR 1
6. Current Law Journal (1981-)
Citation: [2003] 2 CLJ 32
7. All Malaysia Reports (1992-)
Citation: [2003] 3 AMR 142
8. Supreme Court Reports (1988-96)
Citation: [1993] 1 SCR 223
9. Malaysian Appeal Cases (1995-1998)
Citation: [2003] 5 MAC 111

Cases and Statutes judicially considered:

1. *Mallal's Digest Case and Legislation Citator 1932-1991*, 2vol., Kuala Lumpur: Malayan Law Journal, 1994
2. Cases and Legislation Judicially Considered appearing in the *Consolidated Tables 1992-1994, 1995-1996*, Kuala Lumpur: Malayan Law Journal
3. Consolidated Index of Legislation Judicially Considered appearing in the reference binder to the *Annotated Statutes of Malaysia*, Kuala Lumpur: Malayan Law Journal, 1994
4. Index of Legislation Judicially Considered appearing in the annual index to the *All Malaysian Reports*

C. Digests and Indexes

There is only one major digest of law reports “Mallal's Digest” accompanying the oldest law report, Malayan Law Journal which began publication in 1932. However cumulative indexes are issued by all three reports to aid research. The shortfall of these research aids is their limited coverage in that each publisher's index covers only their own respective reports without carrying parallel citations to the same case reported in a rival report.

The Digests and indexes published as retrieval tools for Law reports are as follows:

1. *Pallonjee's Digest of Cases, 1808 - 1911* ¹³⁹ covering cases decided in the Straits Settlement the Federated Malay States.
2. *McCabe Reay's Digest of Reported Cases, 1897 - 1925* ¹⁴⁰ covering cases only of the Federated Malay States.
3. *H.C. Willan's FMS Digest* ¹⁴¹, *Being a Digest of Reported Cases Decided in the Supreme Court of the Federated Malay States, Johore and Kedah from 1907 to 31st day of December 1935*. A supplement was issued in 1940 covering judicial decisions from 1935 - 1940.
4. C.H. Withers - Payne, *The Malayan Digest* ¹⁴², *Being a Complete Digest of Every Case in the Colony of the Straits Settlements and the Federated Malay States from 1808 to the Present Day [i.e. 1936], Including Annotation and a Full Index*. Supplements published in 1937 and 1940.
5. *Mallal's Digest of Malayan Case Law* ¹⁴³ *Being a Comprehensive Digest of All Decisions of the Supreme Courts of Malaya, 1803 - 1939*. A second edition was published in 1953 with a supplement thereto ¹⁴⁴ being brought out in 1958 which also contained in an appendix a Digest of Sarawak, North Borneo and Brunei Case Law 1928 to 1956.
6. *Mallal's Digest of Malaysian and Singapore Case Law 1808 - 1965 3d ed, 1965 - 1987* ¹⁴⁵
7. *Mallal's Digest of Malaysian and Singapore Case Law 1808 - 1988 4th ed, 1990*. This is the most ¹⁴⁶ current edition comprising twelve volumes, kept up to date annual supplements reissue of specific volumes every three to four years are published dependent on the development on a given area of law. Thus re-issue ranging from 2000 - 2002 have been published. A useful Consolidated Subject Index, 1808 - 2000, was issued to cover all twelve volumes of the Digest.

Indexes

1. Malayan Law Journal Consolidated Tables 1932 - 1998 ¹⁴⁷ issued in four volumes comprising:
 - Volume I General Index and Table of Cases Reported
 - Volume II Cases Judicially Considered
 - Volume III Legislation Judicially Considered
 - Volume IV Subject Index

The Consolidated Table of Cases Reported has been re-issued in 2001.
2. Current Law Journal Consolidated Index [1993 - 2000] ¹⁴⁸ comprising Table of Articles, Cases Reported, Legislation Judicially Considered and Subject Index. Annual Consolidated Index 2001 issued to supplement the above stated publication.
3. All Malaysia Reports Cumulative Index, 1992 - 1998 ¹⁴⁹ comprising Table of cases reported, Subject Index and Legislation Judicially Considered. Annual indexes (non - cumulative) issued in 1999, 2000 and 2001.

III. ISLAMIC LAW IN MALAYSIA

Before the advent of British control in the Malay States Islamic law was fully and generally applied in all the nine Malay States ¹⁵⁰. The courts under the British influence, although conceding that Islamic law is the law of the land, did not hesitate to apply English rules of justice, equity, and reasonableness on principles of "justice and fairness" ¹⁵¹. This practice paved the way for the erosion of the influence of Islamic Law in the Straits Settlements and the Malay States.

In the pre - colonial era the Sultanate of Malacca being the portal through which Islam gained a foothold in the Malayan Peninsular, there was compilation of Malay-Muslim law known as Risalat Hukum Kanun or Hukum Kanun Melaka. After the downfall of the Malacca Sultanate to the Portuguese, the Malacca version of the Islamic Law was adapted and applied to other Malay States particularly Pahang, Johore and Kedah.

Islam in contemporary Malaysia is again gaining ground. It now enjoys royal patronage and constitutional status as official religion of the country. The respective rulers of the various states are the guardians of the religion. In states such as Penang, Malacca, Sabah and Sarawak where there are no rulers, the Yang di-Pertuan Agong (Supreme Ruler) is the head.

Islamic law is now enforced by legislation enacted in conformity with the powers and limitations enunciated in the Federal Constitution ¹⁵². Islamic law is a matter for the State Legislatures. It is administered by the Syariah Courts and the civil courts have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts. The exclusive jurisdiction of Shariah Courts include matters affecting the family, succession, charities and religious affairs. In criminal matters jurisdiction is conferred on the Syariah Court by the Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355).

As the administration of Muslim law is a state matter, Syariah Courts were established at the various state levels. Jurisdiction is restricted only to Muslims resident in that particular state. Comprehensive uniform laws of civil and criminal procedure have been introduced and the status of the Syariah Courts have been elevated with the appointment of legally qualified judges in Syariah law. Amendments to the Federal Constitution ¹⁵³ has revoked the jurisdiction of the High Court in respect of any matter within the scope of the Syariah Courts.

Decisions of the Syariah Courts are reported in the Jernal Hukum ¹⁵⁴. A topical list of the Islamic Laws passed by the respective states appears in Part II of the Index to State Laws of the Federal Statute Law Referencer ¹⁵⁵.

IV. TREATIES

Treaties are important sources of international law and treaty collections have great value. The Vienna Convention on the Law of Treaties 1969 defines "treaty" as an international agreement concluded between States in written form and governed by international law. Treaties can be multilateral or bilateral, and many states publish their own treaty series. In Malaysia, the early treaties and agreements were concluded mainly between the individual Malay States and the

colonial powers, namely the Dutch and the British. These treaties were in fact collected and compiled under government authority as follows:

1. Report on the Treaties and Engagement with the Native States of Malayan Peninsular anterior to 1860 ¹⁵⁶ by Colonel Cavenagh, Governor of the Straits Settlements
2. Treaties and Other Papers Connected with Native States of the Malay Peninsular by the Straits Settlements Government 1888 ¹⁵⁷
3. Treaties and Engagements entered into with or affecting the Native States of the Malay Peninsular 1889 by the Straits Settlements Government 1889 ¹⁵⁸
4. Treaties and Engagements affecting The Malay States and Borneo edited by W.G. Maxwell and W.S.Gibson, 1924 ¹⁵⁹

No further official compilation of treaties surfaced since 1924. In 1981 a private publication brought the treaty records up to date. It was a two volume work entitled "A Collection of Treaties and other Documents affecting the States of Malaysia, 1761 - 1963" ¹⁶⁰.

Apart from the above two collections of Johore treaties are held in the Law Library of University of Malaya . One is an undated compilation of treaties between the British and the State of Johore from 1818 to 1915 ¹⁶¹, and the other comprises Johore treaties from 1819 to 1927 in Jawi by Haji Mohd Said bin Haji Sulaiman. This latter collection was published in 1941 entitled "Buku Treaty Johore dengan Pertamabahnnya" ¹⁶² (Johore Book of Treaties with Supplement).

Currently there is no treaty series in Malaysia. The Treaty Division in the Ministry of Foreign Affairs acts as the custodian of all treaties between Malaysia and other countries. Listings appear periodically in the Ministry's quarterly journal entitled "Foreign Affairs Malaysia" published since 1968.

A list of the current treaties subscribed to by Malaysia are:

- S=Where Malaysia is the signatory*
1. Convention for the Protections of Industrial Property and Revisions
Paris: 20-03-1883 Malaysia: 01-01-1989 (S)
 2. International Convention for the Publication of Customs Tariffs
Brussels: 05-07-1892 Malaysia: 07-01-1959 (S)
 3. Constitution of the International Labour Organisation Versailles: 1901
Malaysia: 11-11-1957
 4. Agreement for the Suppression of the Circulation of Obscene Publications and 1949 Protocol
Paris: 04-05-1910 Malaysia: 31-8-1957
 5. International Convention for the Unification of Certain Rules of Law Respecting Collisions between Vessels Brussels: 23-10-1910 Malaysia: 3-3-1913
 6. Minimum Age (SEA) Conventions (ILO)
Genoa: 09-07-1920 Malaysia: 03-03-1964 (Sarawak)
 7. Convention and Statute on Freedom of Transit
Barcelona: 20-04-1921 Malaysia: 28-01-1924
 8. Minimum Age (Trimmers and Stokers) Convention (ILO 15)
Geneva: 11-11-1921 Malaysia: 03-03-1964 (Sabah & Sarawak)

9. Medical Examination of Young Persons (SEA) Convention (ILO 16)
Geneva: 11-11-1921 Malaysia: 03-03-1964 (Sabah & Sarawak)
10. Right of Association (Agriculture) Convention (ILO 11)
Geneva: 11-11-1921 Malaysia: 11-01-1960
11. Workmen's Compensation (Agriculture) Convention (ILO 12)
Geneva: 12-11-1921 Malaysia: 05-06-1961
12. Weekly Rest (Industry) Convention (ILO 14)
Geneva: 17-11-1921 Malaysia: 03-03-1964 (Sarawak)
13. International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications and 1947 Protocols
Geneva: 12-09-1923 Malaysia: 21-08-1958
14. Convention and Statute on the International Regime of Maritime Ports
Geneva: 09-12-1923 Malaysia: 31-08-1966
15. International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading
Brussels: 25-08-1924 Malaysia: 24-08-1970
16. Equality of Treatment (Accident Compensation) Convention (ILO 17)
Brussels: 05-06-1923 Malaysia: 11-11-1957
17. Workmen Compensation (Accidents) Convention (ILO 17)
Brussels: 10-06-1925 Malaysia: 11-11-1957
18. Protocol for the Prohibition of the use in war of Asphyxiating Methods of Warfare
Geneva: 17-06-1925 Malaysia: 10-12-1970
19. International Convention for the Suppression of Counterfeiting Currency with Protocol and Optional Protocol
Geneva: 20-4-1929 Malaysia: 04-07-1972
20. International Convention for the Unification of Certain Rules Relating to International Carriage by Air
Warsaw: 12-10-1929 Malaysia: 16-09-1970
21. Convention on the Stamp Laws in Connection with Bills of Exchange and Promissory Notes
Geneva: 07-06-1930 Malaysia: 14-01-1960
22. 1930 Forced Labour Convention (ILO 29)
Geneva: 28-06-1930 Malaysia: 14-01-1960
23. Convention on the Stamp Laws in Connection with Cheques
Geneva: 19-03-1931 Malaysia: 14-01-1960
24. Underground Work (Women) Convention (ILO 45)
Geneva: 20-06-1936 Malaysia: 11-11-1957
25. Recruiting of Indigenous Workers Convention (ILO 50)
Geneva: 20-06-1936 Malaysia: 11-11-1957
26. Contracts of Employment (Indigenous Workers) Convention (ILO 64)
Geneva: 27-06-1939 Malaysia: 11-11-1957
27. Penal Sanction (Indigenous Workers) Convention (ILO 65)
Geneva: 27-06-1939 Malaysia: 11-11-1957
28. Convention on International Civil Aviation
Chicago: 07-12-1944 Malaysia: 11-11-1957
29. International Air Services Transit Agreement
Chicago: 07-12-1944 Malaysia: 31-12-1959
30. United Nations Charter
San Francisco: 26-06-1945 Malaysia: 19-9-1957

31. Declaration of Acceptance of the Obligations Contained in the Charter of the United Nations
San Francisco: 26-06-1945 Malaysia: 17-9-1957
32. Constitution of the Food and Agriculture Organisation (FAO)
Quebec: 16-10-1945 Malaysia: 9-11-1957
33. Constitution of the United Nations Educational Scientific and Cultural Organisation (UNESCO)
London: 16-11-1945 Malaysia: 16-6-1958
34. Articles of Agreement of the International Monetary Fund
Washington: 27-12-1945 Malaysia: 07-03-1958
35. Convention on the Privileges and Immunities of the United Nations
London: 13-2-1946 Malaysia: 28-10-1957
36. Constitutions of the World Health Organisation (WHO)
New York: 22-07-1946 Malaysia: 24-4-1958
37. Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs
New York: 11-12-1946 Malaysia: 21-1-1958
38. Protocol Bringing under International Drugs Outside the Scope of the Conventions of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs as amended by the ;Protocol signed at Lake Success
New York: 11-12-1946 Malaysia: 21-8-1958
39. Labour Inspection Convention (ILO 81)
Geneva: 11-07-1947 Malaysia: 1-7-1963
40. Contracts of Employment (Indigenous Workers) Convention (ILO 86)
Geneva: 11-07-1947 Malaysia: 19-5-1958
41. General Agreement in Tariffs and Trade
Geneva: 30-10-1947 Malaysia: 24-10-1957
42. Convention for the Suppression of the Circulations of and Traffic in, Obscene Publications concluded at Geneva on 12.9.1923 and amended by the Protocol signed at Lake Success
New York: 12-11-1947 Malaysia: 21-8-1958
43. Convention on the Privileges and Immunities of the Specialised Agencies
New York: 21-11-1947 Malaysia: 29-03-1962
44. Convention on the International Maritime Organisation
Geneva: 6-03-1948 Malaysia: 17-6-1971
45. Employment Service Convention (ILO 88)
Geneva: 9-7-1948 Malaysia: 6-6-1974
46. Constitution of the International Rice Commission
Washington: 29-11-1948 Malaysia: 15-9-1958
47. Labour Clauses (Public Contracts) Convention (ILO 94)
Geneva: 29-6-1949 Malaysia: (Sabah & Sarawak:3-3-1964)
48. Protection of Wages Convention (ILO 95)
Geneva: 1-7-1949 Malaysia: 17-11-1961
49. Right to organise and collective Bargaining Convention (ILO 98)
Geneva: 1-7-1949 Malaysia: 5-6-1961 (Sabah & Sarawak: 3-3-1964)
50. Conventions for the Protection of War Victims concerning:
 - (1) Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field
 - (2) Amelioration of the Condition of Wounded and Sick and Ship wrecked Members of Armed Forces at Sea

- (3) Treatment of Prisoners of War
- (4) Protection of Civilian Person in Time of War
Geneva: 12-08-1949 Malaysia: 24-8-1962
- 51. Convention on Road Traffic
Geneva: 19-9-1949 Malaysia: 10-9-1958
- 52. Protocol modifying the 1890 Convention Concerning the Creation of an International Union of Publication of Customs Tariffs
Brussels: 16-12-1949 Malaysia: 01-04-1959
- 53. Agreement on the Importation of Educational Scientific and Cultural Materials
New York: 22-11-1950 Malaysia: 29-16-1959
- 54. Convention on the Nomenclature in Goods in Customs Tariffs and 1955 Amending Protocol
Brussels: 15-12-1950 Malaysia: 30-3-1979
- 55. International Conventions to Facilitate the importation of Commercial Samples and Advertising Material
Geneva: 7-11-1952 Malaysia: 21-8-1958
- 56. Customs Convention on the Temporary Importation of Private Road Vehicles
New York: 4-6-1954 Malaysia: 7-5-1958
- 57. Convention Concerning Customs Facilities for Touring
New York: 4-6-1954 Malaysia: 7-5-1958
- 58. Additional Protocol to the 1954 Convention Concerning Customs Facilities for Touring relating to the Importation Tourist Publicity and Material
New York: 4-6-1954 Malaysia: 7-5-1958
- 59. Articles of Agreements of the International Finance Corporation
Washington: 25-5-1955 Malaysia: 20-3-1958
- 60. Protocol Amending the 1929 Convention for the Unification of Certain Rules relating to International Carriage by Air
The Hague: 28-9-1955 Malaysia: 20-9-1974
- 61. Supplementary Convention on the Abolition of Slavery, the Slavery Trade and Institutions and Practices similar to Slavery
Geneva: 7-9-1956 Malaysia: 18-11-1957
- 62. Statutes of the International Atomic Energy Agency
New York: 26-10-56 Malaysia: 15-1--1969
- 63. Statutes of the International Centre for the Study of the Preservation and Restoration of Cultural Property
New Delhi: 5-12-1956 Malaysia: 4-11-1966
- 64. Convention on the Nationality of Married Women
New York: 20-2-1957 Malaysia: 24-2--1959
- 65. 1957 Abolition of Forced Labour Convention (ILO 105)
Geneva: 25-6-1957 Malaysia: 13-10-1958
- 66. Convention on the Territorial Sea and the Contiguous Zone
Geneva: 29-4-1958 Malaysia: 21-12-1960
- 67. Convention on the High Sea
Geneva: 29-4-1958 Malaysia: 21-12-1960
- 68. Convention on Fishing and Conservation of the Living Resources of the High Seas
Geneva: 29-4-1958 Malaysia: 21-12-1960
- 69. Convention on the Continental Shelf
Geneva: 29-4-1958 Malaysia: 21-12-1960

70. Optional Protocol (to the 1958 Law of the Sea Conventions) concerning the Compulsory Settlement of Disputes
Geneva: 29-4-1958 Malaysia: 1-5-1961
71. Convention of the Recognition and Enforcement of Foreign Arbitral Awards
New York: 10-6-1958 Malaysia: 5-11-1985
72. Articles of Agreement of the International Development Association
Washington: 26-1-1960 Malaysia: 24-9-1960
73. Single Convention on Narcotic Drugs
New York: 30-3-1961 Malaysia: 11-7-1967
74. Convention on the Asian Productivity Organisation (APO)
Manila: 14-4-1961 Malaysia: 1.1.1983
75. Vienna Convention on Diplomatic Relations
Vienna: 18-04-1961 Malaysia: 9-11-1965
76. Optional Protocol to 1961 Vienna Convention on Diplomatic Relations Concerning the Compulsory Settlement of Disputes
Vienna: 18-04-1961 Malaysia: 9-11-1965
77. Conventions on the A.T.A Carnet for the Temporary Admission of Goods
Brussels: 6-12-1963 Malaysia: 13-6-1988
78. Vienna Convention on Diplomatic Relations
Vienna: 24-4-1963 Malaysia: 1-10-1991
79. Treaty Banning Nuclear Weapon testing in the Atmosphere in Outer Space and Underwater
Moscow: 5-8-1963 Malaysia: 15-7-1964
80. Convention on Offences and Certain Other Acts Committed on Board Aircraft
Tokyo: 14-9-1963 Malaysia: 5-3-1985
81. Convention on the Settlements of Investment Disputes between States and Nationals of Other States
Washington: 18-3-1965 Malaysia: 8-8-1968
82. Convention on Facilitation of International Maritime Traffic 1965
London: 9-4-1965 Malaysia: 9-4-1965 (S)
83. Agreement Establishing the Asian Development Bank
Manila: 4-12-1965 Malaysia: 16-8-1966
84. International Convention on Load Lines
London: 5-4-1966 Malaysia: 12-1-1971
85. Convention on the International Hydrographic Organisations
Monaco: 3-5-1967 Malaysia: 3-7-1975
86. WHO Nomenclature Regulations
Geneva: 22-2-1967 Malaysia: 10-9-1969
87. Convention Establishing the World Intellectual Property Organisation (WIPO)
Stockholm: 14-7-1967 Malaysia: 1-1-1989
88. Treaty on the Non Proliferation of Nuclear Weapons London, Moscow,
Washington: 1-7-1968 Malaysia: 5-3-1970
89. International Convention on Tonnage Measurements of Ships
London: 23-6-1969 Malaysia: 24-4-1984
90. International Health Regulations
Boston: 25-7-1969 Malaysia: 11-12-1975
91. Statutes of the World Tourism Organisation (WTO)
Mexico City: 27-9-1990 Malaysia: 8-5-1975

92. Treaty of the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subject thereof London, Moscow
Washington: 11-2-1971 Malaysia: 21-6-1972
93. Convention on Psychotropic Substances
Vienna: 21-1-1971 Malaysia: 22-7-1986
94. Agreement Relating to the International Telecommunications Satellite Organisation (Intelsat)
Washington: 20-8-1971 Malaysia: 20-8-1971
95. Protocol Amending 1961 Single Convention on Narcotic Drugs
Geneva: 25-3-1972 Malaysia: 20-4-1978
96. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapon and on their Destruction London, Moscow,
Washington: 10-4-1972 Malaysia: 6-9-1991
97. Convention on the International Regulations for Prevention of Collisions at Sea
London: 20-10-1972 Malaysia: 23-12-1980
98. Convention for the Protection of the World Cultural on Natural Heritage
Paris: 16-11-1972 Malaysia: 7-12-1988
99. International Convention on International Trade in Endangered Species of World Fauna and Flora
Washington: 3-3-1973 Malaysia: 20-11-1977
100. International Convention on the Simplification and Harmonization of Customs Procedures
Kyoto: 18-5-1973 Malaysia: 8-6-1993
101. International Telecommunications Conventions and Optional Protocol Malaga, Trimolinos: 25-10-1974 Malaysia: 13-4-1976
102. Convention on a Code of Conduct for Liner Conferences
Geneva: 6-4-1974 Malaysia: 27-8-1982
103. International Convention for the Safety of Life at Sea
London: 1-11-1974 Malaysia: 19-10-1983
104. Constitution of the Asia Pacific Telecommunity
Bangkok: 27-3-1976 Malaysia: 23-6-1977
105. Agreement Establishing the International Fund for Agricultural Development
Rome: 13-6-1976 Malaysia: 23-1-1990
106. Convention on the International Maritime Satellite Organisation (Inmarsat)
London: 3-9-1976 Malaysia: 12-7-1980
107. Constitution of the United Nations Industrial Development Organisation (UNIDO)
Vienna: 8-4-1979 Malaysia: 28-7-1980
108. International Natural Rubber Agreement 1979
Geneva: 6-10-1979 Malaysia: 29-1-1980
109. Universal Postal Convention and General Regulations of UPU
Rio de Janeiro: 26-10-1979 Malaysia: 17-2-1982
110. Postal Parcels Agreement
Rio de Janeiro: 26-10-1979 Malaysia: 17-2-1982
111. Convention on the Elimination of all Forms of Discrimination against Women
New York: 18-12-1979 Malaysia: 5-7-1995
112. Asia Pacific Postal Convention
Jog Jakarta: 27-3-1981 Malaysia: 27-3-1981

113. Sixth International Tin Agreement 1981
Geneva: 26-6-1981 Malaysia: 4-9-1981
114. International Telecommunication Convention and Optional Protocol
Nairobi: 6-11-1982 Malaysia: OP. (Optional Additional Protocol)
115. UN Convention on the Law of the Sea
Montego Bay: 10-12-1982 Malaysia: 10-12-1982
28-7-94 signed the Agreement to Implement Part XI. : 20-3-1996
116. Agreement Establishing the Association of Tin Producing Countries (ATPC)
London: 29-3-1983 Malaysia: 16-6-1983
117. Commonwealth Telecommunications Organisation Financial Agreement
London: 30-3-1983 Malaysia: 14-6-1987
118. International Convention on the Harmonized Commodity Description and Coding System
Brussels: 14-6-1983 Malaysia: 15-12-1987
119. International Tropical Timber Agreement
Geneva: 18-11-1983 Malaysia: 14-12-1984
120. Universal Postal Convention and General Regulations of UPU
Hamburg: 27-7-1984 Malaysia: 13-8-1986
121. Vienna Convention for the Protection of the Ozone Layer
Vienna: 22-3-1985 Malaysia: 29-9-1989
122. Convention Establishing the Multilateral Investment Guarantee Agency
Seoul: 11-10-1985 Malaysia: 2-8-1991
123. Constitution of the Asia-Pacific Postal Union
Bangkok: 4-12-1985 Malaysia: 14-1-1988
124. International Convention against Apartheid in Sports
New York: 10-12-1985 Malaysia: 16-5-1986(S)
125. Agreement on the Reconstruction of the Commonwealth Agricultural Bureaux as Cab
International
London: 8-7-1986 Malaysia: 11-3-1987
126. Convention on Early Notification of a Nuclear Accident
Vienna: 26-09-1986 Malaysia: 1-9-1987
127. Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency
Vienna: 26-09-1986 Malaysia: 1-9-1987
128. International Natural Rubber Agreement 1987
Geneva: 20-3-1987 Malaysia: 25-6-1987
129. Protocol on Substances that Deplete the Ozone Layer
Montreal: 16-9-1987 Malaysia: 29-8-1989
130. Agreement on the Network of Agriculture Centers in Asia and the Pacific
Bangkok: 8-1-1988 Malaysia: 4-7-1991
131. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving
International Civil Aviation, supplementary to the 1971 Convention for the Suppression
of Unlawful Acts Against the Safety of Civil Aviation
Montreal: 24-2-1988 Malaysia: 8-7-1988
132. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
Vienna: 20-12-1988 Malaysia: 20-12-1988(S)
133. Convention on the Control of Transboundary Movements of Hazardous Wastes and Their
Disposal
Basel: 22-3-1989 Malaysia: 8-10-1993
134. Terms of References of the International Tin Study Group
Geneva: 7-4-1989 Malaysia: 18-10-1989

135. Constitution of the International Telecommunication Unions
Nice: 30-6-1989 Malaysia: 30-6-1989
136. Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific and 1990 Protocols
Wellington: 24-11-1989 Malaysia: 27-6-1995
137. Asian Pacific Postal Convention
Rotorua: 6-12-1990 Malaysia: 6-12-1990
138. Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality National of Cambodia
Paris: 23-10-1991 Malaysia: 31-3-1993
139. United Nations Framework Convention on Climate Change
New York: 9-5-1992 Malaysia: 13-7-1994(S)
140. United Nations Convention on Biological Diversity
Rio De Janeiro: 5-6-1992 Malaysia: 30-9-1992
141. Constitution of the International Telecommunication Union
Geneva: 22-12-1992 Malaysia: Optional Protocol
142. Convention of the International Telecommunication Union
Geneva: 22-12-1992 Malaysia: Optional Protocol
143. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction
Paris: 13-1-1993 Malaysia: 14-1-1993
144. International Cocoa Agreement 1993
Geneva: 16-7-1993 Malaysia: 21-12-1993(S)
145. Charter of the Asian and Pacific Development Centre
Bangkok: 1-4-1992 Malaysia: 15-6-1995
146. Agreement Establishing the World Trade Organisation
 - (a) Multilateral Agreement on Trade in Geneva
 - (b) General Agreement on Trade in Services
 - (c) Agreement on Trade Related Aspects of Intellectual Property Rights
 - (d) Understanding on Rules and Procedures Governing the Settlement of Disputes
 - (e) Trade Policy Review Mechanism
 Malaysia: 6-9-1994
147. International Cocoa Agreement 1993
Geneva: 16-7-1993 Malaysia: 25-1-1994
148. International Tropical Timber Agreement 1994
Geneva: 26-1-1994 Malaysia: 1-3-1995
149. United Nations Convention to Combat Desertification on those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa
Paris: 14-10-1994 Malaysia: 6-10-1995
150. International Natural Rubber Agreement 1995
Geneva: 17-2-1995 Malaysia: 24-12-1996

V. SECONDARY SOURCES OF RESEARCH

A. Annotated statutes

The only source of annotation to Malaysian statutes is that published by the Malayan Law Journal entitled "Annotated Statutes of Malaysia" ¹⁶³ in loose-leaf binders. Annotation is made to selected statutes and the work is therefore not comprehensive. Each annotated Act is issued in booklets which are re-issued periodically.

B. Encyclopedic Works

The first point of reference when researching an area of law is encyclopedic works which give a succinct statement of the current legal position on a given point of law. The only such work in respect of Malaysian law is Halsbury's Laws of Malaysia ¹⁶⁴ which to date has published seventeen volumes on various areas of law.

C. Law Dictionaries

A dictionary in Bahasa Melayu is available entitled "*Kamus Undang-Undang*" ¹⁶⁵. In the absence of locally published dictionaries in English, recourse has to be made to foreign works, but compilations of words and phrases judicially defined are often referred to seek meanings attributed by the courts to specific terms and phrases. One such source is "*Words and Phrases Judicially Defined*" published by Malayan Law Journal ¹⁶⁶. Apart from this, publications there are dictionaries on appropriate Bahasa Melayu terminologies for parallel legal terms in the English language ¹⁶⁷. With the increased use of the local language in court proceedings these terminology texts are very useful.

D. Law Journals

Law journals are useful sources of academic comment and analysis of legal developments. The most useful legal journals published in Malaysia are:

1. Malayan Law Journal
2. Jernal Hukum
3. Malaysian Current Law Journal
4. Malaya Law Review
5. Jernal Undang-Undang: Journal of Malaysian and Comparative Law ¹⁶⁸
6. Survey of Malaysian Law ¹⁶⁹
7. Insaf ¹⁷⁰
8. Adil ¹⁷¹
9. Malaysian Tax Journal ¹⁷²
10. The Writ ¹⁷³
11. Journal of the Straits Branch of the Royal Asiatic Society, Singapore, 1878-1922
12. Journal of the Malaysian Branch of the Asiatic Society ¹⁷⁴
13. Index Malaysiana ¹⁷⁵

E. Internet CD-ROM etc

In the electronic age, the on-line sources are the most current and readily available sources:

1. www.lawnet.com.my -contains full text of all legislations, including Amendments, Bills, P.U.(A) & P.U.(B)
2. www.lexis.com -contains online sources for legal information including cases, legislations, journal articles etc.
3. www.cljlaw.com -contains cases, legislations of Malaysia, words and phrases judicially defined etc.
4. www.sc.com.my -provides guidelines, statutes and other legal matters related to securities
5. www.epu.jpm/Bi/guidelines/fic/FIC1.HTM -provides guidelines for the acquisition of assets, mergers and take-overs
6. www.bnm.gov.my/IslamicBanking/default.asp?1 -provides information on Islamic banking in Malaysia
7. www.malaysianbar.org.my -official website of the Bar Council, Malaysia
8. www.kln.gov.my/english/Fr-foreignaffairs.htm -contains list of all treaties subscribed to by Malaysia
9. Malayan Law Journal on Disk-produced by MLJ
10. Malaysian Court Forms in Civil Proceedings on Disk-produced by LexisNexis
11. Singapore Malaysia Case Law Library on Disk by LexisNexis & MLJ

VI. LEGAL RESEARCH CENTRES

The most useful resource centres for legal research are the well-stocked libraries of University Malaya ¹⁷⁶, National University of Malaysia (Universiti Kebangsaan Malaysia) ¹⁷⁷ and International Islamic University Malaysia (Universiti Islam Antarabangsa Malaysia) ¹⁷⁸. All these universities conduct legal education courses up to postgraduate level and have extensive legal materials to support requisite research needs.

Another good repository of historical documents is the National Archives of Malaysia (Arkib Negara Malaysia) ¹⁷⁹.

ENDNOTES

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- ² Sharifah Suhana Ahmed, *Malaysian Legal System*, Kuala Lumpur: Malayan Law Journal, 1964, pp. 1-3.
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- ²⁴ G. W. Bartholomew, *Ibid.*, p. 332.
- ²⁵ Singapore, 1890-98, 9 vols.
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- ³⁰ G. W. Bartholomew, *Ibid.*, p. 334.
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 169 Published by the Faculty of Law, University of Malaya, the first volume for the year 1977 was published in 1979. It is a survey of legal developments in Malaysia, and is brought out annually.
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¹⁷⁴ Succeeded the Journal of the Straits Branch of the Royal Asiatic Society. Published in Singapore, 1923- Suspended 1941-45. Contains scholarly articles on the history, literature and customary laws of Malaysia, Singapore and Brunei.

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PHILIPPINES

BASIC INFORMATION FOR LEGAL RESEARCH IN THE PHILIPPINES

By

Prof. Antonio M. Santos *

I. HISTORICAL EVOLUTION OF PHILIPPINE LAW – AN OVERVIEW

The evolution of the Philippine legal system may be discussed through the various periods of political development the country had experienced: the Pre-Spanish period (ante 1521); the Spanish Regime (1521-1898); American Period, (1891-1946); Japanese Occupation (1941-1944); Philippine Republic (1946-1972); and the Martial Law Period (1972-1986); 1986 until the present.

A. Pre-Spanish Period

The Pre-Spanish Period refers to the time before Ferdinand Magellan set foot in Philippine soil in the island of Mactan, province of Cebu on March 16, 1521. This is the date that history assigns as the discovery by Ferdinand Magellan (1480-1521) of the Philippines.¹

Many centuries before the Christian era and stretching back to the Stone Age, intrepid Indonesian and Malay migrants came in waves to the Philippines and set up *barangays* in the rich deltas of the archipelago. Each *barangay*, like the Greek city-state, was an independent and self-sustaining political unit. The *barangay* head was called a *datu*. *Barangay* groupings were under a higher chief called the *rajah*. The early Filipino chiefs made laws upon consultation with the lesser chiefs. Most of the laws were unwritten, handed down by word of mouth from generation to generation, and evolved

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¹ G. Zaide, *The Pageant of Philippine History* 184 (1979).

into native customs and traditions. This is customary law. The *Code of Kalantiaw* and the *Maragtas Code* are the only relics of Pre-Spanish written laws (Gupit, p.39-40).²

The *barangays* administered their own brand of justice. The *datu*, assisted by the elders in the community, presided over the court. Cases were settled through mediation and generally ended up in a compromise. If the parties could not agree, a public hearing was held. Witnesses took their oaths and the parties were bound under oath to abide by the council's decision, which was final and was promptly executed by the disputants. The foregoing procedure in resolving controversies is the idea behind the present *Katarungang Pambarangay Law*,³ which compels residents of *barangays* of the same city or municipalities, or of adjourning *barangays* of different cities or municipalities to enter first into conciliation before the *Lupong Tagapayapa* before they can file action in court.⁴

B. Spanish Period

The Spanish time is a long period of 377 years, from the year Magellan discovered the Philippines until 1898 after the Battle of Manila Bay. Initially, Spain ruled the Philippines from Mexico through the Council of Indies in Spain. The Council exercised executive, legislative and judicial powers. The King of Spain, through royal decrees, exercised legislative power over the colonies. In addition to these royal decrees and order, certain laws with general application were extended to the Philippines, such as *Fuero Jusgo*, the *Fuero Real*, *Las Sietes Partidas*, *Las Leyes de las Indias*, *La Novisima Recopilacion*.⁵

During the last fifty years of Spanish rule, Spain extended the application of new codes and statutes to the Philippines, among them: the Civil Code of 1889, the Code of Commerce of 1885, the Penal Code of 1870, the Code of Civil Procedure of 1853; the Mortgage Law of 1861; the Notarial Law of 1862; the Marriage Law of 1870; and the Code of Criminal Procedure of 1882.⁶

On May 5, 1898 the *Royal Audiencia* was established in Manila until the end of the Spanish regime in 1898. The Audiencia was not an exact model of the present Supreme Court. During the fight for Philippine independence against Spain, the provisional revolutionary government issued decrees, orders and proclamations to govern the conduct of the inhabitants. Leaders came out with various drafts of constitutions. The most significant of these documents was the Malolos Constitution. It established the short-lived Philippine Republic. It provided for a trinity of powers, the

² T. Agoncillo & M. Guerrero, *History of the Filipino People* 46 (1973).

³ Pres. Decree No. 1508 (1978), as amended.

⁴ F. Gupit & D. Martinez, *A Guide to Philippine Legal Materials* 43 (1993).

⁵ M. Gamboa, *An Introduction to Philippine Law* 69 (1969).

⁶ *Supra* note 4 at 45.

executive power in the hands of one person. The legislative power was in a representative body. The judicial power was lodged in the Supreme Court and lower courts.⁷

C. American Period

The American Period started with the cession of the Philippines to the United States, formalized in the Treaty of Paris signed on December 10, 1898. The cession saw the evolution of the law making process under a constitutional government. The Constitution of the United States was never formally extended to the Philippines. The organic acts that defined the structure and organization of the Philippine Government were: Instruction of Pres. William McKinley to the Philippine Commission of April 7, 1900; Act of Congress of July 1, 1902, or the Philippine Bill of 1902, otherwise known as the Cooperatives Act; Act of Congress of August 29, 1916, or The Philippine Autonomy Act, also referred to as the Jones Law; and the Philippine Independence Act of 1934 or The Tydings-McDuffie Law⁸.

- Military Government

From August 13, 1898 up to September 1, 1900, the military governor exercised all the powers of government in the Islands, including legislative power. The Philippine Commission later assumed the legislative functions of the military governor, thus paving the way for a dichotomous civil and military government, with the military governor exercising executive power and the Commission the legislative power. As for the judicial power, the military governor at first, organized military commissions and military courts and suspended the civil jurisdiction of the *Audiencia de Manila* and other local minor courts. Later, General Order No.20, re-established the *Audiencia*, the court of first instance, the justice of the peace courts. Legislation during this military period came down in the form of General Orders⁹.

- Civil Government

On July 4, 1901, the Spooner Amendment, a rider to the Army Appropriations Bill, abolished the position of Military Governor and transferred the executive power to the Chairman of the Philippine Commission, who acted as the Civil Governor. This made the government structure parliamentary in form. The Civil Governor exercised not only executive power, but also took active part in lawmaking. The Philippine Commission, whose members were cabinet secretaries, was the lawmaking body.

⁷ *Ibid.* at 46.

⁸ *Id.* at 47-48.

⁹ *Id.* at 49.

With the passage of the Philippine Bill of 1902, a Philippine Assembly was created with whom the Philippine Commission shared the legislative function. The Philippine Commission as the upper chamber and the Philippine Assembly as the lower chamber. With the establishment of the civil government, the Philippine Commission enacted Act No. 136, the Judiciary Act of 1901, Act No. 136 creating a three-level court system with the Supreme Court as the highest court, The Philippine Autonomy Act of 1916 or Jones Law which further changes the structure of the government. It vested the general legislative powers in a legislature composed of two houses, the Senate and the House of Representatives.¹⁰

- Commonwealth Government

The Tydings-McDuffie Law provided for a ten-year transition period preparatory to the grant of independence. It empowered the Filipinos to formulate their own Constitution. The Constitution was drafted and approved by a constitutional convention on February 19, 1935. After it was signed by US President Franklin D. Roosevelt, it was ratified by the Filipino people on May 14, 1935. A presidential form of government, which was adopted with a unicameral legislature, which subsequently became a bicameral Congress, when the Constitution was amended in 1940, composed of a Senate and a House of Representatives. The judicial power was vested in one Supreme Court and other inferior courts but the National Assembly enacted Commonwealth Act No. 3 creating the Court of Appeals to relieve the Supreme Court of minor cases and to give it more time to consider the more important ones.¹¹

D. Japanese Period

A hiatus in the Commonwealth period occurred when the Japanese Imperial Forces occupied the Philippines for three agonizing years, more specifically, from January 3, 1942 to February 27, 1945, after the Americans successfully liberated the islands.¹²

During the three-year military rule, a 1943 Constitution was drafted and ratified by a special national convention, which led to the short-lived Japanese sponsored republic. The executive power was ostensibly held by a Filipino president Jose P. Laurel and the legislative power in the Japanese-sponsored Executive Commission, which restored the Supreme Court, the Court of Appeals, the Courts of First Instance and the municipal and justice of the peace courts. During the Japanese Occupation, the Commonwealth, then in rule, functioned in Washington, D.C.¹³

¹⁰ *Id.* at 50-51.

¹¹ *Id.* at 52.

¹² *Id.* at 53.

¹³ M. Feliciano, *The Legal System of the Philippines, Legal Systems in the ASEAN Region* 14 (1987).

E. Philippine Republic

The Philippines was inaugurated as a Republic on July 4, 1946. On that historic day, the American flag was lowered, leaving the Philippine flag to fly alone. The Philippine Republic continued with the American style presidential form of government in accordance with the 1935 Constitution, which was the organic law at that time. The establishment of the Philippine Republic, however, did not bring about any major change in the government system. The basic powers of government were distributed among the executive, the legislative and the judiciary.¹⁴

The Philippine Republic continued except that with the declaration of martial law by President Ferdinand E. Marcos, its political principles and institutions underwent some changes. During this period the 1973 Constitution was in effect. It established a parliamentary form of government and introduced a merger of executive and legislative powers. This parliamentary form of government was never implemented. The 1973 Constitution was subsequently amended in 1980 and 1981. Martial law was lifted on January 17, 1981 and military tribunals were abolished by Proclamation No. 2045. On June 16, 1981 a presidential election was held and again President Marcos was re-elected. In his inaugural address on June 30, 1981, he proclaimed the birth of the Fourth Republic under the New Constitution.¹⁵

On August 21, 1983 former Senator Benigno S. Aquino, was assassinated which triggered mass demonstrations and an economic crisis, which paved the way to another set of amendments to the 1973 Constitution. On May 14, 1984, elections for the congressional seats in the 200 members *Batasang Pambansa* was held and the legislature convened on July 24, 1984. On November 3, 1985, Pres. Marcos announced the calling of a special presidential election, which paved the way for the ouster of President Marcos after a four-day “People Power” revolution on February 25, 1986.¹⁶

Corazon C. Aquino took her oath as President and it was during her administration that a Constitutional Commission was constituted which drafted the 1987 Constitution. Although, it is basically patterned after the 1973 Constitution, the 1987 Constitution contains a hundred new sections, which deal primarily with social justice, the national economy, family rights, education and human resources, the Commission on Human Rights and the autonomous regions. Emerging as successor to Pres. Aquino was President Fidel V. Ramos, followed by Pres. Joseph E. Estrada and the incumbent Pres. Gloria Macapagal-Arroyo.

¹⁴ *Supra* note 4 at 53.

¹⁵ *Supra* note 13 at 16-18.

¹⁶ *Ibid.* at 19-20.

II. SOURCES AND CLASSIFICATION OF LAW

A. Sources of Law

The three (3) branches of the Philippine government under the present dispensation have different roles in the law-making process. These roles and the interplay among the three branches balance the law-making power, with each branch checking the law-making power of the two. These institutions involved as sources of law must be ascertained and their behavioral patterns analyzed to be able to predict with a reasonable degree of certainty what action will be taken in a particular case. These institutions must necessarily include government institutions since they are the official sources of law. Let us therefore, discuss briefly the structure of the Philippine government.

B. Structure of Government

The government of the Philippines is republican in form and under a presidential system. It is also unitary and centralized with the principle of separation of powers as a basic feature. This means that there is a division of the functions of the government into three distinct classes, -- the executive, the legislative, and the judicial departments – and in the exercise of functions allotted to each department under the 1987 Constitution, each department is supreme, coordinate and coequal with the others.¹⁷

- Executive Department

The Constitution vests the executive power in a President who has control of all the executive departments, bureaus and offices; exercises general supervision over local governments; and ensures that the laws be faithfully executed. It invests the President with powers of Commander-in-Chief of all armed forces of the Philippines and empowers this office under certain circumstances and conditions to suspend the privilege of the writ of habeas corpus or place the Philippines under martial law for a limited period. A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ. Likewise, the suspension of the privilege of the writ applies only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.¹⁸

The other powers of the President include: the authority to nominate and appoint with the consent of the Commission on Appointments, the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed

¹⁷ *Id.* at 24.

¹⁸ *Id.* at 25.

forces from the rank of colonel or naval captain, and other officers whose appointments are vested in the Presidency under the Constitution and by law; authority to contract or guarantee foreign loans on behalf of the Republic only with the prior concurrence of the Monetary Board and subject to such limitations as may be provided by law; power to grant reprieves, commutations and pardons, and remit fines and forfeitures, after conviction by final judgment except in cases of impeachment; and power to grant amnesty with the concurrence of the majority of all the Members of the Congress¹⁹.

The President also participates in the legislative process because a bill passed by the Congress does not become a law unless he approves it. If he vetoes the bill, it could still become a law if two-thirds of all the Members of each House reconsider and approve such bill²⁰.

Both the President and Vice-President are elected by direct vote of the people for a term of six years. The President shall not be eligible for any reelection whereas the Vice-President shall serve for not more than two successive terms. In case of death, permanent disability, removal from office, or resignation of the President during his term, the Vice-President shall become President to serve the unexpired term. Where there is no President or Vice-President, the President of the Senate or in case of his inability, the Speaker of the House of Representatives shall then act as President until the President or Vice-President shall have been elected and qualified²¹.

- *Legislative Department*

The legislative power is vested in the Congress of the Philippines, a bicameral body composed of the Senate and House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum. The Senate is composed of twenty-four Senators who are elected at large for a term of six years and for not more than two consecutive terms. The House of Representatives is composed of at most two hundred and fifty members, 20% of whom are elected through the party-list system and from the sectors for the first three terms while the rest are elected by legislative district. The members of the House of Representatives are elected for a term of three years but must not serve for more than three consecutive terms.²²

The Congress convenes once every year on the fourth Monday of July for its regular session unless a different date is fixed by law and continues to be in session for such number of days as it may determine until thirty days before the opening of its next regular session. Each House by a majority vote of all its respective members elects the Senate President and the Speaker and other officers who shall hold their office at the pleasure of their respective members. Each House determined its rules of procedure and

¹⁹ *Id.* at 26.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

punishes its members for disorderly behavior. Each House shall have an Electoral Tribunal composed of nine members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, with the senior justice as the Chairman, and the remainder, members of the Senate or House.²³

The Constitution has revived the Commission on Appointments, which was constituted under the 1935 Constitution to consider the nominations made by the President to the more important positions in the government. It is composed of the President of the Senate as *ex officio* Chairman, twelve Senators and twelve Members of the House of Representatives.²⁴

- Judicial Department

The judicial system of the Philippines consists of a hierarchy of courts with the Supreme Court at the apex. The other courts are: one Court of Appeals, Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts. For Muslims, there are *shari'a* circuit and *shari'a* district courts. Aside from this tribunal, there are special courts, namely, the Court of Tax Appeals and the Sandiganbayan.

The Supreme Court is composed of a Chief Justice and fourteen Associate Justices who sit *en banc* or in divisions. Cases that are heard and decided by the Supreme Court *en banc* are those involving the constitutionality of a treaty, executive agreement, or law; and such cases as required under the Rules of Court, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations. These cases shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon. Cases or matters heard by a division are decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues of the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the cases are decided *en banc*. No doctrine or principle of law laid down by the Court in a decision rendered *en banc* or in division may be modified or reversed except by the Court sitting *en banc*.²⁵

Under the Constitution, the Supreme Court exercises original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, *quo warranto*, and habeas corpus. The Supreme Court has the power to review and revise, reverse, modify or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and decrees of inferior courts in: (a) all cases in which the constitutionality or validity of any treaty,

²³ *Id.* at 27-28.

²⁴ *Id.* at 28.

²⁵ *Id.* at 31-32.

international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question; (b) all cases involving the legality of any tax, impost, assessment, or toll or any penalty imposed in relation thereto; (c) all cases in which the jurisdiction of any lower court is in issue; (d) all criminal cases in which the penalty imposed is *reclusion perpetua* or higher; (e) all cases in which only an error or question of law is involved.²⁶

The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose. The Supreme Court has also the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleadings, practice and procedure in all courts, admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. The Supreme Court exercises administrative supervision over all courts and their personnel. It has the power to discipline judges of lower courts, or order their dismissal.²⁷

After knowing the functions of the three main branches of the government, it is necessary for the researchers in law to know where to find these different legislations, pronouncements, enactments and promulgations of these institutions. Are these found in primary sources, secondary sources or through finding tools? Primary sources contain the law itself, secondary sources contain commentary on the law, and finding tools are used to find primary and secondary sources. Primary sources are given the most weight, but secondary sources may be used if no primary sources are available. Finding tools are not authoritative and may not be quoted or cited. Nevertheless, finding tools are an important part of legal research. You may be able to locate relevant primary and secondary sources only by using finding tools. Whether these sources of law are primary, secondary or just finding tool the same shall be explained further in the succeeding pages.

C. Classification of Law

As mentioned above, the three main structure of government, namely, legislative, executive and judicial branches of government are the three main sources of law, such as statutes, judicial opinions and administrative regulations and adjudications.

If we consider administrative regulations to be subsumed with statutes for the reason that they are normally promulgated pursuant to statutes and because like statutes, they are binding upon the people to whom they apply, and if we consider that the term judicial opinions to include administrative adjudication, then the two main classification of law consist of statutes (legislation) and judicial opinions (decisions) which we call STATUTE LAW and CASE LAW, respectively.

²⁶ *Id.* at 32.

²⁷ *Id.* at 32-33.

III. RESEARCH IN STATUTE LAW

A. Concept, Scope and Classification of Statute Law

Statute law refers to those rules enunciated and declared by the competent authorities for the governance of the community. It embraces not only the enactment of the legislative department of the government but also those rules and regulations which have the force and effect of law.

In general, statute law may be classified into conventional legislation and subordinate legislation. The first comprises all enactments by national or local legislative bodies, or in which they may have participated. The second includes all rules and orders, issued pursuant to law by administrative and judicial agencies.²⁸

Statute law may also be divided in a broad sense: into external legislation, or rules of general application, affecting order and procedure in a community, and internal legislation, or rules of restricted application, affecting order and procedure among members of a legislative, judicial or administrative office.²⁹

In particular, there are several classes of statute law. These are constitution, treaties and other international agreements, statutes proper, presidential issuances, administrative rules and regulations, charters of local government units (LGU's), legislations of local government units (LGU's), tribunal/court rules and legislative rules.

B. Statute Law Materials

- Constitution

A constitution is that written instrument by which the fundamental powers of the government are established, limited, and defined, and by which those powers are distributed among the several departments for their safe and useful exercise for the benefit of the body politics. The Philippines has had several Constitutions. As these documents are the Charters adopted by the people, they are the highest primary authority.

To research problems in Constitutional Law, one must not only consult the document itself, but all of the sources that will assist in the interpretation of the Constitution. Such sources include the background and record of the Constitutional Convention, the interpretation of the Constitution by the Supreme Court of the

²⁸ F. Moreno, *Philippine Legal Bibliography* 7 (1973).

²⁹ *Ibid.*

Philippines and the commentaries on the Constitution appearing in treatises, legal periodicals, encyclopedias and textbooks.

The official text of the Philippine Constitution of 1935 is found as Appendix in Vol. 30 of *Public Laws of the Philippines* and in vol. 34 of the *Official Gazette*. It also appears in the Vol. 1 of the *Messages of the President*, which also contains, the *Tydings Mc-Duffie Law* and the *Proclamation of the President of the United States* establishing the Commonwealth of the Philippines.

As to proceedings of the 1934 Constitutional Convention, Delegate Salvador Araneta donated a few original typewritten copies of the proceedings of the convention to the Supreme Court Library. Another publication containing the Proceedings of the 1934 Constitutional Convention is the *Proceedings of the Constitutional Convention* in seven (7) volumes. Likewise, a three (3) volumes *Journal of the 1934 Constitutional Convention* was published by East Publishing Company.

Other materials on the proceedings of the constitutional convention are the *Journal of the Constitutional Convention of the Philippines*, by Vicente J. Francisco, *Framing of the Philippine Constitution* by Jose Aruego, and *Constitutional Convention Records* by the House of Representatives and *The Philippine Constitution: Origins, Making, Meaning and Application* published by the Philippine Lawyers Association.

The secondary sources on the 1935 Constitution are: George A. Malcolm and Jose P. Laurel, *Philippine Constitutional Law* (1936); Lorenzo A. Tañada and Enrique M. Fernando, *Constitution of the Philippines* (1952); Ruperto G. Martin, *Philippine Constitutional Law* (1954); Vicente J. Francisco, *Constitutional History* (1956); Lorenzo A. Tañada and Francisco A. Carreon, *Political Law of the Philippines* (1956), Vicente G. Sinco, *Philippine Constitutional Law* (1960).

Exhaustive annotations to the 1935 Constitution are contained in vols. 1 and 2 of the *Philippine Annotated Laws*. The annotations consist mainly of decisions of the Supreme Court that interpreted and applied the provisions of the Constitution.

The Preparatory Committee for Philippine Independence headed by Jose P. Laurel drafted the 1943 Constitution of the Republic of the Philippines during the Japanese Occupation. The official text was promulgated in Tagalog and in English and may be found in vol.2 (Special Number 9-A) of *Official Gazette*. By *Proclamation* of Gen. McArthur on October 23, 1944, the Japanese sponsored Constitution was declared null and void and without legal effect in areas of the Philippines free of enemy occupation and control.

The official text of the 1973 Constitution was promulgated in English and Pilipino, and translated into several local dialects, and into Spanish and Arabic. In case of conflict, the English text prevails. Both English and Pilipino texts appeared in vol. 68 and 69 of the *Official Gazette*.

If one has to know the 1971 Constitutional Convention Proceedings and the intent of its drafters on certain provisions, ordinarily one has to delve into the records of the 1971 Constitutional Convention. But unlike its 1935 counterpart, there are no published materials much less as official repository of its proceedings and there is no single institution that has a complete collection of the same. The U.P. Law Library was a recipient of collection of personal papers of some twenty (20) delegates to the 1971 Constitutional Convention. The library arranged and classified the same for easy retrieval but they are considered unofficial document. At present, these papers have been relocated to the Legislative Archives of the Congressional Library of the House of Representatives, which has some documents from the Constitutional Commission of 1986.

An important publication, which is worthy of mention, is the *U.P. Law Center 1970 Constitutional Revision Project*. This volume contains the studies and discussions that were considered in the revision of the 1935 Constitution, which were made available to the general public and disseminated to the delegates to the 1971 Constitutional Convention.

The secondary sources on the 1973 Constitution are: Enrique M. Fernando, *Constitution of the Philippines* (1973); Neptali Gonzales, *Philippine Constitutional Law*, (1975); Vicente V. Mendoza's *From McKinley's Instructions to the New Constitution; Documents on the Philippine Constitutional System*, (1978).

In 1986, as it had done in 1970, the UP Law Constitution Project facilitated the work of the 1986 Constitutional Commission. The project produced two (2) volumes of *Annotated Provisions* (vol. 1) and *Position Papers and Bibliography* (vol.2). These, along with *Draft Proposal of the 1986 U.P. Law Constitution Project* were published on June 5, 1986.

The Records and Journal of the 1986 Constitutional Commission, in five (5) and three (3) volumes, respectively, failed to provide a published index to the multi-volume set. It is for this reason that CD-Asia and in cooperation with UP Law Library published in CD-ROM, the 1986 *Con-Com Records & Journals* for a fast and easy retrieval of the proceedings of the Commission.

The secondary sources on the 1987 Constitution are: Ambrosio B. Padilla, *The 1987 Constitution of the Philippines with Comments and Cases*, (1987); Magdangal B. Elma, *The Aquino Presidency and the Constitution*, (1993); Joaquin G. Bernas, *The Constitution of the Republic of the Philippines – A Commentary*, (1996); *Constitutional Structure and Powers of Government, Notes and Cases, Part I*, (1997); *Constitutional Rights and Social Demands, Notes and Cases, Part II*, (1996); *The Intent of the 1987 Constitution Writers*, (1995); *Foreign Relations in Constitutional Law*, (1995); Hector S. De Leon and E.E. Luge, *Textbook on the New Philippine Constitution*, (1999); *Philippine Constitutional Law : Principles and Cases*, (1999); Isagani A. Cruz, *Constitutional Law*, Central Book Supply, Manila, (2000); Jorge R. Coquia, *Human*

Rights : An Introduction Course, (2000); Miriam Defensor-Santiago, *Constitutional Law, Text and Cases*, (2000); Rolanda A. Suarez, *Principles, Comments and Cases in Constitutional Law*, (2000).

- *Treaties and Other International Agreements*

A treaty is primarily an agreement or contract between two or more nations or sovereigns, entered into by agents appointed for the purpose and duly sanctioned by the Supreme powers of the respective parties. Treaties may be bilateral (between two nations), or multilateral (between several nations).

Of the same class as treaties but bereft of Senate concurrence, are executive agreements which may or may not have legislative authorization and which are limited in execution only by constitutional restrictions.

Treaties and other international agreements on a selection basis are likewise published in *The Lawyers Review, International Law Documents* (1945-1993), 1995 Edition; The UP Law Center has also published, *Law of the Sea*, 1996 Edition. It has also published the *Philippine Yearbook of International Laws, Vols. IX to XV* (1983-1989); *Documents in Contemporary International Law*, 2 volumes, was published in 1976 edited by Dean Merlin B. Magallona.

The UP Law Complex has also published the following: *Vital ASEAN Documents, 1967-1984*; *The Ocean Law and Policy Series*; *Philippine Trade and Economic Agreements*; and *World Bulletin*.

The secondary materials on treaties and international agreement are: Vicente Abad Santos, *Cases and Materials on International Law* (1971); Jovito R. Salonga, *Public International Law* (1974); Jorge R. Coquia and Miriam Defensor-Santiago, *International Law* (1998); Isagani A. Cruz, *International Law* (1998); Miriam Defensor-Santiago, *International Law with Philippine Cases and Materials and Asean Instruments* (1999).

- *Statutes Proper*

A statute is an act of the legislature as an organized body, expressly in the form and passed according to the procedure required to constitute it as part of the law of the land. Statutes enacted by the legislature include the laws promulgated by the Philippine Commission and the Philippine Legislature, those passed during the Commonwealth period, those enacted by the Philippine Congress and those approved by the Batasang Pambansa and by the House of Representatives and Senate.

The statutes of the Philippines are found in the various enactment of the Philippine legislature since its creation in 1900. From the establishment of the American Civil Government in 1900 to 1935, there were 4,275 laws known as *Acts*

passed by the Philippine Commission and its bicameral successor, the Philippine Legislature. The Commonwealth period witnessed the enactment of 733 statutes known as *Commonwealth Acts*, while 6,635 *Republic Acts* were legislated from July 4, 1946 to September 21, 1972 when martial law was imposed.

Law promulgated by the Batasang Pambansa is referred as *Batas Pambansa*. There were a total of 891 *Batas Pambansa* passed by both the Interim and the Regular Batasang Pambansa. The bicameral Congress that followed passed their enactment beginning with Rep. Act No. 6636 which was a continuation of the law enacted by the previous Congress before martial law. To date, the Congress, has as its last enactment, Republic Act No. 9182 dated January 10, 2003.

The official repository of laws passed by Congress is the *Official Gazette*, published by the Bureau of Printing, now the National Printing Office, since the start of the American Regime. At present *newspapers of general circulation* are official repositories of laws by virtue of Executive Order No. 200, s. 1986.

The other official repositories of statutes are: for Acts passed by the Philippine Commission and Philippine Legislature, a publication by the Bureau of Printing, called *Public Laws*, volumes 1 to 31, with English and Spanish editions; two volumes of *Public Laws* contained Commonwealth Act Nos. 1-412. The features of the compilation are the same as the previous publication on public laws except that this one has a General Index: the Bureau of Printing also published Republic Acts in *Laws and Resolutions* in a series of volumes containing Republic Act Nos. 1 to 6635; for the *Batas Pambansa*, the official repository is the *Acts & Resolutions* by the Batasang Pambansa.

In addition to the official collections mentioned above, there are several private editions of compilation of statutes such as: *Philippine Annotated Laws* (PAL) published by the Lawyers' Cooperative Publishing Co., in 24 volumes with pocket parts. The compilation consists of all Acts of the Philippine Legislatures of a general and permanent in nature and in-force as of January 1956. The Acts are compiled in the alphabetical order of given titles. This publication, however, has been discontinued in 1963; *Commonwealth Acts Annotated*, by Prof. Sulpicio Guevara, in seven volumes, contain permanent statutes from Public Act No.1 to Public Act No. 2439 while the *Philippine Permanent and General Statutes*, a U.P. Law Center publication in seven volumes is a compilation of all existing permanent and general statutes from Acts to Republic Acts and some Presidential Decrees issued during martial law.

Below is a summary of enactments by the Philippine Legislature.

LEGISLATION IN THE PHILIPPINES (1900-2002)

PERIOD	LEGISLATIVE AUTHORITY	NAME OF STATUTES	NUMBER OF STATUTES ENACTED
1900-1935	Philippine Commission, Philippine Assembly, Philippine Legislature	Acts	4,275
1935-1941	National Assembly, Congress	Commonwealth Acts	733
1946-1972	Congress	Republic Acts	6,635
1972-1986	Marcos as Legislator under Martial Law	Presidential Decrees	2,036
	Batasang Pambansa (1978- 1986)	Batas Pambansa	891
1986-1987	President Aquino as Legislator in the Revolutionary Govt	Executive Orders	302
1987-to present	Congress	Republic Acts	2,543

In legal research, it is also important that the deliberation in the passage of a bill is ascertained. This, we call legislative history because legislation is sometimes ambiguous and contains omissions. It is often necessary to ascertain the intent of the legislative body when it passed the legislation. Legislative history includes such things as sponsorship speeches, legislative hearings, debates and reports and earlier drafts of the final bills.

To get the legislative history of a statute, the *Senate and the House of Representatives* publish its respective *Congressional Records* and *Congressional Journals*, which contain the proceedings of each chamber. In tracing the legislative history of an enactment an index to record or journal entitled *History of Bills and Resolutions* is used. This publication records all actions taken on all bills and resolutions introduced during the regular and special sessions of both Houses, from the

filing of a measure, through the motions presented, to its signing by the President or its repassage over his veto.

Appendix I show the legislative process on How A Bill Becomes A Law.

- Presidential Issuances

During the administration of the country under martial law, the President was then empowered by the Constitution to rule and govern by Presidential issuances. These executive acts were promulgated in the form of Presidential Decrees, General Orders, Letter of Instructions, Executive Orders, Proclamations, Memorandum Orders, Memorandum Circulars, Letters of Implementation and Letters of Authority.

These enactments were 2,036 Presidential Decrees, 1,093 Executive Orders, 2,489 Proclamations, and 1,525, Letters of Instructions, 504 Administrative Orders, 157 Letters of Implementation, 1,297 Memorandum Circulars and 832 Memorandum Orders. They are officially published in the *Official Gazette* and a publication of Malacañang in a multi-volume set *Vital Legal Documents*. The Central Law Book Supply, Inc. has also publish a secondary source for laws issued during martial law in its multi-volume set containing general orders, letter of instructions, presidential decrees, circulars, etc. *Vital Legal Documents in the New Peoples Government*.

During normal times, however, Administrative acts and commands of the President of the Philippines touching on the organization or mode of operation of the government, of the rearranging or readjustment of the districts, divisions, part or parts of the Philippines and all acts and commands governing the general performance of duties by public employees or disposing of issues of general concern are made effective by the issuance of Executive Orders. Those orders fixing the dates when specific laws, resolutions or orders are to have or cease to take effect and any information concerning matters of public moment determined by law, resolution, or executive orders, take the form of executive proclamations.³⁰

Ordinarily, administrative orders are confined to the exercise by the President of the Philippines of his power in deciding administrative cases. Sometimes they may contain regulations for the conduct of subordinate officers in the executive department in the performance of their official duties. Executive Orders and Proclamations of the Governor-General were published annually in a set entitled *Executive Orders* and *Proclamations*. The Bureau of Printing published thirty three (33) volumes until 1935. During the Commonwealth period, the Administrative Acts and Orders of the President were published in the *Executive Order* in four (4) volumes; *Proclamations* in seven (7) volumes, covering period from 1935 to 1941. All Executive Orders, Administrative

³⁰ R. Rodriguez., *Legal Research* 141 (2002).

Orders and Proclamations are also published in the *Official Gazette* and in the *Public Laws* as appendices.³¹

- *Administrative Rules and Regulations*

To assist the President of the Philippines in the performance of his executive functions, various departments and bureaus and other offices under them have been established. The Head of the Department and Head of Bureaus and other agencies, are authorized to issue orders, rules and regulations for the proper and efficient performance of their duties and functions for the effective enforcement of the laws within their respective jurisdiction. However, in order that such rules and regulations for the proper and efficient performance of their duties and functions or the effective enforcement of the laws within their respective jurisdiction may be valid they must be within the authorized limits and jurisdiction of the office issuing them and in accordance with the provisions of law authorizing their issuance.³²

Before the effectivity of the *Administrative Code* of 1987³³ these orders, rules and regulations are usually published in the *Official Gazette*, especially those imposing penalty for violations, before they become effective. Each department, bureau or agency issuing such orders, rules and regulations are expected to keep official records and files thereof and mimeographed copies are usually made available to the public.

But when the Administrative Code of 1987, was declared effective by Proc. No. 495 (1989), governmental and departmental orders, rules and regulations need be filed with the Office of National Administrative Register (ONAR) at the UP Law Center and published them in the quarterly publication called the *National Administrative Register*. This publication contains properly certified rules and regulations, which are adopted by government agencies, which are of general or of permanent character.

The ONAR is not only tasked to publish this quarterly register but must keep an up-to-date codification of all rules thus published and remaining in effect, together with a complete index and appropriate tables. The ONAR may omit from the bulletin or codification any rule if its publication would be unduly cumbersome, expensive or otherwise inexpedient, but copies of that rule shall be made available on application to the agency which adopted it, and the bulletin shall contain a notice stating the general subject matter of the omitted rule and how copies thereof may be obtained. However, every rule establishing an offense or defining an act, which, pursuant to law is punishable as a crime or subject to a penalty, shall in all cases be published in full text.³⁴

³¹ *Ibid.*

³² *Id.* 142.

³³ Exec. Order No. 292, s.1987.

³⁴ Adm. Code, sec. 6.

All government agencies are required to file their rules and regulations with the ONAR. The exceptions to this requirement are: Congress, the Judiciary, the Constitutional Commissions, military establishments in all matters relative exclusively to Armed Forces personnel, the Board of Pardons and Parole, and state universities and colleges.³⁵ Other sources of administrative rules and regulations include the agency's annual report, the agency's serial publication issued separately in pamphlet or book form.

- *Charters of Local Government Units (LGU's)*

The laws under which a city or town or other municipal corporation exercises its privileges, perform its duties, and discharges its obligations, including all matters in which it has a direct interest and a right to regulate and control, constitute the LGU's charter.

These charters are of two main classes, namely: those created by statute and those created and adopted by the voters of city or town by constitutional authorization.

Since LGU's charters are enactments of Congress, their official repositories are books where statutes proper are published such as *Public Laws*, *Laws and Resolutions*, *Acts & Resolution*, *Official Gazette*, etc.

- *Legislations of Local Government Units (LGU's)*

The basic local government units are the provinces, cities, municipalities and *barangays*. Each of these units has lawmaking powers to pass what is commonly called "ordinances" which are usually of local interests only. Local legislative powers are exercised by the *sangguniang panlalawigan* for the province; the *sangguniang panlungsod* for the city; the *sangguniang barangay* for the *barangay*. Each *sanggunian* keeps a journal and record of its proceedings, which may be published upon resolution of the *sanggunian* concerned.

There are no statute books containing resolutions of provincial boards. Periodicals of general interest, enjoying local circulation, sometimes publish the important resolutions. On the other hand, municipal legislation is recorded in a journal, which the council keeps for its own proceedings. Unlike statutes proper which are published in the *Official Gazette*, municipal ordinances and resolutions are promulgated by posting them on the day or after passage at the main entrance of the municipal, or *barangay* hall in at least two (2) conspicuous places in the local government unit concerned not later than five (5) days after approval thereof. The text of the ordinances or resolution is being disseminated in Filipino or English and in the language or dialect understood by the majority of the people in the local government unit concerned. The gist of all ordinances with penal sanctions is published in a newspaper of general circulation

³⁵ ONAR Guidelines.

within the province where the local legislative body concerned belongs. In the absence of any newspaper of general circulation within the province, posting of such ordinances is made in all municipalities & cities of the province when the sanggunian of origin is situated. In the case of highly urbanized and independent component cities, the main features of the ordinance or resolutions duly enacted or adopted, in addition to being posted, is published once in a local newspaper of general circulation within the city and in its absence, in any newspaper of general circulation.

- *Tribunal / Court Rules*

Tribunal rules are internal rules of a court or agency with express quasi-judicial powers. They govern practice and procedure for the parties who come before the courts of tribunals. Unlike in the past, the Supreme Court does not have rules for their internal workings but they have certain Resolution such as how and what cases go to the *en banc* or to a division. On July 1, 1940, the Supreme Court promulgated rules concerning pleading, practice and procedure in all courts of the Philippines & in the admission to the practice of law. It has, since then, amended the rules many times. Likewise, the Court of Appeals, Sandiganbayan, the National Labor Relations Commission, the Civil Service Commission, the Commission on Audit, the Employees Compensation Commission and others have already promulgated their standard operating procedures. Since these rules have the force of law, publication in the *Official Gazette* is a prerequisite for the effectivity of the rules. There are also secondary sources, which publish the rules of court. The best source, however, are the publications, in pamphlet or codal forms available from the respective agencies. These internal rules are sometimes filed by agencies in the ONAR that publishes the *National Administrative Register*.

- *Legislative Rules*

The rules of procedure for the internal order of law-making bodies were first adopted when the Philippine Assembly was created under the Philippine Bill of 1902. All subsequent legislative chambers followed suit; the national Assembly, then Congress and then again the National Assembly and the present Congress which were expressly authorized by the Constitution to promulgated its own rules of proceedings. The past Congresses had separate rules not only for each of the two chambers but also rules applicable for both chambers. The present Senate and House of Representatives also have their separate rules. These include also the Rules in Aid of Legislation, Rules on Impeachment Proceedings, etc.

C. Citation of Statute Law

Reproduced hereunder, with permission from the author, Myrna S. Feliciano, are portions of *Philippine Manual of Legal Citations*.

1. Constitution

The Constitution is cited by reference to article, section and paragraph. When the Constitution is no longer in force, put the year in parenthesis.

Examples: CONST. (1935), art. III, sec. 1, par. (3).
CONST. Art. VII.

2. Session Laws

Citation of source, e.g., *Public Laws, Laws & Resolutions, Vital Documents or Official Gazette* is not required but may be added. Reference to section, article or paragraph should follow not precede the main citation if the citation is in the footnote.

a. Public Laws, 1900 to 1934.

Cite as: Act No. _____ (year of effectivity), volume Public Laws page.

Example: Act No. 1160 (1904), art. 3.

b. Commonwealth Acts, 1935-1945.

Cite as: Com. Act No. _____ (year of effectivity), volume Public Laws Com. Page.

Example: Com. Act No. 52 (1936), sec. 2 (b).

c. *Presidential Decrees, September 21, 1972 to February 20, 1986.*

Cite as: Batas Blg. ____ (year of effectivity), volume VITAL DOCS. page.

Example: Pres. Decree No. 603 (1975) .

d. *Batas Pambansa July 23, 1984 to February 1, 1986.*

Cite as: Batas Blg. ____ (year of effectivity), volume ACTS & RES. page.

Example: Batas Blg. 80 (1981), ACTS & RES., 1980-81, 1-30

e. *Executive Orders, February 23, 1986 to July 26, 1987.*

Cite as: Exec. Order No. ____ (year)

Example: Exec. Order No. 329 (1950), 46 O.G. 2035 (July 1950)

f. *Republic Acts 1946 to 1972; July 27, 1987 to date.*

Cite as: Rep. Act No. ____ (year of effectivity), Volume LAWS& RES. page.

Example: Rep. Act No. 1792 (1957), sec. 4.

3. Codes

As a general rule, cite the name of the particular code, article number or section number (if any) without any indication of date. But when the code is no longer in force or has been subsequently revised, put the year of effectivity in parenthesis.

Examples: CIVIL CODE, art. 297
CIVIL CODE (1889), art. 67.

4. Bills, Resolutions And Committee Reports

a. Congress of the Philippines, 1946-1972; 1987 –

Cite bills, resolutions or committee reports in the following manner; House where the bill, resolution or committee reports originated, serial report number, the Congress, session, and year in parenthesis. For committee reports, give the name of the committee.

Examples: S. No. 5, 6th Cong. 1st Sess. (1966)

H. No. 15085, 5th Cong., 4th Sess. (1965).

S. Res. 1, 4th Cong., 1st Session. (1958).

H. Res. 2, 6th Cong., 3rd Sess. (1966).

Comm. on National Defense and Security, H. Rpt.28, 5th Cong., 1st Sess. (1962).

b. Batasang Pambansa, 1978-1986.

Cite bills in the following manner: Origin of bill, bill number, the number of the Batasan, number of the session and the year in parenthesis.

Examples: P.B. No. 2878, 2st Batasan, 5th Sess. (1983)

C.B. No. 54, 1st Batasan, 5th Sess. (1983)

For Committee reports, cite name of Committees, Serial report number, number of *Batasan*, number of the session and the year in parenthesis.

Example: Committee on Civil Service Rpt. 545, 1st Batasan, 5th Sess. (1983).

For unofficial collection of statutes, cite by volume, title or abbreviated citation as indicated by the publisher, page.

Example: III C. P. S. 586

Some unofficial Philippine Compilations	Cite As
Commonwealth Acts Annotated-----	Com. A.A.
Philippine Annotated Laws-----	P. A. L.
Compilation of Permanent Statutes (Philippine Permanent and General Statutes)-----	C. P. S. / PPGS
Public Laws Annotated-----	Pub. L.A.
Vital Legal Documents-----	V.L.D.

5. Treaties And Other International Agreements

Cite the name of the agreement and the exact date of signature by the Philippines. The effectivity date or date of entry into force may be given parenthetically at the end of the citation. Shorten the title of the cited agreement by substituting “with” for “Between the Republic of the Philippines and, “ Give the source of the text of the treaty.

Example: Treaty of Friendship with India, July 11, 1952 (1953),

II-2 DFATS 1, 2 P. T. S. 797, 203 U. N. T. S. 73.

Treaty Sources:	Cite As
Department of Foreign Affairs Treaty Series-----	D. F. A. T. S.
Philippine Treaty Series-----	P. T. S.
League of Nations Treaty Series-----	L. N. T. S.
United Nations Treaty Series-----	U. N. T. S.
Treaties and Other International Series -----	T. I. A. S.
United States Treaties and Other International Agreements-----	U. S. T.

6. Presidential Acts

Presidential acts are cited in the following manner, giving the source of publications.

a. Executive Orders

Cite as: Exec. Order No. _____ (year).

Examples: Exec Order No. 329 (1950), 46 O.G. 2035 (July, 1950).

b. Proclamations

Cite as: Proc. No. _____ (year).

Example: Proc. No. 784 (1961), 57 O.G. 7122 (September, 1961).

c. Administrative Orders

Cite as: Adm. Order No. _____ (year).

Example: Adm. Order No. 21 (1966), 62 O.G. 7194 (October, 1966).

PRESIDENTIAL ACTS UNDER MARTIAL LAW:

d. *General Orders*

Cite as: Gen. Order No. _____ (year).

Example: Gen. Order No. 39 (1972).

e. *Letters of Instructions*

Cite as: L. O. I. No. _____ (year).

Example: L. O. I. No. 230 (1972).

f. Letters of Implementation

Cite as: L. O. Impl. No. _____ (year).

Example: L. O. Impl. No. 5 (1972).

g. Letters of Authority

Cite as: L. O. A. No. _____ (year).

Example: L. O. A. No. 1 (1972).

7. Opinions of the Secretary Of Justice

Cite as: Sec. Of Justice Op. No. _____, s. (year).

Example: Sec. Of Justice Op. No. 271, s. 1982.

8. Administrative Rules and Regulations

Rules and Regulations promulgated by administrative agencies are cited by name of agency (where there is an abbreviation for the agency, use abbreviation or acronym) together with the designation employed in the rules ("administrative order", "order", "circular", "bulletin", "rules and regulations", etc.), serial number, and year of promulgation in parenthesis. The designation "Rules and Regulations" is abbreviated as "Rules & Reg." Or "reg." Followed by a reference to section or paragraph. Where the promulgating agency is a Department, indicate, where appropriate, the implementing bureau or office.

Examples: DCI (Cooperatives) Adm. O. No. I (1963).

DNR (Forestry) Adm. O. No. 26 (1976).

Labor Employment Service Reg. No. 3 (1966).

9. Ordinances

Cite provincial and city ordinances in the following manner: Name of the municipal or provincial Unit, serial number of ordinance, and date of adoption.

Example: Manila Ordinance 6120, Jan. 26, 1967.

10. Court Rules

Rules of Court is cited as a code. When the rules are no longer in force, add year of effectivity in parenthesis.

Examples: RULES OF COURT, Rule 130, sec. 2, par. (a).

RULES OF COURT (1940), Rule 19, sec. 7, par. (b).

IV. RESEARCH IN CASE LAW

A. Concept, Scope and Classification of Case Law

Case law is the general term that refers to a great class of official literary manifestations of law made up of cases decided by persons and agencies of the government performing judicial and quasi-judicial functions³⁶. Judicial decisions provide the second important set of rules, which have the force and effect of law consisting of those legal principles emanating from the decisions of courts of justice.

Generally, case law may be divided into conventional decisions and subordinate decisions. Conventional decisions are those decisions which emanates from regularly or specially constituted courts of justice. Subordinate decisions, on the other hand are those decisions made in accordance with law, by administrative and legislative tribunals.³⁷

In particular, case law is classified as follows: decisions of regular courts of justice; decisions of special courts of justice; decisions of administrative tribunals, decisions of legislative tribunals; rulings of board and commissions; rulings of administrative officers; and opinions of legal officers of the government.³⁸

B. The Philippine Court System

Under the 1987 Constitution of the Philippines in Article VIII, Section 1, the judicial power is vested in one Supreme Court and such lower courts as may be established by law.

Appendix II shows the courts in the Philippines as established by the Judiciary Reorganization Act of 1980 as amended.

C. Case Law Materials

- *Conventional Decisions*

Decisions of the Supreme Court

When the Supreme Court renders a decision, a written opinion or memorandum exemplifying the ground and scope of the judgment of the court shall be filed with the Clerk of Court and shall be recorded by him in an opinion book. When the court shall

³⁶ *Supra* note 28 at 73.

³⁷ *Ibid.*

³⁸ *Id.* at 74.

deem a decision to be of sufficient importance to necessitate publication, the Clerk shall furnish a certified copy of the decision to the Reporter. The Reporter then prepares and publishes with each reported decision a concise synopsis of the facts necessary to clear understanding of the case, stating the names of counsel, together with the material points raised and determined, citing each case, which shall be confined, as near as possible to points of law decided by the courts on the facts of the case without necessity of reciting the facts.³⁹

1. Official Repositories of Decisions of the Supreme Court – What distinguishes a law report as official is the fact that it is printed under the supervision of an authorized government agency. The decisions of the Supreme Court appear in three official publications, namely: *Advance Sheets*; *Official Gazette*; and the *Philippine Reports*.
 - a. *Advance Sheet* – As soon as decisions of the Supreme Court become final they are published in advance sheets in mimeographed form. Thus they are made available to the bench and the bar at the earliest date possible, much earlier than their publication in the *Official Gazette*.
 - b. *Official Gazette* – The *Official Gazette* is an official publication of the government printed by the National Printing Office. The decisions of the Supreme Court are published under the section, “Decisions of the Supreme Court.” While before all these decisions were published in the *Official Gazette*, at present because of the volume of decisions promulgated by the Supreme Court, not all are found in the *Official Gazette*.
 - c. *Philippine Reports* – Decisions of the Supreme Court from August 8, 1901 are published in the *Philippine Reports*, printed by the National Printing Office. The decisions are arranged according to the dates of their promulgation. As soon as there are about seven hundred fifty pages of decisions published in the *Official Gazette*, the Reporter gathers them and publishes them in the *Philippine Reports*. At the outbreak of the Pacific War, the Bureau of Printing printed 74 volumes of the *Philippine Reports*, with the latest decision dated October 31, 1937.

Decisions of the Supreme Court during the Japanese Occupation were not preserved completely. However, some decisions are found in volumes 73 and 74 of the *Philippine Reports*. After the war, it resumed the printing of volume 75 up to volume 110, which covered decisions promulgated from Nov. 23, 1960 to January 31, 1961. The Bureau of Printing continued printing of the *Philippine Reports* up to volume 126, covering the period from April to June 1967. The Supreme Court took over starting with vol. 127 (July 1967) to vol. 411 (June, 2001).

³⁹ *Supra* note 30 at 166.

- d. *Philippine Reports (Reprints)* – The destruction of libraries and reserve copies of Philippine Reports in the Bureau of Printing during the war necessitated the reprinting of these reports and the Supreme Court entrusted the undertaking to the Lawyers' Cooperative Publishing Co., which by photo-offset process, reprinted the first 74 volumes of the Philippine Reports. However, the index-digest found in the original volumes is omitted in the reprinted set.
- e. *Jurisprudencia Filipina* – This is the Spanish edition of the Philippine Reports, also printed by the Bureau of Printing. It is arranged in the same order as that of the Philippine Reports, each volume containing the same cases published in the corresponding volume of the Philippine Reports. Its publication was discontinued during the war to the present. Like the English edition. It contains the same parts.

2. Unofficial Reporting of Supreme Court Decisions

- a. *Philippine Decisions* – Unofficial law reporting in the Philippines is exemplified by the publication known as Philippine Decisions (Community Publishers, Inc., Manila), which selected the leading cases reported in Vols. 1 to 54 of the Philippine Reports and collected them in 10 volumes. It actually served as an economical unit of the Reports. Four more volumes were published after the war, but the publisher of the Decisions had altered the scheme and arrangement of the original set, by reporting all the decisions of the Supreme Court for 1948 and 1949.
- b. *Philippine Reports Annotated* – This is a private publication in 33 volumes corresponding the volumes 1 to 33 of the Philippine Reports. The cases reported are annotated by the publisher with legal principles from cases subsequently decided by the court, bearing on the points of law enunciated in the case reported. Thus, with the use of this annotated edition, the researcher is informed whether the decisions has been cited in a subsequent decision and whether such subsequent decision has adopted or overruled the legal principle in the earlier decision. The publication ended with Volume 33.
- c. *Philippine Reports Annotated (Central)* – This is different from the previous one. Central Book Supply Inc publishes this PRA. It hopes to republish and annotate Supreme Court Decisions from 1901 to January 31, 1961 totaling 110 volumes. So far, it has published volumes 1, 2, 3, 4, 5, 6, 76, 77, 88, 89, 90, 91, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105 106, 107, 108, 109 and 110. Other volumes will be released soon.
- d. *Supreme Court Reports Annotated (SCRA)* – The SCRA is the leading private publication at present of Supreme Court decisions. Central Lawbook Publishing Co., and the Central Book Supply Inc., containing all the decisions of the

Supreme Court starting with the year 1961, publishes it. It has now 363 volumes, the latest containing SC decisions decided in 2001.

Each volume contains a table of cases reportedly arranged in alphabetical order with the page number of each case given; the arrangement in alphabetical order is also given in the reverse form. The cases published in each volume are arranged according to the date when the decision was promulgated. The main body of each case includes the name of the litigants, the case number and the date of promulgation. Other important contents of this set are: annotation on important legal questions, giving the state of the law on important questions, their historical development and application; authoritative and comprehensive syllabi for each reported case; a subject-index at the end of each volume which is alphabetically arranged; a set of 4 volumes of *Quick Index Digest*; and *SCRA Annotations*, a helpful guide in instructive annotations and opinions on significant Supreme Court decisions.

- e. *Supreme Court Decisions (SCD)* – This set is a publication of the decisions of the Supreme Court of the Philippines, starting January 1, 1982. The decision of the Supreme Court each month are compiled in one volume, under the editorship of Atty. Jose N. Nollado and published by the National Book Store. The decisions of the Supreme Court are published according to the dates of their promulgation. The Table of Contents lists all the cases promulgated each month; arranged according to the dates of promulgation stating the “G.R. Number,” date of promulgation, title of the case and the *ponente*, and the corresponding page in the volume where each case may be found. Each decision is published in full and is preceded by an expertly prepared syllabus. At the end of each volume is a subject index.
- f. *Philippine Law and Jurisprudence (PHILAJUR)* – This publication started in November 1977 reporting both law and jurisprudence. Current Events Digest, Inc publishes it. Each volume of PHILAJUR consists of five parts: Legislation; Supreme Court decisions; Digest of Court of Appeals Decisions; Legal Articles; and Indexes. It has ceased publication.
- g. *Supreme Court Unpublished Decisions (SCUD)* – this publication contains the unpublished decisions of the Philippine Supreme Court. This is compiled by Judge David G. Nitafan and the Editorial Staff of the Central Lawbook Publishing Co., Inc. Volume 1 contains the unpublished decisions of the Supreme Court from March 1946 to February 1952 while Volume 2 has the March 2, 1952 to March 30, 1954 unpublished decisions.
- h. *Supreme Court Advance Decisions (SCAD)* – This is prepared by the Legal Editorial Staff of Rex Book Store, Inc. It publishes all decided cases promulgated by the Supreme Court. It started with Vol.41 containing decisions and resolutions of the Supreme Court in May 1993 and its latest volume is

Volume 144 containing SC decisions from February 21 – March 1, 2001. The SCAD is published monthly, immediately after the decisions are promulgated, the practitioners and the students have ready access to the latest available decisions rendered by the Supreme Court.

- i. *Supreme Court Excerpts (SCEX)* – This book authored by Atty. Aristotle T. Dominguez is published by Rex Book Store. The book attempts to combine the strengths of the various publications containing 410 Supreme Court excerpts extracted from 304 Supreme Court decisions and resolutions promulgated from Sept. 3, 1996 to January 31, 1997.
- j. *Summary of Supreme Court Rulings* – This is authored by Atty. Daniel T. Martinez and published by Central Book Supply, Inc. This work aims to provide the law students especially those who are preparing to take the bar examinations supplementary reading materials on the latest rulings of the Supreme Court. The Supreme Court rulings are collated into eight chapters corresponding to the eight bar examinations subjects in the order the Supreme Court gives them. It now has 45 books containing summaries of SC decisions from 1986 to 1998.
- k. *Citations: Excerpts of Supreme Court Decisions* – This publication authored by Lerio Caballero Castigador has six volumes: Vol. 1, July-December 1990: Abuse of Discretion to Words and Phrases; Vol. 2, January-April 1991: Abuse of Discretion to Workmen's Compensation; Vol. 4, September-December 1991: Actions to Workmen's Compensation; Vol. 5, January-April 1992: Eight Bar Subjects; Vol. 6, May-August 1992: Eight Bar Subjects.
- l. *The Sandiganbayan Reporter* – This book authored by Atty. Rufus Rogriguez is published by Central Lawbook Supply and contains all cases decided by the Supreme Court involving the Sandiganbayan – Vol. 1 from Feb. 28, 1980 to April 7, 1988, 1994 Edition; Vol. 2 from April 15, 1988 to December 5, 1991, 1995 Edition.
- m. *The PCGG Reporter* – This book is likewise authored by Rufus Rodriguez which contains SC decisions involving the Philippine Commission on Good Government (PCGG) starting from the first case of Cruz, Jr. v. PCGG, May 27, 1986 up to Romualdez v. Sandiganbayan, May 16, 1995.

Decisions of the Court of Appeals

The Court of Appeals serves as our intermediate appellate court. As to whether the decisions of this Tribunal shall constitute precedents, the Supreme Court of the Philippines, in the case of *Miranda, et al. V. Imperial* (77 Phil. 1066) held: "Only the decisions of this Honorable Court establish jurisprudence or doctrines in the jurisdiction. However, this does not prevent that a conclusion or pronouncement of the Court of

Appeals which covers a point of law still undecided in our jurisprudence may serve as juridical guide to the inferior courts, and that such conclusion or pronouncement be raised as a doctrine if, after it has been subjected to test in the crucible of analysis and revision, this Supreme Court should find that it has merits and qualities sufficient for its consecration as a rule of jurisprudence.”

Following are the publications for cases decided by the Court of Appeals.

1. *Appellate Court Reports* – The decisions of the Court of Appeals were originally published in the Appellate Court’s Reports by the Court Reporter. Although preparations were completed for the publication of the Reports, only two volumes were released. The first was Vol. I, embracing the decisions of the appellate court from February 29, 1936 to December 29, 1936. The other was Vol. VIII, covering the period from January 8, 1947 to June 30, 1947.
2. *Advance Sheets* – Decisions of the Court of Appeals had been published in advance sheet starting January, 1960, but this practice was discontinued in 1963.
3. *Official Gazette* – When the Court deems a decision or resolution to be sufficient importance to require publication, the Clerk of Court furnishes a certified copy of the decisions of the reporter who prepares a syllabus for each case to be published with the cooperation of the author of the decision and is responsible for its publication in the Official Gazette. Each case is published in the language it is originally written.
4. *Court of Appeals Reports* – This set of reports containing decisions of the Court of Appeals has 25 volumes from 1961 to 1980. Its first volume contains decisions rendered in 1961. The last volume was Volume 25 and the last case reported was *People v. Estonina*, Dec. 29, 1980. Except for the title, this set has the same features as those of the Appellate Court Reports.
5. *Court of Appeals Reports Annotated* – This publication contains selected decisions of the Court of Appeals. It is compiled, annotated and edited by the editorial staff of the Central Lawbook Publishing Co., Inc. volume 2 has the January to June 1987 decisions. Its latest volume is Vol. 9 containing July-December, 1990 decisions.

Decisions of the Sandiganbayan

The *Sandiganbayan* a collegiate trial court established by the Constitution to try crimes by public officers, published the Sandiganbayan Reports in 1980, which contained its decisions from December 1979 to February 1980. However, this was not succeeded by other volumes.

Decisions of the Court of Tax Appeals

Under Rep. Act No. 1125, the Court of Tax Appeals was established, with exclusive appellate jurisdiction over tax and customs cases. This jurisdiction is however intermediate, since the decisions of the Court are subject to review by the Supreme Court. The Tax Court is directed by law to provide for the publication of its decisions in the Official Gazette in such form and manner as may best be adopted for public information and use.

Court of Tax Appeals Digest of Customs and Real Property Tax Cases (1973) and *Court of Tax Appeals Digest of Internal Revenue Code* (1971) by Colon are publications on cases of the CTA.

Decisions of the Regional Trial Courts

Their decisions have not been published in official reports or in books of secondary authority. Its judgments on matters of evidence is usually respected, although there have been rare moments when its opinion on points of law have been cited for persuasive influence. In order to secure a copy of decisions from this court, one has to request from their respective sala.

Decisions of the Metropolitan Trial Court, Municipal Trial Courts and Municipal Circuit Trial Courts

Their decisions have likewise not been published in any official report or publication. The respective courts themselves are the only places where their decisions are found.

- Subordinate Decisions

The Senate Electoral Tribunal and the House of Representatives Electoral Tribunal

The 1987 Constitution in section 17, provides that the Senate and the House of Representatives shall each have an Electoral Tribunal, which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief of Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman. The House of Representatives has published its Electoral Tribunal Proceedings in its publications, titled *HRET Reports: Final Orders, Resolutions, and Decisions* in seven volumes.

-- *Administrative Agencies Exercising Quasi-Judicial Powers*

1. Agencies with implied quasi-judicial powers

These are agencies mostly with investigative functions. In fact, all agencies may be said to enjoy implied quasi-judicial powers. Just to name a few examples, these are the Department of Foreign Affairs, the Commission on Immigration and Deportation, the Office of the President, Secretary of Justice, National Wages Council, Philippine Patents Office, Bureau of Land Transportation, Civil Service Commission, Professional Regulatory Commission and the Tanodbayan.

2. Agencies with express quasi-judicial powers

These are agencies which are actually given judicial functions over cases which would otherwise go to the regular courts of justice were it not for the grant of such powers to these agencies. They are sometimes characterized with specific appeal procedures under the law. These are the Insurance Commission, the National Labor Relations Commission, Commission on Elections, Government Service Insurance System, Social Security System, National Seamen Board, Commission on Audit, Employees' Compensation Commission, Civil Aeronautics Board, and other similar agencies. For other agencies performing quasi-judicial functions. See the list available in the ONAR.

D. Citation of Case Law

1. *Case Names*

a. General Rule

Cite cases by giving the surname of the parties, the volume, title and page of reports, and the year of promulgation in parenthesis. Abbreviate versus or contra as v. When used in the text, underscore the title of the case (if printed, italicize); and place the source or citation in the footnote.

Example: *Ariaga v. Javellana*, 92 Phil. 330 (1952).

If two or more actions are consolidated in one decision, cite only the first listed.

b. Exceptions

(1) Cite Islamic and Chinese names in full. As to those with Christian first names, follow the general rule.

Examples: *Lim Sian Tek v. Ladislao* not *Lim v. Ladislao*
Wong v. Dizon not *Joseph Wong v. Dizon*
Una Kibad v. Commission on Elections not
Kibad v. Commission on Elections

(2) Cite compound names in full.

Examples: *People v. De la Cruz* not *People v. Cruz de la*
Abad Santos v. Auditor General not *Santos v. Auditor General*
Galeos-Valdehuesa v. Republic not *Valdehuesa v. Republic*

(3) Always cite names of corporations, associations, business firms and partnerships in full. Words forming part of such names may be abbreviated, except the first word.

Examples: *Mata v. Rita Legarda, Inc.*

Allied Workers Ass'n. of the Phil. v. Republic Trading Corp.

(4) Cite cases involving the Government of the Philippines and criminal cases as follows:

Government v. _____; Commonwealth v. _____;

Republic v. _____; U.S. v. _____;

People v. _____; depending upon the title of the case.

Examples: *Government v. Abadinas*

Commonwealth v. Corominas

Republic v. Carpin

U.S. v. Jaranilla

People v. Santos

(5) Cite cases involving public officers or offices as follows:

(a) Where the person is named in his official capacity, give the name of the person only.

Examples: *City of Manila v. Subido* not *City of Manila v.*

Subido, in his capacity as Civil Service Commissioner

Gonzales v. Hechanova not *Gonzales v. Executive Secretary*

(b) Where the office is names, give the complete name of the office.

Examples: *Collector of Internal Revenue v. Tan Eng Hong*

Chief Of Phil. Consultancy v. Sabungan Bagong Silangan

Board of Election Inspectors of Tolosa v. Piccio

Assistant Executive Secretary v. Sarbro & Co.

(6) Always cite Municipality of _____, City of _____.

Province of _____, as they appear in the decisions.

Examples: *Province of Rizal v. R. T. C.*

City of Cebu v. Ledesma

Municipality of Mandaluyong v. Bautista

(7) Cite case names beginning with procedural terms like *ex parte*, *ex rel* and *in re* as they appear in the decisions. Use *In re* instead of *In the matter of*.

Examples: *Ex parte Milligan*

In re Garcia

U.S. ex rel Greathouse v. Smith

2. Case Reports

a. Supreme Court Decisions

When the decision is already found in the official published Philippine Reports, indicate only the Philippine Reports citation.

- (1) *Philippine Reports*
Cite as: volume Phil. page (year)
Example: *Diaz v. Estrera*, 78 Phil. 637 (1947).
- (2) *Official Gazette*
Cite G.R. docket no. and date of promulgation before the O.G. citation.
Cite as: G.R. No. _____, date promulgated, volume O.G.
Page (Month & year of issue)
Example: *Espiritu v. Rivera*, G.R. No. 17092, September 30, 1963,
62 O.G. 7226 (Oct., 1966).

If the decision is found in a supplement, indicate supplement number, page and date of issue.

Example: 46 O.G. Supp. No. 11, 22 (Nov., 1950).

- (3) General Register (G.R.) – Advance decisions of the Supreme Court.
Cite as: G.R. No. _____, date of promulgation, omitting the L-which refers to post-liberation decisions.
Example: *Estepa v. Diansay*, G.R. No. 14733, September 30, 1960.
- (a) For disciplinary cases against attorney-at-law:
Cite as: G.R. Adm. Case No. _____, date of Promulgation.
Example: *In re Mallare*, G. R. Adm. Case No. 533, April 29, 1968.

Note: For unofficial reports of cases, see Rule II. AI.b.

- (b) For disciplinary cases against judges: Cite as: G.R. Adm.
Case/Matter No. _____, date of promulgation.
Example: *Secretary of Justice v. Catolico*, G.R. Adm. Case No.
203-J & Adm. Matter No. 625-CFI, November 18, 1975.

b. Court of Appeals Decision

- (1) Appellate Court Reports (v.2, 1937 and v.8, 1947 are the only ones published) –
Cite as: volume C.A. Rep. page (year)
Example: *Chunaco v. Singh*, 8 C. A. Rep. 488 (1947).
- (2) Court of Appeals reports, Second Series
Cite as: volume C.A. Rep. 2d page (year)
Example: *Flores v. Valpeña*, 2 C.A. Rep. 2d 64 (1962).
- (3) Court of Appeals General Register (C.A.-G.R.)- Advance decisions of the Court of Appeals.
Cite as: C.A.-G.R. No. _____ -R, CV, CR or SP, date of
Example: *Caliboso v. Bueno*, C.A.-G.R. No. 20401-R, April 8, 1960.
- (4) Official Gazette
Cite as: C.A.-SP or CR or CV No. _____, (date of promulgation,
volume O.G. page (month & year of issue).

Example: *Manila Electric Co. v. Allarde*, C.A.-SP No. 11850, May 15, 1987, 86 O.G. 3447 (May, 1990).

c. Other Courts

- (1) Sandiganbayan Decisions
Cite as: Sandiganbayan Crim. Case No. _____, date of promulgation, volume Sandiganbayan Rep. page (year of issue).
Example: *People v. Sabarre*, Sandiganbayan Crim. Case No. 001, December 12, 1979, 1 Sandiganbayan, Rep. 305 (1979).
- (2) Court of Tax Appeals Decisions
Cite as: CTA Case No. _____, date of promulgation.
Example: *Abad v. Commissioner of Internal Revenue*, CTA, Case No. 717, June 4, 1963.
- (3) Regional Trial Court Decisions
Cite as: RTC (Place & Branch No.) Crim. Case or SP No. R- _____, date of promulgation.
Example: *People v. Johnson*, RTC (San Jose, Occidental Mindoro, Br. 45) Crim. Case R-1681, August 6, 1984.
In re Morales, RTC (Dagupan City, Br. 43) SP-2472, December 7, 1989.
- (4) Metropolitan Trial Courts Decisions
Cite as: Me TC (Place & Branch No.) Civil or Criminal Case No. _____, date of promulgation.
Example: *Shell Distribution Co., Inc. v. Balmaceda*, Me TC (Manila, Branch X) Civil Case No. 59563, July 20, 1982.
- (5) Municipal Trial Courts and Municipal Circuit Trial Courts Decisions
Cite as: MCTC or MTC (Place) Crim. Case No. _____, date of promulgation.
Example : *People v. Soliven*, MCTC (Paoay—Currimao, Ilocos Norte) Crim. Case No. 992-C, November 11, 1983.
- (6) Shari'ah District and Circuit Courts
Cite as: Shari'ah Dist./Circ. Ct. (place), date of promulgation
Example: *Al-Awadhi v. Rulona*, Shari'ah Dist. Ct. (Marawi City) Special Proceeding No. 011-87, September 15, 1988.

d. Administrative Decisions

Cite by the name of the agency (when there is an abbreviated form, use abbreviation or acronym), case number and date of promulgation.

Examples: *Tinio v. Dizon*, DANR Case No. 2734, April 24, 1967.
In re Colorado, CSC Adm. Case No. R-27182, September 29, 1964.

For unofficial reports of cases, cite by volume, abbreviated citation of the Reports as indicated by publisher, page and year.

Example: 46 S.C.R.A. 160 (1972)

Some unofficial Philippine Reports:	Cite As
Court of Appeals Reports Annotated-----	CARA
NITAFAN'S Supreme Court Unpublished Decisions-----	S.C.U.D.
Philippine Decisions-----	Phil. Dec.
Philippine Law Decisions-----	P.L.D.
Philippine Law and Jurisprudence-----	PHILAJUR
Philippine Reports Annotate-----	P.R.A.
Supreme Court Decisions-----	S.C.D.
Supreme Court Reports Annotated-----	S.C.R.A

V. SEARCH BOOKS / LAW FINDERS

A. Introduction

Search books or law finders constitute the third classification of law books. They differ very sharply from the first two in that they neither contain the law nor any statement or explanation of the law, except in a very few of them. As a rule these books simply indicate to the researcher where he can find certain cases or certain collection of case, presumably pertaining to a particular subject of the law, give some information regarding cases or statutes other than contents.

Many of these books serve as guideposts in the search for authority, giving the searcher explicit directions as to the path, which he must take in order to find the case or cases or statutory provision embodying the legal principle he is looking for. However, some search books merely give an indication of the general direction of his search that may lead him to the authorities he desires to find. Although these books cannot be regarded as authority, or cited to support a statement of the legal principle, it is nonetheless true that some of the most useful law books belong to this class.

Search books are not only numerous, but they are various kinds, each designed to serve one or more specific purposes. There are finding tools for statutes and there are case finders that are indexes and digests. They vary greatly in form but notwithstanding this variety of form, they may, for practical purposes, be divided into several classes: Legal Textbooks, Legal Encyclopedia, Law Dictionaries, Legal Digests, Legal Periodicals, and Citators.

B. Legal Textbooks

A legal textbook is one, which summarizes the present status of the law, for professional use, or the development and the general principles of the existing law, for study and references. As will be noted, this type of treatise has two main purposes. The textbook written for the lawyer in his practice compiles provisions of law and court decisions pertinent to the subject of which it treats. The main text is either a recitation of the law itself, quoted or restated, or it is anchored to a generous spread of footnotes. Tables of statutes and cases cited as well as appendices of related laws are usually included.

The textbook prepared for the student of law, on the other hand, is more concerned with the choice of authorities than with their number. While statutes dealing with the subject are given verbatim, only those judicial opinions illustrating the growth and development of the law are provided. The author's handiwork consists chiefly in the selection and arrangement of materials, which he personally believes are best, suited to the study of the subject. The treatises are written in the form of running text or outline; they appear in such titles as manuals, notes outlines, principles, readings, cases and materials, handbooks, guides, studies, or the law of the subject.

There is a type of textbook for student use known as bar reviewer, prepared mainly for those graduates who are reviewing for the annual bar examinations given by the Supreme Court. The reviewer consists of abridged matter, questions and problems previously asked in bar examinations, definitions, distinctions and enumerations, all calculated to aid the candidate for the bar in his examinations. Or it may simply be a list of words and phrases, used in a particular law, defined and distinguished from other terms.

C. Legal Encyclopedia

Legal encyclopedias are designed to supply in concise form, brief but comprehensive statements of the current law topics combined into one sequence. Thus, the encyclopedia is not designed for the laymen or students but primarily for busy practicing lawyers.

Legal encyclopedias are not difficult to use. Topics are arranged alphabetically. Under each main topic are various subtopics that further divide the legal points under the topic. The researcher can locate information in an encyclopedia by several methods: by general index, by topic approach, by volume index, or by table of authority. Encyclopedias are classified as national encyclopedias, local encyclopedias, especially encyclopedias.

In the Philippines, two publications can be classified as legal encyclopedias but only the first volumes have been published. These are *Alvir's Encyclopedia of*

Philippine Laws and Venidas, Encyclopedia of Philippine Laws and Jurisprudence. The Philippine Legal Encyclopedia of Sibal, however, is more of a Philippine legal dictionary than an encyclopedia.

D. Law Dictionaries

Generally, a law dictionary is composed of terms, words and phrases, with their definitions. These definitions are synthetic as they arise out of the use to which the words or phrase has been put in a great many instances and situations. The definitions consist of a synthesis of its use. Once a court has been called upon to construe a word or phrases in a statute or in a document of some kind and has construed that a word or phrase that construction thereafter is the true meaning of that word or phrase in that statute or in documents of that type.

Law dictionary is also defined as a book which is arranged alphabetically and defines words which constitute the terminology of the law as a special branch of knowledge, of common words which have been defined in the process of law-making, judicial interpretation or administration of the law.

Law dictionaries are sometimes called mini-encyclopedias. *Bouvier's Law Dictionary*, in two thick volumes, has as its full title "Law Dictionary and Concise Encyclopedia." They are very helpful in obtaining useful authorities in a quick manner. Though foreign to the Philippines, many principles therein are applicable.

The leading law dictionary is the *Philippine Law Dictionary* of Justice Federico B. Moreno. The first edition came out in 1972 and has had Annual Supplements thereafter until it was again revised in 1983. The book is a collection of words and phrases, classified in dictionary A to Z form, as legally and judicially defined and accepted particularly by the Supreme Court.

Other law dictionaries are those of: Burton, *Legal Thesaurus*; Gamboa, *Dictionary of International Law and Diplomacy*; Isidro, *Philippine Labor Dictionary*; Nollado, *Dictionary of Legal Terms*; Tiopanco, *Dictionary of Insurance Terms and Phrases*; and Lee, *Handbook of Legal Maxims*, to name only a few.

In wide use in the Philippines is *Words and Phrases* with 45 volumes. Also to be found in many book collections are *Black's Law Dictionary*, *Bouvier's Law Dictionary* and *Ballentine's Law Dictionary*. We may also mention Bander and Wallach, *Medical and Legal Dictionary*; Casselman, *Labor Dictionary*; Malloy, *Medical Dictionary for Lawyers*; and Strand's, *Judicial Dictionary of Words and Phrases*.

E. Legal Digests and Indexes

A legal digest is a compilation of paragraphs containing concise statements of legal principles which may be deduced from statutory enactments to form a digest of statute law, or which may be gathered from careful study of the decisions to form a digest of case law, grouped under appropriate headings, which are arranged alphabetically. The digested paragraph consists of statement of facts of the case and the principle of law, which the court has applied to those facts. These digests, both for cases and statutes, serve as a subject index or a topically arranged finding tool.

In any survey of Philippine jurisprudence, it is a must to consult the major case digests, such as: *Philippine Digest*; *Republic of the Philippine Digest*; *Velayo's Digest*; *SCRA Quick-Index Digest*; U.P. Law Center *Survey of Philippine Law and Jurisprudence*; U.P. Law Center, *Philippine Law Report* and U.P. Law Center, *Supreme Court Decisions: Subject Index and Digest*; and the *Case Digest of Supreme Court cases* published by the Supreme Court for dissemination to the judges. The individual case digests of Gupit, Martinez, and Magsino of Supreme Court decisions, which have been earlier discussed, are also worth mentioning.

Title indexes as a finding tool for both statutory and the case law are also provided by the case reporters and statutory books either as separate volumes or as an end part of each volume. For instance, Public Laws of the Philippine Island, Public Laws of the Commonwealth, Laws and Resolutions, Acts and Resolutions have their respective subject and title index. Secondary publications for indexes to statutes include Moran, *Index to Republic Acts*; Albert and Daga, *Philippine Laws Made Easier to Find* (1954); Arroyo and Frianeza, *Topical Index: 1986 Presidential Issuances* (1987); Feliciano and Santos, *Subject Guide to Presidential Decrees and Other Presidential Issuances*; Laureta, *Presidential Decrees with General Orders and Letter of Instructions* (1978); Aguirre, *Subject and Title Index to Executive Orders* (1987).

Index to cases arranged alphabetically by title, include, Desk Book volume of the *Philippine Digests*, and *Republic of the Philippine Digest*; Ateneo de Manila University *Index to Cases Decided by the Supreme Court 1961-75* (1977); Santos-Ong, *Title Index to Supreme Court Decisions, 1945-1978*. At present, retrieval of cases by title are easily accessible through online legal databases and CD-ROM publication.

F. Legal Periodicals

Legal periodicals are journals of articles written by judges, professors, law students, and legal experts on various legal topics. Law schools, professional organizations, and law associations publish legal periodicals.

Many law schools have a group of top law students who publish a law review for their school. The law reviewee, as these students are called, decides what articles to

publish. A law review may publish articles written by professors or by the students themselves. This is the practice in the University of the Philippines College of Law, *Philippine Law Journal* and Ateneo de Manila University *Ateneo Law Journal*. Some law schools also publish specialized scholarly journals that may be edited by professors or other scholars rather than law students, i. e. *Philippine Yearbook of International Law* or *World Bulletin* of the U. P. Law Center. For example, the *IBP Journal* contains articles on many practical issues of current interest. Special interest groups that deal only with certain topics publish other legal periodicals.

Legal periodical articles usually are scholarly and provide considerable depth about issues of current interest. It may be published weekly, monthly, quarterly, or annually. Often legal periodicals are published in paperback format, and this pamphlet may be bound together.

Legal periodicals serve a variety of function. It is not unusual for a legal periodical to identify an evolving area of law. A legal periodical can help sort through apparently confusing cases or complicated statutory developments and provide a rationale for the law. Typically, legal periodicals give researchers additional insight into law. Periodical literature is published so often that it becomes a rich source for the current thoughts on most topics of legal interest.

Some legal periodicals provide basic background information about the law. Other legal periodicals provide opinions or analysis of law. A legal periodical may be critical of a law or a trend in the law. Although legal periodicals are not used routinely in the initial phase of a research project, the articles in them do provide back-up citations for research. They can prove particularly productive, even in initial phase of research, for the researchers looking into a unique or new area of the law.

To search for specific legal periodical articles, one uses the indices that are available. The two most commonly used indices are the *Index to Legal Periodicals* and the *Current Law Index*. These indices are the most commonly used index, table-of-cases and table-of-statute indices, and a book review index.

The Index to Legal Periodicals provides access to over five hundred legal periodicals. It covers legal periodicals published since 1900 and can be searched on-line through both *LEXIS-NEXIS* and *WESTLAW*. There is a *CD-ROM* version of this index called *WILSONDISC*, also published by H.W. Wilson.

The advantage of using a *CD-ROM* version like *LegalTrac* or *WILSONDISC* is that the researcher does not have to look through volume after volume (a year by year search) for articles. The researcher can look under a particular heading and find relevant references. *LegalTrac* covers approximately one hundred more journals than the *Current Law Index*.

Sad to say, in the Philippines there are no available published index to legal periodical articles. At most, each journal like Ateneo Law Journal has its own consolidated index and most law libraries provide its own homemade index to journals available in their collection.

G. Citators

The final step in doing legal research is updating the law. This step involves making sure the legal rules researched is still a valid law. *Shepardizing* is the most widely used method of updating the law. It is a research technique unique to law. When used as a verb, it refers to the process of consulting the *Shepard's Citations* volume for the complete history and treatment of the case by other courts. The primary purpose of consulting Shepard's Citations is to bring the case up to date. Shepard's will indicate if the case has been affirmed, modified or reversed on appeal. In addition, Shepard's will indicate how your case has been treated in subsequent decisions of the same court (e.g. followed, criticized, limited, questioned, or overruled). Thus, a case must always be shepardizing to ensure that it is still a good law and has not been overturned or modified by a subsequent decision. There are separate Shepard's Citations for every state, regional, federal, and Supreme Court Reporter, as well as for all statutes and some administrative agency rulings and law review articles.

The only published citators in the Philippines are those of Alberto Dizon, *Philippine Citations* and of Arturo Paras, *Philippine Citations*. They are not in the category of Shepard's Citations with respect to extensiveness but they can be very useful to those who use them. Unfortunately, in the Philippines, we do not have a citator in the caliber of Shepard Citations.

It is in this regard that the Integrated Bar of the Philippine, a national association of Philippine lawyers, through their publications, IBP Law Journal and Magazine has espoused a pressing need for Sheppard's Citations, Philippine style. It was suggested by the proponent to have the Supreme Court or Congress impose additional filing fees for the cases filed in court, one percent (1%) of the total amount of which to be used exclusively for project "Philippine Citations."⁴⁰

VI. COMPUTER ASSISTED LEGAL RESEARCH (CALR)

A. Internet and On-Line Services

⁴⁰ L. de Vera, *Shepards Citations, Anyone?* The Agony and Inadequacy of Philippine Legal Research in Vols. 23 & 24 *IBP Law & Mag* 7 (1997-98).

Although a full discussion of computerized legal research is beyond the scope of this topic, the subject warrants an introduction because of the increasing role computers play in the legal profession in the field of legal research. Information Technology (IT) revolutionizes the traditional way of research in law. Now computers have become a daily part of the legal research process.

In the beginning, before you can use a computer-assisted legal resource you must first have access to the service. But at the present time databases in law and other system can easily be accessed *via* Internet

The Internet is providing us new research opportunities for legal and non-legal research prompting new computer applications in law firms and business. Because the Internet is a worldwide network of computers, a researcher can search around the world for legal and non-legal information. A researcher using the Internet can connect with computers at the Library of Congress, the House of Representatives, or the White House. An Internet user can also send a communication through E-Mail, participate in bulletin board discussion, retrieve files and login to remote locations. A researcher, for instance, can locate a US Supreme Court Decision or the Code of Federal Regulation on the Internet. Reference questions can be posed to law librarians around the world, or the user can connect directly into a computer card catalog called *On-line Public Access Catalog (OPAC)*.

In the Philippines, the online services of *Lexis-Nexis* as well as *Westlaw* are now on subscription in law libraries like the UP College of Law and Asian Development Bank (ADB). Through these databases, subscribers now have access to an enormous collection of legal information organized into libraries according to jurisdiction, which comprises literally millions of pages of law reports, unreported cases, and statutory texts. Altogether, the information in these databases also contain news & business data which enables the subscriber to develop a global perspective of companies, people, issues and events using current information from authoritative news-gathering organizations.

Remember, however, that although computers can offer invaluable research assistance, they cannot make you any more effective as a researcher than you are when using conventional methods. You still need to know and understand the essential steps involved in legal research.

B. CD-ROM

In the Philippines, CD Technologies Asia, Inc. (CD Asia), one of the leading companies in the emerging industries of electronic publishing and actively pursuing the publication of CD-ROM titles on specific or specialized topics in law has these following publication called *Lex Libris* Series.

Vol. 1 - Laws (Philippine Edition) – The first volume of the series is the most extensive compilation of Philippines laws on CD ROM. Featured in this publication are full-text versions of the Philippine Constitutions, Republic Acts, Mga Batas Pambansa, Presidential Decrees, Executive Orders, Presidential Proclamation and Letters of Instructions. Other official acts of legislative or statutory character are also compiled here.

Vol. 2 - Taxation (Philippine Edition) – The second volume – by far the most comprehensive publication on the subject of taxation – contains the rulings, opinions, memoranda, circulars, VAT Rulings and official acts of the Bureau of Internal Revenue, as well as international tax treaties and local tax ordinances. Also included here are related laws, decisions of the Supreme Court, Court of Appeals and Court of Tax Appeals, as well as executive issuance's.

Vol. 3 - Jurisprudence (The Supreme Court Reports) – The decisions of the Supreme Court, since 1901, constitute the third volume of the series. Patterned after the Philippine Reports, this CD ROM publication also contains the text of available case syllabi and synopses - and over 35,000 judicial opinions.

Vol. 4 - Department of Justice (Opinions of the Secretary) – This fourth volume of the series is also the first release for 1997. For the first time, the complete collection of opinions of the Philippine Secretary of Justice, since 1939, is available in easy reference and research form.

Vol. 5 - Local Autonomy and Local Government – The first multi-media compact disc of the series. It contains a thematic compilation of policy instruments on the subject. It features full-text information issued and promulgated by the Supreme Court, by the three Constitutional Commissions and thirty national government agencies and offices. It also includes video interviews with notable local government personalities.

Vol. 6 - Environment and Natural Resources – It is the first and most comprehensive collection of information gathered from the Department of Environment and Natural Resources (DENR) and its attached agencies, published in CD-ROM. The full-text have related laws and statutes, presidential issuances, jurisprudence, policy issuances and decisions; permits, licenses and tenurial instruments are also contained.

Vol. 7 - Labor and Social Legislation – The seventh volume of the series was released last November. It contains related statutes and jurisprudence as well as issuances from the Department of Labor and Employment (DOLE) and its affiliated offices.

Vol. 8 - Elections – The eight volumes contains statutes, presidential issuance, DOJ opinions and jurisprudence related to the topic of elections. Implementing rules and regulations of Electoral Tribunals, Comelec rules on procedure, Electoral Tribunal decisions, and Commissions on Elections issuance are likewise contained in this first-

of-a-kind CD-ROM publication. Similarly featured here are the 1995 election results, list of accredited political parties and their platforms of government, and list of precincts in major cities and provinces of the Philippines.

Vol. 9 - Trade Commerce and Industry – The most comprehensive collection of materials on Trade, Banking and Finance, Capital Markets, Insurance and Intellectual Property. This title contains a compilation of pertinent Supreme Court decisions, laws, issuances of various agencies such as the Department of Trade and Industry, Board of Investments, Department of Finance, Bureau of Customs, Bangko Sentral ng Pilipinas, Philippine Stock Exchange, and other government offices.

Vol. 10 - Securities and Exchange Commission – The fusion of accurate information officially provided by SEC and the research software engineering expertise provided by CD Asia. This new CD-ROM edition contains SEC Related laws and jurisprudence, SEC Opinions, SEC Cases, other SEC issuance's, namely: Orders, Memoranda, Circulars, and Rules and Regulations.

Vol. 11 - Family Law - This latest title carries new features such as a subject index and an interactive topical outline. The contents include pertinent laws, jurisprudence, presidential issuances, rules and regulations, international treatises and agreements, as well as other materials that deal with familial relationships. The issuances and publications of the National Commission on the Role of the Filipino Women (NCRFW) are likewise included.

Other titles in CD-ROMS of CD-Asia are as follows:

Lex Libris Student Edition – The Lex Libris Student Edition (LLSE) is a series of CD-ROM publications specially offered to students. Each volume is comprised of materials pertaining to the subjects taken in each year of law school. The contents of the specific subject outline were gathered from various sources and were submitted to notable professors of law for comment and review.

Bangko Sentral Ng Pilipinas – The special edition title conceptualized, prepared and presented in the distinctive tradition of the Lex Libris series on CD-ROM. This new work is the result of many, committed months of intensive preparation and close coordination with the country's premier and central monetary authority. This latest release is the first and only compilation of its kind that includes Index of Economic Laws and Banking Regulations, BSP Manuals of Regulations for Banks and Financial Intermediaries, and BSP Memorandum Circulars, Orders, Letters, Notices and other Regulations.

National Administrative Register (1990 to 2000) – A compilation of Rules and Regulations from different administrative agencies and bureaus filed with the Office of the National Administrative Register.

Proceedings of the 1986 Constitutional Commission – Contains the Records and Journals of the 1986 Constitutional Commission with related issuances.

Impeachment Proceedings Against Pres. Joseph E. Estrada – The transcript of the historic impeachment proceedings against former president Joseph E. Estrada. With an interactive presentation of the articles of impeachment and witness's testimonies.

Another Philippine private corporation who was a pioneer in CD-ROM title in law is Gigabytes Research Systems, Inc. (GRSI). It has digitized and first published *PhilJuris Professional* – a CD-ROM containing the entire collection of over 35,000 reported Supreme Court resolutions from 1901 to 1995. Since its market debut in 1993, around 300 installations of PhilJuris Professional have been established nationwide. Accordingly, almost 2,000 judges, lawyers, law academicians and students as well as legal professionals and researchers use and access PhilJuris on a regular basis.

GRSI has likewise released its second title, *PhilJuris Students' Reference Edition (SREd)*, an electronic compilation of Supreme Court rulings from 1960-1994. This edition has been designed exclusively for students' use. The company has also released CD-ROM title, *PhilJuris Network Version through Lotus Notes*, to further advance the standards of computer-based legal research and broaden the installed base of CD-ROM users in the country by creating new opportunities.

Another important publication in CD-ROM is provided by ACCESSLAW, Inc. At present, they have two (2) volume publication in CD-ROM vol. 1 *Private Law: The Law on Private Transaction and Regulation* and vol. 2 *Public Law: The Laws on the State Structure, Powers, Relations and Regulations*.

C. Philippine Websites

Philippine Online Legal Research Sites

Following sites are some of the important Philippine websites maintained by Filipinos and are noteworthy as far as content and presentation is concerned.

www.supremecourt.gov.ph

The Philippine Supreme Court's official site in the Net contains the full text of the 1987 Constitution, the Rules of Court (including the Revised Rules of Criminal Procedure) and a complete listing (with full text) of Supreme Court circulars and orders from 1973 to 2001. Its section on Jurisprudence contains the latest decisions of the high tribunal from December 2000 to February 2001 as well as the Court's minute resolutions covering the same period. The site's hyperlink marked "Bar Matters" contains the list of the last successful bar examiners, the roster of bar topnotchers (from pre-war to 1997) which includes their schools and bar examination average, as well as an alphabetical listing of members of the Philippine Bar with their dates of admission.

The latest feature of the site capsule syllabi decisions resolutions and announcement of general interest promulgated by the court since July 2002.

www.disini.ph

The official web site of the Disini and Disini Law Office, the site offers a comprehensive listing of materials on e-commerce and other e-legislations. Visit this site to access the E-Commerce Act, and its Implementing Rules and Regulations, a list of pending bills with respect to e-commerce and intellectual property, and administrative issuances with respect to the same topic. The site also features interesting articles *concerning* emerging local and international legal issues with respect to cyber laws, cyber crimes and the Internet in general.

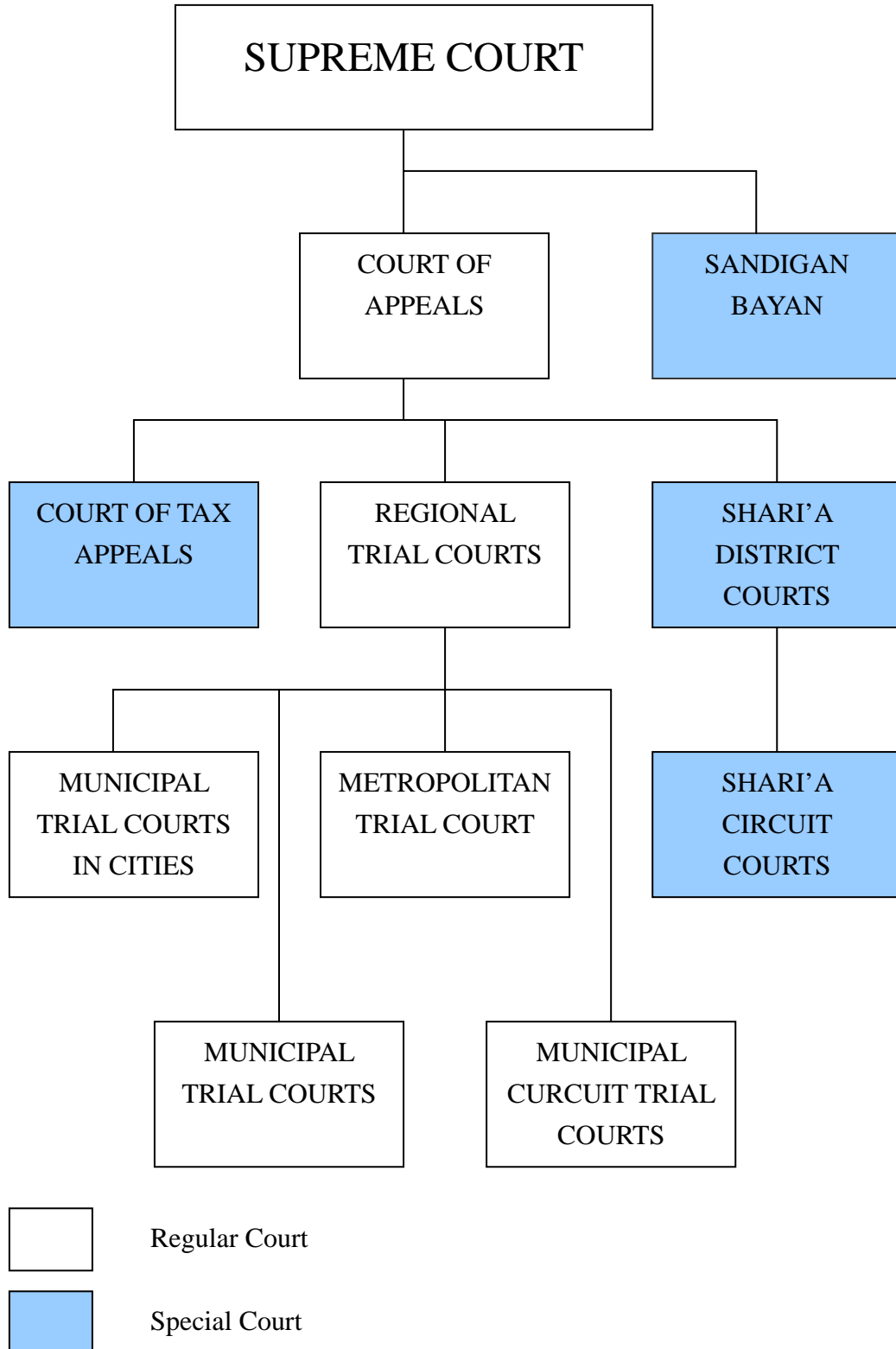
www.chanrobles.com

Maintained by the Chan Robles Firm, this site is home to the Chan Robles Virtual Library, a virtual utopia to any online Filipino legal researcher. This site contains a comprehensive listing of law-related materials arranged by topic featuring the full text of laws and jurisprudence. It has vital links to global online resources classified by country and topic including global jurisprudence, links to the UN and the ICJ websites, as well as schools, universities, bar organizations and law firms around the world.

www.Pinoylaw.com

This e-law service websites promises to be “Your Window to Philippine Legal Information and Solutions.” It contains a section on jurisprudence, a list of Republic Acts and other Laws, vital links to the official websites of the Supreme Court, the Solicitor General and the Office of the President.

The Philippine Court System

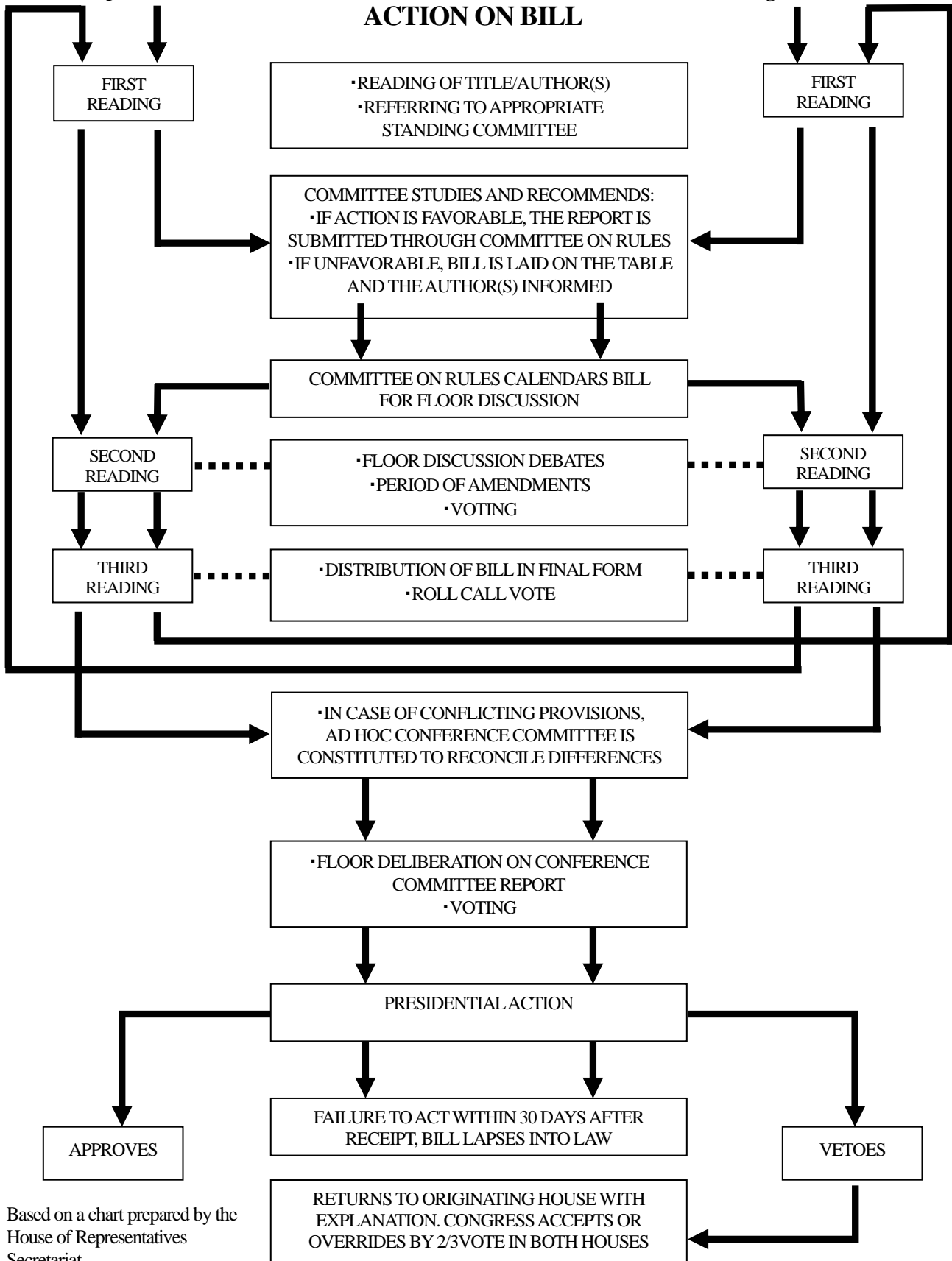


HOW A BILL BECOMES A LAW

A bill, introduced in the House of Representatives, is labeled "H" and assigned a number.

A bill, introduced in the Senate, is labeled "S" and assigned a number.

ACTION ON BILL



Based on a chart prepared by the House of Representatives Secretariat

THAILAND

LEGAL RESEARCH AND LEGAL EDUCATION IN THAILAND

By

Vichai Ariyanuntaka^{*}

INTRODUCTION

Research into the legal education of Thailand reveals a rich history of law reform and the preparation for a strong and independent judiciary. The most prominent figure in the transformation of the entire Thai legal landscape was Prince Rajburidirekrit, commonly known as Prince Rapee and affectionately referred to as “Father of (Modern) Thai Law”. He was also the founder of the first law school in Siam in 1897, the “Law School of the Ministry of Justice”. The philosophy of the first law school in Thailand, or Siam as She then was, was to prepare Thai officers and legal scholars to take charge of the judicial service, and in turn laid a firm background for the start of a strong judiciary.

It is hoped that the Thai judiciary today can maintain the reputation it enjoyed almost a hundred years ago when Walter Graham, in his book, *Siam*, (3rd edn, London: Alexandra Moring, 1924 Vol. I, pp 372-373) said:

“... The Ministry has built up a service probably the cleanest and straightest Siam has ever seen, and containing in its ranks officers who could compare favorably with the members of the judiciary of many European countries. In fact,

*

Judge, Central Intellectual Property and International Trade Court, Thailand.

about the year 1909, the Ministry of Justice was the bright particular star in the administration of the country ...”

The first law school in Thailand, the Law School of the Ministry of Justice, whereby future judges were trained was modeled upon the ‘Inn of Courts’ in London. The most prestigious legal qualification for legal practice in Thailand is to pass the Thai Bar Examinations, taught and organized by the Thai Bar Association. The qualification is called “Thai Barrister-at-Law” –*Nei ti ban dit Thai* – It is so called to distinguish itself from the Inn of Courts’ Barrister-at-Law in England.

Although Thailand may be classified as a Civil Law country, whereby the Continental style of codification is evidenced in its systematic and diversified codes of law, the English legal system has much influence in its development, particularly in the field of commercial law, procedural law and the law of evidence. The notion of proof beyond reasonable doubt in a criminal case and proof on the balance of probabilities in a civil case, and adversarial system of procedure where the judge acts in a passive role as an umpire are of the common law influences. No doubt much of the English influence comes from the part English trained lawyers and judges of the earlier days.

Legal education abroad represents a trend in the legal development. In the older days Thai government and private well-to-do individuals used to send its officers or their sons to England for legal studies. Higher tuition fees in the UK first introduced by the Thatcher’s government in 1970s and the world-famous, cost-effective postgraduate legal studies in North American law schools, notably Harvard, Yale, Berkeley, Columbia etc with their one year master of laws programmes makes legal studies in the United States a much more competitive choice than in the UK for Thais. One sees an influx of Thai law graduates to the United States law schools to the detriment of UK law schools. The late 1990s saw UK law schools fought back with more competitive one-year masters’ programmes for law graduates from civil law countries whose first language is not English. Although the variety of subjects may be as wide-ranging as US law schools, the UK law schools do not offer core subjects in the masters’ programmes for the benefit of the examination leading to a judicial career in Thailand. Recently, with the reform of judicial salary, judicial career in Thailand has once again gained popularity. The entrance of judicial career is by way of competitive examination,

perhaps the toughest of any law exams in this country. Post graduates from an approved Thai or foreign law school have a particular advantage for the judicial examinations since they will be tested in a different set of papers, reputedly softer and more general. However, there are certain core subjects to be fulfilled e.g. contract, tort, criminal law, procedure law and evidence. Not all of these subjects are offered in standard masters of law programmes in the UK since they are considered undergraduate-subjects and hence one cannot use an UK master of law degree to qualify in the judicial examination. American law schools, on the other hand, may offer these courses through their undergraduate law degree (J.D. Programme) and treat it as part of a masters' programme for individual student interested in the course. This is a matter of administrative arrangements to fit the purpose of the students. It benefits both. We can now see more American influence in the Thai law, particularly in the field of Alternative Dispute Resolution and American legal thinking in general.

This paper, in the analysis of the Thai legal research and legal education, will trace the historical background of Thai legal education with particular emphasis on the training of its legal profession: judges, public prosecutors and attorneys. Legal education at university level is added at a later stage. Some useful websites and further reading materials are also added at the appendices.

I. LEGAL EDUCATION IN THAILAND: HISTORICAL BACKGROUND

A. Before Legal and Judicial Reform [before B.E. 2411 (A.D. 1868)]

Back in the year B.E. 1781 (A.D. 1238), the Kingdom of Thailand was in the period of Sukhothai Era. King Pau Khun Sri-Intratit of the first monarchy, which was called “the Fountain of Justice”, had provided way of solving the disputes among his citizens by exercising his power himself. His judgment was a sign that the king impliedly imposed rules or regulations, which were meant to be the law of the kingdom. In B.E. 1862 (A.D. 1319), Thai alphabets were invented by King Ramkhamhaeng Maharaj. It was then the new era of education in all branches of knowledge including opportunity to record all events and historical events of the kingdom. Nonetheless, many legal nobles believed

that the law was recorded even before time. Some said that the law was written in the Khmer script or Sanskrit script, the language which was originated in India and widely used in those periods, and the law had some root from Code of Manu, the ancient Hindu Jurisprudence. However, when Thais had their own alphabets, they recorded the law in the so-called “Sila-Jaruk” or Royal Stone Inscription, under supervision of King Ramkhamhaeng Maharaj. According to the Sila-Jaruk, the record showed that there was the implication of some rules that had criminal penalty and some rules in civil matters. At that period, there was evidence that people had started studying many fields of knowledge such as medical science, literature, mechanical subject and so on. But legal education was dimly shown its existence because the society then was simple and static. Way of life among that period was plain. And more importantly, people had great respect in the King who presided upon the dispute and delivered judgment; everyone honor the King’s decision without any question. There was no need for compilation of the rules imposed by the King to regulate his people. In this period, people were more interested in working for living than in legal matters which, somehow, was not that much needed in their daily lives. Therefore, the legal education back then was not likely established in systematic function even though the law itself had been starting to surround the community. The method of dissemination of legal knowledge was done by narrations and indirect teaching between relatives and friends who needed to exercise their legal rights.

In B.E. 1893 (A.D. 1350), the so-called “Sri Ayudhaya Period”, Krung Sri Ayudhaya was promoted as the capital city of Thailand till B.E. 2310 (A.D. 1767). The society of this period became subtler because of the improvement of people’s life and the increase of population. The King no longer himself oversaw and delivered his royal decisions to all disputes put before him. He instead delegated his power of adjudication to his royal noble officials or the so-called “Purohita”, the Chief Chaplain to the King. However, the King’s power of judiciary was still absolute in his hands. When the King delivered judgment by himself, it was the model and became royal precedent for others to follow. Consequently, it became law. At the same time, the King also exercised his power on legislation by ordering his royal officials to draft the law and be reviewed and declared by him. During this period, King U-Thong gave his order to have all legal matters assembled and put in written forms for the first time. Even though it was

evident that the law was getting more and more evolved but the group of people who gained legal knowledge was confined to the royal officials who were learned on the legislative and judiciary matters in the Royal Palace. Legal education, therefore, started literally from the Royal Palace among those royal officials.

In the beginning of Rattanakosin period, B.E. 2325 (A.D. 1782), after the end of Sri Ayudhaya Period where Thailand had lost to Burma (Myanmar) during the war, some collections of the law which had been recorded during Sri Ayudhaya Period were partly destroyed in the Burmese invasion. The first monarch of Chakri Dynasty, King Rama I, applied the law partly inherited from Sri Ayudhaya period and at the same time engaged his prerogative of law making powers. He also established new rules of law, which conformed to ways of life during his period of the reign. He also ordered to have all laws and regulations assembled, revised and rectified. After 11 months, the rectification was finished and the law was written into three copies and was called “the Three Emblems of State Law or the Law of the three Great Seals”. This Law was considered as the original formality of the Law of the Land and was used as the Basic Law of judiciary. This Law had been used for 103 years. In the meantime, there were some minor laws enacted to solve some urgent problems. Legal studies during this period, however, had not been changed much from the Sri Ayudhaya Period because the way of life and culture maintained its former patterns including legal system and judiciary.

In B.E. 2369 (A.D. 1827), while Thailand had been developing trading relations with Western countries, England and France forced Thai to amend the regulations and rules of law on trading. However, King Rama IV, who just ascended the throne, proposed the agreement with England and other Western Super Powers at the time on trade and relationships. A treaty with England was called “Bowring Treaty” which brought about unequal right to economy, law and judiciary of Thailand. According to the treaty, English subjects were not under Thai law and judiciary. Other western countries followed suit, claiming that their people should not be put under Thai law and judiciary as well because of the insufficiencies and unsystematic of Thai Law and Courts. They preferred to have their peoples subjected only to their laws and special tribunal of judiciary established by them. This situation created the so-called extra-territorial jurisdictions of foreign courts in Thailand. King Rama IV, therefore, tried to

improve Thai law and judiciary acceptable to other countries. The Thai law was then written and promoted to foreigners and Thai people to understand and act in accordance with the law. Also in this period, techniques of printing was invented. Therefore, many law books were available to all people who were interested. Legal studies during this period, with the assistance of published law books, moved forward dramatically even though there were no law schools, law curriculum or techniques of teaching law in a systematic pattern.

B. After Legal and Judicial Reform [after B.E. 2411 (A.D. 1868)]

At the time when King Rama V was reigning the kingdom in B.E. 2411 (A.D. 1868), England and France both conquered and colonized Thailand neighboring countries. Therefore, it was the time for Thailand to get ready to challenge the threat of colonization. Improving and developing the country in the way of westernization was the plan to challenge or slow down the threat from those countries. The King ordered the moves to revolution of the administration foundation toward modernization. In the area of State Administration, the King appointed the Privy Council and the Council of State to deliver advice of state administration and policy in the same style as English system. In the area of public utilities, the King built water supply, electricity and post office. In the area of public health, the King established hospitals and medical school. And one of the significant royal responsibilities created by the King was the declaration of abolishment of slavery in Thailand. The Kingdom in this period was in the so-called “Absolute Revolution”. When the community was prospering, communication and trade relation among people was expanded. There were a lot of foreigners coming to Thailand and the numbers had been increasing drastically. However, the factor that made Thailand felt troublesome to cope with foreigners was the exception of judicial power above them. Western powers interpreted the Treaty, which granted extra-territorial jurisdiction to their subjects to also include citizens of their colonies in Asia. It led to great hardship and humiliation to Thais. Consequently, the law was not seen as the enforceable tool for administering and protecting peace in the community. The only way to confront with these undue practices was to improve Thai legal system and judiciary at the maximum to the acceptance of western countries and brought back the

sovereignty right of the judiciary above the people of the western nations living in Thailand.

In B.E. 2434 (A.D. 1891) the royal Thai government announced the establishment of the Ministry of Justice, which was the organization mainly responsible to reform and improve Thai judiciary. The moving of Thai legal system followed modernization of the European countries. Common Law and Civil Law system were among the system that Thai looked forward to adaptation as Thai model law. In the first place, there was an idea to bring Common Law system as the principal law for Thai legal adaptation because many of Thai lawyers and judges were graduates with law degree from England and were familiar with this system. However, after taking serious consideration, all concluded that Common Law system was more suitable to English people than others because it was the system that the Law was based mainly on traditional practices and judgments of the Court. The Law was not organized well enough for studying and using as the model. On the other hand, Civil Law system of the continent of Europe had been well organized into sections of code, which was suitable to learn and adopt. Moreover, many western countries except only England adopted the Civil Law system. If those countries accepted Thai legal system and judiciary as moving toward the modernization of the Civil Law system, it would be more possible that multilateral negotiations to terminate undue advantages on the Thai law and judiciary would be agreed upon. Finally, the Royal Thai government took Civil Law system to be the model of Thai legal adaptation. In the process of reforming Thai legal system, there was the consideration of the real need of the people, custom, practice, tradition, culture and way of life; not just a transplant of foreign law. The very first law reform was the Criminal Code on the Chakri Dynasty Era of 127 (B.E. 2451, A.D. 1908). This Criminal Code was drafted with very thorough consideration and discreet. Firstly, the draft was done in English by Mr. George Padoux, the Chief of drafting committee which included some of foreign legal experts and the draft, then, was translated into Thai. This Criminal Code was considered as a very modern law at the time because the popular principles of criminal law of the western countries were included while some rules were changed to suit with Thai community. In B.E. 2438 (A.D. 1895) there were 2 other laws, the Civil Procedure and Constitution of the Court of Justice. And in the later years, many laws were drafted and utilized. In B.E. 2478 (A.D. 1935) Thailand had the set of code laws,

which included Criminal Code, Civil Code, Criminal Procedure Code, Civil Procedure Code and Constitution of the Court of Justice. That was the period of the fulfillment of the legal system and judiciary reform to challenge with western countries and to claim back independence of the Thai judiciary. Finally, in B.E. 2481(A.D. 1938) Thailand gained back entirely its independence of the Law and judiciary from all western countries. It is important to note that even though Thailand had reformed Thai legal system and judiciary, it was also exhausted with diplomatic persuasion with powerful countries and trading off some of its territories to bring about this result. Upon this reform of the legal system and judiciary, the legal study had been expanding from simple learning in the house or premises of the royal officials to teaching law in the royal institute among new officials and in the same time sending some legal scholars of the royal house and outstanding officials to study law overseas. For example, the King sent his brother, HRH Prince Sawasdi-Sophon, to study at Balliol College of Oxford University, England and sent Khun Luang Phraya Krai Sri, a Thai judge, to study Barrister-at-Law in the English Bar institution. Later on the King's son, HRH Prince Rapee-Pattanasak or Prince Rajburidirekrit, was sent to study law at the Christ Church College, Oxford University in England. This Prince was the one who later founded the first law school in Thailand and he was acclaimed as "the Founder of Modern Thai Law". Many officials and judges were sent to study and graduated with Bachelor degree of laws from Cambridge and Oxford Universities and Barrister-at-Law from many institutes such as Gray's Inn and Middle Temple.

In the period of establishment of the Ministry of Justice, workload of cases was one of the problems the department had to solve. However, in the beginning, the solution focused on court procedural efficiency rather than inputting manpower. But when the laws were being reformed and there was a need to have personnel with adequate knowledge to the reformed law, the government, temporally, hired legal experts from foreign countries, which had no conflict of interests to Thailand to solve the lack of personnel. For example, the government hired Mr. Rolin Jacquemyns and Mr. R. J. Kirkpatrick, legal advisers from Belgium. Dr. Tokichi Masao from Japan and Mr. William Alfred Tilleke from Sri Lanka were invited to work with Thai judges. However, the Thai government had to hire some legal advisers from England and France due to the commitment of the treaty between Thailand and those countries. In

order to balance the local experts with foreign legal advisors, the Thai government tried to keep the number of foreign legal advisers to a certain limit. The King sent more Thai officials to study overseas and meanwhile tried to educate officials with better knowledge in law by providing legal education. In B.E. 2440 (A.D. 1897), under the responsibility of HRH Prince Rapee-Pattanasak, who was promoted as the Minister of the Ministry of Justice at the time, the school of law was established with determination of producing new generation of legal officials to handle judicial tasks under the reformed legal system. In the beginning, the school had around 100 students participating in classes. Chief Justices of the civil and criminal courts and some other judges came to help as the lecturers of the law school. The style of teaching in the school was like English legal teaching because most of the lecturers graduated from England. Moreover, English culture had played important role in the society at the time. The curriculum and law books used in the school were adapted mostly from England. However, when the time went by, many lecturers wrote more law texts in different areas of law such as land law, law on evidence, civil damages, corporate law, contract law etc. The curriculum of the law school was one-year term and final examination was provided at the end of term before graduating with Barrister-at-Law degree. In November 22, B.E. 2440 (A.D. 1897), the Ministry of Justice announced the schedule of the first examination during December 2-7, B.E. 2440. The subjects of the examination included criminal, contract, succession, tort, family law, procedural law and international law. Each day, there would be 10 questions to be answered and 4-hour period (9.00 – 13.00) was allowed to complete the examination. For the first examination there were 9 out of 100 students passed this test and qualified as Barrister-at-Law. In B.E. 2441, the school proposed the plan to have a committee taking care of and running for the school. Therefore, the committee so-called “the Thai Bar Association” was established. The conference of the Bar would be entitled to vote for the members of this Bar Association. All regulations of the school was enacted such as school regulation on committee election, committee process of conference, conduct investigation of Barrister, process of admitting judge who graduated from overseas to be Thai Barrister-at-Law, process of applying to be students in the school, process of practicing litigation in Court, robe of Barrister, etc. The school, under unofficial supervision of the Ministry of Justice, had duty to teach and conduct professional

training in the meantime, which was more like Inns of Courts of England. The Bar Association was also acting as a professional association. In B.E. 2454 (A.D. 1911), during the period of King Rama VI, the school of law was royally declared to be the royal college under the Ministry of Justice. Then the government took full responsibility of running this school. The Head of the Ministry would be responsible for all activities in the school. Therefore, the Bar Association ended its role from this law school. The law school under the supervision of the Ministry of Justice was categorized as the level of a college. The students must have finished high school before enrolling as a law student here.

In B.E. 2456 (A.D. 1913), when the civil law system was first introduced to Thailand, some Thai students were sent to study law in France and Germany or the United States of America to gain a broad legal knowledge instead of only knowledge of the Common Law system from England like in the past. There was also a reorganization and development of the curriculum and teaching in Thai law school. In B.E. 2462 (A.D. 1919), there was a change of the legal curriculum to extend a time frame to 2 years within 2 terms. In the first term, the subjects included jurisprudence, private international law, criminal law, criminal procedure law, contract, torts and land law. The second term included agency law, corporate law, bankruptcy law, bill of exchange law, sale, succession law, family law, law of evidence, civil procedure and public international law. The development of the school moved towards the system of jurisprudential studies rather than professional training of lawyers. Between the years B.E. 2457 (A.D. 1914) to B.E. 2466 (A.D. 1923), the curriculum and teaching style had been changed to incorporate a European style of teaching law. Therefore, the King gave the order to announce the improvement and development of the curriculum by way of establishing the so-called “Legal Council” to take care of the changing of the curriculum according to current legal system and making up to the international standard like foreign school of law. In B.E. 2467 (A.D. 1924), the curriculum of the law school was changed into 3 terms within 3 years. First term included jurisprudence, legal history, criminal law, civil law on chapters 1 and 2, marital law, will and property law. Second term included civil law chapter 3, bankruptcy law, evidence law, civil procedure, criminal procedure and private international law. And third term included special law (to be announced), public international law, economic study, administrative law and

financial law. A student who passed the first 2 terms would graduate with the degree of Barrister-at-Law and a student who passed the third term would graduate with the Bachelor Degree. In B.E. 2473 (A.D. 1930), the Legal Council announced the new curriculum by increasing the term for Barrister-at-Law curriculum from 2 years to 3 years, which was the same curriculum of Barrister-at-Law of other countries such as Japan, France, etc. In the meantime, the curriculum would include English or French Law for a student to choose. This was very beneficial to students to make comparison of both Thai and foreign laws. However, in case of a student who graduated with Bachelor Degree or Barrister-at-Law from abroad, that student would not have to take this foreign law and had the opportunity to take as many subjects as he wished after enrolling to study for one year. This new curriculum which extended into 3 terms within 3-year-period combined with the first term; jurisprudence, legal history, administrative law, constitution of the Court of Justice, criminal law, criminal procedure, English or French law, the second term: commercial and civil code on juristic act and obligation, securities with person and property (which meant suretyship, mortgage and pledge), lien, sale of goods, exchange of property, gift, leasing, hire of property, hire-purchase, carriage of goods, loan, deposit, warehousing, compromise, gambling, corporate and association, civil procedure, law on evidence, bankruptcy law, English or French law and the third term; international law (state and individual section), commercial and civil law on property, family and will, agency, current account, insurance, bill, management of affairs without mandate, English or French law. The Legal council set up the subjects including English and French law as follows:

First term

English law: Constitution of the Court of Justice, Criminal Law, Civil Procedure and Criminal procedure.

French law: Constitution of the Court of Justice, Criminal Law, Civil Procedure and Criminal procedure.

Second term

English law: Common Law and Equity.

French law: Civil Law.

Third term

English and French law: Commercial Law

According to the Bachelor of Laws curriculum, the Legal Council set a higher standard of learning by allowing a student to learn how to accomplish legal research not more than 2 years. It was meant that after a student graduated with Barrister-at-Law Degree, he or she would have to spend 2 years doing research and came back to take written and oral tests on the topics of general law including English and French law (except the student who graduated from overseas). Moreover, the student would have to fulfill a thesis in a topic that the examination committee assigned. The reason that the Legal Council had to put English and French Law in the curriculum was Thailand had been put to sign the agreement with England and France to hire English law teachers to teach the English Civil and Commercial Law where England demanded Thailand to apply as that law which Thai law did not have in its Civil and Commercial Law. And the agreement with France demanded Thailand to establish legal Department and drafted the new curriculum and regulation of the law school while the director of the school would be French. Moreover, Thailand had to hire French legal advisers attaching to the Ministry of Justice. Therefore, by the force of the these Agreements, Thailand had to appoint Mr. L Duplart, a French lawyer with other 2 French law teachers to participate in the law school. Meanwhile, the school also hired English law teachers to teach Common Law as well.

The establishment of the law school, in the time of King Rama VI through the period of King Rama VII, which was declared as the royal school under supervision of the Ministry of Justice, was the foundation to Thai legal education.

C. Legal Education in Thailand: Current and Future Trend.

In B.E. 2476 (A.D. 1933), King Rama VII considered that the law school of the Ministry of Justice had been prosperous and reached at the level of the standard college like most others in the western countries. The King, therefore, declared the royal decree to merge the curriculum and regulation of the law school and established as a faculty in the university; it was announced as the Faculty of Law and Political science. At that time, this faculty was in Chulalongkorn University and later on it was transferred to be one of the faculties in Thammasat and Political Science University in B.E. 2477 (A.D.

1934). During B.E. 2477 (A.D. 1934) through B.E. 2491 (A.D. 1948), there was only one legal study institution in Thailand, the faculty of law in Thammasat and Political Science University. In B.E. 2494 (A.D. 1951), Chulalongkorn University reestablished a department of law in the faculty of Political Science and within a few years, the university developed this department to be the faculty of law. These two universities rendered legal study service for students in their institutions for many years. After B.E. 2500 (A.D. 1957), more universities provide legal studies in their institutes. In the year of B.E. 2543 (A.D. 2000), there are a total of 21 law faculties in various universities in Thailand. Five out of twenty one universities are State Universities: Chulalongkorn University, Chiangmai University, Thammasat University, Ramkhamhaeng University and Sukhothai Thammathirat University. The first three universities require applicants to take the entrance examination before admitted to study while Ramkhamhaeng University and Sukhothai Thammathirat University are the Open University which need no entrance exam to apply for studying. These open state universities try to provide legal education to those who are interested but have no opportunity or time to enter the others. Therefore, distant legal learning for students who stay in other provinces is provided by these universities. And apart from those universities, another important legal institution which has to be mentioned here is the Institute of Legal Education of Thai Bar Association which provides higher level of legal study and offers Barrister-at-Law degree to a candidate who passes its examination.

Current Legal Education in the University of Thailand

Undergraduate level

The current legal study of undergraduate level in most faculties of law of present universities combines with 4-year standard terms in which students will normally have 4 years of studying. The credits of graduation with Bachelor of Laws accumulate with around 135 to 145 credits. The main qualification of a candidate who will be admitted to study in the university is to have high school knowledge or any degree on the same level. To enter some state universities, a candidate must take the so-called “entrance examination” and gain appropriate scores to be admitted. Most faculties of law in

various universities provide relatively the same subjects of legal studying. However, there are some differences among those schools on methods of teaching and patterns of enrollment, which lead to identify expertise or major area of studying of students.

This paper will pick up the update curriculum of one of the faculties of law of the State University and enter to some details of the subject matters of legal study. This will provide some prospective of what legal education in Thailand on undergraduate level is like.

Bachelor of Laws program of Chulalongkorn University

Title of Degree: Bachelor of Laws or LL.B.

Philosophy and objective of the curriculum

- build social awareness among students
- establish legal professionalism for students
- magnify internationalization in students

Qualification of candidates

One who graduates with the high school degree or the same level according to the rules and regulations of admission to study in the level of graduate degree.

System of study

One term (year) combines of 2 semesters: first semester and second semester and sometimes includes summer session after each conventional term. Each semester will consists of a period of not less than 15 weeks. Summer session will be around 6 studying weeks.

Period of study

Throughout 4 curriculum years (8 studying semesters) whereas minimal period of study not less than 7 semesters and maximal period not more than 16 semesters.

Enrollment

In each semester, a student will be allowed to enroll not more than 22 credits, not less than 9 credits and 7 credits in summer session.

Evaluation and fulfillment

A student must obtain grade A, B+, B, C+, C, D+ or D to pass an exam. F is considered as failing a test. If a student fails a compulsory subject, he or she must enroll that subject again. If the subject is not compulsory, the student can choose any other subject instead. A student must pass examinations and obtain at least 135 credits to reach the fulfillment of the curriculum whereas he or she must consume studying time not less than 7 semesters.

Curriculum

- Accumulated credits throughout the curriculum are 135 credits.
- Structure of the curriculum.
 - Section of general subjects 30 credits
 - Section of specific subjects
 - Group of basic legal subjects (compulsory)* 71 credits
 - Group of area subjects (compulsory to choose)* 18 credits
 - Section of noncompulsory subjects 16 credits

1. Section of general subjects (30 credits)

1.1 Section of subjects of general study (18 credits)

- group of social science 3 credits
- group of humanity science 3 credits
- group of science and mathematics 3 credits
- group of general science 3 credits
- group of foreign language 6 credits

1.2 Compulsory subjects according to other faculties (12 credits)

- Choose one of Legal Logic or History of Law 2 credits
- Law and Society 2 credits
- Choose one of Accounting for Lawyer or Economics for Lawyer 2 credits
- Choose one of EAP I or French language in legal studying III 3 credits
- Choose one of EAP II or French language in legal studying IV 3 credits

2. Section of specific subjects

2.1 Group of basic legal subjects (compulsory) (71 credits)

- Sources of Obligations I 3 credits
- Property Law 3 credits
- Persons and Family Law 3 credits
- Fundamental Legal Principles 3 credits
- Effect of Obligations 3 credits

• Succession Law	2 credits
• Loan and Security Transactions	2 credits
• Specific Contracts I	3 credits
• Specific Contracts II	2 credits
• Sources of Obligations II	3 credits
• Law on Business Organization	3 credits
• Negotiable Instruments	3 credits
• Taxation	3 credits
• Criminal Law: General Principals	3 credits
• Criminal Law: Specific Offences	3 credits
• Judiciary Process and Thai Court System	3 credits
• Civil Procedure	3 credits
• Criminal Procedure	3 credits
• Evidence	2 credits
• General Principles of Public Law	2 credits
• Constitutional Law and Political Institutions	3 credits
• Administrative Law	3 credits
• Legal Philosophy	2 credits
• Labor Law	2 credits
• Public International Law	3 credits
• Private International Law	3 credits

Total of 26 subjects

2.2 Group of area subjects (compulsory to choose) (18 credits)

A student must choose to study a set of subject area as follows and must enroll up to 18 credits

- Area of Civil and Criminal Law
- Area of Business Law
- Area of International Law
- Area of Public Law

Area of Civil and Criminal Law

• Civil and Criminal Law in English	2 credits
• Seminar on Civil Law	2 credits
• Insurance Law	2 credits
• Seminar on Criminal Law	2 credits
• Business Crime	2 credits
• Juvenile Offences	2 credits
• Civil Procedure: Execution of Judgements or Orders	2 credits
• Bankruptcy Law	2 credits
• Seminar on Civil Procedure	2 credits
• Seminar on Criminal Procedure	2 credits
• Introduction to Comparative Law	2 credits

Total of 11 subjects

Area of Business Law

• Accounting for Lawyers	2 credits
• Business Law in English	2 credits
• Intellectual Property Law	2 credits
• Anti-trust Law	2 credits
• Seminar on Business Law	2 credits
• Securities Regulations	2 credits
• Contract Negotiation and Drafting	2 credits
• Banking Law	2 credits
• Consumer Protection Law	2 credits
• International Trade Law	2 credits
• International Contract	2 credits
• International Business Transaction Law	2 credits
Total of	12 subjects

Area of International Law

• International Law on Sea	2 credits
• International Criminal Law	2 credits
• International Law in English	2 credits
• International Environmental Law	2 credits
• International Organization Law	2 credits
• European Union Law	2 credits
• Seminar on International Law	2 credits
• International Humanitarian Law	2 credits
• Human Rights Law	2 credits
• International Economic Law I	2 credits
• International Economic Law II	2 credits
• International Law and Development	2 credits
Total of	12 subjects

Area of Public Law

• Public Law in Foreign Language	2 credits
• Organic Law I	2 credits
• Administrative Court and Administrative Procedure	2 credits
• Public Finance Law	2 credits
• Administrative Procedure Law	2 credits
• State Contracts	2 credits
• Seminar on Law and Social Problems	2 credits
• Environmental Law	2 credits
• Introduction to Public Economic Law	2 credits
• Seminar on Legal Drafting and Legislative Process	2 credits
• Seminar on Administrative Law	2 credits
• Seminar on Constitutional Law	2 credits
Total of	12 subjects

3. Section of noncompulsory subjects (16 credits)

3.1 *Subjects in the faculty of Law*

• Law on Derivatives	2 credits
• Law on Structuring and Financing Foreign Direct Investment	2 credits
• Criminology	2 credits
• Litigation and Moot Court	2 credits
• Forensic Medicine	2 credits
• Non-Judiciary Dispute Settlement	2 credits
• Criminal Investigation and Inquiry	2 credits
• Law on Land Management	2 credits
• Seminar on Taxation	2 credits
• Customs Law	2 credits
• Law on Marking	2 credits
• Mineral Resource and Petroleum Law	2 credits
• Consumption Tax	2 credits
• Seminar on Law and Computer	2 credits
• Law on Public Service and State Enterprise	2 credits
• Seminar on Labor Law and Social Security	2 credits
• Industrial Law	2 credits
• Law on Personal Management in Public Section	2 credits
• Law on Public Information Access and Rights of Privacy	2 credits
• Organic Law II	2 credits
• Maritime Law	2 credits
• International Commercial Arbitration	2 credits
• International Taxation	2 credits
• International Law on Natural Resource Management	2 credits
• International Law on Air and Space	2 credits
Total of	25 subjects

3.2 *Group of noncompulsory subjects out of the Faculty of Law*

1. Field of Business Administration in Faculty of Commerce and Accountancy.
2. Field of Economic in Faculty of Economics.
3. Field of International Relation in Faculty of Political Science.
4. Field of Public Administration in Faculty of Political Science.
5. Field of Foreign Language in Faculty of Arts.
6. Field of other faculties.

Postgraduate Level

Due to the development of the global economic and trade, there is a need to have personnel who are qualified to work in the area of this development. As well as in the area of Public Law, Thailand had recently enacted the new Constitution which is regarded as the most democratic one. The Constitution provides many significant fundamental rights to the people. The Society, therefore, is turning to focus on fulfilling and maintaining citizen rights under their new Constitution. According to the Constitution, there are new institutions established, namely the Constitutional Court and the Administrative Court. Public Law, which is mainly used by those institutions then, comes to its important role to accomplish the expectation of the Constitution. Those areas of law are important to the lawyers in the community to have the opportunity to acquire more intensive knowledge. Many universities in Thailand provide postgraduate programs for students to further their knowledge in specific area. The faculties of law in various universities, as well, have developed postgraduate program to produce qualified candidate to serve the need of the legal community. Moreover, some universities have created international programs in legal study by cooperating with outstanding universities overseas such as Japan, United States of America, England, etc. and have been producing students who qualify to serve regional and international legal communities. It is appropriated to choose one of the Master of Laws curriculum from Ramkhamhaeng University to be the example of postgraduate studying of law.

Master of Laws program of Ramkhamhaeng University

Name of the degree: Master of Laws (LL.M.)

Method of teaching: Period of teaching will be held out of an official working hour.

Number of students: not more than 120 students

Qualification of a candidate: Obtain Bachelor degree of Laws from any institute approved by the Department of University with average score not less than 75 percent or not less than 2.75 GPA and a candidate must have an experience in legal field not less than 1 year.

Curriculum: Total credits not less than 49 credits and the curriculum is divided into 4 separate fields as follows:

- Business Law
- Public Law
- International Law
- Law for Development

In each field combines with these subject Sections:

- | | |
|--|-------------------|
| • Section of supplementing on basic legal subjects | none credit |
| • Section of basic of law | 9 credits |
| • Section of compulsory subjects | 18 credits |
| • Section of noncompulsory subjects | 10 credits |
| • Thesis | 12 credits |
| Total of | 49 credits |

A student must also pass English for Legal Studies to the level or above of **S** (Satisfactory).

Subjects of studying

1. At least 5 subjects from the Section of supplement of basic law and Section of basic of law must be taken.

- None credit subjects
 - English for Lawyer
 - Legal Research
- Credit subjects
 - Legal Philosophy 3 credits
 - Rules of Civil and Commercial Law 3 credits
 - Philosophy and Rules of Public Law 3 credits

2. Compulsory subjects total of 18 credits

2.1 Section of compulsory subjects in the field of Business Law

- Advanced problems in Business Law 3 credits
- Graduate Seminar in Business Law 3 credits

And a student must choose group of subjects 4 out of 6 from these following subjects:

- Law concerning Financial Institution 3 credits
- Law concerning Industrial and Investment 3 credits
- Advanced Tax Law 3 credits
- Advanced Labor Law 3 credits
- Intellectual Property Law 3 credits

- International Commercial and Investment Law 3 credits
- 2.2 Section of compulsory subjects in the field of Public Law
- Advanced Constitutional Law and Political Institution 1 3 credits
 - Advanced Constitutional Law and Political Institution 2 3 credits
 - Advanced Administrative Law 1 3 credits
 - Advanced Administrative Law 2 3 credits
- And a student must choose one out of these two following subjects:
- Advanced Monetary Law 3 credits
 - Public Economic Law 3 credits
- 2.3 Section of compulsory subjects in the field of International Law
- Advanced International Law 3 credits
 - International Law Concerning Treaty 3 credits
 - Graduate Seminar on International Law 3 credits
- And a student must choose 3 out of 5 subjects as follows:
- Advanced Law on International Organization 3 credits
 - International Law of the Sea 3 credits
 - International Economic Law 3 credits
 - International Trade and Investment Law 3 credits
 - Law on International Organization in level of Region 3 credits
- 2.4 Section of Compulsory Subjects in the field of Law for Development
- Law for Social Development 3 credits
 - Law Concerning Development Planning of City and Province 3 credits
 - Graduate Seminar on Law for Development 3 credits
 - A student must choose 3 out of 7 subjects as follows:
 - Environmental Law 3 credits
 - Anti-Trust and Unfair Competition Law 3 credits
 - Consumer Protection Law 3 credits
 - Intensive Problems in Welfare and Social Security Law 3 credits
 - Law on Specific Territory Development 3 credits
 - Law on Agriculture and Agriculture Institution 3 credits
 - Law on Land Control 3 credits
3. Section of noncompulsory subjects not less than 10 credits
- 3.1 Section in the field of Business Law
- Law on Commerce and Accounting 2 credits
 - Maritime Law 2 credits
 - Law on Business Organization 2 credits
 - Economic Law 2 credits
 - Advanced Insurance Law 2 credits
 - Seminar on International Business Law 2 credits
 - Law on Business Planning 2 credits
 - Economic Crimes 2 credits
 - Comparative Commercial Law 2 credits

3.2 Section in the field of Public Law	
- Advanced Law on Election and Parliament	2 credits
- Law on State Official	2 credits
- Law on Public Service Management	2 credits
- French Administrative Law	2 credits
- German Administrative Law	2 credits
- Administrative Law of Anglo-Saxon	2 credits
- Principle of Law on Constitutional Case	2 credits
- Law on Public Freedom	2 credits
- Law on Public Administration	2 credits
- Law on Social Science	2 credits
3.3 Section in the field of International Law	
- Private International Law	2 credits
- International Criminal Law	2 credits
- International Law in Field Trip version	2 credits
- International Law on Diplomacy and Counsel	2 credits
- International Law on Human Rights	2 credits
- Law of Space	2 credits
- International Labor Law	2 credits
- Law on Land and Air Transportation	2 credits
- International Tax Law	2 credits
- International Agreement	
- International Commercial Arbitration Law	2 credits
- European Community Law	2 credits
3.4 Section in the field of Law for Development	
- Law and Economics	2 credits
- International Environmental Law	2 credits
- Human Rights in Developing Countries	2 credits
- Law on Monetary Loan Agreement	2 credits
- of Developing Countries	
- Economic Crimes	2 credits
- Public Economic Law	2 credits
- Law on Social Science	2 credits

Besides noncompulsory subjects in those 4 Sections, a student may choose compulsory subjects in each Field or these noncompulsory subjects as follows:

- Criminal Justice Administration	2 credits
- Advanced Criminal Procedure	2 credits
- Comparative Criminal Procedure	2 credits
- Advanced Civil Procedure	2 credits
- Comparative Evidence Law	2 credits
- Advanced Criminology and Penology	2 credits
- Advanced Criminal Law	2 credits
- Seminar on intensive Problems of Criminal Law	2 credits
- Advanced Contract and tort Law	2 credits

- Comparative Bankruptcy Law 2 credits
- Seminar on Contemporary Legal Problems 2 credits

Besides Master of Laws, there are 2 universities which provide Doctor of Laws Degree; Chulalongkorn University and Thammasat University. Doctor of Laws programs of these two universities were recently revised. The program of Thammasat University were revised in B.E. 2539 (A.D. 1996) and now there are three students studying. However, there has been no successful student applying to study in Doctor of Laws in the faculty of law of Chulalongkorn University.

University and Institute Statistics

Table 1 Number of all universities/institutes by types of institution, 1999

Type of Institution	Number
Grand Total	70
1.Public Institute	24 (21 with law faculty)
1.1 Limited Admission University	18 (3 with law faculty)
1.2 Open University	2
1.3 Autonomous University	4 (no law faculty)
2. Private Institute	46
2.1 University	20 (12 with law faculty)
2.2 College	25 (4 with law faculty)
2.3 Institute	1 (no law faculty)

Table 2. Number of new and total enrollments of all students (all faculties) in 1999 and graduates in 1998 by types of institution

Type of Institution	New Enrollment	Total Enrollment	Graduate
(Grand Total)	328,182	1,012,285	109,648
1.Public Institute	276,691	844,186	78,206
1.1 Limited Admission University	77,807	263,567	52,278
1.2 Open University	193,928	565,032	23,590
1.3 Autonomous University	4,956	15,587	2,338
2. Private Institute	51,491	168,099	31,442
3. Public: Private	84:16	83:17	71:29

Number of Students in Faculty of law of State Universities

Table 3. Student Numbers in Chulalongkorn University in 1999

	Bachelor	Master	Total
Faculty of Law	704	472	1176
Law	704	362	1066
Economic Law		87	87
Business Law		23	23

Table 4. Student Numbers in Thammasat University in 1999

	Bachelor	Diploma	Master	Ph.D.	Total
Faculty of Law	3279	122	389	3	3793
Non-Select Area of Law	2026	122	389	3	2540
Law (Special Class)	1253				1253

Table 5. Student Numbers in Chiangmai University in 1999

Faculty of Social Science	Undergraduate
Law	269

Table 6. Student Numbers in Ramkhamhaeng University in 1999

Faculty of Law	Bachelor	Diploma	Master	Total
Law	60447	48	674	61169

Table 7. Student Numbers in Sukhothai Thammathirat University in 1999

	Undergraduate	Bachelor	Total
Faculty of Law			49077
Land and Property Law	805		805
Law		48273	48273

The Institute of Legal Education of Thai Bar Association

At the time of B.E. 2476 (A.D. 1933), when there was the royal decree to terminate the Legal Study Council who had responsibility to organize the curriculum of the law school in the Ministry of Justice, the Bar Association, therefore, did not play any role in legal education. Until B.E. 2490 (A.D. 1947), the Bar Association Committee, with advice of the Judicial Committee, considered to establish the legal training course focusing mainly on legal professional practices to produce personnel serving the judiciary in the Ministry of Justice. The committee, therefore, founded the department of legal study in the Bar Association. And in B.E. 2491 (A.C 1948), the Legal Education Institute of Thai Bar Association was established with the duty of educating and promoting knowledge of legal practicing for law practitioners. There was a special committee which was enacted to direct legal study in particular. At the time, the President of the Supreme Court was nominated to be the president of the institute. The objective of establishment of the Legal Education Institute of Thai Bar Association was accorded to the agreement of the International Bar Association in which Thailand was a member. The consensus of the International Bar Association which was held in Hague, Netherlands in B.E. 2491 (A.D. 1948) stated that there should be enough practical training for legal personnel before performing his or her duty in the legal professions. At the beginning, the curriculum of the institute included Civil Procedure Law, Criminal Procedure Law, Evidence Law and the Constitution of the Court of Justice, Criminal Law, Civil Law and others. In present, the qualification of a candidate who can apply to study in the institution must be a person who graduates with Bachelor of Laws from Thammasat University, Chulalongkorn University and Ramkhamhaeng

University or has studied in the faculty of law in other universities in Thailand or overseas and passes an examination up to the standard stipulated by the Legal Study Committee of the Bar. The curriculum of studying is as follows:

- Civil Law
- Criminal Law
- Administrative Law
- Intellectual Property Law
- International Trade Law
- Civil Procedure Law
- Criminal Procedure Law
- Evidence Law
- Constitution of the Court of Justice
- And others

The period of study is separated into two terms. The first term begins on June to September and the second term starts on December to March of the consecutive year. Time of teaching is provided in both normal class (8.00 to 16.30) and evening class (17.00 to 20.00 including Saturday 8.00 to 17.00). The subjects which are taught in the first term are: Criminal Law, Labor Law and Proceeding in Labor Court, Administrative Law, Civil Law on Property, Juristic Act, Obligation, Torts, Sales, Exchange, Gift, Hire of Property, Hire-Purchase, Hire of Labor, Hire of Services, Loan, Deposit, Suretyship, Mortgage, Pledge, Agency, Broker, Bill, Current Account, Partnership and Company, Family, Succession, Tax Law, Land Law, Intellectual Property Law and International Law. Second term includes: Civil Procedure Law, Bankruptcy Law, Constitution of the Court of Justice, Criminal Procedure in Small Claim Court, Trial Procedure in Juvenile and Family Court, Criminal Procedure, Evidence Law and Litigation and Witness Examining Practices. An examination will be held at the end of each term. The examination combines with written and oral tests. A student who passes the Bar exam will be entitled to Barrister-at-Law degree and qualifies to be a candidate applying to judiciary or public prosecutor recruitment.

From B.E. 2440 (A.D. 1897) to B.E. 2476 (A.D. 1933), where the school of law was running by the Ministry of Justice, there were 1,073 students who graduated with

Barrister-at-Law. Since B.E. 2491 (A.D. 1948) the Institution of Legal Education of Thai Bar Association was established and the institution has been producing many lawyers as stated on the table below:

Table 8. Numbers of Barrister-at-Law each year

Session	Year	Graduated
1	B.E. 2419 (A.D. 1948)	6
2	B.E. 2492 (A.D. 1949)	None
3	B.E. 2493 (A.D. 1950)	3
4	B.E. 2494 (A.D. 1951)	13
5	B.E. 2495 (A.D. 1952)	24
6	B.E. 2496 (A.D. 1953)	34
7	B.E. 2497 (A.D. 1954)	38
8	B.E. 2498 (A.D. 1955)	32
9	B.E. 2499 (A.D. 1956)	15
10	B.E. 2500 (A.D. 1957)	11
11	B.E. 2501 (A.D. 1958)	19
12	B.E. 2502 (A.D. 1959)	20
13	B.E. 2503 (A.D. 1960)	58
14	B.E. 2504 (A.D. 1961)	19
15	B.E. 2505 (A.D. 1962)	69
16	B.E. 2506 (A.D. 1963)	44
17	B.E. 2507 (A.D. 1964)	115
18	B.E. 2508 (A.D. 1965)	51
19	B.E. 2509 (A.D. 1966)	130
20	B.E. 2510 (A.D. 1967)	63
21	B.E. 2511 (A.D. 1968)	137
22	B.E. 2512 (A.D. 1969)	304
23	B.E. 2513 (A.D. 1970)	351
24	B.E. 2514 (A.D. 1971)	124
25	B.E. 2515 (A.D. 1972)	125
26	B.E. 2516 (A.D. 1973)	72
27	B.E. 2517 (A.D. 1974)	132
28	B.E. 2518 (A.D. 1975)	328
29	B.E. 2519 (A.D. 1976)	255
30	B.E. 2520 (A.D. 1977)	171
31	B.E. 2521 (A.D. 1978)	361
32	B.E. 2522 (A.D. 1979)	490
33	B.E. 2523 (A.D. 1980)	548
34	B.E. 2524 (A.D. 1981)	517
35	B.E. 2525 (A.D. 1982)	646
36	B.E. 2526 (A.D. 1983)	906
37	B.E. 2527 (A.D. 1984)	443

38	B.E. 2528 (A.D. 1985)	678
39	B.E. 2529 (A.D. 1986)	530
40	B.E. 2530 (A.D. 1987)	530
41	B.E. 2531 (A.D. 1988)	466
42	B.E. 2532 (A.D. 1989)	250
43	B.E. 2533 (A.D. 1990)	260
44	B.E. 2534 (A.D. 1991)	436
45	B.E. 2535 (A.D. 1992)	259
46	B.E. 2536 (A.D. 1993)	338
47	B.E. 2537 (A.D. 1994)	282
48	B.E. 2538 (A.D. 1995)	395
49	B.E. 2539 (A.D. 1996)	491
50	B.E. 2540 (A.D. 1997)	405
51	B.E. 2541 (A.D. 1998)	839
52	B.E. 2542 (A.D. 1999)	438
Total		13,271

D. Future Trend of Legal Education in Thailand

In the future, many legal education institutes are looking forward to accelerating their legal education improvement of producing appropriate personnel to serve the society. Many universities annually improve their curriculums to muster up students who will have their areas of expertise in the period the first or second year of studying. The curriculum will be more intense in each area and more legal subjects are provided for students to choose. This effect comes from the changing of society. The more areas of study occur, the more in-depth of knowledge is in need. The area of laws is inevitably effected. At present, it is the age of information technology where phenomenon has been bringing the world to no boundary. It is the era of international exchanging of information, which brings about many implications. International matters play the important roles in the world communities in many areas, especially in business activities. When the market of international business transaction is in need of personnel, most of educational institutes are moving toward those needs. With no exception to the legal education institutes, they are trying to serve this personnel shortage, which, however, has long been lacking. Even though the long plan to produce international practicing lawyers from undergraduate and postgraduate students has been being on the way as mentioned earlier, there is also urgent need to provide some knowledge on international legal forum to current practitioners both lawyers and non lawyers in the community. Some of the outstanding education institutes, then, are managing to provide significant

education in this area of international legal matters. They are coming with short course and medium course where students will obtain the diploma after going through the course. Some institutes provide Master Degree to a successful student who implements their long term course. One of the programs which is interesting and should be mentioned here is the Master of Arts in Economic Law 2000 provided by Chulalongkorn University. This program is designed under the consideration of the drastic trend of global economy, monetary transaction and international investment under the scope of the World Trade Organization (WTO) and the scope of regional groups such as European Union, NAFTA, AFTA, APEC, etc. In the section of economy and business of the country, the relation between law and financial & investment market has been increasing in every moment. The new creation of cooperation between private institution in investment, establishment of business organization, business negotiation, utility of new financial instruments needs to be approached with competent particular business concept together with legal perception as well. Due to the limited numbers of experts in this area, the program is, therefore, designed to prepare and produce both lawyers and businessmen who have conception and knowledge in global and regional economic law for the global business community. This program eliminates obligation, which the legal curriculum structure is always created significantly toward legal technical profession whereby a law student neglects the concept of other areas outside legal scope. This program, therefore, combines relation between law and economics in the sense of correspondence, which will create a candidate who gains vision and integrated concept and can serve the community in the mist of the changing of the global economic phenomenon. Qualification of a candidate who will be admitted to study is: graduated with law, economics, business administration or accounting degree and having working experience in those fields not less than 3 years or if graduated with other degree than those three, a candidate must have no less than 4 years experience or if a candidate has postgraduate degree, experience is not needed. However, a student who has less legal basic must take special courses on particular fundamental legal subjects approved by the Board of Postgraduate Study. The time of fulfillment is not more than 4 years and not less than 2 years. A student must accumulate at least 39 credits to graduate with the master degree. The curriculum subjects are as follows:

Compulsory subjects with total of 27credits

- Economic Analysis of Law 3 credits
- Relationship between Law and Business 3 credits
- Contract Negotiation and Drafting 3 credits
- Law relating to Business Organization and Management 3 credits
- Tax and Business 3 credits
- Laws relating to International Business 3 credits
- Settlement of Disputes in Business 3 credits
- Criminal Law and Economic Crimes 3 credits
- International Economic Regulations 3 credits

Noncompulsory subjects with total of 9 credits

- Law of International Commercial Transactions 3 credits
- Tax and International Business 3 credits
- Business Tax Planning 3 credits
- Laws relating to Business Finance 3 credits
- Law on Marketing Planning 3 credits
- Law relating to Industry and Labor 3 credits
- Law relating to Commercial Credits 3 credits
- Law on Securities 3 credits
- Law on Derivatives and Derivative Market 3 credits
- Law on Business Planning 3 credits
- Important Business Contracts 3 credits
- Law and Contract for Real Estate Development 3 credits
- Intellectual Property Law 3 credits
- Natural Resources, Environment and Law 3 credits

Thesis with total of 12 credits**Individual Study with total of 3 credits**

- Individual Study on Economic Law and Business Law 3 credits

In the meantime, the Bar Association has also been working on transcending its curriculum to meet new legal environment. The Bar, upon legal experts brainstorming, concluded the future legal trends and created norms toward those tendencies to produce more productive lawyers to the community. Upon the conclusion, the appropriate lawyer is compared with social architect or engineer. He or she should have very keen legal knowledge in particular area. Economic, social, and politic matters will be important for all lawyers to understand those situations and its implications. Lawyers, therefore, will be able to manage to establish justice in the society, which is the step toward elevating quality and integrity of Thai community. Lawyers should be able to protect state interest and sovereignty. Toward the qualified lawyer, there must be concrete strategies to improve and establish legal knowledge and merit of all lawyers to serve the country. With those strategies, the Bar has concluded as follows:

1. There should be enough special curriculums in specific area of law for specialized lawyers such as in the area of Intellectual Property Law, International Trade Law, Administrative Law or Private International Law.
2. The way of learning and testing the students in Legal Education of the Bar must be differentiated from those in the universities. The curriculum must provide the opportunities of learning the law, understanding and applying them appropriately. The way of utilizing the law must be focused on its merit besides earning of interest.
3. The curriculum must also be concentrate on morality, ethical conduct and social responsibility. The improvement in this matter must be intense for the foreseen professional practices. Legal Education of the Bar must expand its objective to cover all law practitioners. Not like in the past that the institute only provided legal personnel for the community of judicial, public prosecutor and litigation lawyer, the institute must presently serve the community out of the court as well by producing appropriate lawyers such as legal consultants to the field of business transaction.

From those educational moves of the Bar, we can foresee good pictures of legal profession of Thai Community in the future. If the Bar fulfills its expectation including the supplementation from legal educational markets in many learning Institutes, standard of Thai lawyer will be even better and levitate the society up to the anticipation.

II. LEGAL PROFESSION TRAINING AND DEVELOPMENT

A. Judiciary

Thai judiciary within the Ministry of Justice has long been providing legal training in its institution. Because judiciary is crowded with legal nobles and in the past there were not many numbers of judiciary, they, therefore, trained new comers individually. The way of training was more like on-the-job training where a candidate who was approved to work in the judiciary would be posted as Judge-Trainee and would be trained by a senior judge who had experience more than 20 years of judicial work. A senior judge would train a Judge-Trainee word for word by the reason of efficient training. The senior judge would have responsibility to contribute job operation knowledge in all areas from adjudicating through delivering a judgment. And more importantly, a senior judge would emphasize also on judicial ethic along the way besides professional training. Lectures and seminars were provided by high ranking and prominent justices from time to time. However, when there were the increasing numbers of new comers into the institute, the Ministry of Justice, therefore, established its Training and Seminar Division under supervision of the Office of the Judicial Affairs. This Training and Seminar Division had the main duty to organize training for Judge-Trainees before sending them to be trained with senior judges. In 1987, the Ministry of Justice realized that it was necessary to enhance judge and court personnel's knowledge and capability by means of pre-service training and continuing education programs in order to assist them in discharging their duties more efficiently and effectively. And due to the fact that the Training and Seminar Division had a very limited capability of manpower and place not enough to implement all training programs intended by the Ministry, therefore, under distinguished idea of Honorable Justice Sophon Ratanakorn, Permanent Secretary of the Ministry of Justice at that time, the Ministry of Justice eventually proposed and got approval from the government the project to expand and develop the Training and Seminar Division to be the Judicial Training Institute. Judicial Training Institute, nowadays, has its own twenty-storied building including more than 5 seminar rooms and 70 air-conditioning bedrooms for participants throughout the country to attend long

term training. The Judicial Training Institute is annually running various kinds of both legal and related knowledge training and seminar for all level of judicial personnel not only a Judge-Trainee training. Normally, more than 40 courses of training and seminar are conducted for judges in each year. These courses are combined with short term (3 to 10 days) and long term (4 months) courses. Here are some interesting courses, which should be mentioned.

The Training of Judge-Trainee

Under the Judicial Service Act B.E. 2543 (A.D. 2000) the general planning for the training of judge-trainee is entrusted to the Office of the Judicial Affairs. In order to ensure high standard of training, there is a official body called the Committee of Judicial Training presided over by the Secretary of the Court of Justice to supervise the training curriculum. The present one-year training course aims at a balance education of the individual and insists upon both knowledge and wisdom. The training devotes much attention to the practical skills being on a bench. A good deal of time is also allotted to discussions and classes in allied subject. The academic training course is divided into three parts:

1. Judicial knowledge comprises 6 sections:

- **Court works** (30 subjects within 106.5 hours): Civil trial, Criminal trial and special trial. This section is designed to train judge-trainees both theoretical and practical skill in civil and criminal court proceedings.
- **Knowledge related to the work of the court** (13 subject within 45 hours): Probation and Rehabilitation, Theory of laying down punishment tariff and sentencing, Justice system on woman and child protection, Medical science and Justice, Criminology, Forensic, Rule of interrogation and investigation, Trial related to international cooperation in both civil and criminal and extradition, Legal writing and Judgment, Legal interpretation, Justice system under the Constitution, Testimony recording, Strategy toward Court system improvement.
- **Special Subjects** (18 subjects within 61.5 hours): the Constitutional Law, Administrative Law, Intellectual Property Law, International Trade Law,

Rights to Information Law, Law of Protection and Suppression Money Laundering, Anti-trust Law, Law on Electronic Commerce, Law on Cross Border Crime and International Criminal Case, Law on Financial Institution, Law on Monetary and Finance, Law on Security and Stock Exchange Market, Merger and Acquisition, Rehabilitation under Bankruptcy Law, Unfair Contract Terms Act, Arbitration, Mediation and Higher Thai Language Utilization.

- **Institution under the Constitution** (4 subjects within 12 hours): Constitutional Court, Criminal Trial of Politicians, Election Committee and Administrative Court.
- **General Knowledge** (8 subjects within 45 hours): Legislative Process, State and Royal Ceremony, Human Rights, Narcotic Problems, Psychology in Court Trial, Computer, Period of the Office of Judicial Affairs and Academic Seminars.
- **Professional Ethic and Judicial Character** (16 subjects within 57 hours): Judicial Discipline and Ethic, Judicial Wisdom, Professional Way of Life of Judiciary, Ethical Practice in Court Trial, Ethical Practice in Administrative Works, Ethical Practice in Other Matters, Ethical Practice of individual and family, Religious way of living, Way of Live of Renowned Justices, Justice in Common Sense and Justice to the Law, Social Status of Character, Physical Character, Verbal Character, Mind Development, Image of a Judge under Expectation of Public and Conventional Social Manner.

2. **Practical Training comprises 2 sections:** In this training, judge-trainees will be assigned to write court decisions, court memorandums, orders of court and all proceedings carried out by the court from the copies of the real files under supervision of 7 senior advisers who were distinguished senior judges and had already retired from the office.

- **Court Practical Training (39 hours)**
- **Moot Court Practice (57 hours)**

3. **Observation Study (15 days):** Courts and other related offices in the region and other governmental agencies such as Scientific Crime Detection Division, the office of Narcotic Protection and Suppression Committee, etc.

All subjects of training will be produced not only by learned judges in special field but also by the well-known professors and experts from state agencies and private institutions. This judge-trainee course is a campus type of training. All participants must stay during weekday in the dormitory of the Judicial Training Institute. During the course, participants are urged to choose additional activities such as sports, computer or languages after class.

After the completion of the four-month academic training, the judge-trainees will be sent to the Civil Court and Criminal Court for 8 months to learn the skills and techniques of adjudication of cases and administration of all case proceedings under supervision of senior judges in those courts. The trainees will be able to actually acquainting with all court works via this on-the-job training after learning important aspects of working from the Judicial Training Institute. After all these trainings, all judge-trainees will be finally evaluated by the special committee before being appointed to enter the position of judge to the Court of First Instance.

Chief Judge Training

When a judge has worked for more than 10 years, he or she will be promoted to the higher post and entitled to have administrative responsibility when he or she is elected to be the chief judge in a provincial court. The duty of the chief judge is not only taking care of case management in the court but also responding to court management including manpower, money and material. Therefore, the chief judge must have managing concept as tools to manage the court up to the standard. The Judicial Training Institute, therefore, provides court management knowledge for those chief judges before they discharge their duties. This course comprises 4 parts lasting within 8 days. All 4 parts are as follows:

1. Court Administering (8 topics within 19.5 hours): Planning for Court Development Techniques, Court and Public Service, Public Relations of the Court, Personnel Management, Court Administration Management, Monetary, Financial and Accounting Management, Inventory Management and Court Rule and Regulation Memorandum and Correspondent.

2. Court-related Works (6 topics within 13.5 hours): Court Policy for Development, Chief Judge and Royal Ceremony, Chief Judge and Social Meeting, Technique of Office Cooperation, Computer and the Court and TQM of the Court.

3. Case Management (6 topics within 13.5 hours): Principles and Techniques of case advice, Mediation Technique, Court Bail Procedure, Special Procedure of Juvenile Case, Petty Case and Special Trial for Non-Answering of the Defendant in Civil Case.

4. Others (3 topics within 3.5 hours): Special Lecture of the President of the Supreme Court, Leadership of the Chief Judge and Organization Management Experience in comparison between Public and Private.

Besides these 2 interesting trainings, the Judicial Training Institute provides “in-service” training which is intended to be the continuing education for judges in order to keep them well informed for the latest legal developments. In-service training in the form of seminars and conferences is also given to the judges of the Court of Appeal and the Supreme Court as well. The topics of the seminar include Law of International Trade, Intellectual Property Law, Taxation Law, Administrative Law and others in the field relating to legal knowledge.

Table 9. Number of Judge-Trainees each year.

Session	Year	Number
27	B.E. 2528 (A.D. 1985)	57
28	B.E. 2529 (A.D. 1986)	109
29	B.E. 2530 (A.D. 1987)	70
30	B.E. 2531 (A.D. 1988)	95
31	B.E. 2532 (A.D. 1989)	118
32	B.E. 2533 (A.D. 1990)	138
33	B.E. 2534 (A.D. 1991)	239
34	B.E. 2535 (A.D. 1992)	142
35	B.E. 2536 (A.D. 1993)	135
36	B.E. 2537 (A.D. 1994)	150
37	B.E. 2538 (A.D. 1995)	133
38	B.E. 2539 (A.D. 1996)	70
39	B.E. 2540 (A.D. 1997)	143
40	B.E. 2541 (A.D. 1998)	81
41	B.E. 2542 (A.D. 1999)	140
42	B.E. 2543 (A.D. 2000)	166
Total		1986

B. Office of the Attorney-General

The Attorney-General Office has been conducting its human resource development for many years. One of its important courses is the training of its new comers or public prosecutor trainees to the office from the annual recruitment. Those candidates who have passed the examination will be called to participate the training and be evaluated before appointed as Assistant District Public Prosecutor. This training is called “Assistant District Public Prosecutor Course”. The training is organized according to the Public Prosecutor Act B.E. 2521 Section 26. It is the requirement to have every public prosecutor Trainee to be trained by the office not less than one year and each of them will be evaluated by the Public Prosecutor Committee whether they all gain

appropriate knowledge, ability and conduct to be appointed as Assistant District Public Prosecutor. This special training provides basic concept of the infrastructure of the Attorney-General Office and its chain of management. Duties and responsibilities of the Public Prosecutor are included in the curriculum. Moreover, morality and profession conducts are other important matters the participants should learn. This training is composed of 2 parts: Academic Training and Practical Training.

The Academic Training will last 45 official days whereas the Practical Training will be held within the period which the Public Prosecutor Committee stipulates. The Academic Training comprises 7 sections as follows:

Professional Ethic (24 hours)

- Morality and Professional Conduct of Public Prosecutor
- Lawyer Spirit
- Life and Nature
- Works and Life valuation
- Buddhism and Etiquette Problems
- Human, Logic and Ethic
- Wisdom and Human Learning
- Life equilibrium

Problems of Thai Society (12 hours)

- Child Problems
- Problems of Prostitute in Thai Society
- Illegal Economy Activities
- Economic and Financial Crisis in Thailand

General Knowledge (29 hours)

- Personality and Manner Improvement for Thai Society
- Thai Civilization
- Ethical Valuation in Thai Literature
- Thai Folklore Intuition
- Indigenous Intellect

- Ways of Community Life
- Law and Social Development
- Economic and Social Development Planning
- Appropriate Conduct of the State Official following His Majesty the King's Paths

Works of the Public Prosecutor (42 hours)

- Roles and Responsibilities of the Public Prosecutor
- Infrastructure and Policy of Attorney-General Office
- Intellectual Property Litigation
- Litigation in the Small Claim Court
- Litigation in Juvenile and Family Court
- Tax Litigation
- Labor Litigation
- Works in the International Relation Office
- Narcotic Litigation
- Principle of Case Investigation
- Forensic Medicine
- Principle of Court Procedure
- Criminal Proceeding Regulations and Case Administration
- Suggestion of Case Proceeding of the Public Prosecutor
- Criminology and Criminal Justice Administration

Case Proceeding (84 hours)

- Criminal Proceeding (Criminal case approving and ordering, Criminal case drafting and Criminal case advocating)
- Civil Proceeding (Evidence collecting, file ordering, offense and defense case drafting and advocating)

Buddhism Practicing and Field Trip Observation (10 days)

- Visiting Royal Projects and the Grand Palace
- Visiting the Central Prison

- Lecture on Buddhism, teamwork practicing
- World Heritage Park in Sukhothai

Miscellaneous (20 hours)

Beside this Assistant District Prosecutor Training, the Public Prosecutor also has other important training and seminar all year round to fulfill its objective of human resource development in Attorney-General Office.

Table 11 . Number of Participants in Assistant District Prosecutor from 1997-1999

Year	Number
1999	261
1998	148
1997	67

C. Attorneys

According to the Advocate Act B.E. 2528 section 33, the law prohibits any person who does not register and obtain the license to practice law representing other persons in the Court. The person who will qualify to register and obtain a license must have law degree from a university which the Law Society of Thailand has approved and that person must be a member of the Thai Bar Association. According to section 38, the applicant, who is not used to be a lawyer, judge, judge advocate in the army, public prosecutor, public prosecutor advocate in the army or lawyer according to the Constitution of the Court of Martial, must pass the training in the area of Attorney Ethic, Basic Practice in Litigation and Lawyer Professional Practices (except the applicant who has practiced in any law firm for more than one year). The Law Society assigns the responsibility of training applicants to the Advocate Training Institute of the Law Society. The institute, therefore, stipulated its announcement of training in B.E. 2539 where the training combines with the academic training and the practical training. The academic training will last 25 days. Afterward, the applicant must pass the examination of the institute. For the practical training, the applicant who has passed the examination

will be sent to practice law in law firms not less than 6 months. The applicant who passes both academic training and practical training will be entitled to obtain the diploma from the institute and will be proposed to obtain the license to practice law.

The academic training comprises these major subjects: Arts of Lawyer Profession, Basic Legal Consultant, Basic legal Notice and Power of Attorney Drafting, Fact Finding, Social Manner, Basic Legal Advisory to foreigners, the Advocate Act B.E. 2528, the Constitution of the Court of Justice and the Court Jurisdiction, Intellectual Property Law and its Litigation Preparation, Land and Building Law and its Transaction, Corporate Registration, Basic of Civil Plead and Answer Drafting, Civil Litigation, Criminal Proceeding under the Investigator, Process of Search, Arrest, Detention and Release on Bail, Basic of Criminal Plead and Answer Drafting, Criminal Litigation, Principle of Contract Drafting, Principle of Basic Accounting for Lawyer, International Trade and Investment Law, Lawyer Ethic, Legislature Procedure, Tax Litigation, Labor Litigation, Alien Business Act, Communication Law, Financial Institution and Banking Law, Customs Law, Notary Public and International Document Certification, Security Regulation Act and Security Market, Arbitration Law, Mediation, Lawyer Personality Improvement, Litigation in Juvenile and Family Court, Small Claim Court Litigation, Arts of Advocating, Psychology and Human Relation, Probation Process, Bankruptcy Litigation, Forensic Science, Lawyer Discipline Process, Correction Department Works, Court Administration Works, The Carriage of Goods by Sea Act and Arrest of Sea Going Ship Act, Environmental Law, Law for Public Safety, Economic Crime, Constitution and Administrative Law Concerning to Legal Profession, Administrative Law Litigation and Rights of Public on State Information, Art of Speaking for Lawyer and Moot Court.

Table 12 Number of participants of the Advocate Training Course each year

Year	Number of Applicants	Number of Graduate
B.E. 2539(A.D. 1996)	2564	1432
B.E. 2540(A.D. 1997)	2987	1793
B.E. 2541(A.D. 1998)	3270	2140
B.E. 2542(A.D. 1999)	2615	1473
B.E. 2543(A.D. 2000)	2709	

The training of advocating for the candidate who applies to obtain law practicing license is the important course for the Advocating Training Institute. However, the institute also provides other special trainings and seminars in the area of interesting laws and also contemporary problems for lawyers.

CONCLUSION

Legal education in Thailand was almost entirely focused on the preparation of law students for legal practice. The objective of securing a career in the judiciary or as a public prosecutor in the Department of Public Prosecutions (now the Attorney-General Office) was foremost in many, if not most of the law students. The predicament somehow dictated the method and contents of teaching law in university law schools and the Thai Bar Association. The teaching method was always lectures before a theatre of a mass of students and the contents were invariably the so-called ‘four pillars of the law’: the Civil and Commercial Code, the Criminal Code, the Civil Procedural Code and the Criminal Procedural Code. As most things were geared towards legal practice, most law lecturers were recruited from the judiciary and the Department of Public Prosecutors (now the Attorney-General Office) on a part-time basis. The atmosphere made legal research proper almost impossible. The situation was made worse by the practice of granting scholarships, in the earliest days to judges or would-be judges to England and ‘read’ English law to qualify as ‘barrister-at-law’. When these ‘English’ barristers-at-law taught at university law schools; obviously the teachings were mostly concentrated towards practice-oriented method and contents.

The situation somehow got better when law schools started to build up ‘career-professors of law’. It started with the ‘investment’ of state universities in granting scholarships for their brighter students and obligated them to teach full time at law schools. Unites States law schools, with their one-year LL.M programme, were the most popular. France and Germany also granted scholarships to would-be professors of law. Now Chulalongkorn, Thammasat, Ramkamhaeng and Sukothaithammathirat Universities produce some of very good researches in legal studies. These are the fruits of those investments.

Teaching law are in the process of change. Lectures are now likely to be supplemented with tutorials, seminars and simulations. The Bar Association has successfully brought in the moot court competition for a few years now. Chulalongkorn has introduced, in conjunction with Kyushu, British Columbia and Victoria in Canada, the English programme of LL.M. This is a timely project to help students cope with economic crisis and the prohibitive costs of going abroad. Thammasat, Ramkamheng and Chulalongkorn are introducing their doctorate programmes in Law. These can only be seen as positive signs of legal research in Thailand.

APPENDIX I

USEFUL WEBSITES FOR LEGAL RESEARCH OF THAI LEGAL MATERIALS

- | | | |
|-----|--|--|
| 1. | www.krisdika.go.th | This is the official website of the Council of State of Thailand. The Council of State was formerly known as the Juridical Council, the home of legislative draftsmanship. The site could be rated as the best website for Thai legal research. It contains most legislations enforceable at the moment, with a few translated into English. |
| 2. | www.thailandlaw9.com | A General website for legal research |
| 3. | www.thai.net/s4u/law.html | A General website for legal research. |
| 4. | www.pub-law.net | A good website devoted to public law managed by a law professor at Chulalongkorn Law School. |
| 5. | www.lawonline.co.th | A General website for legal research. |
| 6. | www.legislation.parliament.go.th | A General website for legal research with special emphasis on the draft legislations pending parliamentary process. |
| 7. | www.juristhailand.com | A General website for legal research. Both Thai and English. |
| 8. | www.geocities.com/elaw007 | A General website for legal research with special emphasis on electronic law library. |
| 9. | www.archanwell.hyperrmart.net | A General website for legal research with special emphasis on Private International Law, managed by a law professor at Thammasat Law School. |
| 10. | www.siamlaw.com | A General website for legal research. |
| 11. | www.thaijustice.com | A General website for legal research. |
| 12. | www.meechailaw.com | A General website for legal research organized by Professor Meechai Ruchupan, ex-speaker of the Senate now runs a law office of the same name. |

APPENDIX II

Useful websites of various organizations in the justice system

1	www.judiciary.go.th	Office of the Judiciary
2	www.concourt.or.th	The Constitutional Court
3	www.admincourt.go.th	The Administrative Court
4	www.inet.co.th/org/oag	The Attorney-General Office
5	www.moj.go.th	Ministry of Justice
6	www.lawsociety.or.th	The Law Society

APPENDIX III

***NUMBER OF JUDGES, PUBLIC PROSECUTORS AND ATTORNEYS
(REGISTERED WITH THE LAW SOCIETY) AS OF 1 OCTOBER B.E. 2545 (2002)***

Judges

Post	Male	Female	Total
Senior Judges (60-70 years of age)	147	5	152
Judges (25-60)	2,319	572	2,819
Judge-Trainees	146	76	222
Total	2,612	653	3,216

Public Prosecutors

Post	Male	Female	Total
Senior Public Prosecutors (60-70 years of age)	105	1	106
Public Prosecutors (25-60)	1,763	282	2,045
Total	1,868	283	2,151

Attorneys

Bangkok	Other Provinces	Total
22,276	17,207	39,483

APPENDIX IV

Universities Offering Law Degrees (as of March 2003)

Public Universities (Funded by the Government)

1. Thammasat University
2. Chulalongkorn University
3. Ramkhamhaeng University
4. Sukhothaimathirath Open University
5. Chiang Mai University

Private Universities (Not Funded by the Government)

1. Bangkok University
2. Dhurakijpundit University
3. Krirk University
4. Kasem Bundit University
5. Saint John's University
6. Rangsit University
7. Sripatum University
8. Siam University
9. The University of the Thai Chamber of Commerce
10. Assumption University
11. Eastern Asia University
12. South-East Asia University
13. Srisophon College, Nakornsrithammarat Province
14. Wongchavalitkul University, Nakornrajsima Province
15. Payap University, Chiang Mai Province
16. Nivadhana University, Supanburi Province

APPENDIX V

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VIETNAM

BASIC INFORMATION FOR LEGAL RESEARCH – A CASE STUDY OF VIETNAM

By

*Prof. Dr. Dao Tri Uc**

INTRODUCTION

A. Overview of the Vietnamese legal system

Thanks to an early introduction of a writing system (i.e. *Nôm* scripts - demotic characters), written laws came into being in Vietnam long time ago. Before the 10th century, the ancient Vietnam, then named Au Lac was under a brutal rule of successive Chinese feudal dynasties. The laws of Au Lac kingdom were in fact also those introduced by the foreign rulers.

Since the 10th century, after the country has gained its independence from the Chinese rulers, Vietnamese feudal dynasties have managed to established their control through a centralised system of governments and a well-developed legal system marked by the famous Hong Duc Code that was enacted in 1483 under the rule of King Le Thanh Tong. This legal masterpiece was continuously revised and preserved by Kings Le under the name of “Quoc Trieu Hinh Luat” (Royal Criminal Code) consisting of 722 articles. Despite its name and apart from a substantial bulk of criminal provisions, the Code also, by its virtue, recognises and covers in many chapters and articles a variety of civil transactions such as inheritance, properties, marriage and family, international relation, sales and purchases, contract, taxation etc.

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The second key legislation that has so far been well preserved is the Gia Long Code enacted by King Nguyen Gia Long in 1815. (This Code may also be named “Hoang Trieu Luat Le” or “Royal Laws and Rules”). The Code is found to be extremely enormous by standards of that time including 22 volumes and 938 articles.

According to many researchers, this Code is different from the Hong Duc Code in that while the latter was featured by a greater degree of independence, national identity and traditional values of the Vietnamese in comparison with the contemporary laws of the Chinese, the 1815 Gia Long Code is said to be merely a copy of the Chinese feudal laws, especially those adopted under the Tsing dynasty. However, this is also a colossal set of law including fundamental institutions of the criminal law, civil law, marriage and family law and procedural law etc.

Of course, the generality of Vietnam’s feudal laws may be found in the prevalence and an overwhelming dominance of criminal law in the entire legal system.

During 1958-1945, Vietnam was a French colony. Together with the establishment of a colonial regime, the French rulers also introduced and applied a system of colonial laws to Indochina in general and Vietnam in particular. The country was then divided into three territories each of which was placed under a different ruling system and a different legal system. In Cochinchina (i.e. southern part), French laws were widely applied by the French rulers while in the Central part of the country - a protectorate territory, local laws were allowed to be introduced. In the North of Vietnam (Tonkin) that was nominally an autonomous territory, the French colonialists enacted in 1923 a separate act called the Civil Code of Tonkin. In parallel with this Civil Code, there were four other important acts namely the law on the organisation of the courts (including 37 articles), law on civil and commercial procedures (373 articles), law on criminal procedures (211 articles) and the criminal law (328 articles).

All these aforementioned acts were officially introduced in 1923 until 1945 after the victory of the August Revolution and eradication of the French colonialism in Vietnam.

The current legal system in Vietnam have been formulated and gradually improved since 1945 through the following main phases:

1. 1945-1954. This is a historical period marked by a gain of independence and the foundation of the Democratic Republic of Vietnam. During this period, the first constitution was adopted in 1946 paving the way for the enactment of a series of key legislation as well as the creation of new legal institutions. Outstanding pieces of legislation introduced in this period include the Law on the Organisation of the courts, Election Law, Law on Freedom of Media, right to associations and criminal laws. However, laws and regulations issued in this period were proven to be simple in legislative skills because of a historical lack of professional law-makers as well as low level of public education. In this context, laws were drafted in such a way that made them easy to understand and practical to introduce.

2. 1955-1975. In this period, Vietnam was historically divided into two parts with different political regimes. Therefore, while laws that were introduced since 1945 continued to be in effect in the North, the pro-American puppet regime in the South relied mainly on military laws. In 1959, an amended constitution was adopted in the North to replace the 1946 Constitution as a result of significant changes marked by the mass introduction of a public land ownership (including the State ownership and collective ownership). Numerous liberal and democratic rights were brought to a high level such as the right to education, right to a free residence and freedom of travel of citizens. As the time passed, especially with an expanding relation with the then socialist block and the former Soviet Union, a considerable number of jurists have been trained in these foreign jurisdictions. Consequently, laws introduced in these years were heavily influenced by the socialist-oriented legal system for example the Law on Media, Publishing Law, Law on Co-operatives, Law on Counter-Espionage, Anti-Corruption Law etc. As far as the drafting skills are concerned, this period was marked a new step forward and specific provisions have a greater universality.

3. 1975-1985. This period of time is marked by a national reunification, a unitary State, a single political regime, namely the socialist regime. In 1980, a new constitution was enacted to replace the 1959 constitution. The most salient feature of the legal system in this period is the existence of a centralised, bureaucratic, subsidised and non-market mechanism.

Apart from the 1980 Constitution, fundamental legislation were also promulgated including laws governing violations of public and private ownerships, the Law on the Organisation of the Courts, Law on the Organisation of the Procuracy Institutes, anti-speculation law and so on.

4. 1986 to now. The current legal system of Vietnam may be said to have been established since 1986 when the *Doimoi (Renovation)* policy was first introduced. This policy is characterised by the following elements:

- a. establishment of a market-driven economy;
- b. recognising the co-existence of various economic sectors and different forms of ownership including the State ownership, private ownership, co-operative ownership etc. All economic sectors and types of ownerships are treated equally by the law and are given the same business opportunities;
- c. Though the land continues to be public owned by the State, the land user is authorised to make a long-term and sustainable use of it, to transfer the right to use land to others, to bequest or take mortgage over the value of the right to use land etc.
- d. international economic relations are expanded with special emphasis on an unlimited attraction of foreign investment in Vietnam;
- e. Implementing democracy, freedom of press, respect for public opinions;
- f. maintaining national and religious unity and securing freedom of belief;
- g. ensuring social justice, taking care of the poor, ethnic minorities, disabled and war victims etc.

The 1992 Constitution that is currently in force has recognised these essential peculiarities of the modern Vietnam's society. Pursuant to the 1992 Constitution, a new legal system has taken shape to govern various areas of social relations and provide a relatively complete legal framework for the social transformation. In parallel with law-making efforts, the public administration reform and judiciary reform have also been initiated since mid-1990s and 2000 respectively.

The current legal system may be said to be constituted by the following components:

1. Constitutional law. In governing this area of social relations, apart from the 1992 constitution, there is also a number of other legislation including the Law on the Organisation of the National Assembly, the Law on the Election of the Deputies of the National Assembly, the Law on the Organisation of the Government, the Law on the Organisation of the Courts, the Law on the Organisation of the Procuracy Institutes, the Law on the Organisation of the Local People's Councils, the Law on the Elections of Deputies of the Local People's Council, the Law on Media, the Publishing Law, Law on Religions, Law on Complaints and Denunciations of the Citizens etc.
2. Administrative law including the Ordinance on Dealing with Administrative Breaches, Ordinance on Resolution of Administrative Proceedings, Law on Customs, Law on local administrative agencies etc.
3. Civil law. Including the 1995 Civil Code, Ordinance on Procedures for the Settlement of Civil Cases, Law on Marriage and Families.
4. Economic and commercial laws: including the Commercial Law, Law on Enterprises, Law on SOEs, Law on Foreign Investment in Vietnam, Ordinance on Procedures for Settlement of Economic Cases, Ordinance of Arbitration etc.
5. Criminal law and criminal procedural law: 1985 Criminal Code (as amended in 1999), the 1988 Criminal Procedural Code, Ordinance on Police, Ordinance on Investigation etc.
6. Land Law: including the 1993 Land Law as amended in 2001.
7. Other laws governing social affairs: including the 1994 Labour Code, Ordinance on Education amide healthcare for children, Ordinance on Elders etc.

Additionally, the Standing Committee of the National Assembly and the government also issued a series of legal documents.

B. Acquirement of Oriental and Western Legal Values with Regard to the development of Vietnam's Legal Ideologies

Throughout its long history, the development of Vietnam legal ideologies was influenced and governed by Oriental and Western law ideologies. Generations of Vietnamese, braving the ups and downs of history, knew how to win over the ideological and cultural values in general and legal ideologies in particular - from the nations having their historical relations with Vietnam with the purpose of building their own national character for the sake of survival and development.

The interaction between Vietnam traditional values and Oriental and Western values in the sphere of law took place in history as result of really paradoxical reasons. *First*, it was the imposition' of legal viewpoints and ideologies by an invading country upon an enslaved one. Throughout a millennium of northern [Chinese] dependence, various feudal dynasties of ancient China imposed on Vietnam their legal ideologies as well as their system of law and practices. In the century of domination, the French colonialists also imposed on Vietnam the ideologies of the French legal system. *Secondly*, the acquirement of values from nations having their relations with Vietnam, these values were propagated in Vietnam to create an important ideological basis for the formation of Vietnamese legal values in each specific stage of history.

When studying Vietnamese law, researchers often come to the conclusion that Vietnam's feudal laws were deeply influenced by those from China. As a matter of fact, the influence of Chinese feudal laws on feudal Vietnam in the past took place on two aspects: Ideology itself and the system of law regulations by various dynasties, and legal ideologies and the consciousness of the Vietnam feudal dynasties, governed by Confucian ideology. Since the 12th century, Confucianism was received by the contemporary feudal class as ideological basis for the building of State and laws. Confucian values strongly governed the orientation in law building and content of the Le dynasty. In the 15th century, the penal laws of Le dynasty expressed a Confucian-oriented legal system. By regulations of the law, the kings of Le dynasty wanted to transform the society along the Confucian lines. 'Loyalty-to-the-king' viewpoints such as "Right name decides on the Fate", "Three mainstays of social order", and "Five basic virtues" were clearly expressed in the

formulation of Vietnam feudal laws about social relations.

Among the five sorts of relations: King to subject, husband to wife, father to son, brother to brother, and friend to friend, the first three relations were the most basic ones defined by Confucianism as “Three mainstays of social order”. There were three major components for any other relationship: “The King to use civility in issuing his orders to subjects; the subject to preach loyalty in worshipping the King” (*Ana/ects, Eight Seclusions* 19); “The King must behave like King, subject like subject, father like father, and son like son” (*Ana/eels, Nhan Uyen* 11). The “Three mainstays of social order” relationship was institutionalised into rules to be defended by the law. To defend the King Subject relationship, Vietnam feudal laws elevated the King's position to supreme power and reverence. Any infringement on the interest of the State with the King as head might be seen as disloyalty and could be severely punished by the law. Among the ten big crimes considered as the most dangerous, 5 of them (betrayal, high treason, lack of respect, rebellion, disloyalty) were seen as infringement on the King-Subject relations, conspiring against the dynasty's security. In the “Royal court penal laws,” a whole chapter containing 47 articles was reserved to the “Royal guards” whose purpose was the absolute defence of the King's life, body and ownership. Any illegal action such as trespassing in the Royal ancestors' temple, Royal citadel or palaces (articles 50-56) is punishable by death in the guillotine.

Besides the law regulations adjusting the King-Subject relationship in the spirit of Confucianism, Vietnam's feudal laws had many other statutes and regulating family relations between husband and wife, father and son, all of which was deeply influenced by Confucian spirit regarding family governance. The laws institutionalised the position of women to depend on men: In the family, the daughter must obey her father; the wife must obey her husband; and the widow must obey her son. Article 360 of the Royal court penal laws compelled the husband to divorce his wife should the woman commit what was called “the end of righteousness” (including seven points: Not giving birth to a child, being lustful, not worshipping the husband's parents, being garrulous, thieving, being jealous, having an infirmity). A wife who beats her husband might be punished of detention (Article 481), but a husband who beats his wife was only punished three times less than the case of causing

injury to some other people (Article 482).

The regulations of marriage and family by Vietnam's feudal laws were in fact the institutionalisation of the Confucian ideas with its principle of "managing the family - governing the country - pacifying the world". Many norms and regulations of the Le dynasty in its royal court's penal laws were the very expression of Confucian ethics and morals. Crimes such as "undutiful", "disloyal", "cruel", and "traitorous" figured among the ten big crimes defined by the Royal court's penalty laws. Institutionalizing the ethics of filial" piety in children, the Ly dynasty defined for children several obligations such as: Not being allowed to sue their parents (Article 511); being forced to conceal any sin committed by the parents (Article 504); and to bear punishment by rod beatings in place of their parents (A. 38).

In fact, legal ideologies in Vietnam feudal dynasties were not only influenced by Confucian religious doctrines in shaping up their Confucius-oriented legal systems, they were also influenced by the ideologies of the law makers. Feudal dynasties made the law a tool for the consolidation of the King's power. In 1464 for instance, trying to strengthen his royal power, King Le Thanh Tong said: "The law is the public rule of the State, so everyone has to implement it, remember ..."¹

In the law-makers ideology, the law went hand in hand with reward and punishment. According to Han Phi, "the law is the root of the King whereas punishment is the clue to compassion" (Han Phi Tu – Eight Degrees). Imbued with that law making ideology, many Kings of the Le dynasty unceasingly developed and consolidated all those laws that had been created by their predecessors and previous dynasties. King Le Hien Tong, successor of King Le Thanh Tong, was constantly concerned with the correct and prompt implementation of laws. From what he conceived, the settlement of lawsuits was most important of all as people's life was endangered. He ordered all lawsuits to be urgently tried in the first year of his reign. King Le Hien Tong constantly paid attention to the selection of local mandarins and the rejection of those who were incapable. In 1499, he reformed the court department – a justice agency which originally belonged to the "Guards in brocade dress" – into an independent agency. Military mandarins in the department were replaced by civilians whose main functions were to try criminals for penal offences.

In traditional Vietnam society, enforcement of justice was the key point for the State and people to get closer to each other. Any injustice could easily create discontent, even rebellion, among the population. According to the rule by law, it was not the task of the King to attach special attention to ethics for his self-improvement but that of clearly defining the law and having it proclaimed for everyone to know and implement. The purpose of penal law was to use penalty for punishing the law-breaker. Under this viewpoint, Vietnam feudal laws, especially those in the Ly dynasty, gave prominence to penal law, the important place which was reserved to punishment system.

From the influence of Chinese feudal laws, Vietnam feudal laws, especially those of the Ly dynasty, had applied the Tang dynasty's five-penalty system to punish those who committed offences. The five-penalties system comprises: Reprimand, rod beating, deportation, detention and death (Art. 1 Royal court penal law) were seen as hard punishments. The same was slightly modified in the Le dynasty since rod beating was considered barbarous, as it caused painful physical injuries to the victim, staining the latter's honour and dignity.

The influence of Oriental legal ideologies on Vietnam's feudal dynasties was also defined in another aspect: Imitation of Chinese feudal laws in Vietnam feudal laws. Laws in the Ly and Tran dynasties, especially those of the Le dynasty's Royal court penal code were largely imitation of those from the Chinese Tang and Ming dynasties. Later, the Gia Long penal code was also another imitation of the Tsing dynasty's penal code.

Notwithstanding the influence of Confucian ideologies, the rules by law makers or the imitation of Chinese feudal dynasties' penal code, should by no means be understood as Vietnam's feudal dynasties lost their own character. Vietnam feudal dynasties, in building their own legal system, knew how to acquire the Chinese legal ideologies, methods and contents of the penal code to be applied to the reality of Vietnam, conforming to the local character, its socio-economic development level, culture, tradition, psychology, customs and habits. Such selected acquirement without mechanically copying the legal values of Chinese culture created a real Vietnamese legal system that expressed the nation's features. By comparing with the penal codes of Tang and Ming dynasties, it was found that the 722 articles of the (Vietnam) Royal court penal code contained 161 articles borrowed from the

Tang dynasty penal code and 53 other articles from the Ming dynasty penal code. Thus 408 articles of the Royal court penal code were unique to the laws of Le dynasty and had not been borrowed from any law of any other country.

In structure, the Le dynasty penal code was different from that of the Tang dynasty. The Tang dynasty penal code comprised 500 articles divided into 12 chapters. The Le dynasty penal code, for its part, was made of 722 articles divided into 13 chapters. Comparing the arrangement and the name of different chapters in these two penal codes, it was found that 6 chapters of the Le dynasty penal code did not figure in that of the Tang dynasty (namely in chapters regarding offences against the system, administration, land and property, in supplementary articles on land and property, inheritance, adultery, etc.). Prof. Insun Yu was of the opinion that

The imitation and copy of China law system by the Le dynasty had a specific aspect and its own character. It was of great importance for us to understand the traditional Vietnam society. On one hand, the law makers of the Le dynasty followed the Chinese legal system, on the other, they combined it to their own conditions.²

In the process of law promulgation, Vietnam's feudal dynasties selectively acquired ideologies and laws from the Chinese feudal states while taking as their basis the national features to be adjusted to their own social relations in an appropriate way. Thus, the acquirement and borrowing of Chinese feudal laws by Vietnam's feudal dynasties constituted a lively picture reflecting the Vietnamese life and society at each stage of its history. The content of feudal laws, especially that of the Le dynasty, were strongly embedded with its national character. It was especially so in those regulations related to family or human rights. For example, the laws of Le dynasty defended the legitimate rights of women in their marriage relations. A girl who was engaged but her marriage never happened was allowed to sue at the mandarin's office for returning all offerings in case the boy was infirm, was a criminal or was ruining properties (Article 322). When a man and a woman were married, the husband could lose his wife if he left her untouched for a period of 5 months_ this period could be prolonged to one year if the wife had given birth to a child. The law was not applied to those on assignment as mandarin working away from home. A husband who deserted his wife could be tried of perjury if he tried to hamper her

remarriage with somebody else (Article 308). Many regulations were made to defend the rights and interests of women. For example, girls were entitled to the same inheritance as boys were; wives were entitled to get divorce; all measures that expressed a traditional respect for women in Vietnam. This was in utter opposition to the ideology of Chinese Confucianism, which preached “respect for men and contempt for women.” The laws of Le dynasty did not see as 'undutiful' any act by children to have their own properties or live away from their parents while the latter were still alive. This also meant that there was a considerable difference between Vietnam and Chinese families.

In spite of being influenced by Chinese feudal legal ideologies and models, the various Vietnam feudal dynasties refused to have their laws “sinicised.” What were characteristics of Vietnam was constantly affirmed in its penal codes from one time to another: Its traditional character being the love for people.

The love for people in Vietnam nation was not simply a magnanimous deed of respect and compassion for people in the Ly and Tran royal dynasties; it expressed a resplendent development of legal regulations in the penal laws of the Le royal dynasty. This has been assessed by the historian Phan Huy Chu as “an example of country governance, a rule of conduct for administration over the people.”³

Today, at any time, when dealing with the heritage in terms of Vietnam legal values, we used to mention the Royal court's penal code. This is a code which went far beyond any imitation or influence by the Chinese feudal legal ideologies. It is always considered a product of Vietnam's intelligence, that of a national tradition imbued with a humanistic character throughout a long history. Professor Oliver Oldman, Chairman of the East Asian Law Division at the Harvard College of Law (USA) remarked that:

The law code of the Le dynasty in Vietnam was an immortal work of the traditional East Asian region ... which, in its special centuries, had built up a powerful nation for the defence of the people's legal ownership by a progressive law system that could be compared in many points as equal in function to the law viewpoints of the modern West⁴.

In its history of development, Vietnamese legal ideologies were not just influenced

by Oriental legal ideologies – i.e. laws and ideologies of ancient, feudal China – they were equally influenced by Western legal ideologies from the French colonisation and rule over Vietnam in the 19th century.

First, the way for, Western legal viewpoints and models to be introduced to Vietnam were the invasion by French colonialists. After the French expeditionary corps entered Vietnam in the 19th century, Western laws made their appearance in Vietnam society and step by step the French colonialists imposed the Western law model on a country that was originally alien to these sorts of legal regulations. It could be said that Vietnam's society was influenced by Western laws in a quite differently than was Japan, which quite voluntarily adopted western models. Vietnam's experience was the imposition of French laws as a result of invasion and use of force.

Since Vietnam was a French colony, the French colonialists imposed on Vietnam a legal system from France, and they partitioned Vietnam into three 'countries' under three different law systems.

In Cochinchina which acquired the status as an assimilated “colony,” the French colonialist law system was established in place of that by the Nguyen royal dynasty. A decree by the Governor General of Indochina (January 6, 1903) abolished “the native status” in Cochinchina. Every Vietnamese or Frenchman was to be tried by the French court on the basis of a French penal code. Every civil relation was adjusted along the 'French citizen elements' as proclaimed by the French President.

In Tonkin with the status as a “protectorate,” the French colonialists maintained in the first period two sorts of courts: A Western court to try Western people and a Vietnamese court to try the natives. Later, the Southern royal court was assigned to be a Revise Council, then a sort of Supreme Court. By a decree of 2 December, 1921 from the Indochina Governor General, 4 codes were promulgated and applied in Tonkin:

- The law on tribunal proceedings (37 articles) related to organisation, authority and activities of various tribunal levels.
- The law on civil lawsuits (373 articles) related to lawsuits, trials and execution of sentence.
- The law on criminal affairs (211 articles) related to the application and trial of

criminal cases.

- The penal law (328 articles) defining the principles of trial on offences and punishment.

In 1931, the Tonkin civil code proclaimed: by the Governor General of Indochina was applied in Tonkin. In essence, the law system in Tonkin was decided by the French administration which basically followed the French legal model, somewhat taking into account the characteristics and habits of the natives.

In Annam, the central part of the country, the Gia Long royal code was still applied but the French colonialists gradually forced the Hue royal court to issue documents that amended a number of legal regulations in many aspects according to the rulers' desire. Since 1936, the Tonkin civil code was amended to be partly (1938) and totally (1939) applied all over the central part of the country.

For nearly one hundred years of domination, the French colonialists rejected (or in practice nullified) Vietnam's feudal laws and replaced them with a French legal system that was imposed on Vietnamese social life. The imposition of alien colonialist laws met with a strong popular opposition and created a negative psychology among people regarding Western law. It should however be seen that the introduction of Western law into a feudal country as Vietnam also created an opportunity for Vietnam to be penetrated of those Western democratic legal ideologies.

Overcoming the negative psychology and consciousness of people towards a legal system imposed by the colonialists, several Vietnamese ideologists and revolutionaries had tried to understand the real values of Western European democracy because, as a result and at different levels, they were influenced by these values, too.

It was found that the harsh legal system imposed by the French colonialists in Vietnam ran counter to Western democratic values, values, which constituted _m important ideological motive force for social progress in Western countries. The consciousness of people protesting against colonialist oppression and barbarous enslavement - the traditional patriotic values of the Vietnamese nation - were once again strengthened as soon as they met with Western progressive and democratic values. Western constitutionalism –

ideologies on human and civil rights with their slogans of freedom, equality, fraternity and human rights – were acquired by Vietnamese patriots who propagated them among the people and created revolutionary movements among different strata of the population to carry out their struggle for liberation. It was precisely the Western democratic values which, mixed with traditional patriotism and the historic cultural values of the Vietnamese nation, became an ideological force in the struggle against colonialism for independence, freedom and democratic liberties. Western constitutionalism, the ideologies of human and civil rights, had in these circumstances contributed to the creation of new legal ideologies for Vietnamese revolutionary forces in their struggle for national liberation.

Predecessors of the revolution, from Phan Boi Chau to Phan Chau Trinh, Huynh Thuc Khang and the great leader Ha Chi Minh, had acquired the Western legal values in various forms and applied them to the reality of Vietnam, making them a tool for a struggle that demanded the French colonialists to enforce democracy in Vietnam.

Phan Boi Chau advocated that a constitution must be built in Vietnam. He said:

I think our country has never had a constitution before. Now that a constitution is to be made, it would not only mean a good thing, it is necessary, too. There must be a constitution at all cost, and that is inevitable... For my part, I always have a constitution in my heart. That of mine was adjusted along the constitution of monarchies like England and Japan. But to have constitutions like these in the US, Germany and Russia would depend on our people's level to choose what was appropriate before we could have them perfected.⁵

The civil rights ideology of Phan Boi Chau stemmed from Western ideology of civil rights. According to Phan Boi Chau, "every civil right is meant to promote equality." "First, it was the right to vote to choose representatives to the Parliament. All people are entitled to vote, whether they are noble or not, rich or poor, big or small."⁶

Phan Chau Trinh was also deeply influenced by Western constitutionalism. He thought highly of having a constitution, considering it a legal tool for the abolition of monarchy and establishment of people's governance. Phan Chau Trinh maintained that

people in Europe had long practised their regime of “mutual governance by the King and people, which was translated into Chinese as constitutional monarchy”, “the regimes in England, Belgium and Japan of today.”⁷

He compared and affirmed that people's governance was much better than royal governance since with such regimes, people could set up their own constitution and regulations, and decide on agencies to take care of everybody's affairs. What the people wanted could be satisfied⁸.

Phan Chau Trinh's viewpoint on civil rights was strongly influenced by the bourgeois democratic system. He advocated the abolition of feudal monarchy, implementation of democracy, freedom for improvement of people's cultural standard, expansion of industry and commerce, and practice of non violence. Here he counted not on external aid but on support from the colonialist administration itself.

Though deeply influenced by Western democratic values with the wish to establish a constitutional regime and carry out civil rights in Vietnam, both Phan Boi Chau and Phan Chau Trinh failed to succeed because they were restricted in terms of their revolutionary method. But the ideologies they propagated in Vietnam were of a great significance for the preparation of ideological bases that would lead to a new revolutionary trend as it was later promoted by the leader Nguyen Ai Quoc.

With over thirty years of itinerant life abroad in search of a way for national salvation, President Ho Chi Minh largely acquired the cultural cream of humanity, especially the values of Western legal ideologies. From Western legal values, Ho Chi Minh used it as a weapon in the struggle against the French colonialists' inhuman laws in Vietnam. He received and inherited Western law values in his own way and requirement, making them his own dream and ideal. We can see from reading his “claims for the Annamite people” written in 1919:

1. Amnesty for all native political prisoners
2. Reform justice in Indochina by providing natives the right to enjoy legal assurance 'as Europeans, abolish all special courts which are being used as tools of terror and oppression against the most faithful part of the Annamite people

3. Freedom of the press and speech
4. Freedom of establishing associations and meetings
5. Freedom to go abroad and of tourism abroad
6. Freedom of education, establishment of technical and vocational schools in all provinces for the natives
7. Replace the regime of issuing decrees with that of laws [constitution]
8. Permanent, delegation of natives, elected by natives, at the French parliament to make it the aspirations of natives known.

In 1922, putting his "claims for' the Annamite people" into plain verse called "the song of demands by Vietnam", Ho Chi Minh (then under the name of Nguyen Ai Quoc wrote): "The seventh is the request for a constitution to be proclaimed. There should be among hundred items, deities of jurisdiction."⁹

From the above, we can see that Ho Chi Minh had approached and was deeply influenced by the legal ideologies of the progressive West with its constitutionalism, the spirit of law and viewpoints on civil and human rights by Montesquieu.

The idea of progressive constitutionalism and the aspiration to establish a democratic constitution by Ho Chi Minh was successfully expressed in the first constitution of Vietnam Democratic Republic led and built by President Ho Chi Minh himself - the 1946 Constitution.

The 1946 Constitution was a skilful expression of values both of constitutionalism and Vietnam. On one hand, it expressed the requirements of a democratic constitution and basic rights for people in the spirit of human, and civil rights. On the other, it reflected the specific democratic path followed by the Vietnamese revolution, which was not stereotyped on any Western democratic model.

In the history of the Vietnamese revolution, the "Claims for the Annamite people" (1919), the poem entitled "Song of demands by Vietnam" (1922) and the "Call to' the League of Nations" (1926) by Nguyen Ai Quoc were a profound application of value human values mixed to the thirst of an oppressed nation for freedom and was the first appearance of Vietnam declaration on human rights, the Declaration of Independence

(1945) which was worthy of the stature of a "Declaration on human rights by the colonial people".

The Vietnam Declaration of Independence (1945) began with the affirmed values of the US Declaration of Independence and the Declaration on human and civil rights by the French bourgeois revolution:

All men are created equal, they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness¹⁰

These human values were acquired and brought to a new height: "Right to equality," "right to life", "right of nations to live happy and free." In Ho Chi Minh's ideology, the basic rights of men should be further elevated and assured by the basic rights of national independence and self-determination. The truth of "nothing is more precious than independence and freedom" in Ho Chi Minh's ideology was the summing up the historical values and of the Vietnamese nation in its long history to freedom and independence.

The same truth can also be generalise for the 20th century's movement for national liberation in the world. It was not only a Vietnamese constitutional platform, a Vietnamese value; it was a universal value of mankind as well.

Studying the history of the formation and development of ideologies, we can see that the values of Vietnam legal ideologies, once acquired from its contact with Eastern and Western values, were developed and elevated to other heights finally become Vietnam's own values. .

It was for that reason that, in spite of having received legal ideologies from feudal China, the laws of Vietnam feudal dynasties were not 'sinicised'; they all bore Vietnam's national characters. Similarly, though having acquired and being influenced by Western law ideologies, even those imposed by a colonial law system, the Vietnamese nation always knew, once its independence recovered, how to build its own constitutions that would able to keep abreast with the times while remaining democratic and purely Vietnamese.

Today, in the cause of national "renovation, the need to build and perfect a legal

system demands a continued acquirement of legal values, experience building and implementation of law in the world to adapt them to the reality of our country.

Most legal branches in our country's law system, in conditions of a market economy, are built on comparison, consultation and acceptance of those rational legal values from many countries in the world, especially from developed market-economies in Europe.

The first civil code of the Socialist Republic of Vietnam (promulgated in 1996) was not simply the reflection and definition of ownership relations in Vietnam's socio-economic conditions, it was also the acquirement of principles from the Roman-German civil code which originated from the 12 law tables of ancient Rome. The acquirement of European civil legal values also finds its expression in the norms, structures and disposition of chapters in the Vietnam civil code.

The law on commerce proclaimed in 1997 was an important step forward in the efforts to bring trade, relations into the adjustment of law that conforms not only to the characteristics of Vietnam's market economy and its possibility of joining in the international trade relations, but also to the law standards as affirmed in the international trade laws, international customs and laws of many other countries. Important institutions in Vietnam's trade law, businessmen (individuals and companies); properties used in business activities, commercial affairs (transactions) are all built on the basis of consultation and acquirement of values from the trade laws of many European countries.

In the process of building and proclaiming draft laws in the economic field, experiences in the outlining of laws regarding economic relations with countries in the region and the world all had been consulted in the spirit of searching for the optimal. The laws on various companies, economic contracts, in the fields of finance, banking, credit, all expressed a large acquirement of law values from many countries.

In the field of formal laws, Vietnam laws acquired the principles of democratic litigation common in the laws of countries applying the Roman-German system. Penal lawsuit principles like: Public trial, equality before the court, assuring the right of defence for the defendant and the accused, not-guilty deduction etc. are being defined in Vietnamese laws regarding penal lawsuit as influenced by the principles of penal trial in various European countries.

The procedures for settlement of civil cases, especially those in economic and commercial disputes, are defined in Vietnamese laws, all on the basis of consulting experiences setting up regulations of formal legislation and activities by juridical agencies in many countries of the world. Principles and procedures in the settlement of disputes in civilian, economic and commercial fields in the form of court and arbitration of Vietnam laws have content basically similar to those international law regulations and customs on the settlement of disputes.

The process of development of a market economy in Vietnam had on different levels integrated Vietnam's socio-economic life in that of the region, an integration of Vietnam's laws step by step to the regional and international legal life.

The basis for this legal integration was the same traits in fields of Vietnamese law towards that of countries in the region and the world. The influence and process of introduction of several Oriental and Western democratic and progressive legal institutions to Vietnam have contributed to deeply improve the legal system. The system of legal norms which were subjective and voluntary in the period of the centralised economic mechanism had changed towards a legal system of a market economy. It was the acquirement of foreign legal values that created similarities to the laws of countries in the region and the world, thus providing conditions for Vietnam to join the regional and international organisations, but also increased the attraction to encourage foreign investors to invest their capital in Vietnam in order to strengthen the possibilities of international cooperation.

At any rate, Western or Oriental values cannot substitute the Vietnamese values. They merely constitute as precious supplements to our own efforts in building up a Vietnamese legal system.

C. Hierarchy of Law

The following scheme shows the hierarchy of law in Vietnam

Issuing institutions	LEGAL DOCUMENTS
National Assembly	<ul style="list-style-type: none"> - Constitution, Laws - Resolution - Declaration - Protocol and stenography of National Assembly Sessions. - Paper on opinions on the law draft of the member of NA. - Legislative initiatives on law drafts. - Protocol on interpellation. - Report on the opinions of electors on the activity of NA members - Report on inspection on complains of citizens.
National Assembly Standing Committee	<ul style="list-style-type: none"> - Ordinance - Protocol of SC meetings. - Decisions. - Legislative initiatives on law drafts
National Assembly Commissions and Committees	<ul style="list-style-type: none"> - Report on checking law drafts and legislative initiatives. - Legislative initiatives on law drafts.
President of Vietnam	<ul style="list-style-type: none"> - Legislative initiatives on law drafts. - Annual report. - Ordinance
Government	<ul style="list-style-type: none"> - Decree - Resolution - Decision of the Prime Minister. - Directive of the PM - Annual report - Legislative initiatives on law drafts
Ministries	<ul style="list-style-type: none"> - Legislative initiatives on law drafts. - Circular of the Minister
Supreme Court and other courts	<ul style="list-style-type: none"> - Legislative initiatives on law drafts. - Annual report - Sentences, resolutions and decisions. - Evaluations on the cases and practicing judicial activity
General Prosecutor Office	<ul style="list-style-type: none"> - Legislative initiatives on law drafts. - Annual report - Decisions. - Protest.
Vietnam Fatherland Front and other mass organizations	<ul style="list-style-type: none"> - Legislative initiatives on law drafts - Petitions
Local authorities	<ul style="list-style-type: none"> - Resolutions - Decisions

Legal agreements, economic agreements or treaties with legal content signed between Vietnamese Government and foreign governments are also need to be researched. For example: Treaty on Commercial relations between Vietnam and the USA, Treaty on legal promotion between Vietnamese Government and Chinese Government.

I. HOW TO FIND LEGISLATION

A. Publication of legal documents:

- Among the above-mentioned documents, the legal documents issued by National Assembly, the National Assembly Standing Committee, Government, Ministries and Prime Minister in the period from 1945 up to now are published on State Official Gazette (Cong Bao)
- Other documents, up to now, are archived at their own issued institutions, but not published on common and only one source like Cong Bao. For instance: one wishes to look for documents of Hanoi People's Committee, they only can find those documents and read only at the office of that People's Committee.
- The same situation with Court sentences, resolutions and decisions. In Vietnam now, the court legal documents usually don't have a common official form. Each court has its own form, either paper-printed or even hand-written. These documents are not open for public, but only archived at the offices of the courts. However, in some specific cases, for example: for research purpose, a student or a professor of a university staff can read these documents at these Courts if they are introduced by their faculty, school or institution.
- In addition, there are few laws and codes are translated into English. For example: the Civil Code of Vietnam translated by Phillips Fox Law Office in Hanoi in 1996.

B. Legal specialized library system

These libraries belong to legal specialized institutions are considered as valuable centers for sources of legal documents. The biggest ones are:

- Center for Information, libraries and academic research, which belongs to the National Assembly Office with more than 12,000 books.
- Ministry of Justice Library: 11,000 books, including more than 5,000 books published in Vietnamese.
- Institute of State and Law Library: 19,000 books, including more than 5,700 books written in Vietnamese.

Besides, all research and training institutions and faculties and universities relating to legal sphere in Vietnam, such as Hanoi National University School of Law, Hanoi Law College, Ho Chi Minh city National University School of Law, etc., have established legal information system or legal materials libraries, but basically it is just for simple reference purpose.

C. Computerization of legal information system:

Currently in Vietnam, there are law databases as follows:

- Database of legal research projects and programs at the national level, which are registered at Ministry of Science, Technology and Environment, National Science and Technology Institute.
- Database of commercial information at the Center for Commercial information, including legal information documents of Vietnam relating to commercial and economic sphere, circulated by transmitting through the network.
- Electronic database systemizing the legal commercial documents and company and enterprise files and records published by Vietnam Chamber of Commerce and Industry.
- Database of legal documents of Vietnam published by the National Assembly Office Library Information Center. The Center has published a CD-ROM consisting laws, decrees from 1945 and legal documents issued by Government

and Ministries from 1986 up to 2000 titled “Vietnam Law Database 2000”. This Center has also published a CD-ROM titled “Your lawyer” for legal assistance in general and simple knowledge of law for people. (Vietnam law database website: <http://www.vietlaw.gov.vn/>)

- Electronic database of legal library established by the National Assembly Office Library based on CDS/ISIS software of UNESCO.
- Database of foreign law information for reference: exist at some centers for cultural exchange between Vietnam and foreign countries, at Science and Technology Information Institute of Vietnam, at some consulting organizations in Vietnam in the form of LEXIS, NEXIS, WESTLAW (English) database or PARDOC and Alliance Francaise (French) database on the internet.
- Vietnam Law Database by Khai Tri Software Company: consisting the legal documents mainly from 1986 up to now.

II. OTHER MATERIALS

A. Village regulations (Huong uoc)

From the feudal time until now, beside the intellectual legal documents system issued by governmental authorities, there are village regulations.

Village regulations do not belong to the legal system of Vietnam, but they are self-regulation documents in the villages – the smallest community unit in the population. The position and role of village regulations are important in contribution to administration and management of the society. Village regulations have been used as a supportive and supplement instrument for the laws of the State and have embodied the spirit of ownership of the community of residents in a hamlet or village. For this reason, to study the Vietnamese legal system, the village regulations are needed to be understood too.

In Vietnam now, there are thousands of villages. Most of the villages have regulations. In order to expand democracy, the people in a commune, village, or hamlet must jointly discuss and form village rules or regulations on civilized way of life, cultured families,

procedures for marriage or funeral and so forth in conformity with the new way of life, the nation's fine traditions and the laws of the State. Therefore, for researching Vietnamese legal system, we need to gather and analyze village regulations.

With respect to old village regulations, depending on the practice of each locality, village, commune, and on the team or individual assigned with drafting, village regulations were named Huong Uoc, Khoan Uoc, Khoan Le, Huong Le, Huong Khoan, Huong Bien and so forth. Nowadays, the majority of villages call their regulations "Rules of a cultured village". The conception of "cultured village" which was initiated by the cultural authority of former Ha Bac Province is a matter under discussion. Therefore, many villages have prudentially called their regulations "Village rules" or "Rural rules." Some villages give them such specific names as "Regulations on Formation of a Civilized Way of Life and Restoration of Rules and Social Order."

Although names of village regulations are not the same, their contents have been quite similar, including rules relating to all aspects of life in each village, and their form is all in writing. Normally, village regulations include a preamble (outlining the social situation and issues referred to in the contents of the village regulations) and chapters consisting of specific articles (governing each issue relating to the life of each village or commune).

Since there are a big number of village regulations, for the purpose of studying they are needed to be collected with the big efforts and require a big time budget. Usually the village regulations are collected with the following methods:

- Collect old village regulations and mobilize number or group of people who can use Demotic script (Ancient Vietnamese script) and Chinese characters (Han script, Han ideograms).
- Conduct the collection, meetings, interviews and exchange of views with the local authority, old people, village patriarchs and heads of mountainous villages on each article of both old and new village regulations, their background, their application in practice and the effect of old village regulations on the current social life.
- Selecting the villages: following the sociological survey methods, the

systemization of village regulations should be conducted national wide: on Northern, Central and Southern parts of Vietnam. At each part, pick up the most typical village, which is famous for Huong uoc.

B. Publication on the legal matter

Monthly publications and reviews (magazines)

In the legal field, there are magazines such as:

- State and Law Review issued by Institute of State and Law.
- Legislative Studies Magazine issued by National Assembly Office.
- Jurisprudence Review issued by Hanoi Law College.
- Judiciary Review issued by the Supreme Court.
- Prosecution Study Review issued by General Prosecutor Office.
- Democracy and Law Review issued by Ministry of Justice.
- Law Forum issued by Vietnam Lawyers Association (in English and French).

There are some daily newspapers on the legal matter such as:

- Law Newspaper issued by Ministry of Justice.
- Law and Society issued by Vietnam Lawyers Associat
- Law Newspapers issued by Legal Department of Ho Chi Minh City.

Legal dictionaries and textbooks

Dictionaries:

Nowadays in Vietnam, dictionaries are important tool for researchers and anyone who studies Vietnamese law. Particularly, some of typical characteristics of Vietnamese language in general, especially Vietnamese legal language, are:

- Multiform in the unitedness. Although Vietnamese language is the only one official national language, it has many expressions.
- Import many Chinese-rooted vocabularies, especially in legal sphere. From

historical aspect, ancient laws of Vietnam have strong and deep influence from Chinese feudal laws.

Because of these features, there are 2 main types of dictionaries relating to legal matters in the dictionary system:

Encyclopedical and descriptive dictionaries

There are 3 sets of dictionaries as follows:

- The Vietnam Great Encyclopedia consists of 4 volumes published in Hanoi under the National Encyclopedia Consult in period of 1995 – 2002, including near to 3000 legal definitions.
- Legal dictionary published by Vietnam Lawyer Association published in Hanoi 1997.
- Law Dictionary published by Hanoi Law College in 1998.

Foreign language – Vietnamese dictionaries of legal definitions (up to now only English-Vietnamese, Russian-Vietnamese, French-Vietnamese):

- Russian-Chinese-French-Vietnamese Legal definition comparative dictionary published in Hanoi 1971 by Institute of State and Law of Vietnam.
- English - Vietnamese Legal dictionary published by Social Science Publishing House, Hanoi 1994.

Textbooks:

At present, there are some complete law textbook sets belonging to law faculties, law schools, law colleges and other academic institutions.

There are some textbook sets such as:

- Textbook sets for undergraduate students published by Hanoi Law College.
- Textbook sets for undergraduate students published by Hanoi National University School of Law.
- Textbook sets for undergraduate students published by Ho Chi Minh city National University School of Law.

- Textbook sets for graduate students published by Institute of State and Law of Vietnam.
- Textbook sets for undergraduate students published National Academy of Administration.

C. Judiciary and Law implementation practice

If all the legal documents and courts decisions are the formal side of Vietnamese legal system, the judiciary and law implementation are the legal realities. For this reason, in my opinion, research on ones legal system is not just to study the legal document collection and analysis, but also is to grasp the information about such reality. We need a correct method in order to have this information. The methods for these two components of the legal system: Judiciary and Law implementation are different, too.

Subjects of the study

(a) Study to determine the cases and level of cases:

- The number of application, decisions, and pending by levels such as the first, the second, the third, reexamination, the rate of criminal, civil and administrative cases.
- The number of acceptance, decisions, mediation, reconciliation, dismissal, pending in the following cases:
 - + Civil cases: contracts, debtor-creditor, domestic relations, inheritance, real property, damages, intellectual property, etc.
 - + Labor cases: labor contracts, wages, workers' compensation, collective bargaining agreements, labor disputes, etc.
 - + Administrative cases.
 - + Criminal cases.

(b) Study of parties' view points with regard to the Court system

Reason for choice of the court:

- The reasons for choosing or not choosing the court system.

- Whether there are any institutional constraints on the existing court system?
- Whether any cultural or mental factor influences the choice of litigation?
- Whether the cost and time for litigation matter?
- Does the existence of out-of-court dispute resolution facilities influence the parties' choice?

(c) Study of reputation of the Court:

- Whether people trust the courts?
- Do people expect the courts to resolve their disputes?
- Do people expect to get/receive/obtain the fair resolution at the courts?

(d) Study of problems of the Court system: Case backlog, corruption of judges, and any factor, which hinder enforcement of judgments.

(e) Study of legal professionals:

- Number of professionals
- Professional education
- Form of activity, etc.

(f) Study of law implementation level:

Study the law consciousness of citizens and legal professionals.

Methods of studying and collecting of the legal information from the judiciary and law implementation practice:

(a), (d), (e) can be approached by *statistical method*.

To study (b), (f), we need *sociological survey methods* (including interview, questionnaires)

Statistical method:

Now the judicial statistical data system exists in all the courts and institutions such as Prosecutor Office, Police and law firms. The data can be obtained through this system. However, in my opinion, this system still has some weak points as follows:

- Court sentences and decisions and statistics data on the cases are not open for public use.
- This system is not yet uniquely centralized. Therefore, there are many differences in data's degree of accuracy and even contrast each other.
- The main part of data is on paper-printed or even hand-written files. The computerization is not yet popular spread. The only computerized data is now data archived at Police departments as internal information system. For this reason, the data is hard to approach.

Sociological survey methods:

Sociological surveys are the most appropriate methods for the practical issues and the issues relating to legal consciousness. First, it is necessary to make correct questionnaires. Secondly, we need the sociological survey teams. Then, choose the appropriate base for survey such as: adequate numbers of professionals, the number of cases for evaluation, appropriate representable locations or regions. Finally, set up and arrange several numbers of sociological survey projects and teams.

(See Questionnaire sample on the next page)

Sample of a typical Questionnaire used in a sociological survey of one research institute

Question 1: How is your opinion on investment environment in Vietnam?

- Attractive ☐
- Used to be attractive before ☐
- Less attractive comparing with other countries in the ASEAN region ☐
- Others ☐

Question 2: Which factors influence an attractive investment environment?

- Improved legal system ☐
- Open policies ☐
- Large market ☐
- Good infrastructure ☐
- Cheap manpower ☐
- High intellectual level of the society ☐
- Others ☐

Question 3: Investment level for the last 2 years has decreased. Its reason is:

- Rigidity of 1996 Law on Foreign Investment in Vietnam ☐
- Regional and international financial crisis ☐
- Low competitiveness of Law on Foreign Investment of Vietnam against other countries in the ASEAN region ☐
- Land rent price higher than other countries in the ASEAN region ☐
- Investment incentive policy is wrong ☐
- Management level of local authority is low ☐
- Bad law implementation ☐
- Others ☐

Some other methods

The legal system can also be understood at the historical aspect. Correspondingly, it can be approached with *historical study method*.

The legal system also can be reached by comparing the Vietnamese legal system with other foreign legal systems. The main method will be used is *legal comparative study method* – one of the popular methods in Vietnam now, which recently used in books and articles by researchers and scholars. I think it is one of the important methods of Vietnam legal system study.

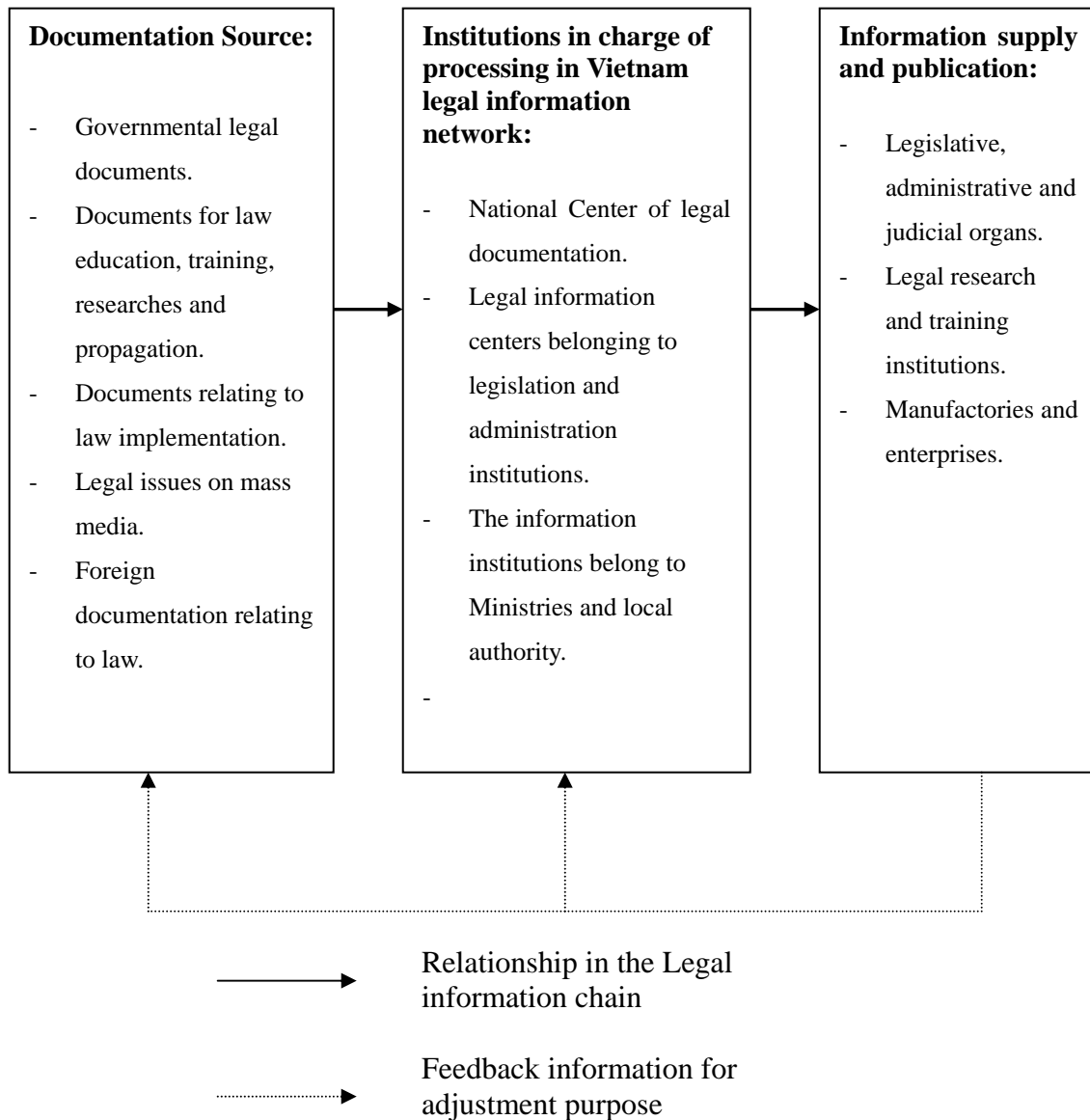
At the historical aspect, the Vietnamese legal system from the ancient time up till now is the open system. In the ancient time, this legal system has been influenced strongly by the ancient Chinese legal system. In the French colonial time, it has been influenced by continental legal system (civil law system). In the period from 1945 to the 90's of the XX century, the Vietnamese legal system has been influenced by the Soviet legal system. Currently, Vietnam is in the period of transition to the free market economy and international wide economic cooperation. There are influences of other foreign countries and international organizations. For example: regulations of WTO, AFTA, EU, etc. This process is the acceptance of legal concepts, legal norms and institutes, and experience exchange. Therefore, the historical study and legal comparative study methods allow us to understand better the current legal system of Vietnam, as well as its future legal system, its development direction through researching the interaction between tradition and modernization, through studying the process of receipt and transplantation of law.

CONCLUSION AND PROPOSALS:

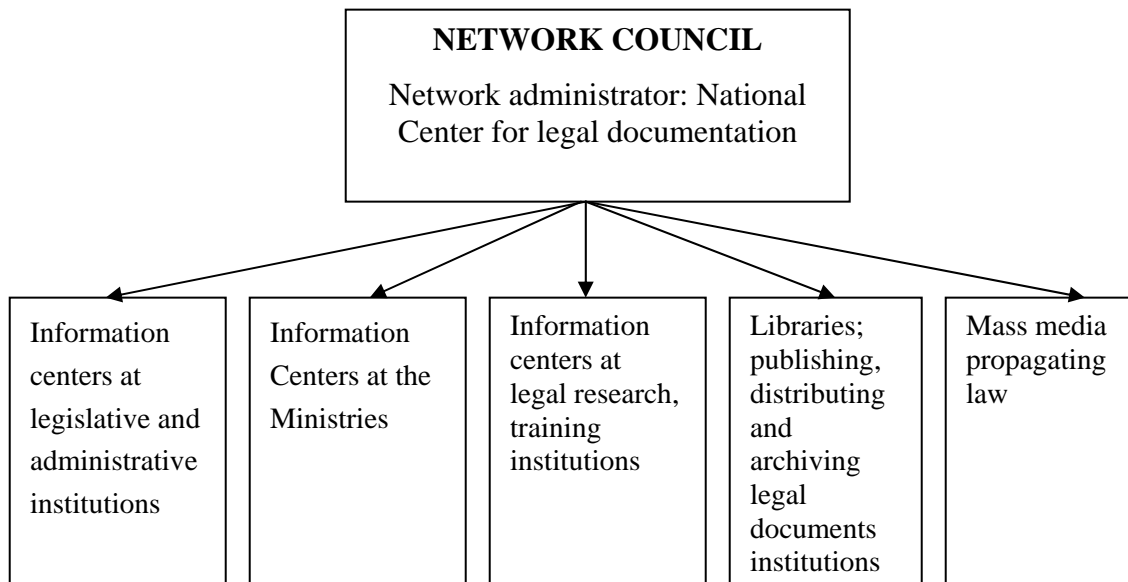
Legal information system in Vietnam now is still a closed and non-developing system. For that reason, it cannot meet the social and individual needs in searching for legal materials and specially is incompatible with the current international trends.

Here are my proposals summarized in the following illustrations:

VIETNAMESE LEGAL INFORMATION SYSTEM MODEL

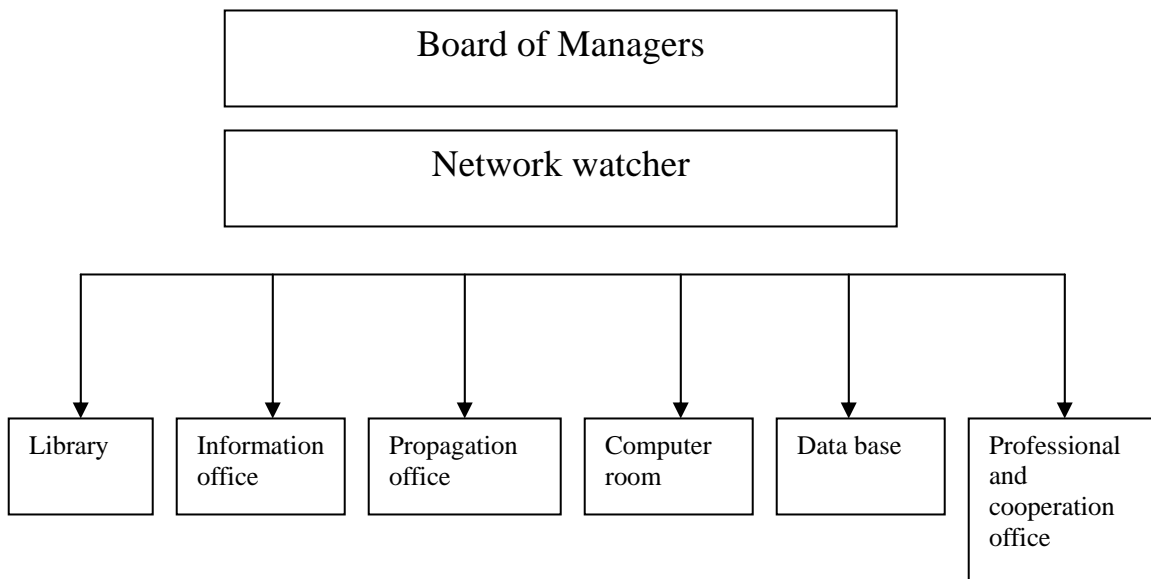


LEGAL INFORMATION NETWORK IN VIETNAM



MODEL FOR THE NATIONAL LEGAL INFORMATION CENTER

Manager of Legal Information Network of Vietnam



ENDNOTES

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