



# LAWS OF SOUTH-EAST ASIA

## Volume I

The Pre-Modern Texts

*edited by*

M.B. Hooker

THE BUTTERWORTH GROUP OF COMPANIES

<i>SINGAPORE</i>	BUTTERWORTH & CO (ASIA) PTE LTD Crawford P.O. Box 770, Singapore 9119
<i>ENGLAND</i>	BUTTERWORTH & CO (PUBLISHERS) LTD London
<i>AUSTRALIA</i>	BUTTERWORTHS PTY LIMITED Sydney, Melbourne, Brisbane, Adelaide and Perth
<i>CANADA</i>	BUTTERWORTHS Toronto and Vancouver
<i>NEW ZEALAND</i>	BUTTERWORTHS OF NEW ZEALAND LTD Wellington and Auckland
<i>SOUTH AFRICA</i>	BUTTERWORTH PUBLISHERS (PTY) LTD Durban and Pretoria
<i>UNITED STATES OF AMERICA</i>	BUTTERWORTH LEGAL PUBLISHERS St. Paul, Minnesota Seattle, Washington Boston, Massachusetts Austin, Texas D & S PUBLISHING COMPANY Clearwater, Florida

©  
Butterworth & Co. (Asia) Pte. Ltd.  
1986

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording, without the written permission of the copyright holder, application for which should be addressed to the publisher. Such written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature.

ISBN 0-409-99506-1 (Volume I)

ISBN 0-409-99528-2 (2 Volume Set)

*Typeset and printed in Singapore by Singapore National Printers Pte. Ltd.*

## PREFACE

Studying the laws of South-East Asia is rather like studying the 'laws of Europe'. Both are comparable in variety and complexity of language, cultural, political and dynastic histories and in the fact that from time to time general surveys of South-East Asian and European legal histories are written. Of course no one supposes that general surveys of this nature can cover everything or satisfy the specialist in each particular field. Why then attempt it? The answer lies in the purpose of each survey and in the case of this collection of essays, there are a number of purposes.

First, from the point of view of general legal history, South-East Asia provides some quite extraordinarily interesting data. There is no doubt that had these been available in their present forms, the works of Sir Henry Maine and Sir Paul Vinogradoff would have been considerably different. This is not just a comment on past history; historians and legal historians still read *Ancient law* and *Historical Jurisprudence* not so much for the material contained there but for the method of reasoning and the theoretical propositions put forward. These must now be considerably changed, in particular the issue of diffusion of legal concepts, especially the technical vocabularies of law must now be taken to have assumed an importance greater than supposed by our illustrious predecessors (see the Introduction at p. 1).

Second, South-East Asia is heir to the three great legal systems of India, (Imperial) China and Islam. From the internal point of view of these systems and from the point of view of the scholars at present engaged in studying them, the changes, indeed transmutation and re-definition which have overtaken each system in South-East Asia are crucial to any balanced view in comparative law. The nature and extent of the changes which have occurred has of course varied over time and in respect of each system but, whatever these might have been, they have one thing in common. This is that each case demonstrates the fact that no imported or introduced legal system can survive in its new home untouched and unchanged by the recipient culture. In the final analysis, it is the languages and cultures of South-East Asia which determine the definition of law and not the absoluteness of Revelation, Confucian ethics or Dharma. This is as true now as it has been from the twilight of legal pre-history in the area.

So far, I have provided two answers to the initial query but both from the external point of view. These are justifications from the standpoint of interests external to South-East Asia. I wish to turn now to internal explanations.

Third, therefore, from the point of view of South-East Asian history; the legal material is in most cases either the earliest or amongst the earliest surviving material in the area. As such, and leaving aside its analytic value, it is obviously prior to any general history. To the extent that it is not used, therefore, any general history is at least deficient if not seriously distorted. The texts described in this collection of essays contain within them definitions of rule and sovereignty, evidence as to dynastic history, valuable material on cultural diffusion and change, examples of specific forms of writing of interest to literary historians and valuable material for students of linguistics and philology. They are, therefore, fundamental sources for a number of disciplines.

Finally, turning to the interests of South-East Asian legal history itself — why should a survey of this sort be useful? We have seen already that for legal historians, students of Islam and Chinese and Indian law and historians, the essay-type accounts given here can have some utility. But given the complexity of the material and the cultures and languages involved, can there be such a use for the South-East Asian legal historian? I think there can be for the following reasons. First, while there are specific studies on Malay law, Javanese law, Vietnamese law and others, there is, I believe, a specific 'South-East Asian dimension' which requires the student of any one to take cognizance of the others. This is not simply a matter of recognizing their existence or the existence of each but rather realizing that there may be deeper structural features held in common. I indicate in the Introduction (pp. 1–22) some common content but of course we cannot extrapolate from this. Instead, I would propose that this may be a clue, and no more as yet, to a common sub-structure. We should now concern ourselves with the identification of this.

Second, it is now clear that the various legal traditions described in this book share in common the same technical problems. So far as is possible, given the material, the essays are arranged similarly so as to demonstrate the range of analytical problems with which *all* students of South-East Asian law, whatever their specialization, must come to terms. In other words, all the materials impose the same problems and it is the technical difficulties in sources, and definition and diffusion, which are primary in any description. The whole of the material must, therefore, be taken in the light of these common questions of comparative law.

Finally, exactly the same reasoning applies to the common difficulties raised by the past historiography of each legal tradition (see Introduction pp. 9–15).

It is this combination of common problems, explained in the Introduction, which marks off the laws of South-East Asia as a unique area in general legal history and oriental law. 'South-East Asian law',

therefore, is something of a special discipline on its own with its own particular demands and techniques.

On the immediately practical side, I hope this collection of essays and the accompanying bibliography will serve as a convenient handbook for other disciplines. The specialist, as I have said, should find examples of the current solutions to the various technical problems though of course neither I nor my colleagues would claim these to be anything more than current. While some of the material given here is fairly well known (*e.g.* on Java, parts of Malay-Muslim), a lot of the remainder is not (especially the Thai and parts of the Burmese and Vietnamese). However, I have tried to maintain a balance so that each tradition is given in as much detail as is possible in the space given the complexity of the material. No doubt a degree of distortion given the requirements of compression will remain but I hope the reader will accept that it is the minimum which can be reasonably accepted.

I would say, lastly, contrary to what some believe, that the day of the 'polymathic orientalist' is by no means done in South-East Asia. All students of law in this area must know more than one law and they must also have some acquaintance with work in the humanities and social sciences. This is not just a plea for lawyers to read outside their subject, it is, quite simply, a requirement for writing acceptably about any South-East Asian law.

It is my very pleasant duty to thank the University of Kent at Canterbury, the British Academy and the British Institute in South-East Asia for their financial support over the last few years.

I and my colleagues owe a special debt to Mr F N Croft who undertook the difficult task of making an index of six legal systems.

I am also very grateful to the staff of Butterworths for their efficiency in seeing this book through the press.

M B Hooker  
Eliot College  
University of Kent at Canterbury

March 1986



## NOTES ON THE CONTRIBUTORS

M. C. Hoadley, Ph. D

Head archivist, the Cardo Group, Malmö, Sweden, author of several papers on Javanese history and legal history including *An Introduction to Javanese Law* (with M.B. Hooker), Assoc. of Asian Studies Monograph No. xxxvii, 1981.

M. B. Hooker, LL.M

Professor of Comparative Law, University of Kent at Canterbury, author of several books on South-East Asian law including *A Concise Legal History of South-East Asia* The Clarendon Press, 1978 and *Islamic Law in South-East Asia*, Oxford University Press 1984.

Yoneo Ishii, LL.D

Professor of South-East Asian History, University of Kyoto, author of several books in English and Japanese on Thai culture including *A Glossarial Index of the Sukhothai Inscriptions*, published by Shoukado, 1978 and *A History of Mainland Southeast Asia* (in Japanese) published by Kōdan -sha in 1977.

Yoshiaki Ishizawa, D.Litt.

Director of the Institute of Asian Cultures, Sophia University, Tokyo, author of a number of books in Japanese on the history and culture of Cambodia and South-East Asia including *History and Culture of Southeast Asia* published by Kōdan -sha in 1983 and *A Contemporary History of Vietnam, Cambodia and Laos* published by Yamakawa-Shuppan in 1977.

Nguyễn Ngọc Huy, Doc.Sc.Pol.

Formerly Professor in the National Institute of Administration in Saigon, now Research Associate in the Harvard Law School author of papers on the Lê Code in (1980) *B.E.F.E.O.* LXVII: 147-220 and in Eikemeier and Franke (eds) *State & Law in East Asia* at pp. 234-54 Wiesbaden: Harrossowitz, 1981.



Ryuji Okudaira, B.A.

Formerly in the Japanese Foreign Service now lecturer in Burmese in the Dept of Indochinese Studies, Tokyo University of Foreign Studies, author of a *Bibliographical Guide to the Customary Law of Burma* (in English and Japanese) published in *Shiroku* vol. 13 (Kagoshima University) 1980.

Ta Vă Tài LL.B., Ph.D.

Formerly, Professor, Saigon Law School, now a Research Associate. Harvard Law School author of papers in English on the "Vietnamese texts of the Lê period" (1982) *American Jour. of Comparative Law* xxx: (3) 523-554 and the "Status of women in Vietnam" in (1981) *Jour. of Asian History* 15: (2) 97-145.

# CONTENTS

## INTRODUCTION: THE SOUTH-EAST ASIAN LAW TEXTS — MATERIALS AND DEFINITIONS

M.B. Hooker

I	DEFINITIONS	2
	(i) South-East Asia	2
	(ii) The South-East Asian texts and the 'classical laws'.	3
II	SOURCES	6
III	HISTORIOGRAPHY	9
IV	RE-DEFINITION AND DIFFUSION OF LAW	15
V	CONCLUDING REMARKS	20
	REFERENCES	21

## THE BURMESE DHAMMATHAT

Ryuji Okudaira

	INTRODUCTION	23
I	THE SOURCES OF LAW — EPIGRAPHY AND MSS	24
	(i) Inscriptions ( <i>Kyauksa</i> )	26
	(ii) Registers ( <i>Sittan</i> )	29
	(iii) Law texts ( <i>Dhammathat</i> )	30
	(iv) Collections of decisions ( <i>Hpyathton</i> )	35
	(v) Tables (of inheritance) ( <i>Hkwebon</i> )	37
	(vi) Royal orders ( <i>Bayin Amiendaw Pyandan</i> )	38
	(vii) Other Burmese legal literature	41

II HISTORIOGRAPHY	41
(i) Richardson	42
(ii) Sparks	44
(iii) Jardine	45
(iv) Forchhammer	48
(v) Furnivall	51
(vi) Lingat	53
(vii) Burmese commentators	56
III CONTENT OF THE DHAMMATHATS	59
(i) The <i>Manugye Dhammathat</i>	59
(ii) Critique of <i>Manugye</i>	62
(iii) The authority of the <i>Dhammathat</i>	63
(iv) Public law	67
(a) Ruler, bureaucracy and administration	67
(b) Public order — crime and punishment	70
(c) Judicial process	71
1 Courts	72
2 Lawsuits	73
3 Ordeals	73
4 Legal profession	74
5 Witnesses and evidence	75
6 Decision or judgement	75
7 Lapse of lawsuits	75
(v) Private law	75
(a) Status	75
1 Classification of the population	75
2 Male and female	79
(b) Marriage	80
1 Modes of marriage	80
2 Polygamy	82
3 Conjugal duties	83
(c) Divorce	85
1 Modes	85
2 Partition of property	88
(d) Inheritance and division of property	90
1 Inheritance	90
2 Division	97
(e) Custody and guardianship	100
1 Custody	100
2 Guardianship	101
(f) Property	102
1 Inherited and matrimonial property	102
2 Pledge or deposit	104
(vi) Obligation	105
(a) Obligation arising out of wrongful acts	105
1 Trespass, damage and loss	105
2 Violence, theft and arson	106

(b) Obligation arising out of contract	112
1 Deposit	112
2 Debt	114
3 Sale and lease	118
4 Gift	120
5 Wages	122
6 Land and boundaries	124
IV CONCLUDING REMARKS	125
(i) <i>Dhammathats</i> as a source of law	125
(ii) The diffusion of Indian law and Burmese law	128
(iii) Definition of law	131
(iv) Burmese legal history	135
REFERENCES	138

THE THAI THAMMASAT  
(WITH A NOTE ON THE LAO TEXTS)

Yoneo Ishii

INTRODUCTION: THE KOTMĀI TRĀ SĀM DUANG	143
(i) The 'purification' of <i>KTSD</i>	145
(ii) The contents of <i>KTSD</i>	146
(iii) Other sources	149
(a) Inscriptional sources	149
(b) Extra- <i>KTSD</i> MSS	149
(c) Post- <i>KTSD</i> laws in pre-modern Siam	150
I TEXTS & EDITIONS	151
II HISTORIOGRAPHY	154
(i) Early studies	154
(ii) Modern critical studies of <i>KTSD</i>	156
III CONTENTS OF THE LAW	157
(i) Public law	157
(a) The authority of the law text	157
(b) The king, bureaucracy and administration	159
(c) Public order — crime and punishment	162
(d) Judicial process	166
(ii) Private law	171
(a) Status: legal categories of the people	171
(b) Marriage and divorce	175
(c) Inheritance	178
(d) Property, including matrimonial property	180
(e) Obligation: <i>Lamoet</i>	183
(f) Obligation (cont.): <i>San'ya</i>	188

IV	CONCLUDING REMARKS: INDIAN INFLUENCE ON SIAMESE JURISPRUDENCE	194
V	A BRIEF NOTE ON THE LAO TEXTS	198
	REFERENCES	201

## REMARKS ON THE EPIGRAPHY OF ANGKORIAN CAMBODIA

Yoshiaki Ishizawa

	INTRODUCTION: PROBLEMS AND ISSUES	205
I	COURTS OF LAW	210
	(i) Officers	211
	(ii) Procedure	214
	(a) Witnesses	215
	(b) Evidence	216
	(c) Trial by ordeal	217
II	TWO DECISIONS	218
	(i) The Tûol Rolom Tim inscription	219
	(ii) The Nak Tà Čàvĕk inscription	220
III	EXECUTION OF JUDGEMENT	221
	(i) Corporal punishment	222
	(ii) Fines	226
	(iii) Punishment of a brahman	228
IV	LAND	228
	(i) Proprietary rights & inheritance	228
	(ii) Disputes and royal involvement	231
V	CONCLUDING REMARKS	235
	APPENDIX: LAW TERMS USED IN ANGKORIAN CAMBODIA	238
	REFERENCES	239

# THE LAW TEXTS OF JAVA AND BALI

M.C. Hoadley and M.B. Hooker

INTRODUCTION: MATERIALS, (DESCRIPTION AND PROVENANCE), CULTURAL DIFFUSION AND THE DEFINITION OF LAW	241
---	-----

(i) Materials (description and provenance)	242
(ii) Cultural diffusion	243
(iii) Definition	250

## A JAVA

I JAYAPATTRA (JAYASONG)	254
II PIAGEM (PRASASTI)	261
(i) Piagem (Prasasti)	262
(ii) The 'Wruhé', and 'Ājñā' texts	265
III PEPAKEM	265
IV UBAYA	271
V AGAMA I: INTRODUCTORY REMARKS AND TEXTS	274
VI AGAMA II: PRÉCIS	276
(a) Public order offences	276
(b) Loans, sales and purchase	280
(c) Dependent status: the bondman/bondwoman	285
(d) Marriage, divorce and sexual matters	287
(e) Agricultural matters	289
(f) Analytical features of the Agama	290

## B BALI

VII HISTORIOGRAPHY	292
(i) Hindu-(Balinese) law	292
(ii) 'Hindu' law in Bali and colonial legal policy	302
(iii) Java-Bali: text comment (1849-1918)	308
VIII THE BALI AGAMA	
(i) Texts	312
(ii) Précis of the Bali Agama — Arts. 273-379	316
(iii) Analytical features	322
IX ADIGAMA	325
(i) Texts	325
(ii) Précis	326

X	KUTARA AGAMA	331
	(i) Text	331
	(ii) Précis	332
XI	PURWA AGAMA	337
	(i) Text	337
	(ii) Précis	337
XII	CONCLUDING REMARKS	341
	REFERENCES	344
THE LAW TEXTS OF MUSLIM SOUTH-EAST ASIA		
M.B. Hooker		
	INTRODUCTION: ISLAM IN SOUTH-EAST ASIA	347
I	CLASSIFICATION OF THE LAW TEXTS	356
	(i) Malay-Muslim	356
	(ii) Java-Muslim	357
	(iii) European (secular)-Muslim texts	358
	(iv) Islamic texts	361
II	HISTORIOGRAPHY	364
	(i) Malay-Muslim laws	365
	(ii) Java-Muslim laws	371
	(iii) European-Muslim	372
	(iv) Islamic texts	374
III	TEXTS, EDITIONS & PRÉCIS	375
	(i) Malay-Muslim	376
	(a) Malacca laws	376
	(b) Johore laws	381
	(c) The Undang <sup>2</sup> Kerajaan	382
	(d) Kedah laws	384
	(e) Perak laws	386
	(f) Minangkabau laws — Malaya	389
	(g) Minangkabau laws — Sumatra	391
	(h) Aceh laws — Adat Aceh and Undang-undang Aceh	394
	(i) South-Philippine ('Moro') laws	406
	(ii) Java-Muslim	410
	(a) Surya Alam	412
	(b) The Pepakem and Angger-angger	413
	(c) Ubaya (Oebaya) — edicts	413

(iii) European-Muslim	414
(a) The Rejang Laws of Lais	414
(b) The Pasemah laws of Manna	415
(c) The 'Code of Laws'	415
(d) The Laws of Sg. Limau, Sg. Hitam and Silebar	416
(e) The British Borneo texts	417
(f) 'Javaansch-Mohammedaansche Regt'	419
(iv) Islamic Texts	422
(a) The technical legacy	423
(b) A South-East Asian rationalization of Islamic legalism?	424
IV CONCLUSION	425
(i) Islam as a source of law	425
(ii) Islam and sovereignty	426
(iii) Islam and the reality of law	427
(iv) Islam and the definition of obligation	427
REFERENCES	428

## THE VIETNAMESE TEXTS

Nguyễn Ngọc Huy and  
Tạ Văn Tài

INTRODUCTION: VIETNAMESE LEGAL HISTORY	435
(i) Chinese domination	436
(ii) The Vietnamese dynasties	437
(a) Lý	438
(b) Trần	438
(c) The Hồ and Ming domination	439
(d) Lê	439
(e) Tây So'n	441
(f) Nguyễn	441
I EXTANT SOURCES AND TRANSLATIONS AND ANALYSES	442
(i) Sources	442
(ii) Translations and analyses of the Lê and Nguyễn Codes	445
II CONTENTS OF THE LAW	448
(i) Legalist thought	449
(ii) Confucianization of law	450
(iii) Public law	452
(a) The ruler	452
(b) The bureaucracy: civil and military	456
(c) Control of the population	464
(d) The judicial system	469



(iv) Private law	475
(a) Contracts	476
(b) Wrongs	480
(c) Property	482
(d) Inheritance	486
(e) Women's status and the matrimonial estate	489
III CONCLUDING REMARKS	493

## BIBLIOGRAPHY

I GENERAL SOURCES	497
(i) General bibliographies	497
(ii) Legal bibliographies (by country)	498
II BURMESE MATERIAL	500
III THAI-LAO MATERIAL	509
IV CAMBODIAN MATERIAL	518
V JAVA-BALI MATERIAL	533
VI MALAY-MUSLIM MATERIAL	539
VII VIETNAMESE MATERIAL	555