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NATIONAL REPORTS

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Tanzania

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The United Republic of Tanzania came into existence on 23 April 1964, with the merger of the two independent states of Tanganyika and Zanzibar. Both Tanganyika and Zanzibar were under British control till recently; Tanganyika became independent on 9 Dec. 1961 and Zanzibar on 10 Dec. 1963.

Tanganyika had been at first a German protectorate. After the First World War, its administration as a mandate was entrusted to the British Government by the League of Nations, and this was changed into a trusteeship of the United Nations after the Second World War. On 9 Dec. 1961, the agreement was revoked and Tanganyika was given independence.¹ Tanganyika became a Dominion within the British Commonwealth,² with a constitution based on the British parliamentary model. On the first anniversary of independence, Tanganyika became a republic, and established a new constitution, different in several other respects from the Independence Constitution.

Zanzibar became independent on 10 Dec. 1963,³ with the Sultan as Head of State, but with a constitution based on the British parliamentary model. On 12 Jan. 1964, Zanzibar had a *coup d'état*, as a result of which the Afro-Shirazi Party came into power. A Revolutionary Council was established in which was vested all legislative and executive power (General Notice no. 13 of 1964).

On 23 April 1964, the Heads of State of the Republic of Tanganyika and the People's Republic of Zanzibar signed an Agreement for a Union (The Union of Tanganyika and Zanzibar Act, 22 of 1964, Cap. 557)⁴ which came into being on ratification by the respective legislatures. A modified form of the Tanganyika Constitution was to serve as the Constitution of the United Republic with substantial autonomy for Zanzibar. This arrangement was an interim measure, pending a Constituent Assembly which would enact the final constitution within a year. The Constituent

Assembly has not met yet, but in 1965 the present constitution, called the Interim Constitution, was promulgated (Act 43 of 1965).

The Interim Constitution provides for a one-party system of government, and till the merger of the two existing parties, the Tanganyika African National Union (TANU) is to be the sole party in Tanganyika, and Afro-Shirazi the sole party in Zanzibar. All political activity must be conducted under the auspices of the Party; and only members of the Party are eligible for election to Parliament. The right to membership of the Party, subject to the acceptance of the basic principles of the Party, is protected by the Constitution, which also has in its schedule the Party constitution.

Tanzania is a sovereign republic, but it is difficult to characterise it; it has several features of a federal state, but falls short of a complete federal model. It is divided into Tanganyika and Zanzibar, but whereas there are separate legislative, executive and judicial institutions for Zanzibar, the Union institutions exercise jurisdiction over Tanganyika in all matters. The jurisdiction of these institutions over Zanzibar extends only in relation to a specified list of matters; these are the Constitution and the government of the United Republic, external affairs, defence, police, emergency powers, citizenship, immigration, external trade and borrowing, the public service of the United Republic, etc. The head of the government in Zanzibar acts in a dual capacity; as President of Zanzibar, he is head of its executive, while he is also the Vice-President of the United Republic and as such the principal assistant of the President of the United Republic in Zanzibar in all union matters. Tanzania is a member of the East African Community, which provides for economic co-operation and a common market among Kenya, Uganda and Tanzania. The legislature of the Community is empowered to legislate on specified matters for Tanzania (Act 42 of 1967).

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¹ The Tanganyika Independence Act, 1961, 10 & 11 Eliz. 2, c. 1.

² Tanganyika (Constitution) Order in Council,

1961, S.I. 1961 no. 2274.

³ The Zanzibar Act 1963, 11 & 12 Eliz. 2, c. 55.

⁴ All references to Chapters (Cap.) are to those contained in the Tanganyika Revised Laws, 1955.

I. CONSTITUTIONAL SYSTEM

1. Nationality

Before their respective independence, the inhabitants of Tanganyika and Zanzibar were, by and large, British protected persons. At independence, the citizenship of these states was established and was conferred on most of these inhabitants.

With the establishment of the United Republic, a common nationality was created, and with a few exceptions, all those who had previously become citizens of either Tanganyika or Zanzibar were declared citizens of the United Republic, the exception being those Zanzibaris who had been deprived of their citizenship by the Revolutionary Council (General Notice no. 652 of 1964).

Under the present law (Cap. 512, General Notice no. 652 of 1964 and Cap. 452), the citizenship of the United Republic is acquired automatically by virtue of birth in the country (after the Union), except for children of foreign diplomats or enemy aliens, or by birth abroad, if the father is a citizen otherwise than by descent. A woman married to a citizen is entitled to citizenship. Citizenship can also be acquired by registration (used in relation to citizens of Commonwealth and other African countries) and naturalisation (for others), the conditions for the latter being more stringent. In both cases there are linguistic and residential qualifications, and whether citizenship is granted, is a matter of executive discretion. The provisions for deprivation of citizenship vary, depending on the mode of its acquisition. A female citizen marrying a foreigner does not, by virtue of the marriage, lose her citizenship.

2. Territorial Division (see *infra* 3 c)

3. State Organs

a. As Tanzania is a *de jure* one-party state, the state organs include both the traditional state institutions and the party institutions. Legislative, executive and judicial powers are vested almost exclusively in the former, of which the chief ones are the Parliament, the President and the courts. There is in addition a Permanent Commission of Enquiry. Of the Party (TANU), the major organs at the national level are the National Conference, the Electoral Conference, the National Executive Committee and the Central Committee. There are also various organs at the regional and the district level, the most basic being the cell, consisting of a grouping of ten houses (Constitution of TANU, First Schedule; Interim Constitution).

The Afro-Shirazi Party is the sole lawful party in Zanzibar; the Revolutionary Council would appear to be its supreme body which is assisted by various departments, like the youth, women and workers' departments (Presidential Decree 11 of 1965).

b. *Head of State and his powers.* – The Head of State, the President, is elected for a term of five years; only one candidate, nominated by the Party's electoral conference, stands for election. The executive authority is vested in the President, which he exercises in his own discretion. The authority extends throughout Tanganyika for all matters, but in Zanzibar is restricted to Union matters. He has the power to appoint and dismiss Ministers, Regional Commissioners, diplomats and other senior officials, in addition to his power to constitute, appoint to and dismiss from, offices in the public service of the United Republic. He appoints various categories of members of Parliament (*infra* c), may veto bills passed by the National Assembly and may dissolve Parliament at any time. He has limited powers of law-making under the Act of Union. He has (under the Public Corporations Act, 17 of 1969) extensive powers to establish, re-organise or dissolve public enterprises, including transfer of assets and personnel-important powers since public enterprises dominate the national economy. He appoints the Chief Justice, and, after consultation with the Chief Justice, the puisne judges of the High Court. He also appoints the members of the Electoral Commission and the Permanent Commission of Enquiry (*infra* f). He is the Commander-in-Chief of the Armed Forces, with powers of appointment to and dismissal from the Armed Forces. He has various other statutory powers under miscellaneous legislation, like the appointment of the Secretary-General of the trade union movement (Cap. 555). He may order the preventive detention of persons without trial (Cap. 490).

c. *Legislative body.* – The legislative body for the whole of the Republic in Union matters and for Tanganyika in all matters is the Parliament of the United Republic; for other matters in Zanzibar, the Revolutionary Council is the competent legislative authority. The National Assembly consists of 126 constituency members from single-member constituencies in Tanganyika (only members of TANU can be candidates in elections), 15 national members elected by the National Assembly, the 23 Regional Commissioners (*ex officio*), up to 32

members appointed by the President from among the members of the Revolutionary Council, with the agreement of the President of Zanzibar; up to 20 members appointed by the President from those resident in Zanzibar on or before 26 April 1964, with the consent of Zanzibar's President and 10 members nominated by the President. The President himself is not a member of the National Assembly but has the right to address it.

The constituency and the national members are members for the session of Parliament, but the other categories of members can be removed by the appointing authority. A constitutional amendment in 1967 introduced new disqualifications for membership, *viz.*, owning and exploiting certain forms of property or participation in business activities.

The Zanzibar Revolutionary Council was appointed in January 1964 and there are no constitutional provisions for elections to it.

d. *Government.* – Executive authority is vested in the President, who is the head of government. The government has the general responsibility for the implementation of laws and policies and the preservation of law and order. It has power to conduct foreign policy and to negotiate and ratify treaties, except that, if effect has to be given to the terms of the treaty within domestic law, legislation by Parliament is necessary. The government plays an important role in the economic and social development of the country, either by regulation or active participation. Various corporations have been set up for commercial and industrial purposes; these corporations, though separate in law from the government, are in practice subject to its general policy directives. Agriculture is regulated through marketing and commodity boards.

The National Assembly has some control over the government. It has to pass the necessary laws to implement government policy; and its control over public revenue can be an important factor in influencing policy. Apart from the President, all the members of the Cabinet have to be members of the National Assembly, where they have to explain and defend government policy.

The powers of the government of Zanzibar are vested in the Revolutionary Council and are exercised by the President of Zanzibar and his Cabinet, the President of Zanzibar being also the first Vice-President of the Republic, and in that capacity the principal assistant to the President of the Republic in his executive authority over Zanzibar.

e. *Territorial authorities.* – The Republic is divided into 21 regions which consist of varying numbers of districts. The regions are headed by a Regional

Commissioner, who is a government agent and the local Secretary of TANU. Most of the administrative powers are exercised at the district level by its Area Secretary, who is also a party functionary. These administrative divisions do not necessarily coincide with local government areas, of which there are the following kinds: municipalities (Cap. 105), districts and towns (Cap. 333), whose councils are popularly elected and have delegated powers to make by-laws.

f. *The Permanent Commission of Enquiry.* – The Commission was provided for by the 1965 Interim Constitution (s. 67–69) and established by the Permanent Commission of Enquiry Act (25 of 1966). It consists of three members appointed by the President, and has power to enquire into the conduct of civil servants and officials of the Party and of para-statal and certain national institutions, like the trade union and co-operative organisations, in order to investigate if there has been a breach of the law or abuse of power. The commission reports to the President, who may take whatever action he deems appropriate, but the Commission itself has no executive powers. It is required to publish an annual report of its activities.

4. The Judicial System

a. *Tanzania* has an independent judiciary. There are five levels of courts, the primary courts, the resident magistrates' courts, the district courts, the High Court and East African Court of Appeal, which Tanzania shares with Kenya and Uganda and which is established by the East African Community (Treaty of East African Co-operation, 1967, art. 80, 81).

(1) *Primary courts.* – There is one for each district. It has both criminal and civil jurisdiction. Appeals are to the District Court and from thence to the High Court, which is normally the final court of appeal from a decision of the primary court, but a further appeal to the Court of Appeal is allowed, if the High Court certifies that a point of law or general public importance is involved. The District and the High Court also exercise supervisory jurisdiction over primary courts.

(2) *Magistrates' and District Courts.* – The Magistrates' Courts are established and regulated by the Magistrates' Courts Act (Cap. 537). Both courts have the same original criminal jurisdiction. A resident Magistrate's Court has civil jurisdiction for the recovery of immovable property up to a certain value, for certain matters arising under the Rent Restriction Act (Cap. 479) and for other proceedings if the value in dispute does not surpass T. sh. 20000 (approx. US \$ 2830). The District

Court has the same general jurisdiction as a Resident Magistrate's Court, if the magistrate holding such a court is designated a civil magistrate. A further and final appeal is allowed to the High Court.

(3) *High Court.*—The High Court is established by the Constitution (s. 56), and its jurisdiction is governed by the Judicature and Application of Laws Ordinance (Cap. 453). The High Court has full original civil and criminal jurisdiction, and is also a Court of Admiralty, though the law may provide that some cases have to be instituted in a lower court. Appeals lie from various courts to the Court of Appeal in its civil jurisdiction; on the criminal side, appeal is always possible where a sentence of death has been pronounced; against any conviction on a point of law, and with leave, on a point of fact or mixed law and fact.

The High Court also has jurisdiction to determine questions relating to the membership of the National Assembly (Const. s. 36) and the full bench of the High Court has the final authority in the interpretation of the Constitution and may declare a statute unconstitutional (s. 64).

b. *Zanzibar* has a High Court (Presidential Decree no. 2 of 1964), and the following kinds of subordinate courts: the Primary Courts, the District Courts, the Resident Magistrates' Court, the *Kādi's* Court, and the juvenile court. The *Kādi's* Court has jurisdiction over matters of personal law, where the parties are Muslim, while the other courts have both criminal and civil jurisdiction (Courts Decree of 1966). The jurisdiction of the High Court of Tanzania is concurrent with that of the Zanzibar High Court in relation to Tanzania laws whose application is extended to Zanzibar, and it has final jurisdiction over questions relating to the interpretation of the Interim Constitution.

c. *Administrative courts and tribunals.*—There are no separate administrative courts, although there are a number of tribunals like the marketing boards and the Rent Restriction Board, which have the authority to issue licenses and make other administrative decisions. Unless otherwise provided expressly, the courts can review the decisions of these tribunals. There are also special tribunals for the trial of a charge of mutiny against members of specified services (Cap. 556 and 552). There is also the Permanent Labour Tribunal with jurisdiction over industrial disputes and other matters (Act 41 of 1967).

d. *In addition to the formal court system*, a large number of disputes have been settled informally by tribal chiefs or elders and more recently, Party officials. In 1969, the machinery for informal settlement was regularized by giving the Minister responsible for Justice the authority to establish Arbitration Tribunals in different wards. These Tribunals consist of Party members and have wide powers of bringing about an amicable settlement, which can then be enforced through the Primary Court (Magistrates' Courts (Amendments) Act, 18 of 1969).

e. *Prosecution.*—The powers to prosecute are vested in the Director of Public Prosecutions; he can institute and undertake criminal proceedings against any person (except in a court-martial); take over proceedings instituted by any other person or authority; and discontinue any proceedings by entering a *nolle prosequi* (Cap. 20 s. 80A). Private prosecutions are allowed with the leave of the magistrate, and are possible only in the Magistrates' Courts. In the exercise of his functions, the Director of Public Prosecutions is subject to the directions of the President but no one else.

II/VII. HISTORY AND SOURCES OF LAW AND THE LAW IN FORCE

1. Tanzania has various systems of law, the basis of which is the "reception clause" as modified or supplemented by provisions for the application of customary laws (Cap. 453). Under the reception clause, subject to any written law in force in Tanganyika, including Indian or British statutes applied to Tanganyika, the jurisdiction of the courts shall be exercised in conformity with the substance of the Common Law, the doctrines of Equity and the statutes of general application in force in England on 22 July 1920, subject to the proviso that such Common Law, doctrines of

Equity and statutes of general application shall have force in Tanganyika only so far as the circumstances of Tanganyika and its inhabitants permit, and subject to such qualifications as local circumstances may render necessary. Customary law, however, is to be applied in civil matters between or in relation to members of a community which has rules of customary law relevant to the matter unless a contrary inference is to be implied from the nature of the circumstances; under the same provision, Islamic law is applicable in matters of personal law to members of the community

following that law.

Under these provisions, the Constitution is the supreme law, and other written law comes next. Most of the important areas, except torts and trusts, are regulated by legislation. The most significant statutes are the Contract Act (Cap. 433) which follows Indian law which in turn is based on the Common Law; land legislation (Cap. 118, 114 and 334) follows partly Indian statutes and is partly of local origin; and commercial law (Act 22 of 1965, Cap. 215, 25, 430, 214). Important legislation of the East African Community applicable in Tanzania covers income tax, railways, harbours, airways, and postal services.

English Common Law and Equity which are case law, apply under the reception clause. Religious laws apply partly as the relevant customary laws and partly under the Marriage, Divorce and Succession (Non-Christian Asiatics) Ordinance (Cap. 112) in the areas and to the people mentioned in the title.

2. As to the legal regulation of the economic life of the country, see *supra* I 3 d.

3. The first revision of Tanganyika Laws was made in 1928, a second followed in 1947, and in 1955 a new loose-leaf edition was established, which with annual supplements inserted therein constitutes the authoritative record of statutes and subsidiary legislation (cited as Tanganyika Revised Laws, 1955, Cap. . . .). Foreign legislation which has been declared applicable, is found in Applied Laws I (Dar es Salaam 1955) with annual supplements.

The last Zanzibar Revision was in 1959. Subsequent legislation is found in the Gazette.

For *Tanganyika* the following law reports exist: (1) Tanganyika Law Reports (T.L.R. (R)) I-II (1921-1957); (2) Gazette Supplements (since 1921-to date); (3) Digest of Appeals from Local Courts (D.A.L.C.) I-XII (1933-1964); (4) Law Reports of the Court of Appeal for Eastern Africa (E.A.C.A.) I-XXIII (1934-1956) (annual volumes); (5) Eastern Africa Law Reports (E.A.L.R.) (1957-1967 annually); (6) East Africa Law Reports (E.A.) (1968-to date).

For *Zanzibar*, (4) and (5) above are also relevant; in addition, there are Zanzibar Law Reports (Z.L.R.) I-VIII (1868-1956).

VIII. SOURCES AND MAIN CHARACTERISTICS OF PROCEDURAL LAW

The procedure in the High Court and the District and Resident Magistrates' Courts is set out in the Criminal Procedure Code (Cap. 20) and the Civil Procedure Code (Act 49 of 1966). The language of the High Court is English, while the District or Resident Magistrates' Courts can choose either English or Swahili. Both the criminal and the civil procedure are based on the principles of the Common Law - proceedings must be in open session, legal representation is allowed (except in Primary Court), parties must be given adequate notice of the charges against them, and, in criminal cases, the accused is presumed innocent unless the prosecution proves his guilt beyond reasonable doubt. There is no jury system, but there are provisions for the assistance of assessors; the District and the Resident Magistrates' Courts may sit with

assessors in civil cases, if rules of customary or Islamic law are in issue; and the High Court sits with assessors in all criminal trials, but in neither case is their opinion binding.

The rules of evidence are contained in Act 6 of 1967, and follow the principles of the Common Law.

The procedure in the Primary Court is different; its language is Swahili, and it has to sit with two assessors, each of whom has one vote, against one vote of the magistrate. No legal representation is allowed, and simplified versions of the civil and criminal procedure rules have been established (Cap. 537 Sched. 3 and 4), as well as a simplified version of the rules of evidence (Government Notice no. 22 of 1964).

IX. PRIVATE INTERNATIONAL LAW AND INTERNATIONAL LAW OF PROCEDURE

The principles of the Common Law apply, as modified by local legislation, the most important of which is Judgments Extension Ordinance (Cap. 1); Foreign Judgments (Reciprocal Enforce-

ment) Ordinance (Cap. 8), Arbitration (Foreign Awards) Orders, 1930-1931 (Applied Laws [44]); Matrimonial Causes Ordinance (Cap. 364) s. 3 and 5; Civil Procedure Code, Sched. I Ord. V reg. 29.

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(Completed in August 1973)

Thailand

Yut Sangoudhai*

Thailand (*Prathet Thai*) is a constitutional monarchy.

I. CONSTITUTIONAL SYSTEM

1. Nationality

The law relating to Thai nationality is based upon the Nationality Act, B.E. (Buddhist Era) 2508 (1965) of 4 Aug. 1965 (Gov. Gaz. vol. 62 special part p. 1).

a. *Acquisition*. – Thai nationality is acquired by birth, naturalization or by resumption of nationality.

Under s. 7 the following persons acquire Thai nationality by birth: (1) a person born of a father of Thai nationality whether that person was born within or outside the Kingdom of Thailand; (2) a person born outside the Kingdom of Thailand of a mother of Thai nationality but of a legitimate father who is of unknown nationality or who has no nationality; (3) a person born within the Kingdom of Thailand. Under s. 8, however, a person born within the Kingdom of Thailand of alien parents does not acquire Thai nationality if, at the time of his birth, his father or mother is (a) the head of a diplomatic mission or a member of such; (b) the head of a consular mission or a member of such; (c) an officer or expert of an international organization; (d) a member of the family of the person under category (a), (b) or (c) who came from abroad to reside with that person.

Under s. 9 an alien woman who marries a person of Thai nationality may acquire Thai nationality by making application to the Minister of the Interior who may grant such nationality at his discretion. Under s. 10 an alien of the prescribed qualification may apply for Thai naturalization to the Minister of the Interior who can, at his discretion recommend the grant of naturalization for the Royal Consent.

Under s. 23 a woman of Thai nationality, who has renounced that nationality upon her marriage to an alien, may apply for its resumption if, for

any reason whatsoever, the marriage is dissolved. Under s. 24 a person of Thai nationality who lost that nationality while still an infant and at the same time as his parent lost that nationality may, if he so desires, make application for its resumption. He must make this application to the Minister of the Interior, at whose discretion the grant of resumption lies, and must make it within two years of attaining his majority, both under Thai law (20 years of age) and under the law of his existing nationality.

b. *Loss*. – Thai nationality is lost by renunciation, by revocation, by registration as an alien, or by foreign naturalization.

Under s. 13 a woman of Thai nationality who marries an alien and thereby acquires the nationality of her husband may, if she so desires, renounce her Thai nationality by a declaration made before a competent official. Under s. 14 an infant may renounce his Thai nationality if he has acquired that nationality through the naturalization of his parents or by virtue of being born in Thailand of an alien father whose nationality he may acquire. Permission for such renunciation is to be granted within one year of attaining majority and may be withheld by the Minister of the Interior only if Thailand is engaged in armed conflict or is in a state of war. A person who is of Thai nationality by virtue of having been born within the Kingdom of Thailand of an alien father and is thus able to acquire the nationality of his father, or a person who has acquired his Thai nationality by naturalization applied for by his parent, but who fails to renounce that nationality within one year of attaining his majority, or a person who is of Thai nationality as well as of foreign nationality, or a person who has acquired Thai nationality by naturalization, is authorized under s. 15 to apply to the Minister of the Interior for permission to renounce

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his Thai nationality. The Minister may grant or refuse such permission at his discretion. The same procedure is available to a person who could have renounced his Thai nationality under s. 14, but failed to do so within the prescribed time limit.

Under s. 16 the Thai nationality of an alien woman married to a person of Thai nationality may be revoked if the marriage was effected by concealment of facts or by false representation of material circumstances, or if the woman commits any act which is prejudicial to the security of the state or which conflicts with the interests of the state, or which amounts to an insult to the nation, or if the woman commits any act contrary to public order or to good morals. Under s. 17 the Thai nationality of a person born within the Kingdom of Thailand of an alien father may be revoked if that person resides in the foreign country of which his father is, or previously was, a national, and does so for a consecutive period of more than five years from the date of attaining his majority. Under s. 17 there is also provision for revocation by reason of other specified grounds. Under s. 18 the Minister of the Interior is empowered to revoke the Thai nationality of a person born within the Kingdom of Thailand of an alien father, or born of an alien mother but of a father who, though the legitimate father, is of unknown nationality and is resident within the Kingdom of Thailand only temporarily or illegally. Under s. 19 the Minister of the Interior is empowered to revoke the Thai nationality of a naturalized person if that nationality was obtained by concealment of facts, or by false representation of material circumstances, or by reason of other specified grounds. The children of a person thus naturalized may be included in the revocation. Under s. 20 a person of Thai nationality born within the Kingdom of Thailand of an alien father loses his Thai nationality if he obtains an aliens' identification card under the law relating to the registration of aliens (The Registration of Aliens Act, B.E. 2493 (1950) of 14 Nov. 1950 (Gov.Gaz. vol. 67 part 62 p. 984), as last amended by the Registration of Aliens Act (no. 3), B.E. 2497 (1954) of 12 Oct. 1954 (Gov. Gaz. vol. 71 part 64 p. 1496)).

Under s. 22 a person of Thai nationality loses that nationality upon foreign naturalization.

2. Territorial Division

For administrative purposes the country is divided into 71 territorial divisions (*changwats*) subdivided into 550 districts (*amphoes*), 59 sub-districts (*keing amphoes*), and 5439 communes (*tambons*). Each of the divisions, except Bangkok Metropolis which is also a *changwat*, is under the authority of a gov-

ernor, a permanent civil servant who is responsible to the Under-Secretary of State for the Interior, while Bangkok Metropolis is under the authority of a political appointed governor, who is directly responsible to the Minister of the Interior.

3. State Organs

Under the Interim Constitution of the Kingdom, B.E. 2515 (1972) of 15 Dec. 1972 (Gov.Gaz. special issue vol. 89 part 192) the executive power is exercised by the Council of Ministers, the legislative power by the National Legislative Assembly, and the judicial power remains with the courts.

a. The King is *Head of State* and of the Armed Forces. The sovereign power emanates from the whole Thai people, and is exercised by the King under the provisions of the Constitution.

b. The *National Legislative Assembly* consists of 299 members appointed by the King. Its functions are to control the administration of state affairs by means of presentation of motions, debates, passing of resolutions and interpellation, and to legislate.

c. The *Council of Ministers* administers the state affairs. The President of the Council of Ministers (Prime Minister) and other ministers are appointed by the King.

There are 11 ministries of state besides the Office of the Prime Minister, and one sub-ministry. A ministry or sub-ministry is headed by a Minister of State who is in some cases assisted by one or more Deputy Ministers of State. The Under-Secretary of State of a ministry or sub-ministry is the most senior permanent civil servant in the ministry or sub-ministry.

4. The Judiciary

The Interim Constitution of the Kingdom, B.E. 2515 (1972) (*supra* 3) guarantees the independence of the judge in the exercise of his functions.

a. The Interim Constitution provides that where a question arises as to whether any act or performance is contrary to or inconsistent with, or not in compliance with the provisions of this constitution, it shall be decided by the National Legislative Assembly.

b. Under the Law on the Organization of the Courts of Justice, B.E. 2477 (1934) of 21 June 1935 (Gov.Gaz. vol. 52 p. 983) the *Courts of Justice* are divided into three classes, namely the Courts of

First Instance, the Court of Appeal and the Supreme Court of Appeal.

(1) The Courts of First Instance for Bangkok and Thonburi are: (a) the *Magistrates' Courts* (*Khwaeng Courts*). The territorial jurisdiction of these courts is determined by the Acts creating them. They are competent to try and adjudicate civil cases where the value of the property in dispute or the amount of money claimed does not exceed Baht 2000 (approx. US \$ 100). They are also competent to try and adjudicate criminal cases where the maximum punishment provided by law does not exceed three years imprisonment or a fine of Baht 6000 (approx. US \$ 300), or both imprisonment and fine. In these criminal cases, however, the Magistrates' Courts may not inflict any punishment exceeding six months imprisonment or a fine of Baht 2000 or both imprisonment and fine; (b) the *Civil Court* which has territorial jurisdiction throughout Bangkok and Thonburi and is competent to try and adjudicate all civil cases; (c) the *Criminal Court* which also has territorial jurisdiction throughout Bangkok and Thonburi and is competent to try and adjudicate all criminal cases.

(2) The Courts of First Instance for the territorial divisions (*supra* I 2) are: (a) the *Magistrates' Courts* which are identical to the Magistrates' Courts for Bangkok and Thonburi; and (b) the *Changwat Courts* whose territorial jurisdiction is determined by the Acts creating them. These Courts are competent to try and adjudicate all civil and criminal cases.

In accordance with the provisions of the Civil and the Criminal Procedure Codes, appeals, both on questions of fact and questions of law, lie from all the Courts of First Instance to the Court of Appeal in Bangkok and finally to the Supreme Court of Appeal which is also in Bangkok.

c. The Legislative and Judicial Council Act, B.E. 2476 (1933) of 9 Dec. 1933 (Gov.Gaz. vol. 50 p. 779) confers certain duties upon the Legislative and Judicial Council which is a governmental body. Among these duties is that of hearing and adjudicating the administrative cases that may be ascribed to its jurisdiction by law. No law has been enacted, however, to ascribe any such cases to its jurisdiction.

d. The Petition Act, B.E. 2492 (1949) of 15 March 1949 (Gov.Gaz. vol. 66 part 15 p. 124) sets up the Commission for the Consideration of Petitions, the members of which may not be governmental officials on active service. The Commission hears petitions from any private individual seeking redress of an injustice. The injustice is not limited to administrative acts by the government, but, as it has no power to enforce its decisions, the Commission acts as an advisory board to the Prime Minister.

e. The Public Prosecutor Act, B.E. 2498 (1955) of 30 Aug. 1955 (Gov.Gaz. vol. 72 part 67 p. 1354) guarantees the independence of the Public Prosecutor in the exercise of his powers. The Minister of the Interior may not interfere with the process of the institution or non-institution of legal proceedings by the Public Prosecutor, who may, after due consideration, issue a prosecution or non-prosecution order to the case submitted to him by the investigating officer. It is the Public Prosecution Service Commission, created by the Public Prosecution Service Act, B.E. 2503 (1960) of 23 Dec. 1960 (Gov. Gaz. vol. 77 part 106 p. 1), that is responsible for considering all matters concerning the appointment, promotion and transfer of the Public Prosecutor and any disciplinary measures that may be taken against him.

II./III. SOURCES AND DEVELOPMENT OF THE LAW

1. Originally the country had been an absolute monarchy. On 24 June B.E. 2475 (1932), a revolution took place and an agreement was thereby reached that the monarchy thenceforward should come under the constitution. The Constitution of the Kingdom of Thailand B.E. 2475 (1932), its amendment and subsequent replacements have now been replaced by the Interim Constitution of the Kingdom, B.E. 2515 (1972) (*supra* I 3).

2. The codification of law began in the early part of the twentieth century. The first of the most im-

portant codes, namely, the Penal Code, was promulgated in B.E. 2451 (1908). It was followed in the year B.E. 2478 (1935) by other codes such as the Civil Procedure Code (Gov.Gaz. vol. 52 p. 730), the Criminal Procedure Code (Gov.Gaz. vol. 52 p. 605) and the Law on the Organization of the Courts of Justice (*supra* I 4b). The Civil and Commercial Code was finally completed in B.E. 2478 (1935) after some 30 years of preparation. It contains six Books in all. The first two deal with the General Principles and Obligations and were promulgated in B.E. 2468 (1925) (Gov.Gaz. vol.

42 p. 3). The third Book, dealing with Specific Contracts, was promulgated in B.E. 2472 (1929) (Gov.Gaz. vol. 45 p. 3), and the fourth Book, dealing with Property Law in B.E. 2475 (1932) (Gov.Gaz.vol. 47 p. 445). The fifth Book, dealing with Family Law and the sixth Book, dealing with the Law of Succession were both promulgated in B.E. 2478 (1935) (Gov.Gaz. vol. 52 p. 534). The new Penal Code, which superseded the Penal

Code of B.E. 2451 (1908), became effective in B.E. 2500 (1957) (Gov.Gaz. vol. 73 part 95 p. 12).

Statutes are published in the Government Gazette and they are cited by their full titles. Only the more important decisions of the Supreme Court of Appeal are selected for publication by the Bar Association of Thailand under the title *Kham Phiphaksa Dika* (published in the periodical Decisions of the Supreme Court of Appeal).

IV. PRIVATE LAW

It should be noted that there is no distinction made in Thai law between private (civil) law and commercial (economic) law. Both are covered by the Civil and Commercial Code (1935, *supra* II 2). There is, however, an exception in the case of bankruptcy which is dealt with under a separate Act.

1. General Principles of the Civil and Commercial Code

The provisions relating to general principles are based on French, German, Japanese and Swiss laws. The law must be applied in all cases which come within the letter or the spirit of any of its provisions. Where no provision is applicable, the case must be decided according to local custom. If there is no such local custom, the case must be decided by analogy to the provision most nearly applicable and, in the absence of such a provision, by the general principles of law.

2. Persons

The law of persons is contained in the Civil and Commercial Code (CComm. C) Book I. Personality commences with the completion of birth as a living child and terminates upon death. A child *en ventre sa mère* is capable of possessing rights, provided that it is subsequently born alive. A person becomes *sui juris* when he becomes 20 years old (s. 19) or upon marriage (s. 20). A minor must obtain the consent of his legal representative for the performance of a legal transaction (s. 21). All acts performed by him without such consent are voidable except where by such acts he merely acquires a right or is freed from a duty, where such acts are of a strictly personal nature, where such acts are in keeping with his station in life and are necessary to satisfy his reasonable needs, or where he makes a will on or after becoming 15 years old. A minor must ask permission from

his legal representative if he wishes to carry on one or more businesses. If the legal representative refuses to grant this permission the court may, on application by the minor, make an order authorizing him to do so if it is of the opinion that the order will be to the advantage of the minor.

A person of unsound mind may be adjudged incompetent by the court on application by the wife, husband, ascendant, descendant, guardian or curator of that person, or by the Public Prosecutor. He may then be placed under guardianship. An act performed by him is voidable, except where the consent of the guardian has been obtained.

A person who is incapable of managing his own affairs because of physical or mental infirmity, habitual excesses in expenditure or intoxication may likewise be adjudged quasi-incompetent and placed under curatorship. Except where the consent of the curator has been obtained, the following acts performed by the quasi-incompetent are voidable: receiving or employing capital, contracting a loan or giving security, performing any act the object of which is to acquire or part with a right in immovable or valuable movable goods, performing an act relating to law-suits, with the exception of applying for the removal of the curator, making a gift, compromise or agreement to submit to arbitration, accepting or renouncing a succession, refusing a gift or legacy or accepting one encumbered with a charge, constructing, rebuilding or enlarging buildings or making extensive repairs, and finally hiring or letting property for longer than six months where the property is movable, or for three years where immovable. Under normal circumstances the court may order the quasi-incompetent person to obtain the consent of the curator for performing acts other than those mentioned above.

A legal entity can come into existence only by virtue of the provisions of the Civil and Commercial Code and of certain other laws. A legal entity enjoys the same rights and is subject to the same

duties as a natural person, except those which, by reason of their very nature, may be enjoyed or incurred only by a natural person. The following are legal entities under the Civil and Commercial Code: public bodies, monasteries, registered partnerships, limited companies, associations and authorized foundations.

3. Legal Transactions

Under CComm.C Book I legal transactions are defined as voluntary, lawful acts the immediate purpose of which is to establish legal relations between persons creating, modifying, transferring, preserving or extinguishing rights.

An act is void if its object is expressly prohibited by law, if it is impossible, or if it is contrary to public order or good morals. A fictitious declaration of intent made with the connivance of the other party is void but this fact cannot be raised as a defence against any third party who acts in good faith and is injured thereby. A declaration of intent is also void if made under a mistake as to an essential element of the legal transaction. If this mistake was due to the gross negligence of the person making the declaration, however, that person cannot invoke such invalidity.

An act performed by a minor, a person of unsound mind, or by an incompetent person as outlined above, is voidable. A declaration of intent is voidable if made under a mistake as to the nature of the person or the thing concerned, if the nature of that person or thing is considered to constitute an essential part of the agreement. A declaration of intent obtained by fraud or by duress is also voidable. A voidable act may be ratified, and is deemed to be ratified in the following circumstances: where the obligation assumed by the act has been fully or partially performed, where performance of the obligation assumed by the act has been demanded, where a renewal of the obligation has been effected, where security has been given for the obligation, and where the whole or part of any right or liability arising from the voidable act has been transferred. When a voidable act is avoided, it is deemed to have been void from the beginning. If a person knew or ought to have known of the voidability of an act and the act is subsequently avoided, that person is deemed to have known that the act was invalid. The parties must be restored to the position in which they were previously, and if this is not possible, then suitable indemnification must be made.

4. Obligations

The law relating to obligations, contained in

CComm.C Book II, is based closely on German and Japanese laws, and does not require any special mention here. The Civil and Commercial Code treats all contracts alike, that is to say, it makes no distinction between a private contract and a commercial contract. In contrast to the position under English Common Law, there need be no consideration to form a contract. However, as under German and Japanese laws, the intention of the parties to form a binding contract is an essential element. The same also applies to acts performed by an agent acting without authority, to unjust enrichment and to torts.

5. Specific Contracts

The provisions relating to specific contracts, contained in CComm.C Book III, are based on German and Japanese laws, but are also influenced by English Common Law. English influence is noticeable, for example, in the law of sales, where, upon the sale of specific goods, ownership passes immediately, without delivery or payment, to the purchaser, except where the contract of sale is subject to a condition or a term. Book III of the Code contains further titles which deal with the law relating to exchange, gifts, the hire of property, hire-purchase, the hire of services, the hire of labour, carriage, loans, deposit, suretyship, mortgage, pledges, warehousing, agency, brokerage, compromise, gambling and betting, current account, insurance, bills, partnerships and companies, and associations.

6. Law of Property

The provisions relating to the law of property, contained in CComm.C Book IV are very similar to those under German and Japanese laws. The only real rights that may be created are those that are recognized by law.

7. Family Law

The provisions relating to family law, contained in CComm.C Book V are based on the old law and on the institutions and customs of the country. These provisions are qualified, however, by certain concepts from German and Swiss laws. The equality of the sexes is guaranteed. For a betrothal or a marriage to be effected, a man must be at least 17 years of age and a woman at least 15 years of age (s. 1435, 1445). If the man or woman is not *sui juris*, the consent of his or her parents or surviving parent is required for the betrothal or marriage. A married person is independent of his or her parents.

The husband is the head of the marital union (s. 1454) and both partners must maintain and support one another (s. 1453). The wife, however, has an absolute right to conduct domestic matters herself. As far as the property of the spouses is concerned, that of the wife is divided into: (1) personal property (*Sin Suan Tua*); and (2) original property (*Sin Derm*), i.e., the property the wife owned before her marriage. The wife remains the sole owner of her personal property. Her original property, however, is managed by her husband, except where an agreement to the contrary was made before the marriage. The property acquired during the marriage is called marriage property (*Sin Somros*) and this belongs equally to the husband and to the wife. It cannot be divided until the death of one of the spouses or until the dissolution of the marriage.

8. Law of Succession

The provisions relating to the law of succession, contained in CComm.C Book VI, are based on French, German and Japanese laws, as well as on Thai custom. A person may make a will to dispose of his property after his death in any way he likes. He may even exclude his wife and children from the inheritance altogether. In practice, however, this is not the case, since a testator is both culturally and morally obliged to provide for his wife and children. The guiding principle of inheritance is that the closer relative takes precedence over the more distant relative. The surviving spouse is a statutory heir and is entitled to a share of the inheritance in the same proportion as the deceased's children.

COMMERCIAL (ECONOMIC) LAW

The relevant Law is contained in CComm.C Book III.

1. There are three kinds of *partnerships and companies*, namely: (1) an ordinary partnership of unlimited liability which may be registered or not; (2) a limited partnership, which must be registered and which has one or more partners, whose liability is limited to the amount that each respectively undertakes to contribute to the partnership, and one or more partners who are jointly liable without limit for all the obligations of the partnership; and finally (3) limited liability companies, which must be registered and must consist of at least seven shareholders, whose liability is limited to the amount, if any, that is unpaid on the shares held by each of them. These limited liability companies are similar to their European counterparts. A partnership or company, when registered, constitutes a legal entity that is distinct from the partners or shareholders of whom it is composed.

2. The principles governing the law relating to *bills* are taken from the Geneva Convention, the German and Japanese Commercial Codes, the Swiss Law of Obligations, and the English laws relating to bills of exchange and cheques. A bill of exchange must contain the following particulars: (1) its designation as a bill of exchange; (2) an unconditional order to pay a sum certain in money; (3) the name or trade name of the drawee; (4) the date of its maturity; (5) the place of payment; (6)

the name of the drawer; (7) the date and place of issue of the bill; and (8) the signature of the drawer. Similar provisions apply in the case of promissory notes and cheques.

3. The law governing *bankruptcy* is contained in the Bankruptcy Act, B.E. 2483 (1940), as amended by the Bankruptcy Act (no. 2), B.E. 2511 (1968) of 2 April 1968, (Gov.Gaz. vol. 85 part 28 p. 19). A creditor may petition to have a debtor made bankrupt where: (1) the debtor is insolvent; (2) he is the sole creditor, and his claims against the debtor aggregate not less than Baht 30000 (approx. US \$ 1500), or he is a joint creditor on a joint petition and the joint claims aggregate not less than Baht 30000; and (3) the amount of the debt may be definitely fixed, whether the repayment is due immediately or in the future. A creditor with security may petition to have a debtor made bankrupt where: (1) the creditor is not prohibited from enforcing the repayment of the debt from the debtor's property to an amount not exceeding the value of the security; and (2) he declares in his petition that if the debtor is made bankrupt he will surrender his security for the benefit of the creditors, or he values the security at less than 30000. When a debtor is adjudged bankrupt, an official receiver takes control of the realization of the bankrupt's property.

VI. STATE DIRECTION OF TRADE

The general principle is that of free trade. Export controls are imposed, however, upon certain basic commodities such as rice, rubber, teak, hides, scrap iron and raw silk. Permission must be obtained before commodities such as these can be exported, and export tax is also imposed. Most foreign commodities can be imported freely.

However, restrictions are imposed upon the import of certain firms. They are also imposed upon commodities where the government, in order to protect foreign investment and promote domestic industry, has granted tax reductions and other concessions for the benefit of the domestic industry.

The National Economic Development Board, created by the National Economic Development Board Act, B.E. 2502 (1959, of Gov.Gaz.vol. 76 part 69 p.), is re-

sponsible for the economic planning of the country. The Board is responsible for the economic planning of state enterprises such as the railways, ports, and radio and television. It is not responsible, however, for any private enterprise. The planning becomes effective as soon as it has been approved by the Council of Ministers. The laws that are relevant here are the law on the government budget and the law relating to loans to industry by monetary institutes (the Annual Budget Appropriation Act and the Industrial Finance Corporation of Thailand Act, B.E. 2502 (1959) of 28 Oct. 1959 (Gov.Gaz. vol. 76 part 99 p. 376) last amended by the Industrial Finance Corporation of Thailand Act (no. 3), B.E. 2506 (1963) of 23 July 1963 (Gov.Gaz. vol. 80 part 73 p. 376)).

VII. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT

There is no law that protects industrial property rights as far as industrial patents and designs are concerned. However, the names of firms, trade marks, and copyright are legally protected in much the same way as in most other countries (the Business Registration Act, B.E. 2499 (1956) of

7 Feb. 1956 (Gov.Gaz. vol. 73 part 13 p. 50), the Trade Marks Act, B.E. 2474 (1931) of 5 April 1931 (Gov.Gaz. vol. 48 p. 1), and the Protection of Literary and Artistic Works Act, B.E. 2474 (1931) of 21 June 1931 (Gov. Gaz. vol. 48 p. 127)).

VIII. JUDICIAL PROCEDURE IN CIVIL AND COMMERCIAL CASES

Civil Procedure Code, promulgated in B.E. (1935) (Gov.Gaz. vol. 52 p. 730), applies fully to both civil and commercial cases. The of procedure are similar to those of the Chinese and Japanese Civil Procedure Codes. The rules are: (1) commencement of an action by the party concerned, that the court will not commence any proceedings public order or justice are affected; (2) proceedings conducted on the basis of written pleadings that is to say, the plaint, reply and summons must be made in writing, and a copy of the

summons must be served upon the other party; (3) the court must settle the issues according to the pleadings filed by the parties; (4) no judgment or order may be awarded for anything in excess of or not included in the plaint; (5) an appeal, both on questions of fact and questions of law, lies against any judgment or order of the Court of First Instance to the Court of Appeal and finally to the Supreme Court of Appeal, except where the amount claimed is trivial; and (6) arbitration clauses agreeing on a foreign arbitration are not recognized.