

Contemporary Legal Knowledge and Practice

Introduction

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1	0.00 – 1.49	<p>Hello! This is the video lecture for session one of comparative laws.</p> <p>The topic of comparative laws is intended to introduce you to the civil law tradition and to provide a general understanding of major features of the civil law tradition and how they differ from the common law tradition.</p> <p>We seek to achieve this by looking at three different areas of law:</p> <ul style="list-style-type: none"> • First, contract law - this will be covered in session two. • Second, what is known as tort law, at common law or delict or civil wrong, as referred to in civil law, this will be covered in Session 3. • Third and finally, we will consider certain key differences between common law and civil law in civil litigation, which will be covered in Session four. <p>It is important to bear in mind that the purpose of this course is not to make you a qualified civil law lawyer. Rather, it is to sensitize you (as someone who will come from the common law tradition) to the differences between the two legal traditions and how these differences inform the thinking and analysis of legal issues.</p> <p>As such, as part of the learning objectives, we will also explore the practical application of our knowledge through the use of a hypothetical fact pattern. We will discuss the hypothetical fact pattern during our contact sessions.</p>
2	01:50 – 03:32	<p>In this video lecture, we will introduce you to the civil law tradition. In particular, we will look at the civil law tradition as adopted in Indonesia and in Thailand. We will do so by introducing you to the Civil Code in Indonesia and the Civil and Commercial Code in Thailand.</p> <p>We have selected Indonesia and Thailand for several reasons.</p> <ul style="list-style-type: none"> • First, they are two of Southeast Asia's largest economies and close trading partners of Singapore. If you intend to practice law in Singapore, you will no doubt encounter issues and matters which are connected to one or both of these countries in the course of your career. • Second, they have been selected to showcase the fact that the civil law tradition is not homogeneous. <ul style="list-style-type: none"> ○ There are differences within the systems. ○ Indonesia's legal system, for example, is derived from the Dutch and its civil code is based on the French or Napoleonic Code.

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		<ul style="list-style-type: none"> ○ Thailand, on the other hand, has adopted a mixture of French and German civil law traditions. ○ More importantly, like common law, civil law is not static. It has been adapted and it has evolved differently in different jurisdictions, although the core remains the same. ● Finally, we will touch on the practical significance of the treatment of judicial decisions in civil law jurisdictions.
3	03:33 – 05:46	<p>The development of law in common law and civil law jurisdictions has followed independent paths, with each having its own distinct history and collection of guiding principles.</p> <p>When we refer to civil law, we are referring to the system of law that originated from continental Europe and which is based on codified law drawn from sources such as custom and ancient Roman law. This codified system of law is the core feature of civil law.</p> <p>Countries with civil law systems have continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure, the penalties and remedies, etc. Put simply, the source of law is the code. This will become evident when we move on to look at the Civil Code of Indonesia and the Civil and Commercial Code of Thailand.</p> <p>Such codes distinguish between different categories of law, and they are intended to be comprehensive and deal with all legal issues that could arise from different relationships. For example, Book Three of the Indonesian Civil Code deals with obligations, and these include obligations which arise out of law or out of agreements, i.e. contract law as we know it in common law.</p> <p>A civil law practitioner's first port of call when considering a legal issue will therefore be the code which is most likely to apply to that issue. Therefore, case law or judgments <i>do not carry the same weight or importance as the provisions of the code.</i></p> <p>On the other hand, while common law does rely on statutes, it is largely based on precedence and development of case law, i.e., an iterative interpretation of the law. This is the core difference between the two legal traditions.</p>
4	05:47 – 07:32	<p>Before we move on to the second part of session one, which introduces the Indonesian Civil Code, we'd like to introduce the fact pattern to you briefly. The fact pattern you see on the screen has been made available to you.</p> <ul style="list-style-type: none"> ● It concerns two parties, an Indonesian publisher, Sophie Publishing Limited or SP, which publishes a popular women's magazine, (Her)Story and a Thai leather goods company with a major brand, Suey Mark Mak or SMM. ● SP and SMM have entered into a contract which concerns advertisement placements in SP's magazine.

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		<ul style="list-style-type: none"> • SMM claims that it agreed to advertise in a magazine because of the reputation of the magazine's editor, which subsequently resigned. • There is a question about whether SB knew about the editor's planned resignation when it signed the contract with SMM. • As a result of these events, SMM does not wish to be bound by the contract anymore. <p>There are a series of issues that we will consider through the lens of the civil law and whether our conclusions will change if they are considered through the lens of common law. As mentioned earlier, we will use this fact pattern to familiarize ourselves with civil law concepts and how they differ from the common law, and we will discuss these during the contact sessions. In the first contact session, we will cover questions one to three, and in the second contact session, we will cover question four.</p>
5	07:33 – 08:01	<p>Thank you, Gitta. Hello everyone, now I will speak about the Civil Code in Indonesia. Indonesia's modern legal system is derived from Dutch models. The Dutch Civil Code was brought into force in Indonesia in 1847, but it still remains as the backbone of Indonesian civil law. It serves as the fundamental legal framework for contractual relationships, embodying principles that have endured over time.</p>
6	08:02-12:43	<p>The Civil Code is divided into four books, as you can see on the slide now.</p> <ol style="list-style-type: none"> 1. Book One: about persons that cover subjects of law, legal capacity, marriage and matrimonial assets. 2. Book Two deals with goods; 3. Book Three regulates contracts; and 4. Lastly, Book Four, that sets out statutory limitation periods and some aspects of civil evidence law. <p>Now some matters regulated in Book One include the right of citizenship, Institution of Civil Registration, residence or domicile, marriage, divorce, family law, guardianship, custody and maturity. I'll pause here to note that laws in civil jurisdictions are often referred to as law number "x" of a certain year. If it is replaced or amended, you look out for the same title, but it will now be number Y of year Z.</p> <p>Book Two regulates property rights. The understanding of property as a legal object doesn't only cover tangible property, but also intangible property, such as rights over tangible property.</p> <p>The contract law is regulated in Book Three, starting with Article 1233, through Article 1456, the fifth chapter of Book Three regulates specific contracts such as sale of goods, barter, hiring and so on. A simple practical point, breach of contract is commonly referred to as default.</p> <p>A wrongful act, on the other hand, is closer to what we understand as torts in common law. Civil law jurisdictions rely on codified law.</p>

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		<p>Each type of tort is codified. For example, there are specific provisions in the Criminal Code and civil code that deal with specific civil liability for specific lower-level crimes and torts, such as arson, theft and minor assault.</p> <p>Generally speaking, there is no extra statutory notion of tortious liability, at least not as understood as in common law jurisdictions.</p> <p>One more practical point:- in many Indonesian local government cases, parties allege both default and wrongful acts, the remedies for each are different and also governed by relevant codes.</p> <ul style="list-style-type: none"> • Now, there is no official Indonesian language version of the Civil Code. The original Dutch language version of the mid-19th century remains as the authoritative version, and this creates serious difficulties. • In many civil law countries, courts rely heavily on doctrine that is legal scholars to help interpret and apply the codes. For Indonesia, this means that the old Dutch legal scholar's interpretation of the code as it stood in 1847 is a source of law. • While some of this has been translated, much of the code has not, making it inaccessible to lawyers and judges who cannot read Dutch. • Because the original code is in Dutch, amendment is near impossible, as legislators would need to enact new provisions in Dutch, legislators have, however, preferred to avoid directly amending the code and chose to issue new statutes that override the code. • For example, the agrarian law in 1960 replaced many of the code's provisions on real property, and the 1974 marriage law replaced many of the code provisions on marriage. • Nevertheless, most of the code remains intact, and hence continues to be applied. Most notable is the law of contract, which is still governed by the code. <p>Other than the code and statutes, many civil jurisdictions like Indonesia also have supplementary laws. For example, many government bodies are able to issue what are known as the implementing regulations, and typically, a law will be passed, and relevant ministries will then issue further guidelines under certain regulations that can be changed and updated from time to time.</p>
7	12:44 – 14:48	<p>Now, let me use a recent development to illustrate what we discussed. Toll roads, as you see on the screen.</p> <ul style="list-style-type: none"> • Now, there were various developments that could not be accommodated by the toll road then known as Law Number 38 of 2004 on Roads.

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		<ul style="list-style-type: none"> • On 12th January 2022, Road Law No 2 of 2022 (also referred to as “law number 2” or “the road law”) was enacted to replace the toll road law. The terms of law number 2 were brought, for example, in relation to charging of tariffs on toll roads, the road law now introduce other grounds for tariff adjustment. <ul style="list-style-type: none"> ○ One, there is a procurement of traffic services in the toll road network system in certain regions. ○ Two, there's an expansion of scope in the business plan that impacts investment viability; and/or ○ Three, there is a central government policy that affects investment viability. <p>Note that these additional grounds for tariff increase have actually existed in many of the toll road concession agreement. The toll road concession agreements usually offer a relief or compensation through, among others, tariff increase, or extension of the concession term should these circumstances occur. The road law has now codified into the legislation to give legal threats for investment.</p> <p>The laws also cross refer to each other, and that's also something to look out for when reviewing civil law codes. For example, the toll road law states that land procurement for public roads is carried out based on the law and regulations relating to land procurement for public interest, that is law number 2 of 2012 on land procurement for development for public interest (also known as “Law No. 2 of 2012 on Land Acquisition in the Public Interest”).</p>
8	14:49 – 15:26	<p>Importantly, law number two needed implementing regulations to give it clearer scope. The law itself will typically note that they only come into force when certain conditions have been met.</p> <p>Implementing regulations can be thought of as supplementary legislation, where the actual detail of the steps intended, or procedures intended by the law are clarified. We saw that the new toll road was published in 2022. In May [2024], the implementing regulations were issued.</p>
9	15:27 – 17:23	<p>It is these regulations that clarified how tariff rates will be increased, as it can be seen from this example, it may take some time for the implementing regulations to be issued. Until they are issued. It is not uncommon in the context of Indonesian regulations, to have a period of uncertainty to understand the intention of the lawmakers and the desired outcome from the law.</p> <p>During that period, consultations will need to be made with the relevant ministries or agencies, which, of course, would help, but should still be taken under great care in considering the right interim view until the actual implementing regulations are issued. Another great example is the Indonesian language law that was issued in 2009 (also known as “Law No. 24 of 2009”):</p>

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		<ul style="list-style-type: none"> • This became a controversy because one of the provisions of the law mandates the use of Indonesian language in contracts. • However, the law doesn't say anything about the consequences for contracts that are not made in Indonesian language. • These led to controversial decisions made by the Supreme Court that declared contract as null and void in the absence of Indonesian language version of the contract. • It was only later, in 2019, 10 years after the language law was issued, that the implementing regulation was issued to give some clarity about the language provision, and only as recent as 2023 that the Supreme Court issued a circular letter that confirms its position that a contract that was made without the Indonesian language version can only be annulled if it is proven that such absence was not as a result of a bad faith. <p>Now I will pass this over to Warathorn.</p>
10	17:24 – 21:59	<p>Thank you, Gitta and Debby. Let's hear some thoughts from Thailand.</p> <p>Even though Thailand is a civil law country, the Thai legal system is a big one. It has been influenced by both major legal system of the civil which are civil law system and common law system.</p> <p>Thailand has adopted a civil law system as a main legal system, but for the legal tradition, and also the common law system has also been a part. The supreme law of Thailand at present is the 2017 Constitution.</p> <p>The main source of law is statutory law. The Thai Civil and Commercial Code ("CCC") is the main statute dealing with private law.</p> <p>Private law includes relationship between private individuals. It is divided into two main branches: civil law and commercial law.</p> <ul style="list-style-type: none"> • Civil law regulates property relations and personal relations between private persons. • Why? Commercial law input doesn't include governing business and commercial contracts between merchants during the course of their business, as well as the instruments they have at their disposal. <p>The content of Thai court laws was drawn from the laws of larger countries having codified systems, for example, France, Switzerland and Germany, and from countries with common law system, for example, Great Britain, and also from the traditional laws of Thailand.</p>

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		<p>I understand that many civil law nations simulate civil law from commercial law. France, Germany and Japan, for example, still have similar commercial codes. Thailand, however, has drafted and combined into one code that deal with both civil and commercial contracts. Thus, the scope of the code has been extended, so it has to make it a “Civil and Commercial Code”.</p> <p>Two sections are applicable to both civil and commercial matters. Like in Indonesia, the Civil and Commercial Code does not comprise the whole of the laws on the subject matter which is of purpose to you.</p> <ul style="list-style-type: none"> • Thus, for instance, the law of companies contained in the court is subdivided by the Public Limited Property Act 1992 and also the Securities and Exchange Act 1992. • The law as to unlawful acts by liability for damages arising from, let's say, product X [is subdivided by] The Liability for Damages Arising from Unsafe Products Act of 2008. • The law as to intellectual property [is subdivided] by the Copyright Act 1994, Patents Act 1979 and the Trademarks Act 1991 etc. <p>This means that the CCC is just only the main laws, but they also have added statutory provisions to deal with some specifics. And actually, for the new act, normally, Parliament will enact statutes to address specifics like I just mentioned.</p> <p>Also, other than the Civil and Commercial Code, there are important codes, i.e. criminal codes to deal with criminal offenses, civil procedure codes to deal with procedure of civil cases (including commercial cases) in the Court of Justice, and [the] criminal procedure code [which deals] with the procedure in the Court of Justice for the criminal case.</p>
11	22:00 – 23:31	<p>The arrangement of the Civil and Commercial Code is, to a great extent, based on the arrangement of the German content, which in turn, has its roots in Roman law. The Thai Civil and Commercial Code is made up of six parts known as books, dealing with the general provisions of court.</p> <ul style="list-style-type: none"> • Book One: general principles, the provision on national and legal person, things among others. • Book Two, obligations. • Book Three, specific contracts. • Book Four, property. • Book Five, family law. • Book Six, succession. <p>The general part of the Civil and Commercial Code, which we refer to as the CCC, deal mainly with the person, natural and juristic, in whom rights may vest.</p>

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		<p>The CCC contains general rules relating to obligations, dealing with contractual arrangement, certainly in so far as it is necessary, as well as special rules and to particular kinds of obligation, it is also concerned with the mechanism of prevention, compensation and enforcement in case rights are violated.</p>
12	23:32 – 25:09	<p>[Book Three] is devoted to specific contracts, the non multi regulation of nominate the contracts under Civil and Commercial Code cover nearly 30 categories of the contracts.</p> <p>Normally contracts are regulated specifically because they are concerned particular relations between person which occur frequently and are always construed in the same form. As you can see from this slide, Book Three specific contracts comprise of more than 23 titles from sale, exchange, gift, hire of property, hire-purchase, hire of services, hire of work, carriage, loan and deposit and all others.</p> <p>[Book Four has] developed, which had led to a more marked distinction between the law as to land and law as to movable [property] as separate divisions, deals with [immovable property], the rules as to the acquisition and loss of property etc is given separately in respect of immovable and movable property. That's Book Four.</p> <p>And Book Five, family and Book Six, succession.</p>
13	25:10 – 27:57	<p>As a comparison of wrongful acts in Indonesia, we have set out examples of wrongful acts and corresponding compensation under the Thai CCC on this slide.</p> <p>Section 420 is the baseline for wrongful acts, or tortious acts. It set out the element of the wrongful acts. Almost all cases where there is an allegation of wrongful acts, we will list a bit of section 420 before going on to list another section that may be more specific:</p> <ul style="list-style-type: none"> • The CCC also indicates liability for person actions indicated in section 425, which is a wrongful act between employer and employee. • Section 427, which is a wrongful act between principal and agent. • Section 428, which is a wrongful act between employer and contractor. • Section 437 which is a wrongful act, a loss from vehicle, etc. <p>Under the purple section, you can see that the CCC also set out the form of compensation once liability has been established, lines to compensation are exhaustively set out in the CCC, including on interest.</p> <p>And for the last section [Section 448], which is prescription. The prescription period, specifically for wrongful acts under Thai law is relatively short. The claim must be bought within one year from the date on which the injured person comes to know of the tortious act and the identity of the person born to pay compensation, or within 10 years from</p>

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		the date of the tortious act. Nonetheless, if the damages claimed are based on an act of punishment under the Criminal Law for which a longer prescription is provided, such a longer prescription will apply.
14	27:58 – 28:21	<p>We have looked at how in civil law systems, codes, complemented by implementing statutes, form the core of the law.</p> <p>In common law jurisdictions, case law is the backbone of the system, and statutes apply only in certain areas. Having said that, it doesn't mean that case law is entirely irrelevant in civil law jurisdictions.</p>
15	28:22 – 30:02	<p>Civil law jurisdictions do not adopt a <i>stare decisis</i> principle in adjudication. In deciding any given legal issue, precedents serve a persuasive role. Civil Law Courts are expected to take past decisions into account when there is a sufficient level of consistency in case law.</p> <p>As you see on the slide, under civil law, no single decision binds the court. Constant jurisprudence is a principle from the French civil law that continues to apply across civil law jurisdictions.</p> <p>Put another way, a court is required to take past decisions into account only if there is sufficient uniformity in previous case law. No single decision binds a court, and no relevance is given to case law where there have been competing views or decisions. Once uniform, case law develops.</p> <p>Courts treat precedents as a persuasive source of law, taking them into account when making a decision. The higher the level of uniformity in past precedents, the greater the persuasive force of case law. There is therefore considerable authoritative force if there is an observable trend of decisions on any given legal issue.</p> <p>Other than these doctrines of precedents, if the fraction of positive judgments, or fraction of negative judgments, with respect to a legal issue, exceeds a threshold, and then recognition of such legal claims in future disputes will be facilitated or made more difficult by the presence of such consolidated case law.</p>