

LOSS OF INHERITANCE RIGHTS DUE TO BEING EXCLUDED FROM THE SUCCESSION: A COMPARATIVE STUDY BETWEEN THAI LEGISLATION AND THE LAOS PEOPLE'S DEMOCRATIC REPUBLIC'S LAW

**Tattanan Khonglamthan¹, Kamonwan Yoowattana^{2*}, Pattaravis Yoowattana³,
Surasak Meebua⁴**

^{1,2*,4} *Law Department, College of Politics and Governance, Suan Sunandha Rajabhat University,
Bangkok, Thailand,*

³ *Innovation Management, College of Innovation and Management Suan Sunandha Rajabhat, Bangkok,
Thailand*

*E-Mail: tattanan.kh@ssru.ac.th¹, kamonwan.yo@ssru.ac.th^{*2}, surasak.mee@ssru.ac.th
pattaravis.yo@ssru.ac.th³*

ABSTRACT

This paper aims to study the loss of inheritance rights because the heir is legally excluded from receiving inheritance under Thai law in comparison with legislation of the Laos People's Democratic Republic (Loas).

The study found that both Thai law and Laos's law contain provisions regarding the loss of heirs' inheritance rights. The heir may be precluded from succession before or after the death of the owner of the inheritance because he/she is illegally engaged in moving and concealing the existence of property, which are the encroachment on the inheritance property. Exclusion from succession could involve the commission of any act against the owner of the inheritance and other descendants. Based on the law of Laos, it contains border provisions that exclude the right to inheritance than Thai law. The provisions preclude heir who have been convicted of unlawfully intending or attempting to cause the death of the owner of the inheritance or other heirs, which is a crime against life. These models are comparable to Thai law. Laos's law also covers the heir who causes serious harm to the owner of the inheritance, as well as when an heir conceals or supports such an offense. The person may lose the right to inheritance when he/she is judged to fail to perform the duty of care and support the owner of the inheritance as parents and children. The law of Laos also excludes the heir who resides in the same province or city as the owner of the inheritance, but he/she did not arrange a funeral or assign another person to act on his/her behalf. These actions result in losing inheritance rights, which do not appear in Thai law.

Therefore, the paper suggests revising Thai legislation concerning exclusion from succession because the heir committed an offense leading to a final judgment that he/she intended to commit or attempted to unlawfully cause the death of the owner of the inheritance or the person who could inherit before him/her unlawfully. It is essential to specify the heir's actions as "instigator" or "supporter". The

legal model of Laos should be applied to Thai law to preclude the heir who intentionally ignores the legal duty to care for parent, this factor should be taken as another cause of the loss of inheritance rights.

Keywords: Heir, Exclusion from succession, Loss of inheritance rights

INTRODUCTION

The law has equally protected the rights and freedoms of individuals since the beginning of human beings. Various measures of the state have to consider the personal and property rights of individuals. Later, if the people die or if they are deemed as disappeared person as a result of a court order, their rights would be terminated. According to the law, the heirs would inherit the properties, rights, duties, and responsibilities of the deceased.

Heirship is not only caused by the intention of the inheritance owner, according to the will. Social rules, beliefs, religion, culture, and customs of each country determine the status and rights of legal heirs by taking close kinship and marriage relationships into account. Regarding to Thailand in the past, inheritance was distributed according to customary principles by considering the behavior of children to take care his or her parents. Recently, the distribution of inheritance relies on the principle of "close relatives excluding distant relatives", which is to be enforced among relative heirs themselves, the categories of those who have the right to inherit, and the legal share of the heir's inheritance have been established after the law was enacted. This is a similar principle to the Laos's law, a neighboring country with a similar social foundation and way of life to Thai society.

In addition to the law guaranteeing the heirs' right to receive inheritance, the laws of both nations also provide provisions governing the loss of an heir's right to an inheritance through the prescription, renunciation of an inheritance, restriction from receiving an inheritance, and being disqualified from getting the inheritance as a result of the heir's dishonest actions or any other conduct that would make them ineligible to receive the inheritance under the law. As a result, the heir could no longer claim an interest in the inheritance. In some circumstances, it could be in opposition to the actual wishes of the inheritance owner, who intends their property to be distributed to that heir. However, following his passing, the inheritance owner might not be able to remove the restriction.

The author considers that the reason for disqualifying the heir from obtaining the inheritance is crucial. In the issue of being precluded, particularly with regard to the issue of exclusion due to being an unworthy individual, it should be studied and comprehended in a comparative manner between Thai legislation and Laos's law.

LITERATURE REVIEW

A. The meaning of inheritance

The inheritance consists of all categories of the deceased's property, rights, duties, and responsibilities. Inheritable objects include land, a residence, a car, money, and so on. In addition to property, inheritance includes legally recognized and protected rights, such as the right to own land and the hire-purchase agreement, which can be reserved to prevent people from violating the rights and can also be enforced to comply with those rights. The deceased's duties and responsibilities prior to death are considered as inheritance. Creditors may then file to claim against the decedent's estate. However, if the debt is a duty or liability, the heir is not directly responsible for it. The law therefore limits the inheritor's

liability to the amount of the inheritance received. Therefore, the deceased's inheritance is the money to which he or she was entitled prior to or at the time of death. According to the Supreme Court's decision no. 1131/2506, it appears that the welfare funds of the State Railway of Thailand's employees consist of five percent of each employee's monthly salary. In addition, if the employee is forced to leave his employment, the State Railway of Thailand contributes an additional ten percent, plus interest and additional funds of the same amount. Clearly, this fund consists of money to which the employee is already entitled. If that individual pass away, it will become an inheritance, regardless of whether this payment is calculated from the remuneration base. However, if the money is paid as a consequence of death, even when calculated based on salary, it is not the deceased's inheritance. As in the Supreme Court decision of 1953/1972, the special allowance paid in the event of a civil servant's mortality while in service. The amount is three times of the salary at the rate being paid at the time of the decedent's passing. It is not the salary of a government employee. However, this is another portion of the additional funds that the government pays when a government official passes away. The recipient has to be identical to the Royal Decree. Consequently, it is not an inheritance of a deceased government official because it was not money the decedent possessed at the moment of death, including the funds for funeral expenses for members and their families. According to Supreme Court Judgment No. 132/2507, the fund from Teachers Association Funeral Welfare Society, which members contribute to assist with the funeral and family of the member who died, is not the inheritance of the deceased. This includes the inheritance interest acquired after the decedent's death, which is not the inheritance.

B. Patrimonies Successoral and Succession of Estates

To consider heirs' inheritance rights, several theories have to be taken into account. Two of them will be discussed in this section, which include patrimonies succession theory and the principle of succession of estates.

In theory, an estate or inheritance occurs after an individual passes away. This causes both properties and liabilities to become part of that individual's inheritance. Consequently, a portion of the inheritance originates from the individual's properties. However, the inheritance consists of property, rights, duties, and liabilities that are not exclusive to the deceased and will be transferred to the deceased's heirs in accordance with the theory of Succession of Estates.

To determine the entitlement of the heir to inherit the estate, it is necessary to consider whether the deceased has a will and whether the will is enforceable. If it is found that the deceased has sold all of the estate, statutory heir will be basically excluded from inheritance, and other categories of successor will be precluded. However, in the absence of a will, or if the will is invalid, or if the provisions of the will are unenforceable, or if the deceased owns property outside of the will. These properties will be returned to the estate for sharing among statutory heirs.

C. Exclusion from succession under Thai law

According to Thai law, exclusion from succession can occur both prior to and after the inheritance owner's demise. The excluded heir will therefore lose his or her inheritance rights and be unable to exercise the right to claim as a beneficiary in the property. There are two situations of losing inheritance rights, which include the heir being fraudulently involved in the inheritance or knowing that it is detrimental to the benefit of other successors, and the heir having inappropriate behavior. These provisions derive from both the old inheritance law and foreign legal concepts such as those from Japanese civil law, France, and the Federal Republic of Germany.

1) In the event that the heir was eliminated because he or she fraudulently misappropriated or concealed the inheritance, or the heir knew that his or her actions caused other successors to lose their

benefits, according to Section 1605 of the Civil and Commercial Code, "Any heir who takes away or conceals the inheritance to the same amount that he or she will receive it or more by fraud or knowing that he or she harms the benefits of other successors, he or she is excluded from succession. Such heir could not receive inheritance. However, if the heir transfers or hides less inheritance than the portion he or she will receive, such heir would be excluded so that he or she does not inherit only the portion that has been transferred or hidden." Exclusion from inheritance can occur for both a statutory heir and a general successor by will, which means the successor who receives the property according to the testament and the inheritance owner did not specify what assets such a successor would receive. In contrast, if the successor by will whom the deceased made a will to provide specific estate, even if the successor has misappropriated or concealed the inheritance, he or she is not precluded. This is subject to the exception in the second paragraph of Section 1605.

Manipulation of inheritance means making inherited assets move, moving or changing the location of assets, or taking them to another place. Concealing inheritance means covering it up. It may not mean to take that property away; it may mean to just hide it so that no one knows about the existence of the inheritance. It is considered to be a concealment.

Fraud refers to dishonest intent, such as secretly taking inherited property without informing other heirs and passing it off as one's own. However, if the property is removed for care and will be returned to the estate without notifying the other heirs. It is not fraud.

Deteriorating the benefits of other heirs is the act of preventing other heirs from receiving their inheritance share or causing other heirs to receive a smaller portion of the inheritance than they are entitled to. Secretly using inherited land to enter into purchase and sale agreements with third parties and taking the deposit for personal use is regarded as theft or concealment of inherited property. According to the Supreme Court's judgment no. 4765/2565, the defendant's name was the owner of the land on behalf of W. After W. died, the land became inherited property. The four plaintiffs, in their capacity as administrators, informed the defendants to hand over the land title deed and to register the change of name of the owner of the property from the defendant to the four plaintiffs in their capacity as administrators. But the defendant did not take action. Instead, he took the inherited land, entered into a purchase and sale agreement with a third party, and received the deposit. The defendant's action was therefore to misappropriate or conceal more of the inheritance than he would receive, knowing that he was causing the other heirs' benefit to be detrimental. Therefore, the defendant must be eliminated from receiving W's inheritance according to the Civil and Commercial Code, Section 1605. Depriving the benefit of other heirs also includes damaging the inheritance, even if it is not fraudulent and can result in being eliminated.

For exclusion from inheritance, if there is any manipulation or concealment of the inheritance equal to or greater than the portion that the heir will receive, he or she will be precluded and will not receive any portion of the inheritance. However, if the heir transfers or conceals less inheritance than the portion he or she will receive, such an heir could not receive the inheritance solely for the portion that was transferred or concealed. In the event of misappropriation of inherited property other than money, the price of the inheritance has to be evaluated and divided into portions. The amount of inheritance that the heir is entitled to receive has to be taken into account. In this instance, the behavior of the heir, who was excluded due to illegal involvement in the inheritance, typically occurs after the death of the inheritance owner. It is regarded as being exclusive to the heir who is disqualified, and the heir's descendants may inherit.

2) In the case where the heir is excluded from inheritance because the heir has acted inappropriately, causing the heir to lose his or her rights to the inheritance. Exclusion from inheritance under the Civil and Commercial Code, Section 1606, applies to statutory heirs and heirs by will, regardless of whether they are the heir by will to receive general properties or the heir by will to receive a specific thing. Without taking into account whether or not the heir committed an inappropriate act due to the desire of the inheritance in the following five cases:

(1) The person who has been convicted of intentionally causing or attempting to cause the death of the owner of the inheritance or a person entitled to inherit before him or her.

The exclusion of succession in this instance requires proof that the heir has committed murder or attempted murder in accordance with the Criminal Code, it results from an intentional action in which the doer simultaneously desires or recognizes the consequence of murder. This is the true intention to kill the owner of the inheritance, or the person entitled to receive the inheritance before him or her, regardless of whether the heir is the doer or instigator causing such crime, the heir would be excluded from the succession when final judgment has been rendered. However, if the heir is sentenced to act with negligence or assault that causes the death of the owner of the inheritance or the person with the right to receive the inheritance before him or her, such an heir will not be precluded in accordance with this provision. It has to be an action against the owner of the inheritance or the person who has the right to inherit before him, which refers to another successor who is entitled to inherit before the heir who committed the crime. If the victim is still alive, the murderer or attempted murderer will not inherit the estate. It excludes heirs of the same status and those lower in the order of succession.

(2) The person who has sued the inheritance owner for committing a crime that lead to capital punishment, and such heir is convicted of filing a false complaint or giving false testimony.

In this instance, the heir to be excluded is the heir who sues the owner of inheritance in term of committing one of the offenses that carry the death penalty under the law. The heir may file the lawsuit himself or herself, authorize another individual to file the lawsuit, or join the prosecutor as a co-plaintiff. But in the end such heir is sued, and the court decided that the heir file is a fraudulent complaint or giving false testimony. Nevertheless, this does not include raising a complaint to the police or serving as a witness, as he or she is not the party prosecuting the owner of the inheritance in court. Therefore, this was not the rationale for exclusion from succession.

(3) The person who, having knowledge that the owner of the inheritance was murdered, did not provide information for the purpose of bringing the offender to the courts; however, this does not apply if he has not reached the age of sixteen, if he is unable to distinguish between right and wrong, or if the murderer is his spouse or any of his direct ancestors or descendants.

According to this provision, the heir did not kill the owner of the inheritance but knew that the owner of the inheritance was intentionally killed by someone. The heir did not bring the matter to the attention of the complainant by filing a complaint, making an accusation, or testifying to the facts that he or she knew. It does not include actions against other successors, or assault or negligence causing the death of the owner of the inheritance. However, if the heir who knows of the death of the owner of the inheritance has not yet reached sixteen years of age or is a mentally ill person who does not know his or her responsibility, or is a legally married husband and wife, or is a parent or the direct descendant of the person who intentionally killed the owner of the inheritance. Even if such an heir did not file a complaint to bring the offender to court, he or she will not be excluded from succession as an unworthy person because he or she is exempted by law.

(4) The person who, through fraud or coercion, caused the owner of the inheritance to make, revoke, or alter a will regarding the estate or prevented him or her from doing so.

Fraud is the act of convincing others to believe something that is not true. Coercion is the act of causing the owner of the inheritance to fear imminent danger in order to act against the will. For example, fraudulently compelling the owner of the inheritance to sign the will with his fingerprints according to the Supreme Court's Decision No. 1642-1643/2530. Therefore, exclusion from succession under this section occurred prior to the death of the owner of the inheritance. The heir who committed fraud or made threats is not the one who directly acts against the will. Therefore, even though the heir is disqualified from obtaining the inheritance, the heir's direct descendants can still inherit according to their rights.

(5) A person who has forged, destroyed, or hidden a whole or part will.

The provision excludes the heir who forges will by making it appear authentic. Destroying the will is a circumstance that is detrimental to the will. Concealment is not disclosing the existence of a will. These can occur both before and after the death of the inheritance owner.

It can be concluded that if it appears that the heir has defrauded or concealed the inheritance or done anything that is considered inappropriate. The heir will be precluded from receiving the inheritance according to Sections 1605 and 1606. These would result in the heir losing the inheritance rights. But if the heir has descendants, the direct descendants of the heir (Representative Heirs) to represent him or her to receive the inheritance, if it is the exclusion before the death of the inheritance owner. But if the heir is precluded from succession after the death of the inheritance owner, the descendants of the heir can inherit according to their rights. In addition, when the exclusion of the heir from receiving the inheritance is not an expression of the intention of the inheritance owner but a result of the law, the owner of the inheritance deems it appropriate to allow the heir who was excluded before the death of the inheritance to receive the inheritance. The owner of the inheritance can express his or her intention to withdraw the restriction on the basis of being an unworthy person by granting forgiveness in writing. This will allow that heir to be exempted from exclusion and regain the right to receive the inheritance as before.

The exclusion of inheritance rights pertains to the act of excluding an heir due to their unacceptable behavior. Nevertheless, this analysis fails to account for the adverse impact of parental behavior on their offspring or actions that contravene state policy.

D. Exclusion from succession under the laws of Laos.

According to the laws of Laos, the inheritance rights of the heir are lost as follows:

1. Cases of fraud or misappropriation
2. Loss of inheritance rights of parents and children according to court decision
3. Loss of legal inheritance and will

If the heir fraudulently conceals or misappropriates the estate, the heir will lose the rights stipulated in Article 616. The heir misappropriates inheritance beyond the amount of estate that he or she is entitled to receive, the heir cannot inherit and has to return all inheritance that he or she obtained. However, if the heir fraudulently conceals or misappropriates the inheritance, which is less than or equal to the share that he or she will receive, He or she could not receive the specific shares that he or she had fraudulently concealed or misappropriated. This section does not apply to heirs by will for whom the owner of the inheritance has already made a will to provide the specific inheritance to him or her. A person loses the right to receive inheritance only if the owner of the inheritance expresses his or her intention in writing, unless the owner of the inheritance dies according to subsections 1, 3, and 5.

If such person has acted unfairly by refusing to be under the guardianship of their parents, refusing to care for parents in their old age, or when they are sick and have the ability to do so, he or she has to waive the right to inherit and follows the second paragraph of Article 617 of this Civil Code.

However, the owner of the inheritance may cancel the exclusion of the right to receive inheritance, as provided in Section 618, by expressing his or her intention with evidence or in the presence of witnesses, according to Section 619.

RESULTS AND FINDINGS

Both Thailand and Laos have laws that exclude an heir from inheriting if he or she behaves inappropriately towards the inheritance owner and other successors. However, Laos's law contains broader provisions for precluding heir than Thai law does. There are provisions for removing heirs who have been convicted of intending or attempting to cause serious harm to the owner of the inheritance or the other successors. These cover heirs who conceal, aid, or shield those who commit crimes that result in the death, serious injury, or organ loss of the owner of the inheritance. This differs from Thai law, which only applies to those who have been convicted of committing or attempting to murder.

Additionally, the heir's failure to support and care for the owner of the inheritance while he or she is still alive. Or after the demise of the inheritance owner, an heir residing in the same province or city as him or her is aware of the death, but such an heir does not participate in the funeral or send a representative to this event, despite being able to do so. The heir will be precluded from inheriting under the law of Laos. According to Thai law, these provisions are absent. It might be because Laos places a higher priority on the marriage-based and lineage systems. Society places a high value on physical injury, failure to perform duties in providing care, and even failure to attend the funeral of the inheritance owner after death.

CONCLUSION

The law of succession is a social law that has its origins in ancient times in the beliefs, cultures, and customary practices of each region, which were eventually assimilated into legal regulations. Therefore, heirship determination, the heir's share and the heir's loss of inheritance rights are contingent on the characteristics and social conditions of each country. The laws involving the exclusion of successors in Thailand and Laos are comparable, particularly in terms of the transfer or concealment of inheritance assets. The similarities also include any action against will, making a false file, and committing a criminal offence of murdering or attempting to kill the owner of the inheritance or those who have the right to receive the inheritance before the doers. Nonetheless, these two laws differ in the exclusion due to the offences of assault and failure to perform the care duties while the inheritance owner is alive, and the absence from the funeral of a deceased person.

However, being disqualified from receiving the inheritance is the result of the heir's actions. If the heir commits a criminal offence and is subject to a final judgement that he or she intended or attempted to cause the death of the inheritance owner or the person entitled to inherit before him or her, the aforementioned law should specify the actions of the heir as a "user" or "supporter" of the offence. These should include the heir who does not perform their responsibilities in caring for the inheritance owner according to his or her abilities by having evidence demonstrating intentional disregard of his or her legal

responsibilities. Additionally, consideration should be given to the situation in which the heir causes mortality or severe injury to the owner of the inheritance.

ACKNOWLEDGEMENTS

The author would like to express sincere thanks to Suan Sunandha Rajabhat University for kindness and support to this paper.

REFERENCES

- Constitution of the Kingdom of Thailand B.E. 2560. Article 27.
- Pornchai Soonthornpan, (2017) Explanation of succession law, Bangkok: Published by the institute of legal education of the Thai bar, Pp. 2.
- Chalermchai Kasemsan. (2013) Explanation of the Civil and Commercial Code on Inheritance. (8th Edition). Bangkok: Institute of Legal Education (Thai bar Association), Pp. 38.
- Keerati Kanchanarin, (2020) Explanation of Civil and Commercial Law Book 6 on succession, 4th edition, (Bangkok: Published by the institute of legal education of the Thai bar, Pp. 18.
- Kritsada Kanokkulchi, (2014) Problems Concerning Legal Interpretation of Representation for Inheritance: A Case Study on the Enforcement of Article 1639 of the Civil and Commercial Code, Master's Thesi, Department of Law Pridi Banomyong Faculty of Law, Dhirakij Pundit University, Pp. 23.
- Punyisa Sitcharungsi, (2018) The Problems of Succession in Section 1607, master's Thesis, Faculty of Law. Bangkok: Thammasat University.
- Priap Hutangkun, (2017) Explanation of the Civil and Commercial Code on Inheritance, (15th Edition). Bangkok: october, Pp. 126-127.
- Chalermchai Kasemsan. (2013) Explanation of the Civil and Commercial Code on Inheritance. (8th Edition). Bangkok: Institute of Legal Education (Thai bar Association), Pp. 162.
- Civil and Commercial Code.
- Keerati Kanchanarin, (2020) Explanation of Civil and Commercial Law Book 6 on succession, 4th edition, (Bangkok: Published by the institute of legal education of the Thai bar, Pp. 141.
- Pawita Kakhai, (2023) Unworthy Heir under Thai Succession Law: the case of parents who fail to meet legal responsibility to their children, In. P.Suresh (Ed.), Research World International Conference February' 2023 9th-10th Hong Kong, Pp. 1-4.
- Civil Code in Lao People's Democratic Republic.