

THE RIGHT TO ENGAGE IN LEGAL TRANSACTIONS FOR MINORS UNDER THAI LAWS, COMPARED TO TAIWANESE LAWS

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Abstract

The purpose of this article is to compare Taiwanese and Thai legal systems regarding minors' legal capacity and status. Children are generally considered a socially vulnerable group. Even in their youth and inexperience, each nation's unique contexts necessitate specific protection, control, and care for them. Therefore, the expression of intention to establish a legal relationship with minors has to be in accordance with the principle of controlling legal capacity. The study's findings revealed that the beginning of a person's status, which is the beginning of being a minor, is decided in the same manner under Thai and Taiwanese law. Thai legislation establishes a person's legal age at twenty years old. Additionally, if a minor marries before turning twenty, they may reach the one's legal age. Taiwanese law, on the other hand, states that a person cannot marry or reach the one's legal age until they are eighteen years old. There are also restrictions prohibiting minors under the age of seven from making legal transactions. In contrast, Thai law does not set a minimum age for minors to engage in legal transactions. As a result, minors under the age of seven are not required to obtain the permission of a legal representative before engaging in legal transactions that are acceptable for their position and essential to their livelihood. This article suggests that in order to assure adherence to the rights and responsibilities provided by other laws, the criteria for the age of the majority of people should be reviewed.

Keywords: rights, responsibilities, legal transactions, minor, the one's legal age

Introduction

Minors are defined as individuals who hold the legal status of being underage natural people, a status that begins from birth and survives as a baby. At the initial stage of life, humans require specialized care and protection because they are incapable of self-sufficiency. Parents have a duty to look after their children, and both have the freedom to engage in a variety of activities. According to natural conditions, everyone is born with an inherent right as an individual, and no one can be deprived of it. This inalienable right as a human right cannot be terminated because of the change of social status, migration, change of residence, change of nationality, or reaching legal age. Therefore, everyone has the right to freely exercise self-control whenever personal circumstances arise.

Due to individual autonomy, the state must respect the extent of individual rights and freedoms; state intervention in these rights and freedoms may only occur through legislation that is approved by the public under the principle of democracy. (Singkaneti, 2024). Every country in the world has social and legal safeguards in place to protect the rights and freedoms of vulnerable populations, such as the disabled. Those who are still young will be classified as minors until they attain the legal age or marry to establish a family, according to the norms and regulations that each community deems appropriate. The cessation of being a minor and reaching legal age is therefore tied to a person's age and capacity.

For Thailand, there are measures to control the ability of minors to make legal transactions, both in a strict manner, if violated, it will be void; semi-strict, semi-independent under the control with the consent of a legal representative, if violated, it will be voidable; and independent control by giving minors the right to express their intentions to bind legal relationships by themselves alone under the principles of freedom of expression and Private Autonomy. The legal transaction is complete from the moment the transaction is made, which is a principle that can be commonly found. However, measures to control minors' ability to make legal transactions may differ by country, depending on social, cultural, and traditional backgrounds, including religious beliefs, economics, politics, and other necessary constraints, such as in Taiwan, which has a different form of governance than Thailand.

Therefore, the examination of the status of minors and their capacity to carry out legal transactions under Thai law compared to Taiwanese law would formulate a better understanding of the social background, which will serve as a guideline for future improvements and developments in Thai law.

The Fundamental Principles of Private Autonomy and Freedom of Expression.

The principle of private autonomy empowers individuals to decide on various actions within the legal scope, whether in private matters such as engagement, marriage, or residence, or in property matters such as concluding various agreements under contract law. Therefore, in the absence of legal prohibition, individuals have the freedom to freely determine the scope of their legal relations; the law then verifies and enforces their agreement. The principle of freedom of expression also means empowering individuals to freely express their intentions in order to legally bind themselves.

Hence, there is an intertwining of the principles of private autonomy and the freedom to express intention in making legal transactions. When an individual engages in legal transactions, they must do so within the boundaries of the law, public order, or the good morals of the people, a framework that an individual cannot infringe upon because it violates the freedom of others or all citizens. (Sotthiphan, 2024)

The Definition of Transactions under The Civil and Commercial Code

Section 149 of the Civil and Commercial Code defines transactions as any voluntary, law-abiding actions that aim to create, modify, transfer, reserve, or suspend rights between individuals. One can classify the characteristics of transactions into the following categories:

1. It is a person's expression of intention.
2. It is a lawful act.
3. It is a voluntary act.
4. The act aims to establish legally binding or legal relations.
5. It is an act that triggers changes in rights.

In order for an act to be considered legal, it must not violate the law's provisions, public order, or the good morals of the people. Even the extreme idea of legal positivism confirms the

absolute separation of law and morality. (Kasemsap, 2017) In addition, it is important to ensure that the transaction is not legally impossible and adheres to legal provisions; it is crucial to consider the individual's ability to perform the transaction, regardless of their full capacity. If the person performing the transaction is in a state where their ability is restricted due to a lack of capacity, this could potentially render the transaction void or voidable, depending on the specific circumstances.

Being Minors and their legal rights to conduct transactions under Taiwanese law.

For infants who cannot take care of themselves, the father and mother have a duty to look after and care for their children. The labour law stipulates that employers must allocate 60 minutes daily for female employees to personally feed their babies under 2 years old or collect breast milk. (Meebau et al., 2024). Originally, under Taiwanese law, minors reached the age of majority when they were twenty years old. Later in 2020, Taiwan's legislature approved a draft amendment to the Civil Code, allowing those who reach the age of eighteen to reach the age of majority and be able to conduct legal transactions on their own, including getting married, getting a bank account, and so on. The law came into effect on January 1, 2023. (Krischanyakom, 2024)

Therefore, according to Article 12 of the Taiwan Civil Code, minors in Taiwan reach legal age at eighteen. (Taiwan Civil Code, Article 12). During their minor years, they must remain under the guardianship of their parents, a requirement shared by many other countries. For example, if they wish to reach an agreement on marriage, they must obtain consent in accordance with Article 974. Therefore, they must seek consent in advance.

However, the law stipulates two sets of capacity controls: a strict control that prohibits minors from engaging in legal acts, and a lenient control that allows certain capacity limitations. According to Article 13, minors under the age of seven have no right to engage in legal acts. Like German civil law, children under the age of seven are still unable to engage in legal transaction, as they are considered irresponsible (German Civil Code (Bürgerliches Gesetzbuch), Section 2). However, once they surpass the age of seven, their legal capacity becomes limited (German Civil Code (Bürgerliches Gesetzbuch), Section 106) Employers must obtain consent from their legal guardian if they hire employees under the age of eighteen. (Lee et al., 2021)

Being minors and their right to engage in legal activities under Thai law.

Despite the absence of a direct provision for the initiation of minors in Thai law, the legal provisions on natural persons in Book 1, Section 2, Chapter 1, Part 1 of the Civil and Commercial Code grant minors a legal status. Based on Article 15, a natural person is someone who is born and survives as a baby. Even after their birth and death, they are still considered minors. According to Supreme Court Judgement No. 739/2472, children born and died are considered legal persons. Therefore, a minor has the right to enjoy legal rights and obligations, including the certification and protection of life, body, freedom, health, and property in accordance with civil law, from the moment they become a person and a minor. In addition to the legal right to demand and prevent infringement by others, minors also have the right to voluntarily express their intentions to establish legal relationships.

However, Thai law stipulates two criteria for a person to reach the age of majority: reaching the age of twenty years according to Section 19 of the Civil and Commercial Code, which states that “A person shall cease to be a minor and reach the age of majority when he or she reaches the age of twenty years.” and reaching adulthood through marriage, which means registering a marriage (Civil and Commercial Code, Section 1457). Section 20 stipulates that

a minor can attain the age of majority by registering a marriage, in compliance with Section 1448. This allows a married person to fulfil their duties and exercise their rights independently, aligning with the principles of family law that govern the relationship between spouses and the division of property between them. According to the Civil and Commercial Code Amendment Act No. 24, which came into effect on January 23, 2025, when both parties are eighteen years old. It supports equal marriage, which originally stipulated that men and women who are seventeen years old could marry with the consent of the adoptive parents or guardians, as the case may be. If there is reasonable cause, the court may allow the marriage before then. As a result, a minor who marries reaches the legal age. Therefore, a minor generally means a person who has not yet reached the age of twenty, unless they marry before reaching the age of twenty.

Therefore, if a minor intends to conduct a legal transaction, they must first obtain the consent of a legal representative; otherwise, the transaction will be voidable under section 21. However, the law permits minors to carry out specific legal transactions independently, provided that the transaction benefits them by granting them a specific right or relieving them of a duty. This could include receiving a gift, completing a personal task such as registering a child's birth certificate, or engaging in a legal transaction that suits their status and is essential for their proper living. The law does not set a minimum age for minors to engage in these legal transactions, with the exception of conducting a business or other business, entering into an employee contract under the labour law, and making a will only when the minor reaches the age of fifteen, as stipulated in Section 25. If the minor does not reach this age, the will be void, as per Section 1703.

Conclusion

The status of minors and the age of majority in most countries is between the ages of eighteen and twenty. In the past, Taiwan determined the age of majority by the same criteria as Thailand, which is when a person is twenty years old. However, considering the independence and freedom of minors in making legal transactions, Taiwan has amended its civil law to stipulate that a person reaches the age of majority when they are eighteen years old. This allows them to make various contracts by themselves, including marriage, without having to ask for the consent of their parents. Thai law, on the other hand, grants minors the ability to engage in legal transactions based on the principle of consent, without any minimum age limit, except in cases where a will made by a person under the age of fifteen is void. Meanwhile, a person who is eighteen but not older than twenty years old and wishes to get married must first receive the consent of their parents, adoptive parents, or guardians, who act as “legal representatives” because they are still minors according to the age criteria.

However, Taiwan strictly prohibits minors under the age of seven from engaging in legal transactions. Under Thai law, all minors can make legal transactions but must first receive the consent of their legal representatives. However, if the legal transaction aligns with the minor's status and is essential for their livelihood, even if they are under seven years old, they can still complete the transaction, as the law does not set a minimum age.

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