

# Of Elephants, Horses, Bulls, and Buffaloes: The Historical Development of the Concept of Beasts of Burden as a Special Category of Movable Property in Thai Law

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## Abstract

*The term “ช้างม้าวัวควาย” (chang-ma-wua-kway) is a familiar phrase to native Thai speakers. Literally “elephants, horses, bulls, and buffaloes,” it refers to the broader concept of beasts of burden. Beyond the realm of colloquial language, the concept of beasts of burden has led a fascinating life in the law. In the modern legal regime of Thailand, these animals constitute a special type of movable property in the Civil and Commercial Code of Thailand, attracting a similar legal treatment to immovable property. This article investigates the evolution of the legal concept of beasts of burden, from ancient sources, through the 19<sup>th</sup> century legal reformation period, up to the present day. The analysis reveals deep layers in the complex process of the country’s legal transplantation during the reform process: the exceptional nature of its current legal treatment is a product of particular social requirements in specific periods of history. This understanding of its dynamic social creation invites re-examination of the legal concept.*

**Keywords:** Property — Movable property — Legal history — Animals — Beasts of burden — Elephants

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## I. INTRODUCTION

The term “ช้างม้าวัวควาย” (*chang-ma-wua-kway*) is a familiar phrase to native Thai speakers. Literally “elephants, horses, bulls,<sup>1</sup> and buffaloes,” it refers to the broader concept of beasts of burden. Beyond the realm of colloquial language, the concept of beasts of burden has led a fascinating life in the law. In the modern legal regime of Thailand, these animals, together with donkeys and mules, constitute a special type of movable property known as สัตว์พาหนะ (*sat-pahana*), “beasts of burden,” in the Civil and Commercial Code of Thailand (“the TCCC”).

Many Thai property law textbooks have considered the concept of beasts of burden from a doctrinal viewpoint, categorised as a particular class of movable property, sometimes referred to as “special movable property” (as in this article) or “registrable movable property,”<sup>2</sup> which is different to other types of movable property.<sup>3</sup> However, there has been no academic literature that considers this concept in depth from the point of view of legal history within a wider societal context. This article therefore seeks to investigate the evolution of the concept of beasts of burden as a particular category of movable property. As will be discussed, beasts of burden had a prominent and distinct status in ancient laws, reflecting their specially recognised position within these ancient societies—as an important economic factor of agricultural production, a store of value, or even a cultural symbol. The concept survived the country’s most extensive legal transplantations in the process of law reform in the 19<sup>th</sup> and early 20<sup>th</sup> centuries,<sup>4</sup> and was incorporated into the modern

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<sup>1</sup> It should be noted that the authors have chosen the English words “bulls” as a translation for two Thai words—“วัว” and “โค” —both of which are not gender-specific. The first term (โค) is used in a number of statutes, such as the Beasts of Burden Act B.E. 2482 (1939), discussed in Part II of this article; the second term (วัว) is found in many historical texts, as discussed in Part III. However, when the original Thai text specifies the sex of the animals as female, the authors use the word “cows.”

<sup>2</sup> The term “special movable property” (สังหาริมทรัพย์พิเศษ, สังหาริมทรัพย์ชนิดพิเศษ) is generally known to Thai lawyers and is explicitly used in some Thai property law textbooks. See, for instance, กิตติศักดิ์ ปรกติ, หลักการโอนกรรมสิทธิ์ในสังหาริมทรัพย์และหลักการได้มาซึ่งกรรมสิทธิ์โดยสุจริต: เปรียบเทียบหลักกฎหมายเยอรมัน อังกฤษ ไทย (วิญญูชน 2546) [Kittisak Prokati, *Principles regarding the Transfer of Ownership in Movable Property and Principles regarding Good Faith Acquisition of Ownership: A Comparison between German, English, and Thai Law* (Winyuchon 2003)] (Thai) 18, 47–48; and สราวุธ ปิตียาศักดิ์, (คำอธิบายกฎหมายลักษณะทรัพย์) (พิมพ์ครั้งที่ 2, นิตธิธรรม 2555) [Sarawut Pitiyasak, *Explanation of the Law of Property* (2<sup>nd</sup> edn, Nititham 2512)] (Thai) 85. The other term, “registrable movable property” (สังหาริมทรัพย์ที่จดทะเบียนได้), is used in a seminal textbook on Thai property law: เสนีย์ ปราโมทย์, อธิบายประมวลกฎหมายแพ่งและพาณิชย์: กฎหมายลักษณะทรัพย์, (พลสยามพริ้นติ้ง 2551) [Seni Pramoj, *Explanation of the Civil and Commercial Code: Property Law*, (PholSiam Printing 2008)] (Thai) 178.

<sup>3</sup> See Seni, *Property Law* (n 2), which discusses a class of movable property, including beasts of burden, as subject to the same rules on the transfer of legal title as immovable property. See also อานนท์ มามั่ว, กฎหมายทรัพย์สิน: ความรู้พื้นฐานทางความคิด หลักทั่วไปและบทเปิดเสร็จทั่วไป (พิมพ์ครั้งที่ 2, วิญญูชน 2560) [Anont Mamout, *Property Law: Fundamental Concepts, Principles and General Chapters* (2<sup>nd</sup> edn, Winyuchon 2017)] (Thai) 305–8, which discusses special exceptions applicable only to certain types of movable property, including beasts of burden.

<sup>4</sup> The subject of modernisation and reform of Siam during the late 19<sup>th</sup> to early 20<sup>th</sup> century, following the signing of extraterritorial treaties with Western powers, has been extensively discussed. For discussion of the circumstances leading up to the signing of the treaties, see, for instance, Francis Bowes Sayre, “The Passing of Extraterritoriality in Siam” (1928) 22(1) *American Journal of International Law*

structure of the country's civil and commercial laws, retaining its special status as distinct from most other types of movable property.

The evolution of the concept of beasts of burden discussed in this article carries significant implications for comparative legal history. It provides a real-world manifestation of Professor Andrew Harding's argument on the nature of legal transplants in Southeast Asia:

It is appropriate to think of law in South East Asia geologically, as a series of layers each of which overlays the previous layers without actually replacing them, so that in places, due to tectonic shifts, the lower layers are still visible, although not perfectly distinguishable from each other.<sup>5</sup>

Indeed, the historical importance of beasts of burden in ancient laws was not replaced by, or excluded from, the country's current legal conception. Instead, it provides a "lower layer" that is still visible, rich in its historical and societal meanings. A legal history of the concept of beasts of burden, therefore, offers important contextualisation of legal rules that situates them in the proper perspective of Thai society.

This article is divided into two parts. The first part summarily sets out the current distinct legal treatment of beasts of burden as a category of special movable property, including their definition and treatment as registrable and mortgageable property in the TCCC. The second part traces the development of the treatment of beasts of burden throughout discoverable legal history in territory that forms modern day Thailand, looking first at ancient legal history and then at the period of broad legal change in Siam in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries that culminated in the TCCC. Finally, this article concludes on the implications of the examination, from the point of view of comparative legal history.

## II. BEASTS OF BURDEN AS "SPECIAL MOVABLE PROPERTY" IN THAI LAW

Under the TCCC, movable property (สังหาริมทรัพย์, *sangharimsap*) is broadly defined in Section 140 as things other than immovable property and any rights connected therewith. The TCCC itself does not explicitly further categorise movable property into

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70, and Tanin Kraivixien, "Thai Legal History" (1963) 49 *Women Law Journal* 6, 16. For a discussion of the process of modernisation, see, for example, Tamara Loos, *Subject Siam: Family, Law, and Colonial Modernity in Thailand* (Silkworm Books 2002); and P. W. Thorneley, *The History of a Transition* (Siam Observer Press Ltd 1923). For a discussion of legal reform processes, see, for example, M.B. Hooker, "The 'Europeanization' of Siam's Law 1855–1908" in M. B. Hooker (ed), *Laws of South-East Asia* (Lexis 1988); and Andrew J. Harding, "The Eclipse of the Astrologers: King Mongkut, His Successors, and the Reformation of Law in Thailand" in Penelope Nicholson and Sarah Biddulph (eds), *Examining Practice, Interrogating Theory: Comparative Legal Studies in Asia* (Martinus Nijhoff 2008). See also Tokichi Masao, "New Penal Code of Siam" 18(2) *Yale Law Journal* 85 (1908–1909) on the reform of the country's criminal law.

<sup>5</sup> Andrew J. Harding, "Comparative Law and Legal Transplantation in South East Asia" in David Nelken and Johannes Feest (eds), *Adapting Legal Cultures* (Hart Publishing 2001) 199, 205.

special/non-special movable property. However, such categorisation is clearly observable from the distinct legal treatment received by special movable property, to which class beasts of burden belong.<sup>6</sup>

Currently, this category of special movable property comprises ships or vessels of five tons or more, floating houses, and beasts of burden.<sup>7</sup> As discussed further below, the TCCC treats special movable property in the same way as immovable property in several contexts, generally pertaining to the formalities relating to the transfer of ownership and its use as security for lending. This article will now examine these issues in more detail.

## A. Definition and Categorisation of Beasts of Burden

While the TCCC does not provide a definition of “beasts of burden”, this can be found in a separate act, currently the Beasts of Burden Act B.E. 2482 (1939),<sup>8</sup> which supersedes the numerous previous legislation on beasts of burden.<sup>9</sup> Section 4 of the Act defines “beasts of burden” as “elephants, horses, bulls, buffaloes, mules, and donkeys which have been registered for, or are subject to registration for, an identification certificate under this Act.” Under Section 8, these are: (1) elephants that have turned eight years old; (2) beasts of burden other than bulls that have turned six years old; (3) any beasts of burden that have been used for riding, pulling or pushing loads, or otherwise utilised; (4) any beasts of burden that have turned four years old and will be exported; and (5) cows that have turned six years old for the purpose of transfer of ownership, except for a transfer for the reason of inheritance.<sup>10</sup>

Accordingly, it is necessary to state at the outset that beasts of burden are only considered special movable property under the law if they are qualified as such. Therefore, if an animal is kept for the purpose of consumption as food, and has never been utilised as a beast of burden, it is not subject to the special legal rules for beasts of burden, but will be subject to a different set of laws dealing with animal rearing and slaughtering for consumption. For instance, in the judgment of the Supreme Court (or Dika Court) Number 4099/2530 of 1987, the Court ruled that the two buffaloes, which were approximately five years old, had not been utilised as beasts of burden under Section 8(3) of the 1939 Act, and were bought for the purpose of slaughter for meat. Thus, they did not fall within the remit of the beasts of burden definition under the

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<sup>6</sup> See, in particular, s 456 and s 703 para 2 in Book 3; s 1302 in Book 4; and s 1688 para 2 and s 1702 para 3 in Book 6 of the TCCC.

<sup>7</sup> Prior to the Act Amending the Civil and Commercial Code (No. 14) B.E. 2548 (ราชกิจจานุเบกษา เล่มที่ 122 ตอนที่ 110 ก (23 พฤศจิกายน 2548) [Government Gazette, Vol. 122 Part 110 gor. (23 November 2005)] , this category of special movable property consisted of ships or vessels of six tons and over, steam launches or motor boats of five tons and over, floating houses, and beasts of burden. The Act, amending the wordings of all the five sections above, simplified the special category of movable property to simply include ships of five tons and over (without sub-categorising them into water vessels, steam launches, or motor boats), floating houses, and beasts of burden.

<sup>8</sup> A number of Supreme Court (Dika Court) judgments consistently held that the term beasts of burden in the TCCC is defined in accordance with the definition under this Act. See, for instance, Thai Supreme Court Decisions 309/2523 (1980); 4099/2530 (1987); 3523/2535 (1992).

<sup>9</sup> See Section 3 of the Act.

<sup>10</sup> A transfer for the reason of inheritance is subject to additional procedures pursuant to Section 15 of the 1939 Act.

Act. As a result, the contract for their sale was not subject to Section 456 of the TCCC, requiring certain formalities as discussed below. The same conclusion was reached in many other Supreme Court judgments.<sup>11</sup>

Therefore, it can be seen that Thai law draws a distinction between animals of the same species which are kept as food and those which are kept as beasts of burden. This understandably reflects a long-standing distinction between livestock (ปศุสัตว์, *pa-su-sat*) and beasts of burden (สัตว์พาหนะ, *sat-pahana*) which serve different economic and social purposes.<sup>12</sup> The former is not qualified for any special legal treatment under the TCCC, whereas the latter are subject to a particular legal regime, to which the discussion now turns.

## B. Beasts of Burden as Registrable Movable Property under the TCCC

Four main provisions in the TCCC concerning beasts of burden revolve around the issues of registration of changes of ownership, the creation or modification of rights or powers of management, and the protection that such registration affords. As indicated below, such legal attention is usually reserved for immovable property.

The first provision, Section 456 paragraph 1, provides that sale contracts for immovable property, and ships of five tons or more, floating houses, and beasts of burden, i.e., special movable property, shall be void unless they are made in writing and registered with a competent official.<sup>13</sup> Paragraph 2 states that contracts to sell or to buy immovable and special movable property to sell must be evidenced in writing, or supported by an earnest or partial payment, or they will not be enforceable.<sup>14</sup>

Secondly, Section 1302, read with Sections 1299 paragraph 1 and Section 1301, specifies that the acquisition by juristic act of special movable property, or of a real right appertaining thereto, or any modification, extinction and revival of such rights, are subject to the same requirements as those applicable to immovable property: i.e., such juristic acts must be made in writing and registered with a competent official. An acquisition by means other than a juristic act also must be made in writing and registered with a competent official if the new owner wishes the registration to reflect

<sup>11</sup> For instance, Thai Supreme Court Decision 309/2523 (1980), ruled that cows under the age of 1 year old, which had not been used as beasts of burden under Section 8(3) of the 1939 Act, were not subject to the formalities under Section 456. Moreover, in SC 3523/2535 (n 8), it was ruled that buffaloes sold, to be slaughtered for consumption, were not subject to Section 456.

<sup>12</sup> See พระวรภักดีพินุลย์, “กฎหมายเกี่ยวกับสัตว์” (2504) วารสารสังคมศาสตร์ 243–257 [Pra Vorapakpibul, “Laws Relating to Animals” (1961) *The Journal of Social Sciences* 243–257] (Thai) 243–244.

<sup>13</sup> The process of registration is provided in Section 14 of the Beasts of Burden Act B.E. 2482 (1939), which generally requires that the beast of burden and its identification certificate be presented to the Registrar (who, pursuant to Section 4, is the District Chief Officer, his proctor, or any person appointed as Registrar by the Minister of Interior in accordance with the Act).

<sup>14</sup> It should be noted that the requirement of “made in writing” is different from the requirement of being “evidenced in writing.” The former is considered a requirement for the purpose of formality under Section 152, violation of which leads to the juristic act being rendered void. On the other hand, the latter does not require any particular formality, and any form of writing will suffice. See, for example, Thai Supreme Court Decision 3425/2533 (1990), where the Supreme Court stated that the defendant may present any type of written statement regarding the loan, with the signature of the debtor, in order to satisfy the legal requirement that the loan was evidenced in writing.

the change of ownership. Without registration the new owner may not assert his rights against a bona fide purchaser for value who has duly registered his rights.<sup>15</sup>

Finally, Sections 1688 and 1702, which concern succession, provide respectively that the appointment of a controller of property (ผู้ปกครองทรัพย์สิน, *pubokkrongsap*)<sup>16</sup> or an inalienability clause<sup>17</sup> are not complete unless they are made in writing and registered with a competent official.

The registration requirement has an important implication. It has been argued that registration promotes certainty in relation to the identity of the owner, allowing a purchaser to feel confident in a purchase: that the property has been bought from the legal owner, and that the purchaser will not need to fear others bringing conflicting claims to ownership.<sup>18</sup> Since other types of movable property are not subject to these formality requirements, which generally apply only to immovable property,<sup>19</sup> the registration requirement of special movable property, including beasts of burden, indicates that the certainty and protection of their legal title are deemed necessary. The benefits created by the registration system, as the legal system of Thailand has decided, outweighs the costs involved in additional administrative burdens relating to the process of registration, such as extra manpower and administrative costs for the government. All these considerations point to the unique status of beasts of burden within the Thai legal system.

### C. Beasts of Burden as Mortgageable Movable Property

The requirement of registration of beasts of burden, as described above, also importantly assists in the creation of non-possessory security interests, allowing for more efficient lending. Under the TCCC, a mortgage is a type of specific contract, the rules for which are provided in Title 12 of Book 3, in Sections 702–746. The types of property that may be mortgaged are set out in Section 703. The list is restricted to immovable property, special movable property, and “other movable property with regard to which the law may provide registration for that purpose.”<sup>20</sup>

The basic structure for a mortgage in Thai law may be summarised as follows.<sup>21</sup> According to Section 702 of the TCCC, a mortgage is a contract whereby the mortgagor

<sup>15</sup> s 1302, read with s 1299 para 2. It should be noted that a claim for such registration to be revoked may be brought by a person who was previously in a position to have his rights registered; however, such claim may not be brought against a bona fide purchaser for value (s 1302, read with s 1300).

<sup>16</sup> s 1688 para 2, read with para 1 of the TCCC.

<sup>17</sup> s 1702 para 3, read with para 2 of the TCCC.

<sup>18</sup> Alison Clarke and Paul Kohler, *Property Law: Commentary and Materials* (Cambridge University Press 2005) 537–38.

<sup>19</sup> With the exception of a contract for the sale of movable property at a price of 20,000 baht or more, which also requires written evidence pursuant to paragraph 3 of Section 456 of the TCC.

<sup>20</sup> This last category includes such movable property as machinery and vehicles.

<sup>21</sup> For extensive discussion of the topics of mortgages, pledges and other types of security, see, for example, เสนีย์ ปราโมช, คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ บรรพ 3 ว่าด้วยค้ำประกัน จำนอง จำนำ (พระนคร: นิติบรรณาการ 2516) [Seni Pramroj, *An Explanation of the Civil and Commercial Code Book 3 on Suretyship, Mortgages and Pledges* (Nitibannakarn 1973)] (Thai); and อานนท์ ศรีบุญโรจน์, กฎหมายประกันด้วยบุคคลและทรัพย์สิน: ค้ำประกัน จำนอง จำนำ (พิมพ์ครั้งที่ 8, กรุงเทพมหานคร: วิญญูชน 2565) [Anont Sriboonroj, *Law relating to Security by Persons or Property: Suretyship, Mortgages and Pledges* (8<sup>th</sup> edn, Winyuchon: Bangkok 2022)] (Thai).

assigns property to the mortgagee as security for the performance of an obligation, but without the delivery of such property to the mortgagee. The mortgagee has a right *in rem*, to be paid out of the mortgaged property in preference to unsecured creditors regardless of whether the ownership of the property has been transferred to a third person.<sup>22</sup> The mortgage contract is subject to additional formalities, including registration,<sup>23</sup> and specific legal provisions regarding enforcement,<sup>24</sup> rights and duties of the transferee of property subject to a mortgage,<sup>25</sup> and extinction of the mortgage.<sup>26</sup> By contrast, the security device generally applied to movable property is the pledge,<sup>27</sup> which requires delivery of the property to the pledgee as security for the performance of an obligation.<sup>28</sup> The pledge has its own separate legal regime in relation to rights and duties of pledgor and pledgee,<sup>29</sup> enforcement,<sup>30</sup> and extinction of the pledge.<sup>31</sup>

From the above legal scheme, it can clearly be seen that the inclusion of special movable property in the mortgage regime cuts across a sharp divide between movable and immovable property in relation to security. This consideration, once again, reveals the unique position of beasts of burden within the country's legal system. To further elaborate, the dichotomy between immovable property, which may be mortgaged, and movable property, which may only be pledged, is considered fundamental to many civil law systems, including many continental European systems<sup>32</sup> (although, on a side note, the distinction was not observed as a matter of concept or doctrine in Justinian Roman law to which these systems trace their roots).<sup>33</sup> However, given this basic dichotomy in other civil law systems, it is particularly noteworthy that the TCCC carves out special movable property as available to be mortgaged.<sup>34</sup> Indeed, as will be

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<sup>22</sup> TCCC, s 702 para 2.

<sup>23</sup> TCCC, s 714.

<sup>24</sup> TCCC, ss 728–35.

<sup>25</sup> TCCC, ss 736–43.

<sup>26</sup> TCCC, ss 744–46.

<sup>27</sup> However, it should be noted that for a special class of movable property as specified in Section 703 above, it is possible to have a pledge and a mortgage over the same item of movable property. Academic opinions vary regarding who will receive a preferential right to receive the performance of an obligation. See Anont, *Law relating to Security* (n 21) 196–97.

<sup>28</sup> TCCC, s 747.

<sup>29</sup> TCCC, ss 758–63.

<sup>30</sup> TCCC, ss 764–68.

<sup>31</sup> TCCC, s 769.

<sup>32</sup> Willem J. Zwolve, “A Labyrinth of Creditors: A Short Introduction to the History of Security Interests in Goods” in Eva-Maria Kieninger et al. (eds), *Security Rights in Movable Property in European Law* (Cambridge University Press 2004) 40.

<sup>33</sup> The pledge (*pignus*) and non-possessory ‘hypothec’ (*hypotheca*) could each be vested in both real and personal property; it was a matter of convenience that the *pignus* became associated with goods because they are more suitable for delivery than land. See *ibid.*

<sup>34</sup> It is interesting to note that Roman law included beasts of burden—*animalia quae collo dorsove domantur, velut boves muli equi asini*, literally “animals which are subdued by the neck or back, such as cows, mules, horses and donkeys”—in a category of property requiring special formalities called *res Mancipi*, along with land and slaves. The reasons for including beasts of burden and draft in the category of *res Mancipi* are not known, albeit being the subject of discussion and debate among contemporary historians. However, the authors have found no evidence suggesting that the Thai legal treatment traces its origins back to this categorisation in Roman law. See Paul Frédéric Girard, *Manuel élémentaire de Droit Romain*, (Rousseau 1929) 271; Prachoom Chomchai, *Gleanings of Private Law in a Roman and*

demonstrated below, special treatment of beasts of burden is found throughout Thai legal history, and their distinct treatment in the TCCC is also a result of societal considerations in Siamese society at the time of its drafting. This article will now examine the changing contours of beasts of burden as a unique category of property throughout Siamese legal history.

### III. “BEASTS OF BURDEN” THROUGH LEGAL HISTORY: THE ROOT OF ITS UNIQUE STATUS

Whilst it is possible to propose a generic explanation for the special legal status of beasts of burden under Thai law—they represent an important economic factor of production for the country’s agricultural sector—a close investigation of the evolution of their legal treatment reveals a series of dynamic shifts in their conceptualisation. The discussion will be divided into two parts: an investigation into ancient Siamese laws and an investigation into the period of legal reforms in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries.

#### A. Beasts of Burden in Ancient Legal History

This article’s examination of the legal notion and the importance of beasts of burden in ancient Thai societies is based on three texts: the King Ramkamhaeng’s Stone Inscription, the Mangrai Sastra, and the Three Seals Code.

##### 1. Beasts of Burden in the Sukhothai Era as Reflected in the King Ramkamhaeng’s Stone Inscription.

The importance of beasts of burden to ancient Siamese societies may be traced back to the Sukhothai Era. The most famous written account of the societal, legal and cultural structures of that era is the King Ramkamhaeng’s Stone Inscription of 1292 CE. The fourth paragraph of the Inscription states:

In the time of King Rāma Gamhèn this land of Sukhodai is thriving. There is fish in the water and rice in the fields. The lord of the realm does not level toll on his subjects for traveling the roads; they lead their cattle to trade or ride their horses to sell; whoever wants to trade in elephants, does so; whoever wants to trade in horses, does so; whoever wants to trade in silver or gold, does so.<sup>35</sup>

This paragraph, according to M.R. Seni Pramoj, a renowned Thai scholar, reflects the legal recognition and protection of private property of the ancient

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*Anglo-Saxon Setting: A Preliminary Exercise in Legal History and Comparative Law, An Update and Recast English Version of the Thai Original* (Thammasat University 2015) 104–5; George Mousourakis, *Fundamentals of Roman Private Law* (Springer 2012) 122.

<sup>35</sup> A. B. Griswold and Prasert na Nagara, “The Inscription of King Rāma Gamhèn of Sukhodaya (1292 A.D.) Epigraphic and Historical Studies No. 9” (1971) 49 *Journal of the Siam Society* 179–228, 205–6.

Sukhothai community which he calls an ancient primary right of the people.<sup>36</sup> Private ownership of immovable property, such as land for the rice fields, and of movable property, including beasts of burden, was an important store of economic value. Similar to silver and gold, beasts of burden such as cattle, horses and elephants could be traded. The transferability of title was also vital for succession rights, as the Inscription states, in the sentence immediately following the quoted text above:

When any commoner or man of rank dies, his estate—his elephants, wives, children, granaries, rice, retainers and groves of areca and betel—is left in its entirety to his son.<sup>37</sup>

From the above text, the importance of beasts of burden can clearly be observed—both explicitly through the wording of the text, and implicitly through the fact that they were chosen to be included in the highly valuable and extremely limited space of the stone inscription. Their importance is therefore immortalised in Thai history.

It is also notable that the text, when discussing the rights of succession, placed elephants as the first category of valuable things that may be passed down to heirs, even in front of wives and children. This perhaps reflects a distinctive status of elephants in ancient Thai society.<sup>38</sup> This was perhaps due to their importance for use in warfare as well as their economic value.<sup>39</sup>

Acquiring ownership of beasts of burden was also an aspect that was historically recorded, reinforcing the animals' prominent position in ancient society. Capturing and training wild elephants was an important sport and ritual, as shown in the third paragraph of King Ramkamhaeng's Stone Inscription, referring to himself by the first-person pronoun, that "[w]hen I went hunting elephants, either by lasso or by [driving them into] a corral, I brought them to my father."<sup>40</sup> Seni also noted that Thai people's training of elephants as beasts of war may be traced back to the 3<sup>rd</sup> century, and that a record from King Narai of the Ayudhaya Era revealed that Thai traders shipped elephants to as far as India.<sup>41</sup>

Overall, it can be seen that beasts of burden, especially elephants, were prominently featured in this Inscription from the Sukhothai Era. This reflects their

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<sup>36</sup> เสนีย์ ปราโมช, ศิลาจารึกพ่อขุนรามคำแหง, (ดลพาห, ปีที่ 13 เล่มที่ 2 2509) [Seni Pramoj, "King Ramkamhaeng's Inscription" (Dulapaha Year 13 Vol. 2 1966)] (Thai) 57.

<sup>37</sup> Griswold and Prasert, "Inscription" (n 35) 206–7.

<sup>38</sup> For further discussion of the importance of elephants in Siamese/Thai culture and history, see, for example, Joachim Schliesinger, *Elephants in Thailand Volume 2: Through the Ages* (White Lotus 2012).

<sup>39</sup> In terms of warfare, the Inscription itself states that when King Ramkamhaeng, as a prince, "raided a town or a village and captured elephants, young men or women of rank, silver or gold," he turned them over to his father, King Sri Indraditya (Griswold and Prasert, "Inscription" (n 35) 204–5). This demonstrates that elephants were important assets for the victor of a war, which he could seize as of right. Once again, elephants were mentioned first, reflecting the mental process of the author, that when seizing the assets of those who lost at war, King Ramkamhaeng thought first of elephants, before women of rank or young men who would provide vital labour, or silver or gold that would provide the means to finance the next war.

<sup>40</sup> Griswold and Prasert, "Inscription" (n 35) 206–7.

<sup>41</sup> เสนีย์ ปราโมช, ศิลาจารึกพ่อขุนรามคำแหง-ตอนจบ, (ดลพาห, ปีที่ 13 เล่มที่ 3 2509) [Seni Pramoj, "King Ramkamhaeng's Inscription Part II", (Dulapaha Year 13 Vol. 3 1966)] (Thai) 35–6.

special status in this particular period of history, which arguably flows from their economic and commercial value as well as their importance in warfare.

## 2. Beasts of Burden in the Mangrai Sastra.

The Mangrai Sastra is the compilation of the laws of King Mangrai, who built the city of Chiang Mai in B.E. 1835 (1292 CE).<sup>42</sup> It is not known when the text was written,<sup>43</sup> but it is noted that the Mangrai Sastra, or the law of King Mangrai, was the law of the Lanna kingdom, which was contemporary to the Sukhotai kingdom.<sup>44</sup> This places the Mangrai Sastra as a legal text roughly contemporary to the King Ramkamhaeng's Stone Inscription. The discussion of the Mangrai Sastra here is based on the translation provided by Griswold and na Nagara, which relied on the version found in Wat Sao Hai, Saraburi.<sup>45</sup>

The Mangrai Sastra, similar to the Three Seals Code discussed below, contained hundreds of provisions which were divided into many categories. One interesting aspect of the Mangrai Sastra is its categorisation of movable property into animate property (ของมีวิญญาณ, *kong-mee-winyarn*—"property with spirit") and inanimate property (ของไม่มีวิญญาณ, *kong-mai-mee-winyarn*—"property without spirit").<sup>46</sup> For instance, one provision in the category of offences relating to hiding, theft, and stealing<sup>47</sup> states that if inanimate property is stolen and sold in an open market, the owner may claim it back by paying the full value to the buyer. Then, if the thief is found, the thief must pay compensation to the owner. However, if animate property "such as persons and bulls and buffaloes" are stolen and sold in an open market, and if the seller cannot be identified, the owner may claim the property back from the buyer without paying any compensation to the buyer. Another provision concerning lost property<sup>48</sup> offers some examples of inanimate property as "silver and gold."

Without providing further definition or explanation of such categorisation, the Mangrai Sastra reveals an interesting ancient legal concept, that beasts of burden as

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<sup>42</sup> นายเอ.บี.กริสวอลด์ และประเสริฐ ณ นคร, "คำนำ", มังรายศาสตร์, (พิมพ์เป็นบรรณาการในงานฉลองกึ่งศตวรรษของหลวงโหดระกิตยน์พัตร (อาสา โหดระกิตย 2514) [A. B. Griswold and Prasert na Nagara, "Introduction" in Prasert na Nagara, *Mangrai Sastra* (Publication in memory of Luang Hotrakittayanupatra (Asa Hotrakittaya 1971))] (Thai) 17. It is worth noting that there are other spellings of the text. For instance, Yoneo Ishii referred to "Mangraisat," a Lannathai law text which he classified as part of the Lao law, or Lao Thammasat, distinct from the Thai law, or Thai Thammasat. See Ishii Yoneo, "The Thai Thammasat (with a Note on the Lao Thammasat)" in M. B. Hooker (ed.) *Laws of South-East Asia*, vol. 1 (Butterworth 1986) 198. It is not the intention of this article to engage in the genealogical classification of ancient legal texts from this region, especially since many Thai legal history textbooks do not seem to classify Mangrai Sastra as such. See, for example, ชัชพล ไชยพร, ประวัติศาสตร์กฎหมายไทย ภาคก่อนปฏิรูป, (พิมพ์ครั้งที่ 2, วิทยุชน 2561) [Chachapon Jayaphorn, *History of Thai Law: The Period before the Legal Reform* (2<sup>nd</sup> edn, Winyuchon 2018)] (Thai) 86–92. Thus it should suffice for the purpose of this article to recognise the Mangrai Sastra as the law of King Mangrai of Chiang Mai from late 13<sup>th</sup> century.

<sup>43</sup> See Griswold and Prasert, "Introduction" (n 42) 21.

<sup>44</sup> Chachapon, *History* (n 34) 86–7.

<sup>45</sup> Griswold and Prasert, "Introduction" (n 42) 20.

<sup>46</sup> See Prasert, *Mangrai Sastra* (n 42) 54–55.

<sup>47</sup> The Mangrai Sastra did not assign numerical order to the provisions. This particular provision appears as 11<sup>th</sup> provision under the title "Hiding, Theft, and Stealing" (ลักขณะซ่อน อำ และลัก). See Prasert, *Mangrai Sastra* (n 42) 53–54.

<sup>48</sup> *ibid* 55.

animate property should be treated differently from inanimate property. This categorisation clearly does not align with the modern notion of special movable property under the TCCC, which also includes inanimate property such as ships and floating houses. However, this distinction is important, not only for the reason that traditional Thai society perceives spirit as a vital essence that shapes and influences human personality,<sup>49</sup> but also for the reason that it offers an alternative rationale for distinct legal treatment. Unlike the contemporary King Ramkamhaeng's Stone Inscription which focuses on the animals' economic and social worth, instead, the Mangrai Sastra takes into account spiritual considerations of the property. In other words, their special legal treatment flows from the inherent characteristic of a living being which possesses a spirit, as opposed to a non-living thing.

### 3. Beasts of Burden in the Three Seals Code.

The third ancient text is the Three Seals Code, the compilation of which was overseen by King Rama I in 1805 as a reconstruction<sup>50</sup> of the laws of the Ayutthaya kingdom following the destruction of the city by Burmese armies in 1767.<sup>51</sup> The Three Seals Code shares with the Mangrai Sastra the conceptual distinction between animate and inanimate property.<sup>52</sup> However, the Code also deals with beasts of burden, explicitly referred to as “elephants, horses, bulls, and buffaloes,” as a distinct category of assets with clear economic value.

The categorical distinction between animate and inanimate property in the Three Seals Code can be found in many titles. However, these provisions do not provide different legal treatments for the two types of property. For instance, Sections 2 and 36 of Succession (พระไอยการลักษณมรดก, *pra-aiya-garn-laksana-moradok*)<sup>53</sup> makes references to the division of “animate property and inanimate property” (ส่ววิญญาณกะทรัพย์และวิญญาณกะทรัพย์, *sa-winyan-gasap-leh-awinyan-gasap*) upon the

<sup>49</sup> David M. Engel, *Code and Custom in a Thai Provincial Court: The Interaction of Formal and Informal Systems of Justice* (The University of Arizona Press 1978) 57–58.

<sup>50</sup> However, the reconstruction process likely included revision: See Yoneo, “Thai Thammasat” (n 42) 143.

<sup>51</sup> The compilation and reconstruction of the Three Seals Code was also attributable to the need to rectify mistakes and unjust rules. See Preedee Kasemsup, “Reception of Law in Thailand—A Buddhist Society” in Masaji Chiba (ed), *Asian Indigenous Law* (KPI 1986) 283–84. For further discussion of this period of legal history, see Daniel George Edward Hall, *History of South East Asia* (Macmillan International Higher Education 1981) 480; Sarasin Viraphol, “Law in Traditional Siam and China: A Comparative Study” (1977) 65(1) *Journal of the Siam Society* 81.

<sup>52</sup> Lingat, in theorising that Thai Dharmasastra was rooted in Mon and Burmese Dharmasastra, and not a direct transplant from the Hindi Law of Manu, used the distinction between animate and inanimate property as evidence, since this distinction may be found in Mon and Burmese Dharmasastra, but not in the Law of Manu. See ร.เลงกาต์, “อิทธิพลอินเดียในกฎหมายเก่าของสยาม” (ฐานันท์ นิพิฏฐกุล, ผู้แปล), สุรัสวดี ลิขสิทธิ์วัฒนธรรมกุล, กรรณิกา จรรย์แสง, ร.เลงกาต์ กับไทยศึกษา (มหาวิทยาลัยธรรมศาสตร์ 2548) [R. Lingat, “L'influence indoue dans l'ancien droit siamois” (Thapanant Nipitkul, tr), in Surasak Likasitwattanakul and Kannikar Jansaeng (eds), *R. Lingat and Thai Studies* (Thammasat University Press 2005)] (Thai) 114–15.

<sup>53</sup> The Thai spellings of the titles of the Three Seals Code in this article are in accordance with those that appeared in กฎมายตรา ๓ ดวง ฉบับพิมพ์มหาวิทยาลัยธรรมศาสตร์และการเมือง เล่ม ๒, (สุภาพใจ 2548) [*Three Seals Code volume 2*, printed by The University of Moral and Political Sciences (Sukapapjai 2005)] (Thai).

owner's death.<sup>54</sup> Similarly, in Miscellaneous Laws (พระอัยการเบ็ดเสร็จ, *pra-aiya-garn-bedset*), Section 111 provides for compensation for the theft of animate and inanimate property;<sup>55</sup> and in Crimes against Government (อาชญากรรม, *acha-luang*), Section 35 prohibits the misappropriation of various types of government monies and “animate property and inanimate property.”<sup>56</sup> In all the provisions in which the concept of animate and inanimate property may be found in the Three Seals Code, the two types of property in fact seem to refer to property in general. The distinction appears to only be theoretical, and never for the practical purpose of affording different legal treatments to each type.

Turning to the Three Seals Code's conceptualisation of beasts of burden as economic assets, the notion of “elephants, horses, bulls, and buffaloes” can be found scattered throughout Code. In Debt (พระอัยการลักษณหนี้, *pra-aiya-garn-laksana-goonee*), these animals were a clearly recognised type of asset with financial value which could be used to satisfy a debt. For instance, Section 32 provides that if a husband and wife took a joint loan and both passed away leaving to their children only “property; elephants, horses, bulls, and buffaloes; and people”, then the children must repay the debt from their inheritance, proportionally to how much they have inherited. Other provisions similarly provide for these animals as an asset which may be used to satisfy the principal of a loan or an outstanding interest payment.<sup>57</sup>

The concept of the “elephants, horses, bulls, and buffaloes” as economic animals also features heavily in Miscellaneous Laws. The animals are conceptualised in terms of both assets and liabilities. In terms of assets, there is a legal scheme concerning the hire of beasts of burden, forming part of the legal framework on the rent of movable property,<sup>58</sup> and provisions concerning those who provide the service of caring for the animals.<sup>59</sup> The economic value of the animals came from both the fees for usage and compensation in the cases where the animals were injured, stolen, killed, or lost. In addition, their value is also evident in the rules which allowed for them to be handed over in lieu of monetary compensation for a civil wrong.<sup>60</sup> On the other hand, these beasts of burden also could be a source of liability for their owners, as numerous sections provide an elaborate scheme of civil liability arising out of damage caused by beasts of burden.<sup>61</sup>

Criminal liability for theft or destruction of beasts of burden can also be found in Theft (พระอัยการลักขณโจร, *pra-aiya-garn-laksana-john*), which provides for a highly elaborate scheme covering a vast range of topics including theft, injuring, and

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<sup>54</sup> The Thai spellings here are in accordance with those that appeared in Section 2. See *Three Seals Code volume 2* (n 53) 127–8. However, it should be noted that the spellings in Section 36 are slightly different, as “property with spirit” appeared as สัตว์ญาณกะทรพย and “property without spirit” appeared as อะสัตว์ญาณกะทรพย. See *ibid* 140–41.

<sup>55</sup> See *Three Seals Code volume 2* (n 53) 222.

<sup>56</sup> *ibid* 356.

<sup>57</sup> Section 50 of Debt (พระอัยการลักษณหนี้, *pra-aiya-garn-laksana-goonee*) mentions the four beasts of burden as a kind of asset which may be seized to satisfy an outstanding debt. Section 60 provides that a debtor may pay the interests in the form of people or “elephants, horses, cows, and buffaloes.”

<sup>58</sup> Miscellaneous Laws, ss 75, 76, 77, 79, 80, 81, 82, 86.

<sup>59</sup> *ibid* s 91.

<sup>60</sup> *ibid* ss 9 and 24.

<sup>61</sup> *ibid* ss 1, 2, 3, 4, 5, 6, 8, 24, 26, 27, 37, 38, 39, 40, 41, 54, 55, 58, 59.

killing of beasts of burden; the duties of those who find stolen beasts of burden; the liability of those who steal the animals from the original thieves; the issue of ownership of lost or stolen animals which are either found or sold in a marketplace; and a different scheme of liability if the thief was a family member.<sup>62</sup>

Accordingly, it can be seen that the Three Seals Code contains at least two different perspectives of beasts of burden: the spiritual perspective and the economic perspective. This dual conceptualisation reveals a more complex legal landscape regarding the understanding of beasts of burden compared to the previous texts, perhaps reflecting a more complex and economically advanced societal development. It is notable that the spiritual distinction between animate and inanimate property was not reflected in a similarly distinct legal treatment between the two categories. Indeed, there may be evidence of shifting legal concepts within the Three Seals Code itself which, as Baker and Pasuk have argued, may better be regarded as an archive, accumulated over time, rather than being assumed to have the characteristics of present-day legislation.<sup>63</sup> This provides an important backdrop for the conceptualisation of beasts of burden during the law reform period leading up to the TCCC.

## B. Beasts of Burden During the 19<sup>th</sup> Century Period of Legal Reform

In the second half of the 19<sup>th</sup> century, Siam underwent a period of broad-sweeping reforms. These included a programme of legal reform, featuring the drafting of new legal codes heavily influenced by continental European and Japanese models.<sup>64</sup> However, prior to the codification project, beasts of burden were the subject of several specific 19<sup>th</sup> century acts concerning registration of their ownership, reflecting their special status due to their economic value and focusing on preventing their theft.

### 1. Legislation prior to the TCCC.

The earliest reference to beasts of burden in 19<sup>th</sup> century legislation found in the records of the Government Gazette is the Act of Bulls and Buffaloes J.S. 1246 (1884).<sup>65</sup> This is a short piece of legislation, containing only two paragraphs, which briefly deals with registration and inspection of identification certificates of bulls, buffaloes, and, despite the Act's name, elephants. The Act was nullified nearly a decade later by the coming into force of the Beasts of Burden Acts of R.S. 110 (1892).<sup>66</sup> Being a rather short Act containing only 11 sections in total, its preamble nevertheless takes the time to

<sup>62</sup> Theft, ss 22, 40, 41, 60, 76, 77, 78, 79, 80, 87, 104, 109, 114, 126, 133, 141, 153, 155. There was also a rather specifically serious capital punishment under Section 163 for a mahout who disobeyed the order to keep elephants outside of town and let his elephants roam and eat people's crops.

<sup>63</sup> Chris Baker and Pasuk Phongpaichit, "The Child is the Betel Tray: Making Law and Love in Ayutthaya Siam" (2021) 1 Thai Legal Studies 1–21.

<sup>64</sup> See n 4 above.

<sup>65</sup> พระราชบัญญัติโคกระบือ, ราชกิจจานุเบกษา, เล่มที่ 1 ตอนที่ 6 (15 มีนาคม 2427) หน้า 47, [Government Gazette, Vol. 1 Part 6 (15 March 1884) p 47]. The Act refers to the Act of Cows and Buffaloes of the year J.S. 1238 (1876), which cannot be found in the records of the Government Gazette.

<sup>66</sup> Beasts of Burden Acts of R.S. 110 (1892), s 3.

clarify the primary rationale of this Act to be the prevention of theft of beasts of burden and the efficient collection and calculation of export sale tax.<sup>67</sup> The definition of beasts of burden can be found in Section 4 paragraph 2 to be all types of elephants, horses, cattle, donkeys, mules, and buffaloes.<sup>68</sup> As can be seen, the scope of beasts of burden was expanded by this Act and further clarified to include the core “elephants, horses, bulls, and buffaloes” as well as donkeys and mules.<sup>69</sup>

The R.S. 110 Act was then superseded by the Beasts of Burden Act R.S. 119 (1901) and its amendments. The preamble of the new Act clearly states that due to the growth of trade, the prices of beasts of burden had increased, and so had the theft of these animals, therefore further legal amendments were warranted.<sup>70</sup> In this Act, the definition of beasts of burden can be found in Section 3 to be explicitly limited to five types of animals only: elephants, horses, bulls, buffaloes, and mules—donkeys were thus mysteriously left out. The Act, containing 30 sections, was significantly longer than its predecessor, and provided a much more detailed scheme of registration and inspection, rules about legal transactions and transfer of title, and the appointment of competent officials in charge of registration. This Act was nullified in 1939 with the coming into force of the current the Beasts of Burden Act B.E. 2482,<sup>71</sup> discussed above.

These pieces of legislation have as their main focus the registration requirements and associated formalities for beasts of burden, as well as definitions, and do not give a conceptual view of the nature of beasts of burden as property. Nevertheless, Siamese law’s view of beasts of burden as a type of movable property became important in the early 20<sup>th</sup> century, prompted by the use of elephants as security in the teak industry. This continued to be a topic of controversy throughout the subsequent drafting of the TCCC.

## 2. Elephants as security in the teak industry in the northern region.

The first evidence of attention paid to beasts of burden as a special category of movable property in this period can be found in correspondence of Mr. Stewart Black, an English lawyer hired by the Siamese Foreign Ministry in 1902 as the first “Judicial Advisor”, following the death of the first European General Advisor to Siam, Mr. Gustave Rolin-Jaequemyns.<sup>72</sup> On 4<sup>th</sup> December 1906, Mr. Black wrote a letter to W. R.

<sup>67</sup> ราชกิจจานุเบกษา, เล่มที่ 8 ตอนที่ 21 (23 สิงหาคม 2435), [Government Gazette, Vol 8 Part 21 (23 August 1892)] (Thai) 180–81.

<sup>68</sup> The provision specifies that the definition covers male and female animals, and calves.

<sup>69</sup> The Act was later amended by the Beasts of Burden Amendment Act R.S.115 (1896), ราชกิจจานุเบกษา, เล่มที่ 13 ตอนที่ 42 (17 สิงหาคม 2439), [Government Gazette, Vol 13 Part 42 (17 January 1896)] (Thai) but this did not affect the definition of beasts of burden.

<sup>70</sup> ราชกิจจานุเบกษา, เล่มที่ 17 (25 สิงหาคม 2443) [Government Gazette, Vol 17 (25 November 1900)] (Thai) 472.

<sup>71</sup> Beasts of Burden Act B.E. 2482, s 3.

<sup>72</sup> For Mr. Black’s employment record, see “Roster of Foreigners Employed by the Ministry of Justice as Legal Advisors,” พิพิธภัณฑ์ศาลไทยและหอจดหมายเหตุ, สำนักงานศาลยุติธรรม ถนนรัชดาภิเษก กรุงเทพฯ, [Archive of the Court Museum of Thailand, the Office of the Courts of Justice, Ratchadaphisek Road, Bangkok] (Thai) (Translation by the first author). For further discussion of Mr. Black’s role during the legal reform period, see Surutchada Reekie and Adam Reekie, “British Judges in the Supreme Court of Siam” in Andrew Harding and Munin Pongsapan (eds), *Thai Legal History* (Cambridge University Press 2021) 107–8.

D. Beckett, a British consular official, concerning mortgages of elephants in the North.<sup>73</sup> It seems, from the last paragraph of the letter,<sup>74</sup> that the teak firms in the Northern region of the country were concerned about whether elephants provided good security under the existing laws on elephant mortgages.

In examining the issue, Black stated that he had consulted with a Siamese official, one Phya Charoen, and also researched latest Dika Court judgments on the subject. Having completed such a thorough investigation, Black explained to Beckett the contemporary practice and legal effect of mortgages of elephants:

[T]he mortgages of elephants under the form they now use, have all the rights of security they ever had, and according to Phya Chareon all that he ever said they had. Phya Chareon said the form of mortgage was good i.e., as between the parties. The present Judges of the International Court say it is bad i.e., as between the mortgagee and a third party, but the word “bad” has to be largely qualified. It is true that the security is not as absolute as a mortgage over real property, but for all practical purposes, the risk of loss to the mortgagees is small.<sup>75</sup>

This statement offers a number of interesting observations. Firstly, by the time of writing, elephants already possessed a special *de facto* legal status as a mortgageable movable property, at least in the North of Siam. It appears from this correspondence that a form of elephant mortgage contract was in use, even though not based on any specific legislation, in the teak industry. The animals’ vital economic value to the teak industry, and hence to British commercial interests in Siam at the time, can be gleaned from the overall tone of the letter, whereby Black was trying to reassure Beckett that the risk to the teak firms was small and there was “no occasion for alarm;”<sup>76</sup> and also from Beckett’s reply of 10<sup>th</sup> December 1906 that he would not advise British subjects to change the form of their mortgage contracts and would remind them that “should any concrete cases of proved insecurity of British mortgagees, under the existing form, be brought before the Appellate Court, that Court may be trusted to act with due regard to their equitable rights.”<sup>77</sup>

Secondly, it was recognised that this form of elephant mortgage contract did not create as reliable a security as a mortgage over land. The risk, Black went on to explain, was if the mortgaged elephant was sold to a third party without notice, which would only be valid if the purchaser bought the animal in good faith, meaning that the purchaser must buy it with the production of relevant documents or title.<sup>78</sup> Furthermore, in the case of execution, the mortgagee is “entitled to share in proportion to his claim which means that in most cases in the North, the mortgagee would receive 99 per cent, and the other claimant 1 per cent.”<sup>79</sup> These reasons led to Black’s final conclusion that the risk of loss was small.<sup>80</sup>

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<sup>73</sup> Archive of the Office of the Council of State, “Draft Code on Obligations: III Mortgages” (Document AC 15/2, 32, Microfilm Roll 6, 12/1968).

<sup>74</sup> *ibid* 13/1968.

<sup>75</sup> *ibid* 12/1968.

<sup>76</sup> *ibid* 13/1968.

<sup>77</sup> *ibid* 14/1968.

<sup>78</sup> *ibid* 12/1968.

<sup>79</sup> *ibid* 13/1968.

<sup>80</sup> *ibid*.

Another important observation that may be made from Black's letter is the implication that mortgaging of elephants was a common practice with settled rules and procedures, at least in the northern region of the country, and had even led to court disputes.<sup>81</sup> Perhaps this was part of the rationale behind Black's comment that he was against the prospect of "altering the law of mortgages of movable property in Siam so as to bring it into harmony with European codes" which in his view, and without further explanation, would open the existing practice to a possibility of fraud.<sup>82</sup>

Overall, from this exchange in the early period of Siam's law reform, it can be seen that the practice of elephant mortgage in the northern region of the country was a contributing factor to the development of the current legal concept of mortgage of beasts of burden, under Section 703 of the TCCC. Such practice may be explained by the vital economic role, including by way of collateral, that elephants played in the lucrative teak industry in the northern region of Siam. However, the issue arose of how to fit the requirement of this industry—i.e., that elephants should be mortgageable—with conceptual categorisations of movable and immovable property imported into Siamese law through the drafting and adoption of the TCCC.

### 3. Conceptualising mortgageability of beasts of burden in the TCCC.

The draftsmen of the TCCC faced the monumental challenge of creating a conceptual structure for property law, based largely on continental European and Japanese models, while at the same time allowing the commercial and economic life of the Kingdom to continue to function without excessive disturbance. This is evident from the following correspondence and notes concerning the drafting of Book 4 of the TCCC on Property on the issue of beasts of burden.

*a) Preliminary report on Siamese property law.* Among the archival documents relating to the drafting of Book 4 of the TCCC on property, there is a lengthy report on the contemporary law in Siam relating to property, with extensive reference to a large number of Dika Court cases and existing legislation, including the Three Seals Code.<sup>83</sup> Although the report contains no information as to authorship and is not dated, it is filed in the archive with preliminary documents under the Padoux commission, for the years 1908–1913. It appears to be a survey of Siamese property law at the time, in order to categorise types of property into legal concepts with a view to creating a continental European-style code. In this report, the concept of beasts of

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<sup>81</sup> Black's letter referred to a number of Dika Court decisions on the issue of elephant mortgages, including Dika Court case 704 of the Rattanakosin year 122 [Thai Supreme Court Decision 704/2446 (1903)]. Moreover, there was at least one judgment from the British International Appeal Court, referred to in another archival document as Thai Supreme Court Decision 24/1907, which held that the appropriations of a movable, such as an elephant, as security for a debt is valid although the debtor remains in possession of such movable. See Archive of the Office of the Council of State, "Memorandum on Several Questions about Things" (Document AC 13/1, 99, Microfilm Roll 14, 1995/2021).

<sup>82</sup> Archive of the Office of the Council of State (n 63) 13/1968.

<sup>83</sup> The report was titled in French: *Rapport sur les biens dans la législation Siamoise*. See Archive of the Office of the Council of State, "Archives Concerning the Code on Things" (Document AC 98/135–98/237 Microfilm Roll 14, 1647–1753/2102).

burden, specifically elephants, emerges in a manner which anticipates the difficulties later encountered by the draftsmen of trying to conceptualise this category of property in a way that both fit into their binary distinction of moveable and immovable property, while simultaneously allowing for mortgages of beasts of burden.

In categorising property into an overarching binary distinction of immovables and movables, the report recognises a problematic category of “corporeal movables,” stating:

The properties to be placed under this heading cannot easily be defined as there are properties which ought to be considered as movable by their nature, but are subject, in consequence of their size, to the same rights as those incumbent upon immovable properties.<sup>84</sup>

The report goes on to list as examples wooden houses built on land or upon pillars and floating houses, which it states are nevertheless subject to land taxes and may be mortgaged (referencing court decisions as evidence); “big boats,” which may be subject to mortgage agreements that may defeat the claims of third parties provided there is a document (referencing court decisions and what appears to be an academic text); and elephants. It notes:

Elephants are movable like any other animal and nevertheless subject to mortgage agreements which may be set up against third persons provided there is a document thereof as regarding boats (British [International] Appeal Court No 24/1907).

This report recognises, therefore, that these types of property do not fit into the binary distinction of movable and immovable as far as mortgages are concerned. Indeed, the issue of beasts of burden returns in the report when it attempts to establish divisions of immovable property. In relation to a category of immovable property designated “property immoveable by destination”<sup>85</sup> the report explains that:

The notion of that kind of immoveable property has not been yet formed in Siamese law. But, there are in Siam as in other countries, movables necessary to the working of immovables; should they be separated therefrom by attachment at the request of the owner’s creditors or by partition at the request of a co-hire, the owner or he who will get such an immoveable could be unable to work it and remain in the worst predicament, and such harm is to be prevented in Siam as elsewhere. Therefore it would likely be expedient to consider also in Siamese law as immovables the following movables wherever necessary for the use or working of immovables: 1. Animals necessary to the working of land estate such as buffaloes or elephants (compared with animals unnecessary to it, such as pigs or poultry), at least when dealing with an estate of such area as a man cannot work it by himself.<sup>86</sup>

Here, the draftsmen considered the significance of beasts of burden as part of economic output from the use of land. This can be seen from the reference to them as “animals necessary to the working of land estate” as opposed to other animals such as

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<sup>84</sup> *ibid* 1653/2102.

<sup>85</sup> *ibid*.

<sup>86</sup> *ibid*.

poultry which could not be employed to work the land. Therefore, it may be concluded that special status of beasts of burden as an economic factor of production paved the way for the rationale behind their special legal status, reflecting also their value as financial security. This arguably led to the conceptualisation of beasts of burden as accessory to immovable property, thus justifying the extension of the concept of mortgage to include beasts of burden, without having to abandon the doctrinal dichotomy of immovable and mortgageable versus moveable and not mortgageable.

*b) The drafting of Book 4 of the TCCC.* The archival documents reveal that the drafting process of Book 4, eventually promulgated in 1930,<sup>87</sup> commenced in 1908 under the helm of George Padoux, the Legislative Advisor, then from 1913 of Rene Guyon.<sup>88</sup> During this drafting process, beasts of burden were discussed in relation to the classification of property into movables and immovables. However, as will be demonstrated, the key concern in the classification of beasts of burden was to allow for them, along with a limited class of movables, to be mortgaged. Other legal issues, such as registration of mortgageable movable property, seem to have followed from this centrally important consideration.

A glimpse into the legislative contemplation on how to conceptualise beasts of burden can be seen from an archival document on the preliminary discussion of the drafting of Book 4. Guyon's memorandum dated 1<sup>st</sup> July 1916 entitled "Memorandum on Several Questions about Things,"<sup>89</sup> which was sent to Padoux for his comments,<sup>90</sup> included the topic of "Mortgage of movables." Guyon pointed out that the categorisation of property was necessary:

[T]he discrimination between movables and immovable will enable us to consider whether and to what extent mortgages of movable may be allowed by an exception to the principle, everywhere somewhat mitigated, that only immovable can be mortgaged.<sup>91</sup>

It is then clear from the rest of his comments on this issue of mortgage of movables that Guyon was amenable to the idea that a limited category of movables should be allowed to be mortgaged, as an exception to the general principle that only immovable may be mortgaged, so long as this was accompanied by a compulsory system of registration as a condition for the validity of mortgage.<sup>92</sup> Indeed there is further evidence here, in addition to Black's opinion and the report detailed above, that the exception—that certain movables can be mortgaged in Siam—was established by judicial decisions as a concession to the black letter law, as Guyon continued:

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<sup>87</sup> Government Gazette, Vol 47 (18 March 1930). It came into effect on 1 April of the same year.

<sup>88</sup> Archive of the Office of the Council of State, "Archives Concerning the Code on Things" (Document AC 13,98, Microfilm Roll 14, 1507/2102).

<sup>89</sup> Archive of the Office of the Council of State, "Memorandum on Several Questions about Things" (Document AC 13/1, 99, Microfilm Roll 14, 1991/2021).

<sup>90</sup> Padoux's reply, which on the issue of mortgages of moveables stated "No remarks," can be found in the next document in the archive, entitled "Note Pour M. Guyon" (Archive of the Office of the Council of State, Document AC 13/1, 99, Microfilm Roll 14, 2015/2021). For the "No remarks" comment, see 2018/2021.

<sup>91</sup> See *ibid* 1994/2021.

<sup>92</sup> See *ibid* 1994–1997/2021.

Section 7 of the Siamese Mortgage Act, R.S. 118, embodies the principle above referred to. But it is constantly admitted by decisions of the Court that some movables may also be subject to mortgage.<sup>93</sup>

In this statement, Guyon made a reference to the statutory rule, contained in Section 7 of the above Act, that the remit of a mortgage of land shall include the land itself and buildings attached to land, and shall not include trees and other things attached to land that may be considered “movable things.”<sup>94</sup> However, as Guyon remarked, by 1916 there had been many judicial decisions which allowed for mortgages of movable property, including ships,<sup>95</sup> elephants,<sup>96</sup> and wooden and attap houses.<sup>97</sup>

Guyon’s main concern seemed to be that the Commission of Codification would eventually have to decide whether to allow mortgages of movable property as an exception to the general principle, and if so, of what types. Some types of movable property had already received judicial attention as aforementioned, whilst others, such as floating houses and buffaloes, had not. However, in his opinion, they needed to be included in the consideration.<sup>98</sup> This, he contended, “would be the best way to codify, as exactly as possible, the present law and custom governing this question.”<sup>99</sup>

Considering Guyon’s writing, it can be seen that his position would be to draft the new code in accordance with existing legal principles and local customary practices. Whilst Guyon did not elaborate on what custom he had in mind, it is possible to conjecture that one example of such custom might be mortgages of elephants in the teak industry in the northern region of the country, as discussed above. Another source of custom may be the cultural conception of beasts of burden as movables and not accessories to land, which Guyon discussed later in the same memorandum. Under the topic “Accessories to a thing,” he stated that:

In occidental countries a provision to that effect exists with the consequences that horses, mules, etc. used for work on an estate are accessories to such estate. In Siam, this could apply to elephants and buffaloes, but the custom is to consider these animals as movables. However, they are exceptionally liable to be mortgaged. . . . It seems therefore advisable to stick to the custom by deciding that elephants and buffaloes shall be movables, not accessories, and organizing the exceptional mortgage of such movables.<sup>100</sup>

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<sup>93</sup> See *ibid* 1994/2021.

<sup>94</sup> พระราชบัญญัติจำนอง ร.ศ. 118, ราชกิจจานุเบกษา เล่มที่ 16 (18 มีนาคม 2442) [Mortgage Act, R.S. 118, Government Gazette, Vol 16 (18 March 1899)] (Thai) 701 (translation by the first author).

<sup>95</sup> Thai Supreme Court Decisions 192/122 (1903) and 292/123 (1904).

<sup>96</sup> British International Court Decision 24/1907. Moreover, another document shows that there were also Dika Court decisions on the issue: see Archive of the Office of the Council of State (n 63).

<sup>97</sup> Thai Supreme Court Decision 343/123 (1904), British International Appeal Court Decision 4/1907.

<sup>98</sup> See n 82 p 1996 of 2021.

<sup>99</sup> *ibid*.

<sup>100</sup> See Archive of the Office of the Council of State (n 89) 2000/2021.

This above preliminary discussion of the drafting as contained in the memorandum clearly reveals Guyon's legal stance regarding beasts of burden—that they should be classified as a special category of movable property which may be mortgaged. Guyon thus rejected the option, implied in the preliminary report discussed above, of treating beasts of burden as an extension of immovable property. This stance was faithfully reflected in his first drafts on mortgages dated 5<sup>th</sup> February 1916, in the Code of Obligations.<sup>101</sup>

A conceptually similar approach was adopted in relation to the issue of mortgages of bulls in the drafting process. In the minutes of the meetings of the Committee of Redaction, Sittings of the 18<sup>th</sup>–25<sup>th</sup> October 1916,<sup>102</sup> the Committee had to consider the question of whether buffaloes, bulls and horses were to be included in the category of movables which could be mortgaged.<sup>103</sup> The query as to their inclusion appears, from the minutes, to be based on practical issues: the condition of the local administration at the time “does not allow to expect proper registration of the mortgages on the counterfoil of the books from which the identification certificates are issued.”<sup>104</sup> Consequently, it was proposed to strike beasts of burden out of the list of movables which could be mortgaged, and to retain only elephants. However, the minutes record an objection of HRH Prince Svasti, who presided over the committee, on the basis that people who were accustomed to mortgaging their cattle would be unlikely to give up their practice and that it would be hard on them to have contracts entered into “according to a very old custom”<sup>105</sup> revoked by the courts. As a result, the draft law retained the customary practice of mortgaging beasts of burden, broadly defined.

The treatment in the drafts, both in relation to elephants and other beasts of burden, provides a fascinating case of conflicting legal conceptualisation of the animals. On the one hand, the draftsmen were attempting to create a broad conceptual framework to categorise and define notions of property, applying the legal concepts of continental European and Japanese codes as their blueprint. At the same time, they were also trying to preserve the existing customary practices in law and commerce. Regarding beasts of burden, the draftsmen and the Committee of Redaction chose to make specific exceptions. It seems that in a contest between an orderly doctrinal classification in property law and the existing customary practice of the people in relation to beasts of burden, the latter had prevailed. The custom of mortgage of beasts of burden was thus preserved through legal exceptions and through the creation of the arguably conceptually awkward, yet wonderfully fascinating, category of special movable property in Thai law.

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<sup>101</sup> s 11 of Guyon's handwritten draft. Archive of the Office of the Council of State, “III. Drafts” (Document AC 15/2, 32, Microfilm Roll 6, 87/1968).

<sup>102</sup> Archive of the Office of the Council of State, Sittings of the 18<sup>th</sup>–25<sup>th</sup> October 1916 (Examination of the Draft on Mortgage) (Document AC 38/385, Microfilm Roll 6, 438/1968).

<sup>103</sup> *ibid* Document 38/386, 439.

<sup>104</sup> *ibid*.

<sup>105</sup> *ibid* Document 38/387, 440.

## IV. CONCLUSION

This article has traced the development of the concept and treatment of beasts of burden in Thai law, dividing the discussion between ancient texts and the period of legal reformation in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Three ancient legal texts, made at different times in different kingdoms of territory which later became the same jurisdiction, reflect different views of beasts of burden. The view from King Ramkamhaeng's Stone Inscription of the Sukhotai era recognises the characteristic of elephants as beasts of war as an addition to the economic value of the other beasts of burden as items of trade. The Mangrai Sastra, by contrast, conceptualises beasts of burden as a distinct form of movable property due to their animate characteristic, an innate characteristic of the animal, as perceived by those writing the laws, rather than a concept tied to the value it represents to the owner, in agriculture, commerce or warfare. In the laws of the Ayutthaya Kingdom and the Three Seals Code of the early Bangkok era, a complex array of different provisions covers different views of the interactions of beasts of burden with the society: as living beings from a spiritual and cultural perspective, as a store of value that could be used to pay off a monetary debt or to pay compensation for a civil wrong, as a source of liability in respect of damage caused by them, and as the centre of a nexus of complex criminal law provisions, recognising distinct kinds of damages and injuries. The various depictions of the concept of beasts of burden in these ancient legal texts thus reveal its deep-rooted and dynamic relationship with Thai societies, expressed through its rich and complex inclusion into legal rules.

By the early 20<sup>th</sup> century and the time of the legal reformation programme, specific laws recognise the economic value and address the consequent risk of theft of beasts of burden, with the increased importance of the teak industry and the demand to use elephants as financial security by way of mortgages. This leads to difficult questions regarding the distinctive concepts of movable and immovable property, the notion of property in contemporary law, and economic value in allowing mortgages of beasts of burden. Ultimately, the questions were resolved by the creation of a conceptual exception, rather than a rigid adherence to the immovable-mortgageable versus movable-nonmortgageable dichotomy.

The development of these concepts, and their dynamic shifts over time, accords with insights of comparative legal history. The evidence from the investigation performed by this article reveals a dynamic understanding of beasts of burden, and indeed of the understanding of what constitutes property, shifting over time and connected to different perspectives. The discussion thus provides a deeper and richer understanding of a seemingly ordinary legal concept, and reveals a deeper layer, as Harding calls it,<sup>106</sup> of a particular aspect in the complex process of the country's extensive exercise of legal transplantation during the law reform process.

The discussion also provides a vital lesson for a doctrinal understanding of current Thai law, and, simultaneously, a justification for a re-examination of the current legal treatment. First, it points against any need to logically fit the category of special movable property neatly into a broader framework of property law: the

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<sup>106</sup> Harding, "Comparative Law" (n 5) 205.

exceptional nature is due to particular contemporary social and economic requirements which cut across the dualist categorisation of property into immovable and movable. Second, it highlights the importance of changes in the law in response to changes in society: where desirable, perhaps other types of property could be considered for eligibility to be mortgaged without yielding to the claim that to do so would violate existing doctrinal integrity. It is hoped that this discussion may act as a reminder to lawyers and policy-makers to welcome periodical re-examination of the current legal framework taking into account its historical development, which may pave the way for a different legal view of beasts of burden as well as other legal concepts.

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