Laos Legislative Drafting Programme

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Minister Bopha's Visit to BU

Pre com'1 law in Lao PDR

1. Int'l trade
2. Dom trade
3. Cross border w/in region

Usually BV prof teaching #1, #2 = diff. from dom. law.
1. Can get Dan Partan -
2. Pettit/Miller = dom. trad. // Fri P.M.

If poss. will like to learn lessons Example/regional trade/cross border - (eg. Canada, Mex, etc.)

Land law - adopted Sept 1996
Forest law
Water

Chekte - Spouge
Transport - Eoin
Mining - Smith
Electricity

Local administrative
Urban, Planning
Special economic zones
Com'l law

Research = conducting seminars in Lao PDR.
Min: 4 steps-leg process/Lao:
1. People shr. opinion→reflect people's concurs
2. Draft bill→law, psg. people/implementation;
3. advs, class advs→eval'd=revly, inspection
4. exps write law, reflects my fam's models

Last step→must serve people's needs-
B86: IBRD agreed to fin people/implementation rep;

*long dev.* may cld get IBRD to fund 2 people/implementation rep.
June 6, 1996

Minister:

Thank/advice - esp. fact that you did eval.
strengths & weaknesses of Pwq -> basis of
imprmnt; apprec. concern, att'n/leg. efforts in
Lad; + contn./tng. last 4 yrs since returned
2
have gone furth by expd indiv. capacity/special
reasons, esp. focus pols. on strng. mkt syst-
t o each goal, want law -> effective, implementable
// Lao; specially tech personnel to assess, conhns.
rew/specialties. Those who fin. leg. trng
now = knowledgeable/th, but prbs in getting
facts due to lack of exp.; -> to solve prb-
Use tech you taught = outline -> guide/ draft leg;
& also -> gather officials = knowledgeable/field ->
mk realistic bills; Some confusion re 4 who
fin'd if put knowledge into prat, not lug resp
to Advis. Bd; for laws -> realistic, poss., sent
legislator to local constituents to gather
their opinions/int. Then after getting facts, still
need further adjnt / approv. leg/most people,
then bill goes to Cbnet -> approval -> go to
NA; little op because = based on local
evidence of villagers; After law -> adopted, Cbnet
(Pres.) -> issue stat. decree -> promulg. it;
then goes to Min -> implementing decree ->
inform Public re how -> implemented.
MoJ's role = ex pl. org. seminars, educat.
population = 8 steps = ways to implement
dim process in lad, but -> 4 steps to
implement law. @ Qualified people come to trng,
eg if wont long/1996-8 (excl. 3/Sept +1996) = &
laws: involve & steps -> eg. in area of Comm. +
Fin: Urban plng & transp = 2; 2 in admin area;
local admin + spec. ec. zones; 2/environment:
energy + elect. min. resources. Need more than

8 laws:
4 cases
Introduction to Administrative Law Outline
Professor Jack Beermann
Boston University School of Law

Administrative Law is about the delegation of authority from the legislative branch to the executive branch and how that discretion is controlled to combat capture, corruption and incompetence.

Capture by interest groups
Corruption of Agencies, Congress, President
Incompetence of Agencies, Congress, President

Democracy, Freedom and Agencies, stories that are told to justify administrative control, including Congress's agent, expertise, pluralism and accountability through executive branch.

Government and Agency Structure:

Legislature makes basic policy decisions and then delegates administrative authority to:
- Agencies within Cabinet Departments
- Agencies within Executive Branch but not within Departments
- Agencies independent of Executive Branch--more responsive to legislative control

Different Ways that policy is made after delegation of discretion. Administrative Procedure Act and particular agency statutes.

- Rule making--Notice and Comment. Example of what labels should appear on food packages.

- Informally--granting or denying permission, license etc. Example of how much timber may be cut on national forest land.

- Adjudication--general rules announced in course of litigation--example of whether a labor election was fair--Labor Board announces general rule in the course of rule.

Different ways that discretion is controlled

- Direct and indirect legislative supervision--Precise statutory language, re-writing statutes, making funding decisions; committe hearings, agency jobs

- Appeal within the agency--formal and informal decisions

- Appeal to the courts--judicial review,
constitutional and statutory constraints

Control within agency and centralized executive control

Method of Appeal

Adjudications
One level of "independent" decisionmaker-ALJ
Appeal to higher level within agency on the record
Appeal to appeals court (not trial court) on the record

Rulemaking
Expert decisionmakers formulate proposal
Notice to public and receipt of comment
Require agency to explain its decision and evaluate comments
Appeal to appeals court (not trial court) on the record

Informal decisions, decisions in the field
No record (or very little) created at initial decision level
Appeal to expert, non-political decisionmakers
where record is made
Appeal within agency (more centralized) where review is on the record
Appeal to appeals court if agency has made a record otherwise to trial court for a trial de novo where agency
does not make sufficient record

Substance of Appeals

Procedural appeals are favored—not adequate notice, not time for comment, agency did not give person adequate opportunity to present or prepare case

Substantive appeals disfavored—substitutes non-expert (political) judgment for expert in the field. Agency discretion is more legitimate than judicial discretion.

Standards on appeal—substantial evidence, not clearly contrary to law, not arbitrary and capricious. Review is on record before the agency.

The greater the discretion the less likely an appeal is successful, because appeals levels (here usually courts) defer to expertise of those most familiar with the process.

Greatest Challenges of Administrative Law

Effective review without paralysis, political meddling and agency capture.
Will be better if subjects involved'd = 1/area

AWS: 2 pts: ① Ensure min responsibility /law + impl. decree
② Est. rates for min/NA/drafter procedures

Min. incl. law + impl. decree in 4 steps; 4th = inspect + eval; in law = agreed/procedures;
in draft. New Ec mech. = 3 groups: ① Gov't;
② mnts; ③ people → 4 diff structures of NRM:
ag., Ind.,'Brien
Eq./ag. must decide what = best sol. /pot. →
draft bills/land use; in law precedes = family eq./gov't
role = in prod. /fin.,
eg. 'gov't limits farm to 5 ha, ask people; if = emof/survival
people must = committed to do what = nec/ag.
(nothing else) → ask people's opinion = if agree =
OK then = incl. facts in rept/bill.

e.g. if people want to grow trees, forestry, fruit
per mts., but must pay 'tax' = rent... ask
people's opinion/growing trees = $0 per mct?

In sum: before submit leg/bill, require
people's opinion ? meld trends, culture w.
leg. → combine 2 syst = wkt together...
Cultural + tech practices affect health, well-being
= try to 'mind' law to protect well-being;
E.G. in case of terminal, contagious disease,
the trend = live together, must use law to
sep/well-being at those not affected
E.G. conf. trends = keep people to help each other,
cont. w/o new law.
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Mark Pelleti: Commercial Law:

A. 3 points: fundamental of US Com'1 Law
   1. Unless specific rule, can buy or sell anything;
   2. Breaches of contract enforced by its coercive power.
   3. Contract law provides series of rules when 2 contracting parties don't specify rules.

B. On that finding: special laws --> easy for Ps to Trd:
   1. Many: "Uniform Comm'1 code" = law in each state so st.
   2. To promote ease of trd = negotiability = 4 devices/laws
      a. If I have contract to buy from you, but don't have enough $ to pay all now, you want to
         sell, want $ now, I promise to pay you, give me good, sell "promise" to bank which pays
         you for "promise," I pay to C $12 (mk % = "profit")
   b. Lett. of credit: you want to sell to me, I don't have $ now, you don't know me, I go to bank which promises to pay you, promise credit note
   c. You want to sell to me, but we're for partial delivery truck owner gives receipt to seller when he puts goods on truck, whoever has receipt has rights to goods, seller can mail receipt to buyer who gives it to truck on delivery.
   d. Seller takes security in items sold or other property of buyer; = rules abt filing security int/collateral in a public office (I didn't use same property as collateral for 2 lending since record shows already used. But need exp in place to supervise, implement filing system; lenders need to know where to find info.

3. Some laws to ensure trd = fair to Ps involved:
   eq. in Uniform Com'1 code: requires "good faith" = honesty; if ct finds don't act in gd faith, ct ctld refuse to sust contract or if trd = so unfair, ct ctld refuse to enforce it
Petit cont.:

"Fairness" laws by a rd bet \( \geq \cos \), or brng cos + port indiv

\[ \text{Contract bet: } \cos + \text{port } \text{indus} = \text{cons. contracts} \rightarrow \text{more laws to protect port indivs (than to protect brng cos): } 2 \text{ gen't ways: } \]

1. require co. provide info. to cons. = wtz only if cons. can understand info + do something abt it
2. prohibit certain contracts - eg. v. loans at high int rt,

ie use com'f law to encourage brng, protect ps + unfairness

but really a framework of laws/mkt ec, not laws to facilitate

e. mkt ec. 2. But = details 3. no one law/mkt, but

many kinds, dep on mkt desired + circumstances/etry. ie didn't

know if a given deal = gd, unless knew comp circum + could tll

how details fit. Lao cires = res. rep.

Q#1: How Uniform Comm Code -> dtel'd? A: many diff. laws,

some early US, some Eng, many people (lawyers, law teachers,
judges) work on laws, hearings/bus people in various fields/probs
to solve;

Q#2: Do you specialize/partic laws/partic fields, or st w. gen'l law +

all dealings - Dr. H: ie Main law, w. sub div/area? A = Contract

law = most gen'l. Unif Natl = Comm law, labor law, Bkg law +

All items descr'd here = Secs under Comm law; cld have sales w. dif's

under each.

2 issues: research:

1. Law vs. req = legislative procedures, law + admin

pract. law = research

2. Whether to divide in 3 pts.