

Thesis Title : Priority of debts in Bankruptcy cases of Thailand  
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### ABSTRACT

It is generally accepted that an insolvent debtor is unable to fully perform his obligations toward all creditors. Thus, where a debtor becomes bankrupt, a collection of his assets as part of the Estate is to take place in order to distribute them to all creditors whose debts are allowed. When we consider the priority of debts as provided in section 130 of the Bankruptcy Act B.E. 2483, we will see the mentioned Act has demonstrated a concept of favoring some creditors more than others. And if we consider the Estates, we will see that most of them are insufficient to meet all debts. Hence, granting priority to one creditor leads to limiting the chance of getting repaid fairly to another. Therefore, the priority granted to any specific creditors is a crucial part in bankruptcy cases. Consequently, such priority must be precisely specified. In doing so, the quality of debts and the Government's policies should be taken into account. The qualified debt is one which is of common interest to all creditors, beneficial to the Country and in accordance with humanitarian principles. But the research has shown problems of section 130 of the aforementioned Act as being ambiguous and unjust as follow:

The problem in withholding and distributing the "fee" and "expenses" as required by section 124 and 130 of the Bankruptcy Act B.E. 2483

The question of whether there should continue to be a priority in taxes and the debtors' funerals expense.

The Employee Welfare Fund, the Social Security Fund and the Workmen Compensation Fund are not granted a priority over the debtor's Estate even if these funds' main purposes are to help and support the employees in need.

Should there be additional priority in section 130.

The results of the research shows that even though section 124 requires the official receiver to withhold fee and expense before distributing the Estate to any creditor and section 130 stated that such expense and fee are in the second and forth priority. But they are not conflict because section 124 only allows the official receivers to withhold the fee and expense out of the debtor's Estate without specifying which priority they are. Meanwhile section 130 requires the official receivers to distribute the debtor's Estate according to the priorities set forth in it. And in practice, for debtor's funeral expense aspects, despite the creditor rarely files for prove of debts, there is a humanitarian need to maintain its priority. And for the taxation aspects, the research results shows that England has given up the Crown's preference for taxes and duties due to the Inland Revenue Department and also has set up a new rule about distributing the Estate to the creditors by specifying the "Prescribed Part" from the company debtor's Estate which are under floating charge. And repay the unsecured creditor before the floating charge holders from the mentioned prescribed part. And for the debts owed to the Employee Welfare Fund, the Social Security Fund and the Workmen's Compensation Fund are not being granted any priority over the debtors' property under the Bankruptcy Act B.E. 2483 even if these debts are as important as taxes.

This thesis, therefore, proposes to reword and amend section 130 in the Bankruptcy Act B.E. 2483 to grant priority over the debtors' Estate for the debts owed to the Employee Welfare Fund, the Social Security Fund and the Workmen's Compensation Fund as well as the claims for death or personal injury resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.