

Thesis Title : Constitutional Interpretation: A Case Study of Rights and Duties Impliedly Protected by the Constitution

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Degree : Master of Laws (Business Law)

Academic Year : 2009

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### ABSTRACT

Constitution of The Kingdom of Thailand B.E. 2550 states that “Rights and liberties recognized by this Constitution expressly, by impliedly or by decisions of the Constitutional Court shall be protected and directly bound to the National Assembly, the Council of Ministers, Courts, Constitutional organs and State agencies in enacting, applying, and interpreting laws.” The issue which should be considered is that what kind of act will be considered as the exercise of rights and liberties under constitution because the constitution are indicated in either rights and liberties by expressly, by impliedly or by decisions of the Constitutional Court are indicated in the Constitution. The word “Impliedly” under section 27 of the Constitution of Kingdom of Thailand B.E. 2550 should be considered whether it can be interpreted broadly or narrowly. Additionally, its meaning should be defined due to the unclearness.

From a study, it is found that rights recognized by the Constitution imposes that the right to claim that no one can interfere the right of the other person, which leads to the right to claim against the State for acting in order to certify and protect such rights. Moreover, to fulfill such purpose, rights recognized by this Constitution would mean that the State would secure such right and recognized it as the relationship among individuals and the State or the competent organizations.

The State must respect and protect rights recognized by this Constitution in order to enforceably practice. Liberties mean the benefit of the person which entitle the person to

exercise any kind of act without any duress or any control. The person should have liberties without claiming or do anything in order to exercise such liberties. Therefore, the person entitled the liberties will be free from any duress for acting or not acting as long as such liberties still exist.

However liberties can create the rights; which sometimes are so called “Rights of Liberties” which mean that liberties create the right to claim that no one or no State can take away such liberties. If such liberties was taken, then, the holder of such liberties entitle the right to claim or remedy for taking away such liberties.

According to the interpretation of “Impliedly”, it is of view that the protection of rights and liberties should be interpreted covering the issues as follow; 1. Rights and liberties without the interference of the State or any person; 2. Rights and liberties which people entitles to claim from the State; 3. Rights and liberties of the expression of political will and 4. Rights and liberties under the manners and traditions including the related law.

In order to consider the means of interpretation of “Impliedly”, it should be considered to the alphabetical intention and interpretation by intention. In response to this, the custom and the tradition including related rules of law and customary international practice for avoiding the distortion of meaning and constitutional intention are considered.

