

Thesis Title : Binding Effect of Previous Judgments upon Thai Courts:
A Study on the Doctrine of Precedent in the Supreme Court

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ABSTRACT

A judgment is a production of exercising judicial power assigned by a State. Once a court issues a judgment, such judgment is effective and binds parties of such case. If any party is not satisfied with a judgment, such party has to appeal to the Appeal Court or the Supreme Court, as the case may be. After the highest court renders a judgment, a case is final and parties have to comply with a judgment. This thesis aims to study whether the Thai Supreme Court's judgments bind courts' adjudication in a latter case. In other words, if a case has the same facts as the facts in the case previously adjudicated by the Supreme Court, does this court have an obligation to honor the previous precedent? If such court wishes to reverse or differently rule, how should it do?

From the study on binding effect of higher courts abroad and of the Supreme Court of Thailand, all countries give precedence to the high courts' judgments. There is a different between a common law system and a civil law system, nevertheless. While common law countries consider high courts' decisions as a law that latter cases have to oblige, civil law countries view high courts' decision as an important and good example for legal interpretation. In civil law countries, high courts' decision is a guideline for adjudication and makes a judgment more explicit.

This thesis, therefore, suggests that judicial organization should pay high attention to the rationale for the decision, *ratio decidendi*, in order to create a concept to judges. Moreover, judgment rules should be publicized. It should be systematized based on types of law in order to be clear and easy to research. A judgment in a lower court can differ from a judgment in a higher court. Furthermore, it is acceptable that a judgment in a higher court is different from a judgment in the same court. However, to secure a court's discretion in making a judgment, there should be a guideline on

dissenting with previous judgments. In the case that a lower court does not follow a higher court's precedent, the lower court will refer to such higher court's decision and follow by the lower court's opinion and all reasons leading to dissimilar adjudication.

