

## บทคัดย่อ (ภาษาอังกฤษ)

The objective of this research is to study the problems arising from applying foreign laws in Thai courts. The issues of foreign laws application consist of 3 main parts: foreign laws pleading in Thai courts, the proof of foreign laws and the interpretation of foreign laws in Thai courts.

According to the study of the arising problems mentioned above, the results of the study are as follows;

1) Regarding the issue of foreign law pleading in Thai courts, due to the absence of a specific law, it can be identified as three issues. Firstly, the person who has the right to plead foreign laws in Thai court has to be the party of the lawsuit, including a person who files the lawsuit (or a Plaintiff), a person who is sued (or a Defendant), a person who has the right to legally represent for the others such as the attorney of plaintiff, the attorney of defendant, the juristic person's representative, the legal representative, the comptroller in a bankruptcy case, a lawyer, a complainant, an opposer, an interpleader, except for the volunteer interpleading to be co-party of the case, in aspect of section 57(2) of the Code of Civil Procedure, co-party. For the person who requests to enter into the lawsuit after the court has delivered its judgment, the is not allowed to plead any foreign law. Secondly, the period of pleading foreign laws must be a period which the party could cite some facts that result in the matter of issue. Thirdly, any method of pleading for a foreign law should be written in the plead, deposition and counterclaim, except in petty case, foreign law could be verbally referred.

2) According to the problems concerning the proof of foreign law in Thai courts, the evidence which should be brought to prove the foreign laws is a statutory law and the expert witness. The qualifications of the expert witness should resemble to English or Australian Law, namely a person who has specialized knowledge based on education or experience background. The person having a burden of proof is the party of the lawsuit who makes a claim to the court. Thai courts do not have the authority to request any additional evidence for the investigation, according to Section 86 of the Code of Thai Civil Procedure Code. The criteria to prove witness and evidence should be considered under the evidence law and the level of proof should be reached by clear and convincing evidence.

3) According to the interpretation of foreign laws in Thai courts, since the interpretation of Thai court is similar to that in English law, if the law which would be interpreted is in the civil law system, Thai courts should adjust the principle and method accordingly to the system of law. There are two concerning issues. Firstly, the court has to interpret the law by considering both wording and the spirit of law simultaneously and secondly the method to find the spirit of law should be widely used. Approaching the spirit of law should initiate by analyzing the whole provision and considering the history of that law, which could be found in the draft of the bill that was submitted to the council, the principles and reasons under the law, parliamentary commission minutes, parliament minutes or report on the preparation to draft a bill.