



Royal University of Law and Economics

English Language Based Bachelor of Law Program

Professional Legal Skills

Teaching Handbook

“Sentencing and Fair Trial Principle”

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We hope our research paper could be able to help other law students and those in need in order to recognize their right and prepare for the upcoming proceeding.



List of Abbreviation

ABBREVIATION	Full Form
&	And
Art. / Arts.	Article/ Articles
CCC	Cambodia Criminal Code
CCP.	Code of Criminal Procedure of the Kingdom of Cambodia
etc.	Et Cetera
p. /pp.	Page/ Pages
Prof.	Professor
The Constitution.	The Constitution of the Kingdom of Cambodia
UNTAC	United Nations Transitional Authority in Cambodia
DUI	Drunk Under Influence



I. Course Syllabus

A. Course Description

The purpose of this course is to provide a fundamental understanding of sentencing and trial in accordance with the right to fair trials and relevant rights under the constitution of the Kingdom of Cambodia. The course also entails an overview of sentencing and trial procedures as stipulated in the criminal code. The course allows students to explore and analyze the lacunae of the existing trialing system and sentencing framework. This class is intended to be conducted in a combination of lectures, slide PowerPoint presentations, and group discussions. The required course materials will be provided in advance through class teaching content.

B. Course Objective

The course will have 3 main objectives:

- Students are required to read the reading materials before the class
- Students are required to be open for discussion, participate in-class activities, and interact with lecturers
- Students will be required to conduct research and answer the questions that were given in the teaching content

C. Expected Learning Outcome

After completing this course, the students will be able to:

- Students will be able to understand the framework of Trialing system and Sentencing



- Students will also be able to have a good understanding of Fair Trial Rights
- Students will be able to have a better understanding of the purpose of the sentencing principle
- Students will be able to identify legal issues regarding Trial and Sentencing and apply the relevant law and knowledge that they have acquired from this course

D. Teaching Outline

Class	Content	Questions for Class Discussion	Reading material
Class 1	<ul style="list-style-type: none"> - Class Introduction - Introduction to History of Criminal Procedure and Hierarchy of Cambodian Law - Introduction to Criminal Code Principle: Trial 	<ul style="list-style-type: none"> • Under what circumstances may the trial hearing conduct confidentiality? • What are the rules that parties present shall follow at the Hearing? • Who is eligible to ask questions at the hearing? • If the witness is not properly summoned to testify, may parties request the court to hear from the unsummoned witness during the trial hearing? 	<p>Criminal Code of Cambodia</p> <p>Constitution of Cambodia</p>



<p>Class 2</p>	<ul style="list-style-type: none"> - Introduction to Fair Trial Rights 	<ul style="list-style-type: none"> • What is the definition of Fair Trial Rights? • Why is the right to a fair trial important? • Why do we need to study and understand the right to a fair trial? 	<p>Fair Trial Rights in Cambodia by Prof. Soy Kimsan</p>
<p>Class 3</p>	<ul style="list-style-type: none"> - Introduction to Sentencing Principle 	<ul style="list-style-type: none"> • What kind of penalties may be imposed in criminal law? • What is reprimand? What kind of crimes may be imposed? 	<p>Criminal Code of Cambodia (Chapter 3 “Sentencing Principles” Article 96- 103</p>
<p>Class 4</p>	<ul style="list-style-type: none"> - Recap on the Principle of Trial and Sentencing - Recap on the Principle of Fair Trial Rights - Quiz (By Kahoot or On Paper) 		



**** Note: Each class will be conducted for 2 hours and this teaching outline is subjected to change if deemed necessary.**

E. Teaching Method

The class will be conducted in the hybrid form of Student center and Teacher center.

- Lecturer:

- Lecturer will provide class materials, such as slide presentation and additional reading materials for the students before class.
- The lecturer will provide the overview of the lesson to students.
- Students are highly encouraged to participate in class discussion, share their views on the topic and ask questions.

- Students:

- Students are required to read the class material before the class starts.
- There will be a class discussion in every session, therefore students will be divided in groups and discuss the given questions.
- Students are required to take notes and be an active listener and ask questions.
- Students are also required to answer questions that the lecturer asks along the class, to deepen their knowledge and sharpen their critical thinking skills.



II. Section I: Background of Cambodia Criminal Procedure

A. History of Cambodia Criminal Procedure

Cambodia was under French protectorate in 1863 and under French colonization in 1884 until 1953. Cambodia gained fully independence in 9th November 1953. During those 90 years, French had given influences in many industries including Cambodia legal system. Cambodia law is primarily based on French civil law tradition.¹ Cambodia went through several regimes: Constitutional Monarchy² (1953-1970), Republic³ (1970-1975), Communism⁴ (1975-1979), Socialism⁵ (1979-1991). In 1993, constitutional monarchy was restored again.

Cambodia used to have unwritten customary law during Angkorian times and slowly turning to statutory law. The legal system largely influenced by French civil law system under the colonization. Under the republic regimes, the legal system, the judicial and the existing law were destroyed. By the help of Vietnam troop to rescue Cambodia from Khmer Rouge, some of Cambodia legal framework was influenced by Vietnamese legal system. The presence of

¹ Jennifer Holligan, Tarik Abdulhak, Victoria Amann-Lasnier, Nicole Fleury, "Overview of the Cambodia History, Governance and Legal Sources" *Global Law & Justice*. July-August 2019. <https://www.nyulawglobal.org/globalex/Cambodia1.html> (accessed May 20, 2022)

² Constitutional Monarchy: a system of government in which a monarch share power with a government. King is the head of state and prime minister is the head of government. Both of them bound by the constitution of their country. See: <https://www.britannica.com/topic/constitutional-monarchy>

³ Republic: a system of government in which the power is held by people. People transfer their power to their elected representation who present them and their interest. This governing will consider everything as public matter, the right and duty as a whole. See: <https://worldpopulationreview.com/country-rankings/republic-countries>

⁴ Communism: a system of government in which most property and economic resources are no longer belong to individual but the community. People are provided for based on their needs, such as food, clothing, housing and other necessities which are considered as the basic need. Class distinction and religious is abolished under this system. See: <https://www.thoughtco.com/difference-between-communism-and-socialism-195448>

⁵ Socialism: similar to communism but socialism is a system of government in which individual could own personal property but all industrial and production are owned by elected government. People is distributed according to individual ability and contribution. Class distinction exists and people are given the freedom of religion. See: <https://www.thoughtco.com/difference-between-communism-and-socialism-195448>



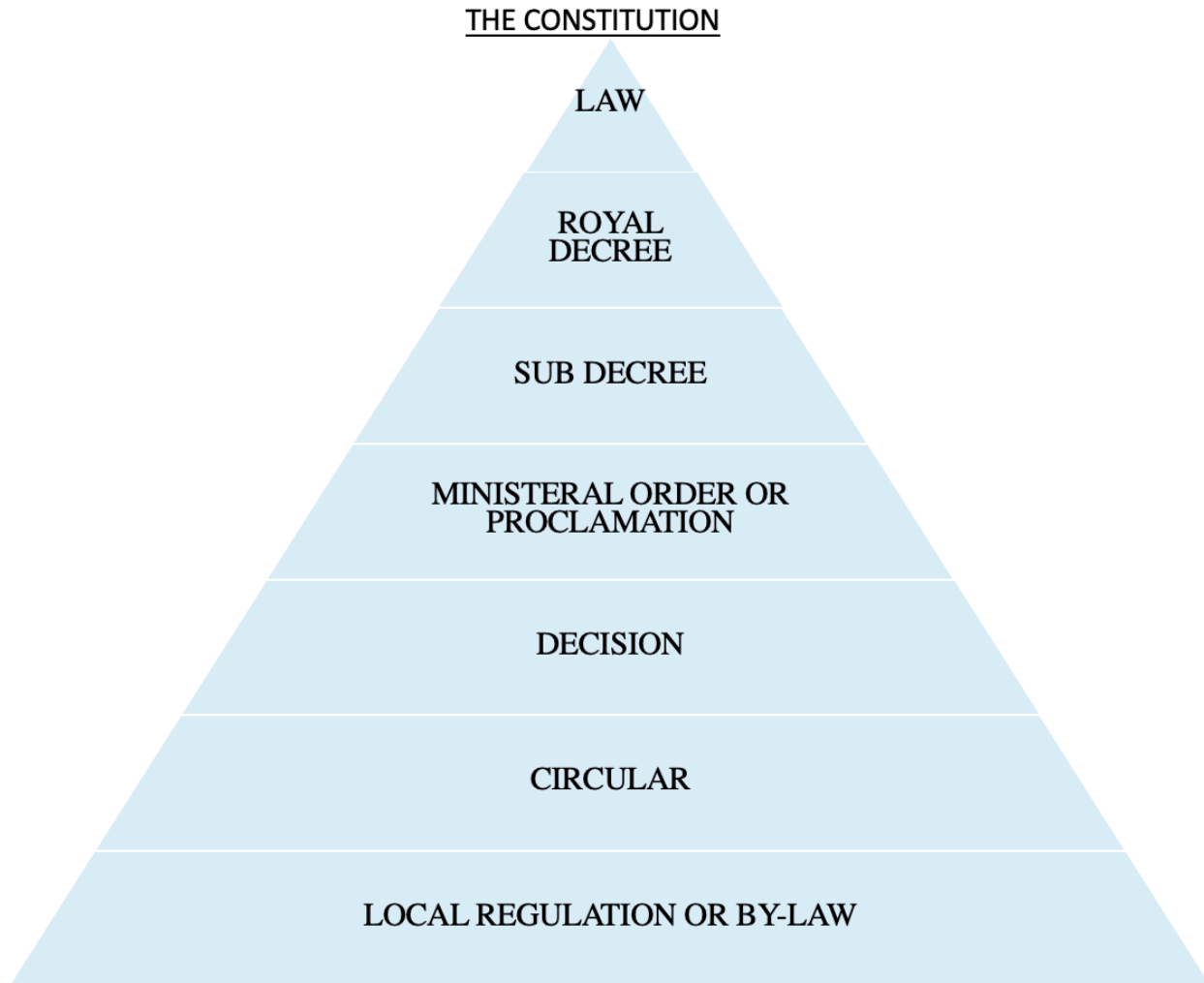
United Nations Transitional Authority in Cambodia (UNTAC), many laws such as a criminal law, a judicial law and the press law were enacted.⁶

B. Hierarchy of Cambodia's Law

Hierarchy of norms in Cambodia legal system starts the highest to lowest legal force. Each rank of legal instrument is validity and legitimacy, but the higher has bigger power. Therefore, the new rule shall create complying with the higher norm, modify with the same level, and repealing the lower level.⁷

⁶ “About Cambodian Law” *CHBAB.NET*. <http://en.chbab.net/about-cambodian-law> (accessed May 20, 2022)

⁷ “About Cambodian Law” *CHBAB.NET*. <http://en.chbab.net/about-cambodian-law> (accessed May 20, 2022)



- **The Constitution:** is the supreme law of the Kingdom of Cambodia, was adopted by the constitutional assembly on September 21, 1993. All laws and decision made by state institution must be strictly complied with Constitution.⁸⁹ Any law made inconsistency with The Constitution. is considered as unconstitutional.

⁸ The Constitution of Kingdom of Cambodia, Cambodia, September 21, 1993, Article 150 (Former article 131).

⁹ Kong Phallack, Hor Peng, Jorg Menzel. 2012. *Introduction to Cambodia Law: Overview of The Cambodian Legal and Judicial System*. Phnom Penh, Cambodia: Konrad-Adenauer-Stiftung, p.9



- **Laws (Chbab):** is adopted by the National Assembly and the Senet, and promulgated by the head of state, King.¹⁰ There are many laws in Cambodia regarding public and private law such as Civil Code¹¹, Civil Procedure Code¹², Criminal Code¹³, Criminal Procedure Code¹⁴, Labor Law¹⁵, Land Law¹⁶ and etc.
- **Royal Decree (Preah Reach Kret):** is an exclusive regulation presented by the Council of Ministers, signed by the head of state, King.¹⁷
- **Sub Decree (Anu-Kret):** is an exclusive regulation proposed by ministries which has been adopted by the Council of Ministers and sign by Prime Minister.¹⁸
- **Proclamation (Prakas):** is an exclusive regulation made at ministerial level and issued by the head of ministry.¹⁹
- **Decision (Sech Kdei Samrach):** is an exclusive regulation made by Prime Minister, the Constitutional Council and relevant ministers.²⁰

¹⁰ The Constitution of Kingdom of Cambodia, Cambodia, September 21, 1993, Article 28 (New).

¹¹ Civil Code: Law covers on private matter and interest including civil, commercial and family law. It was adopted by Royal Kram N_o NS/RKM/1207/030, entered into force on December 08, 2007.

¹² Civil Procedure Code: This code was created to set and determine the procedure in the civil suits to protect the rights of civil parties. It was adopted by Royal Kram N_o RS/RKM/0706/021, entered into force on July 6, 2007.

¹³ Criminal Code: Law covers on public security and public interest. It stated the prohibition or omitted in violation of law ordering. It was adopted by Royal Kram N_o NS/RKM/1109/022 and entered into force on November 30, 2009.

¹⁴ Criminal Procedure Code: This code was created to set and determine the procedure in the criminal prosecution to protect individual rights during criminal process. It was adopted by Royal Kram N_o NS/RKM/0807/024 and entered into force on June 07, 2007.

¹⁵ Labor Law: This law covers on employment contract between employee and employer in the territory of Cambodia. It was adopted by Royal Kram N_o CS/RKM/0397/01 and entered into force on March, 1997.

¹⁶ Land Law: This law determines the ownership over immovable properties in Cambodia for protecting the rights of ownership and other rights related to immovable properties. It was adopted by Royal Kram N_o NS/RKM/0801/14, entered into force on August 31, 2001.

¹⁷ The Constitution of Kingdom of Cambodia, Cambodia, September 21, 1993, Article 28 (New).

¹⁸ Law on the Organization and Functioning of the Council of Ministers, Cambodia, July 20, 1994, Article 13.

¹⁹ Law on the Organization and Functioning of the Council of Ministers, Cambodia, July 20, 1994, Article 29.

²⁰ Kong Phallack, Hor Peng, Jorg Menzel. 2012. *Introduction to Cambodia Law: Overview of The Cambodian Legal and Judicial System*. Phnom Penh, Cambodia: Konrad-Adenauer-Stiftung, p.10



- **Circular (Sarachor):** is an administrative instruction on work and affairs of governmental level, signed by Prime Minister and relevant ministers.²¹
- **By-Law (Deika):** the legal rule approved by Council at sub-national level.²²

III. Section II: Introduction to Criminal Code Principle: Trial

A. Definition of Trial and Fair Trial

A **trial** is a process of hearing in a law court and the judge will listen to the story, evidence, and witnesses in order to decide whether a person is guilty of a crime or not.

In each province of Cambodia, there shall be a court of the first instance which have jurisdiction over the entire territory of the province which is called the Court of First Instance. The Court of First Instance shall rule on the felonies, misdemeanors, and petty offenses.

In criminal case, the court of the first instance shall receive the complaint through:

- Referral order or the investigating judge or the referral judgment of the investigation Chamber;
- Order for direct of the prosecutor; or
- Record on immediate appearance submitted by the prosecutor

²¹ Kong Phallack, Hor Peng, Jorg Menzel. 2012. *Introduction to Cambodia Law: Overview of The Cambodian Legal and Judicial System*. Phnom Penh, Cambodia: Konrad-Adenauer-Stiftung, p.10

²² Sub National Level: refer to Capital Councils, Provincial Council, Municipal Councils, Districts Council, Khan Councils, Songkat Council and Commune Council. See: <https://cacj-ajp.org/cambodia/legal-system/cambodia-laws/overview/sources-of-laws-in-cambodia>; Kong Phallack, Hor Peng, Jorg Menzel. 2012. *Introduction to Cambodia Law: Overview of The Cambodian Legal and Judicial System*. Phnom Penh, Cambodia: Konrad-Adenauer-Stiftung, p.10



Individual who is brought up before the court because of the above reason will be pronounced as an accused. If the procedure does not require an immediate appearance, then the date for the trial to start will be set by the president of the court. The time limit of any act or implementation any proceeding shall expire at 12 o'clock midnight however if the last days appear to be Saturday, Sunday or national holiday (public holidays) then the time limit shall be extended to the first next working days. For example, if the national/public holidays end at Wednesday then it will extend to Thursday.

Right to fair trial is the principle of Rule of Law in nowadays democratic society and its purpose is to make sure that the right to a proper justice is served. Simply said right to fair trial is to protect individual that is charged from criminal offence so that they have their basic rights and freedom arbitrarily curtailed or deprived. Right of fair trial played an important role in the society without the right to fair trial we cannot ensure the safety of the innocent from being wrongly convicted.

B. Rights to Fair Trial

Rights to Fair Trial has been a fundamental right to human rights. It is to give the rights to the person that is accused of crime to receive fair and public hearing by a competent, independent and impartial tribunal established by law.²³ As further mentioned in article 9(1) of the ICCPR that everyone have the right to liberty and the right to liberty here means that individual have the freedom from bodily or physical movement so people cannot just be illegal detained somewhere they need to be confined to a specific space in the states or provinces such as the detention facility

²³ Article 14 of ICCPR



or prison.²⁴ Additionally, during the time of the arrest the individual who is arrested must be informed the reason why are they arrested and what are the charge against them, other rights such as the right to legal counsel, right to remain silent, the right to make a phone called must be explained and given to them in their own language that they can understand.²⁵

C. Presumption of Innocent

Presumption of Innocence is also one of the fundamental rights complement to the right to fair trials meaning that it guarantees the right to be presume innocent until proven guilty.²⁶ Since Cambodia is also a party to the Universal Declaration of Human Right (UDHR) these rules also incorporated into domestic law as well.²⁷ So, if an individual is charged with a criminal offence, they have the rights to be presumed innocent until proven guilty by the law. As further mentioned in article 38 of the Constitution of Cambodia that an accused shall be presumed innocent until they are finally convicted by the court, meaning that from the time of the arrest until the court finally convicted the accused must presume to be innocent all the times and must not be treated as a convicted.²⁸

²⁴ Article 9(1) of ICCPR

²⁵ United Nations Human Rights Committee, *CCPR General Comment No. 13: Article 14 (Administration of Justice), Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law*, 13 April 1984, [General Comment 13], para. 8.

²⁶ Article 11(1) of Universal Declaration of Human Right (UDHR)

²⁷ Article 14(2) of the ICCPR

²⁸ Article 38 of the Constitution of Cambodia



IV. Section III: Introduction to Criminal Code Principle: Sentencing

A. Definition of Sentencing

Sentencing promotes legal compliance and a just, peaceful, and secure society.²⁹ The goals of a sentence can include:

- Dissuade the criminal or others from committing similar crimes in the future
- To prevent future crimes, an offender should be removed from society.
- Customize the penalty to help the offender become better.
- Make amends for any harm caused to victims or the community.
- Encourage criminals to take responsibility for their actions and acknowledge the harm they have caused to victims and the community.
- Sentencing contributes to respect for the law and to a just, peaceful and safe society.³⁰

B. Principle of Penalties

According to CCC, article 43 stated that the principal penalties shall include imprisonment and fines, whereas the fines shall be expressed in Cambodia currency, Riels. For instance, when someone committed a crime, the court will decide within their action that have committed, and punish them within the law, as there are two type of penalties that they will be receiving which are paying fines and sentences of imprisonment. In addition, if the penalty for an offense is imprisonment, then the law shall set the minimum and maximum sentences of imprisonment incurred; and if the penalty for an offense is fines, then the law shall set the minimum and

²⁹ Sentencing Principles and Purposes, British Columbia, <https://www2.gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system/understanding-criminal-justice/how-works/sentencing/sentencing-principles-purposes>

³⁰ *Ibid*



maximum amounts of the fine incurred.³¹ However, the minimum and maximum sentences of the imprisonment and fines may be aggravated or reduced as provided for by this code.³² For example if a person accidentally or intentionally kill another people, the person will be punish in accordance to their crime and the punishment that they person will be likely to receive is the sentence of imprisonment, which are based on their circumstances and actions as well.

a. Petty Offense

Petty offence is those offence which are minor and caused small injuries or no injuries at all. These types of offence not usually not trial by the court.

According to article 48 of CCC stated A petty offence is an offence

- (1) for which the maximum sentence of imprisonment incurred is six days or less. A fine may be imposed in addition to imprisonment
- (2) punishable solely by fine

Example: Driving without license or driving over the speed limits.

b. Misdemeanor

Misdemeanor are criminal offence however it is less serious crime than felony.

According to article 47 of CCC stated that a misdemeanor is an offence for which the maximum sentence of imprisonment incurred is more than six days but no more than five years.

Example: Driver who committed DUI or any assault which involve only minor injuries and not so serious.

³¹ Cambodia Criminal Code, article 44

³² Cambodia Criminal Code, article 45



c. Felony

Felony is the most serious class of criminal offence.

According to article 46 of CCC, Felony is an offence for which the maximum sentence of imprisonment incurred is:

- (1) Life imprisonment
- (2) Imprisonment for more than five years, but no more than thirty years

In which a fine may be imposed in addition to imprisonment.

So, if a person committed a murder, the person will be responsible for their actions by receiving a life imprisonment or sentence to be in prisons for more than 5 years and less than 30 years.

Example: Crime that fall under felony are rape, murder, kidnapping, or selling illegal drug.

C. Sentence of Imprisonment and Fines

a. Computation of Sentence

According to Article 49 of CCC defines the term of the duration of the imprisonment.

- When the accused is guilty and send to one day imprisonment, it must be twenty-four hours (24hours).
- If it is one month therefore it must be 30 days even if the months have 31 days, they accused will only be imprisonment for 30 days
- In case of the accused is being imprison for more than 2 months therefore the time is calculate through each month, for example, if February have only 28 days, they will not add addition 2 days to make it 30 days as stated above it will only count 28 and continue to another month.
- In case if the imprisonment is 1 year therefore it must be 12 months.



b. Calculation of end-date of term imprisonment

Pursuant to article 50 of CCC, the convicted who's their term of imprisonment that will normally end on Saturday, Sunday or any public holiday that is stated within the meaning of the law or any legal instrument they shall be release 1 day prior to the preceding day. For instance, if their term of imprisonment will end on Saturday, they will be release 1 day prior to that day which mean they will be releasing on Friday instead. However, if their term of imprisonment will end on Tuesday which is not public holiday, they will release on that day accordingly.

c. Deduction of time spent in pre-trial detention and proceed from fines

As enshrined in Article 51 of CCC, the time that spent in the pre-trial stage or detention shall be wholly deducted from the term of imprisonment to be served. If the accused spent 5 months during the pre-trail detention and their sentence is only 6 months therefore, they will only need to be imprison for 1 month. Additionally, according to article 52 of CCC, the proceed fines shall be paid to the state Treasury and the state can use that fines money for state purposes. So, for that the fines that has been paid by the person who commits the crime, will all be going to the state.