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Taiwan Legal Research Guide

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I. Introduction

Taiwan, historically called 'Formosa', is an island in East Asia. It is surrounded by the East China Sea, Philippine Sea, South China Sea, and the Taiwan Strait. The latter separates it from Mainland China geographically. Taiwan possesses a few striking characteristics. Economically, Taiwan is highly developed in maritime trade, the origin of which can be traced back to long before the Dutch colonial period in the 1600s. Back then, aborigines in Taiwan mostly lived on farming and hunting. Some of them traded products such as deerskin for salts and other living necessities, such as clothes, porcelain and irons, primarily from pirates from Japan or Mainland China.^{[1][2]} By the time Dutch took de facto control, it was already a place flourishing for international trade. The rudimentary implicit, if not explicit, rules and ideas of free and equal market exchange gradually developed among merchants and traders undoubtedly helped lay foundation for Taiwanese society to be more receptive to modern industrialization and western conceptions of law and individual rights than some of its East Asian neighbors.

Taiwan, probably different what many people perceive, is an immigrant island. Although there is no agreement on the origin of aborigines of Taiwan, two of the most commonly accepted theories are the aborigines of Taiwan are of a mixed race of Malayans or descendants of Miao tribe of China. Although before the Dutch occupied Taiwan, there was Chinese and Japanese who lived on the islands, the Dutch control pushed the first big wave of immigrants from Mainland China to Taiwan in history. In order to find more labor so as to make Taiwan a "thriving land colony" of its own, the Dutch government, represented by the East India Company (Vereenigde Oostindische Compagnie, "VOC") attracted over

fifteen thousands of people mostly from Fujian province of China, right across the Taiwan Strait, to come to work in Taiwan[[3]]. After that, there had been three major migration movements from Mainland China and Japan while Taiwan was under control of the Zheng family, Japan and the Chinese Nationalist Party (“KMT”) respectively. Immigrants have played an important role in the economic and legal development of Taiwan. As an immigrant island, Taiwan proves to be more receptive to external ideas and culture, including legal culture and foreign laws.

Finally, Taiwan has been a colony or under de facto control as a colony for at least over 400 years. The imperial Chinese governments had made several unsuccessful attempts to take control of Taiwan since 230 A.D. Not until the Yuan Dynasty in the 1300s, was a military inspectorate established in Taiwan. [[4]] Dutch, after defeating the Spanish in 1642, physically occupied the island from 1624 to 1662, but never claimed sovereignty over Taiwan. Zheng, a general from the falling Ming Dynasty, expelled the Dutch and took control of Taiwan from 1662 to 1884 after signing the [Exchanged Memorandum between Zheng and the Dutch](#) in 1662 with the then Taiwan officer of VOC, Frederick Coyett. The Qing government resumed its control of Taiwan from 1880s to 1895, until it was defeated in the first Sino-Japanese war. As a result, it signed the [Treaty of Shimonoseki](#) to hand over Taiwan to Japan, effective on May 8, 1895. Japanese exercised its control of Taiwan until the end of the World War II, when it turned Taiwan back to the Chinese government. A few years later, KMT, physically landed in Taiwan and took control, after being defeated by the Chinese Communist Party (“CCP”) in the Chinese civil war in 1949. Different ideas, laws and culture were brought to Taiwan during different time periods. This creates a mixture of legal cultures in Taiwan.

II. Legal Pluralism

Taiwan is a society of legal pluralism. Dutch, traditional Chinese, Japanese and American legal traditions all heavily influenced the development of Taiwan legal system. For example, the VOC first introduced a tax system to Taiwan [[5]], which remained effective through Zheng period. More specifically, it instituted a licensing system to license hunters to areas under Dutch control and collected taxes from farming to receive revenues. [[6]]

Since its primary purpose is to use Taiwan as a base to establish its monopoly of sea trade in East Asia, the Dutch did not intend to exercise much more control that is political or judicial than maintaining peaceful environment for economic and trade development. In terms of laws and regulation, Dutch laws generally applied. With specific Taiwan local matters, local ordinances applied. It set up three courts: A Dutch court, a Japanese court and a Chinese court. With matters, dealing with Chinese or Japanese, Chinese or Japanese court and laws applied. With matters dealing with aborigines, tribe custom and laws governed. With matters involving Dutch people and serious matters including matters involving conflicts between ethnic groups, Dutch court and laws controlled. [[7]]

During the next 22 years, Zheng continued to encourage trade and agriculture development. On the other hand, he brought traditional Chinese laws and rules to Taiwan. Zheng implemented 大明律 ([The Great Ming Code](#)) in Taiwan. It was essentially a penal code following traditional Confucian moral principles and enforcing harsh criminal punishments. Importing Confucian teachings to Taiwan laid a solid foundation for the later integration of Taiwan to be part of China by the Qing government.

The Zheng family surrendered control of Taiwan to the Qing government in 1684, when the Qing government officially included Taiwan to be part of its territory. Qing applied 大清律例 ([The Great Qing Code](#)). Over the 200 years of Qing’s control in Taiwan heavily influenced Taiwan’s legal development in the area of family law and criminal law. Even today, some traditional principles are still highly respected and followed in certain areas of law. For example, for certain offenses, if a person commits against “his lineal blood ascendant”, punishment will be “increased up to one half.”[[8]]

After being defeated by Japanese, Qing government turned over Taiwan to Japan on May 8, 1895. Due to Taiwanese’ brave, fierce and persistent fights, Japanese government eventually passed the Law Relating to Laws and Ordinances to Be Enforced in Taiwan, aka Law No. 63 of 1896. This law vested the legislative power on the local government of Taiwan, which can issue ordinances that will have same effect as Japanese law to be applied in Taiwan. Law No. 31 of 1905, according to which the ordinances issued by the local government of Taiwan shall not conflict with Japanese laws or any Japanese laws or ordinances specifically applied to Taiwan, later amended Law No. 63 of 1896.

But in 1921, following the colonial expansion theory, the Japanese diet took a swift turn and passed Law No. 3 of 1921, which further amended Law No. 63 of 1896 by limiting the legislative power of the local government to only two situations: (1) there was no Japanese law issued in the area, or applicable, or (2) laws issued based on the special situation of Taiwan. [[9]]

Meanwhile, Japan underwent its own modern legal reform, Meiji Law Reform. It passed the first modern constitution in 1890, which models directly from German Constitution. In the next few years, it quickly established modern legal systems by passing five major codes: Civil Code of 1896, Commercial Code of 1899, Criminal Code of 1907, Criminal Procedure Act of 1890, and Civil Procedure Act of 1890. All these laws were heavily influenced by German and French

civil laws. As these laws started to apply in Taiwan, western conception of individual rights and freedoms were gradually exposed to Taiwanese as well.

As Japan entered into the militarism era, all those modern laws were disrespected until the end of the World War II, when Japan turned Taiwan back to Chinese government in 1945. Meanwhile, Mainland China was experiencing modern legal reform as well. The government of the Republic of China enacted its first modern Constitution in 1946 recognizing basic human rights and liberties among other modern legal thoughts and passed a few major laws during the 1930s and 1940s as well. However, as KMT moved to Taiwan after being defeated in the Chinese civil war, it did not apply all those modern laws until 1987.

At the same time, American legal traditions have heavily influenced Taiwan legal development due to the closer relationship between the United States and Taiwan after WWII. For example, when Taiwan enacted its very first [Domestic Violence Prevention Act](#) in 1998, it imported the idea of injunctive relief, a frequently used equitable remedy in the United States courts into the Act.

For more detailed discussions on Taiwan's legal history and tradition, please see the following resources:

王泰升, 具有歷史思維的法學：結合台灣法律社會史與法律論證 (2010).

Henry Shih-shan Tsai, *Maritime Taiwan: Historical Encounters with the East and the West* (2009).

Tonio Andrade, [How Taiwan Became Chinese: Dutch, Spanish, and Han Colonization in the Seventeenth Century](#) (2008).

Hsin-Hui Chiu, *The Colonial 'Civilizing Process' in Dutch Formosa, 1624-1772* (2008).

余钊飞, 我国台湾地区法制史研究综述 (1949-2004) (2008)

Changfa Luo, *The Legal Culture and System of Taiwan* (2006).

Tonio Andrade, *The Rise and Fall of Dutch Taiwan: 1624-1662*, 17 J. World Hist. 429-50 (2006).

王泰升, 台湾法的断裂与延续 (2002).

王泰升, 台湾法律史概论 (2001).

Tay-Sheng Wang, *Legal Reform in Taiwan under Japanese Colonial Rule, 1895-1945: Reception of Western Law* (2000).

John Robert Shepherd, *Statecraft and Political Economy on the Taiwan Frontier, 1600-1800* (1993).

Mark A. Allee, *Law and Local Society in Late Imperial China: Northern Taiwan in the Nineteenth Century* (1994).

Chien-Chao Hung, *Taiwan Under the Cheng Family 1662-1683: Sinicization after Dutch Rule* (Georgetown University Dissertation, 1981)

Wen-Hsiung Hsu, *Chinese Colonization of Taiwan* (University of Chicago Dissertation, 1975).

William Campbell, *Formosa Under the Dutch: Described from Contemporary Explanatory Notes and a Bibliography of the Island* (1903)

[Taiwan Historical Research](#) (1994-): A leading quarterly academic journal on Taiwanese history published by the Institute of Taiwan History.

III. Current Legal System

1. Current Legal Status in International Law

One of the heavily debated and most controversial issues in international law currently is whether Taiwan is an independent nation. Academia has tried to solve the question from several different angles. The elements of statehood are delineated under the Article 1 of the [1933 Montevideo Convention](#). A legitimate state under the International law shall have four characteristics: "a permanent population, defined territory, government and capacity to enter into relations with other states."

The last two elements are most controversial for Taiwan issues. Which government is the solely legitimate government of Taiwan: The Republic of China government or the government of the People's Republic of China? Both governments claim that they are the only legitimate government of China including Taiwan as part of the Chinese territory. PRC government has been extremely firm on this issue. Under the preamble of the [Constitution of the People's Republic of China](#), "Taiwan is part of the sacred territory of the People's Republic of China." In addition, under the article 2 of the [Anti-Succession Law of the People's Republic of China](#) of 2005, "There is only one China in the world. Both the mainland and [Taiwan](#) belong to one China...Taiwan is part of [China](#). The state shall never allow the "[Taiwan independence](#)" secessionist forces to make Taiwan [secede](#) from China under any name or by any means."

Under article 4 of the [Constitution of the Republic of China](#), "the territory of the Republic of China according to its existing national boundaries shall not be altered except by resolution of the National Assembly." KMT, the current controlling party of Taiwan government, has been consistent on its one China policy. Although the DDP (Democratic Progressive Party), another dominant political party of Taiwan, has attempted to claim that Taiwan is independent from China and ROC is the only legitimate government of Taiwan, it has never been successful. [\[10\]](#)

Second, does the Republic of China have sufficient capacity to enter into relations with other states? On the one hand, scholars have argued that the ROC government does not have sufficient capacity to enter into relations with other states. For example, it has not been able to participate in any international organization that requires membership of a state and only very few countries recognize the ROC government. [\[\[11\]\]](#)

On the other hand, people have also argued that although ROC is not a member of international organizations that require statehood, such as United Nations, it has been actively participating in international organizations without such membership requirement, such as World Trade Organization, Asian Development Bank, under the name of “Taiwan, China”, or “Chinese Taipei”. Furthermore, although most countries in the world do not enter formal diplomatic relations with Taiwan and do not recognize Taiwan as a separate nation from China, Taiwan has established economic ties and cultural exchange relations with most of the countries worldwide [\[\[12\]\]](#).

Moreover, although both governments of Taiwan and China claims that Taiwan is an in-separable part of China, some scholars argue that whether ROC is a legitimate government of China is a different issue from whether ROC is a legitimate government of Taiwan. [\[\[13\]\]](#)

The latter then leads to another issue: whether Taiwan Island is part of Chinese territory. Looking back, although Chinese written records of Taiwan can be traced back to 230 A.D., it was during the Qing dynasty that the Chinese government first formally recognized Taiwan territory as part of China in the 1684 [\[\[14\]\]](#). Japanese, after a brief occupation of Taiwan, returned Taiwan to the then government of China, Republic of China government, under the [Cairo Declaration](#) in 1943. [Potsdam Declaration](#) later strengthened the Cairo Declaration. In 1952, when [Japanese signed a peace treaty](#), it reaffirmed that it will “renounced all right, title, and claim to Taiwan and....” Therefore, it appeared that there was an international consensus that Taiwan shall be part of China. However, we could only wish things were this simple. Another issue was brought up after the outbreak of the Korean War, that is: is the Cairo Declaration a self-executing treaty or just a declaration or statement? If it is not a self-executive treaty, then since there was no subsequent instrument to ratify the treaty or the statement, the Cairo Declaration shall not be deemed as valid [\[\[15\]\]](#).

Some scholars also argue from the People’s Republic of China’s perspective that the PRC is the legitimate government of Taiwan, because it meets all the requirements of statehood over Taiwan, part of Chinese territory, under the 1933 Montevideo Convention. [\[\[16\]\]](#)

For more detailed discussion on this issue, please read the following treatises and articles.

The “One China” Dilemma (Peter C.Y. Chow ed., 2008)

Bjorn Ahl, [Taiwan](#), in Max Planck Encyclopedia of Public International Law (2008).

James R. Crawford, *The Creation of States in International Law* (2007).

David Raic, *Statehood and the Law of Self-Determination* (2002).

Y.Y. Wang, “*One China, One Taiwan*”: *An Analysis of the Democratic Progressive Party’s China Policy*, in *International Studies in Sociology and Social Anthropology: Taiwan in Perspective*, 159-182 (2000).

Alan M. Wachman, *Taiwan: Parent, Province, or Blackballed State?* in *International Studies in Sociology and Social Anthropology: Taiwan in Perspective*, 183-204 (2000).

The International Status of Taiwan in the New World Order: Legal and Political Considerations (Jean-Marie Henckaerts ed., 1996).

John F. Copper, *Taiwan: Nation-State or Province?* (2d ed. 1996)

Taiwan Communiqué and Separation of Powers: Hearings before the Subcommittee on Separation of Powers of the Comm. on the Judiciary, 97th Cong. 2nd Sess. (1983)

Victor H. Li, *De-recognizing Taiwan: The Legal Problems* (1977).

Frank P. Morello, *The International Legal Status of Formosa* (1966).

2. Constitution regime

The current Taiwanese constitution was adopted on December 25, 1946 and became effective on January 1, 1947 by the government of the Republic of China in Mainland China. It was implemented in Taiwan as the ROC government moved to Taiwan. However, the Constitution did not apply in Taiwan until 1987, as Taiwan was under control by martial law, Temporary Provisions Effective During the Period of Mobilization for the Suppression of the Communist Rebellion. There have been quite a few revisions to the Constitution. The Constitution was last amended in 2004 by [the seventh revision](#).

The fundamental principle of the Taiwanese Constitution is to build a Democratic Republic Taiwan following Dr. Sun Yet-Sen’s three principles of the People: The Principle of Nationalism, The Principle of Democracy and the Principle of livelihood. The Constitution specifically guarantees certain individual rights and freedoms and protects people from

government infringements.

Under ch. 3 of the Constitution, [National Assembly](#) exercises power including electing President and Vice-President, amending Constitution and voting on proposed amendment submitted by the Legislative Yuan by way of referendum. President is the head of the State and exercises powers such as concluding treaties, declaring war and promulgating laws. Both President and Vice- President serve a term of 6 years up to two terms. In addition, Taiwan government is divided into five branches.

Taiwan government is divided into five branches. Dr. Sun Yat-Sen coined the term: 五權分立 (separation of powers among five branches) of the government. He combined the western idea of separation of powers among Executive, Judicial and Legislative branches with two of the three branches of traditional Chinese imperial governments: the Examination Yuan and the Control Yuan.

The [Executive Yuan](#) is the highest state administrative organ, headed by the Premier and the Vice Premier. The [Legislative Yuan](#), the highest legislative organ, exercises lawmaking powers among others. The [Judicial Yuan](#) is the highest judicial organ. It has three court systems: Ordinary Court dealing with ordinary civil and criminal matters, Administrative court dealing with administrative matters, and Constitutional Court, which has the power to interpret the Constitution and to unify the interpretation of laws and orders. In addition, it also established a specialty court: Intellectual Property Court. [Examination Yuan](#), highest examination organ, is in charge of matters such as examination, employment, registration etc. The [Control Yuan](#) is the highest control organ that has the powers of consent, impeachment, censure and auditing.

For more discussion on Taiwanese' constitutional regime, please see the following books and articles.

Semi-Presidentialism and Democracy (Robert Elgie etc. eds., 2011)

呂炳寬, etc., *中華民國憲法精義* = The Spirit of R.O.C.'s Constitution (2007).

Hungdah Chiu, *Constitutional Development and Reform in the Republic of China on Taiwan (With Documents)*, 29 Issues & Studies 1 (1993)

Yat-Sen Sun, San Min Zhu Yi, the Three Principles of the People. With Two Supplementary Chapter by President Chiang Kai-Shek (196-)

Yat-Sen Sun, The Principle of Democracy (1953)

Yat-Sen Sun, The Principle of Nationalism (1953)

Yat-Sen Sun, The Principle of Livelihood (1953)

3. Legal System: Civil Law Legal System

Taiwan is a civil law jurisdiction. There are three types of primary sources of law: laws, customs filling gaps of laws consistent with public policy or morals, and jurisprudence if neither laws nor customs apply [\[\[17\]\]](#). Judicial decision is generally considered a secondary source of law, except that the Council of Grand Justices has the power to interpret Constitution and its decisions are binding with the same legal effect as Constitution.

There are three major types of laws and regulations, according to the [Central Regulations Standard Act of 2004](#), the Constitution and its amendments are the Supreme Law of the land. A statute, may be named Act, is passed by the Legislative Yuan and enacted by the President. Code refers to a codification of Acts. On the third level are Regulations and Rules, which are issued by delegated government agencies. There are also rules applied to different government agencies internally: Directions. [\[\[18\]\]](#) International treaties and agreements of self-executing in nature are applied directly in the domestic court. Non self-executing treaties and agreements shall be submitted to Legislative Yuan via Executive Yuan within 30 days. Once they are transformed to be domestic law, they have the same effect as domestic legislations under the [Regulations Governing the Process of Treaties and Agreements](#).

Currently, there are five major laws in addition to the Constitution in Taiwan. Civil Code is divided into five chapters and covers most civil and commercial matters that dealing with relations among private parties, such as contract, torts, property, succession and family law. Taiwan [Civil Code](#) was first enacted on May 23, 1929 and has been amended a few times. The most recent amendment was enacted on June 13, 2012. [Criminal Code](#) was first promulgated in Taiwan on January 1, 1935 and was most recently amended on November 30, 2011. It has been amended 26 times since 1935. [Code of Civil Procedure](#) was first promulgated on February 1, 1935 and amended on June 25, 2003. [Code of Criminal Procedure](#) was first promulgated on July 28, 1928 and has been amended 27 times since then. The most recent amendment occurred on December 12, 2007. Since 1994, Taiwan legislature passed a series of laws governing administrative matters including the [Administrative Procedure Act](#), first promulgated on February 3, 1999 and most recently amended on December 28, 2005.

According to the article 1 of the Civil Code of Taiwan, customs are considered primary sources of law in civil matters if

all four conditions are met. Note that customs do change over the years. Customary practices recognized in certain time period may not be recognized in other time periods. In addition, if a law is passed to govern the same matter, then customs will not be considered as a source of law. Moreover, custom shall not conflict with principles of public order and good morals. If neither laws nor customs apply on a certain subject area, then jurisprudence applies.

Judicial decisions are secondary sources of law. The Supreme Court is the court of last resort for ordinary civil and criminal matters. The administrative courts are composed of both the High Administrative Courts and the Supreme Administrative Court. The Supreme Administrative Court serves as a final court for all administrative litigation matters and also has jurisdictions over certain appeals from the Intellectual Property Court.

In order to comply with the [Intellectual Property Organization Act](#), a specialty court, Intellectual Property Court was established on July 1, 2008. The Court serves as a first and second instance of civil and criminal matters governed by IP related laws, decisions of which can be appealed to the Supreme Court. The Court also serves as a first instance of administrative and compulsory enforcement actions governed by IP-related laws, decisions of which can be appealed to the Supreme Administrative Court, as a final court.

The Council of Grand Justices deals with constitutional law related matters including interpreting Constitution and uniform interpreting statutes and laws. Its decisions are final and are binding and treated the same effect as a Constitutional provision. If it rules a constitutional provision unconstitutional, relevant government agency may propose a revision and send to be passed by the National Assembly.

For more detailed analysis, see the following well-written articles on general overview of Taiwan legal system:

Tay-Sheng Wang, *Taiwan in Asian Legal Systems: Law, Society and Pluralism in East Asia* (1997).

Hungdah Chiu & Jyh-Pin Fa, *Taiwan's Legal System and Legal Profession*, in *Taiwan Trade and Investment Law* 21-43 (Mitchell A. Silk ed., 1994).

Herbert H.P. Ma, *General Features of the Law and Legal System of the Republic of China*, in *Trade and Investment in Taiwan* 1 (Hanbao Ma & In-Jaw Lai ed., 1985).

4. Legal Education and Legal Profession

a. Legal Education

The first Taiwan local law school was established in 1928 under Japanese colonial period, Taihoku (Taipei) Imperial University Law School. It was later renamed as National Taiwan University Law School in 1946. Today, there are about 21 law schools in Taiwan, among them, 19 law schools offer L.L.B., 18 law schools offer Master of Laws degree and 9 law schools offer Ph.D in law^{[[19]]}.

College entrance exam performance is still very crucial to determine whether a high school student would be able to be admitted to a desirable law school program, especially that law is one of the most popular subjects and it is extremely competitive to enter into a top-rank law school in Taiwan. The college entrance exam system was first established in 1954, under which the college admission was purely based on the exam score. Although the goal for this system is to achieve a fair college admission system to everyone, the system itself failed to achieve the goal in practice. ^{[[20]]} In 2002, Taiwan Ministry of Education launched a new diverse college entrance program to achieve the principles of "equity, justice and openness" under Article 18 of the [University Act](#).

Under Article 26 of the University Act of Taiwan, undergraduate legal education is usually about 4 years, master education is between 1 to 4 years and doctoral education should be in between 2 to 7 years, subject to special exceptions approved by the Ministry of Education. Certain traditional domestic law courses have always been made mandatory, such as Constitutional Law, Civil Law, Criminal Law, and Civil Procedure etc. Recently, more and more law schools also offer courses in foreign and international law. Some law schools, such as [Soochow Law School](#), have also made courses such as Introduction to Anglo-American Law, mandatory.

Most courses are offered as lectures. There are usually not many in-class interactions between professors and students. Students spend most of the time taking notes in classes. Class participation is usually not taken into consideration for grading. University faculty is ranked lectures, assistant professors, associate professors and professors. Two the most important promotion factors are teaching and research.

b. Legal Profession

Attorney

Under Article 3 of the [Attorney Regulation Act](#), any citizen of the Republic of China may be admitted to practice in law after successfully passing the Attorney Qualification Exam and completing the requisite New Admittees training

programs of 6 months administered by either Judges and Prosecutors Judicial Training Institute or Taiwan Bar Association. The Attorney Qualification Exams may be waived with people meeting certain qualifications. A foreigner may also practice law in Taiwan if fulfilling requirements listed under the Attorney Regulation Act.

The Attorney Qualification Exam is administered by the Examination Yuan of Taiwan once a year. Under Article 5 of the Regulation on the Attorney Qualification Exams ([Laws and Regulations Database](#)), a law degree is generally required to take the exam. The passage rate of Taiwanese Bar Exam is extremely low with about 11% on average in recent years, a huge increase from the 1980s, when the average passage rate was about 1%. In addition, a licensed attorney must become a member of a Bar Association. A Directory of lawyers is available to search or browse on the [Ministry of Justice Website](#).

Judge and Prosecutor

[Judges Act](#) of Taiwan governs three types of “judges”: Grand Council Justices, Commissioner of the Public Functionary Disciplinary Sanction Commission and judges of any other courts. Article 5 and Article 6 of the Judges Act list all the qualifications for judges and several different ways to qualify for judgeship. Fresh graduates from approved law schools may become a district court judge after passing a judges or prosecutors qualification exam. There are many other methods to be qualified for judgeship besides passing qualification exam, such as having practiced laws for more than 6 years, or having graduated from a law program and having served as a full time professor, associate professor or assistant professor for more than 6 years.

The judicial selection committee installed by the Judicial Yuan has the power to select judges. All judges selected are required to go through trainings from 1.5 years to 2 years at the [Judges and Prosecutors Training Institute](#). The [curriculum](#) focuses on practical skills building, legal ethics as well as certain theoretical courses. Trainees may also select courses on foreign language or foreign law. Trainees must pass final exams with satisfactory scores to graduate from the Training Institute [\[\[21\]\]](#). The Judges Act also provides measures to review, remove, evaluate, reward and discipline judges in order to prevent judicial corruption.

Switch between prosecutors and judges are common in Taiwan. In fact, transfers between prosecutors and judges are made easy under certain relevant laws and regulations. For example, under Article 5 of the Judges Act, a tenured prosecutor qualifies to be appointed as a judge automatically. Judges and Prosecutors are treated substantially the same in terms of the qualifications for appointment and training requirements.

However, judges’ power and duties and prosecutors’ power and duties are not the same. Procuratorate power includes both [investigation power and trial power](#) under the [Court Organization Act](#) and Criminal Procedure Code of Taiwan. Therefore, in the recent judicial reform discussion in Taiwan, separating legal regulations of judges from prosecutors has been brought up frequently [\[\[22\]\]](#). As a result, the most recently enacted Judges Act does not govern prosecutors. In 2012, Taiwan further abolished the Regulation on Switching between Judges and Prosecutors.

Notary Public

Like many other civil law jurisdictions, in Taiwan, a notary public is considered as a legal professional. Notary public may be a judicial official in court meeting requirements for qualification set under article 23 of the [Judicial Personnel Regulation](#) or a private notary public (a person appointed by a court) meeting requirements listed under article 25 of the [Notary Public Act](#).

Legal Aid

[Legal Aid Foundation](#) was established in 2004 by the Judicial Yuan in accordance with article 5 of the Legal Aid Act in order to protect citizen’s constitutional right of equal access to justice. According to article 25 of the [Legal Aids Act](#), an attorney is obligated to provide legal aid services in the Bar Association he or she belongs to, unless exempted.

For more discussions on Taiwanese legal education and legal profession, please see the following:

Wen-Liang Tseng & Tai-Sheng Wang, *A Taste of Being Annexed: The Conditions and Predicaments of the Native Taiwanese Legal Talents during the Early Years of the Post-war Era*, 14 Taiwan Hist. Res. 89-160 (2007).

王泰升, 曾文亮, *二十世紀臺北律師公會會史* (2005).

劉從知識繼受與學科定位論百年來台灣法學教育之變遷 (2005).

Jane Kaufman Winn, *The Role of Lawyers in Taiwan’s Emerging Democracy*, in *Raising the Bar: The Emerging Legal Profession of East Asia* (2004).

Heng-Wen Liu, *A Study of the Judges and Prosecutors in Postwar Taiwan: An Observation Focused on Their Training Culture*, 40 Thought and Words: J. of the Human. & Soc. Sci. 125 (2002).

王泰升, *國立台灣大學法律學院院史：1928—2000——臺大法學教育的回顧* (2002).

鄭正忠, *海峽兩岸訴訟法制之理論與實務* (2000).

IV. Legal Research Strategies and Major Resources

It is generally wise to start with secondary resources for any legal: First, a secondary resource will help a researcher quickly master the basics of a legal structure and system of a particular subject or jurisdiction. Second, a secondary resource may also point a researcher to the most relevant primary source so as to save time during the legal research process. If a research has not decided on a research topic yet, starting with secondary resources may help pick a topic quickly.

1. Secondary Resources

A secondary resource generally includes legal research guides, monographs and scholarly treatises, legal periodicals, dissertations and theses, government reports, legal newspaper and magazines etc.

a. Legal Research Guide

A good legal research guide can greatly help with cost-effective research. There are currently a few excellent research guides on Taiwanese law and legal system available in English, although some may be out of date. *Foreign Law Guide* by Reynolds and Flores not only provides a quick overview of legal history and legal system of a jurisdiction, but also lists major legal resources, both primary and secondary. It also points to major laws on many specific subject areas [\[\[23\]\]](#).

Taiwanese Legal Research at the University of Washington Law Library [\[\[24\]\]](#) provides a comprehensive list of legal materials and tools related to Taiwanese legal research. The guide was written in 1999 and therefore may not reflect certain legal publications published after 1999. The guide also links to several major Taiwanese legal databases [\[\[25\]\]](#).

The Legal System of the Republic of China in Taiwan in the Modern Legal System Cyclopedia provides an excellent overview of legal history of China as well as legal system of Taiwan. However, the author appears to focus on the influence of the Chinese legal tradition on Taiwan's legal development. More importantly, the guide was published in early 1990s and does not reflect changes ever since then.

b. Monographs and Scholarly Treatises

There are many scholarly treatises and books published by both Western publishers, such as Butterworth, Kluwer International, Hart Publishing, Cambridge University Press, Oxford University Press, Intersentia, and domestic publishers, such as 元照出版社, 三民书局, and National Taiwan University Press. A researcher may find relevant scholarly treatises or monographs in three ways. First, a user can search by keyword, title or subject in library catalogs. Almost all major law libraries make their library catalogs open to the public on the web. In addition, [WorldCat](#), a union catalog that contains catalog records of thousands of libraries worldwide, is another efficient tool to find relevant treatises or books. Second, A user may also browse or search on [Google Books](#). For books out of copyright, a user may also be able to access the entire book in full text. For most books out of copyright, a user may at least be offered a snippet view. Third, A user may find relevant books and articles through annotated bibliographies:

Constance Johnson, *The Republic of China on Taiwan: A Selectively Annotated Bibliography of English-Language Legal Materials* (1988). It provides a comprehensive list of pre-1988 articles, books, reports and primary documents on Taiwan in many legal subject areas with a subject index. It is available both [in print and online](#).

In addition, Ingrid Kost has published a *Bibliography: Select Legal Materials on China Received and Catalogued in the Peace Palace Library* every year since 2004 in the Chinese Journal of International Law. The bibliography focuses on articles and books on China in the area of international law and does cover materials on Taiwan.

Many commercial publishers publish practice-oriented materials, usually in loose-leaf services in the areas such as business, investment, trade, tax and labor and employment law. For example, [Doing Business and investing in Taiwan](#), published Pricewaterhousecoopers LLP, provides practical guides on Taiwanese business, tax, investments and foreign trade laws and regulations. Another similar publication focusing on business entities in Taiwan is [Business Operations in the Republic of China \(Taiwan\)](#), published by Bloomberg BNA.

c. Legal Periodicals

There are quite a few English legal journals focusing on Taiwan mostly published by Western publishers.

Chinese (Taiwan) Yearbook of International Law and Affairs (1981-): published by the Chinese (Taiwan) Branch of Association of International, it includes articles, notes and documents related to Taiwan practice of International Law and international law issues related to Taiwan. It is available in print and also online at multiple databases such as Hein's Foreign and International Law Resources Databases and Westlaw (CHINYILA). This publication continues a ceased print publication, *The Annals of the Chinese Society of International Law* (1964-1982).

National Taiwan University Law Review (2006-), a law review published the National Taiwan University Press in English with abstract in Chinese. It is available in print and also online at Hein's Law Library Journal, Westlaw ([NTAIULR](#)), and the publisher's [website](#).

China Law and Practice (1987-), published in paper by the China Law and Practice Ltd. Of Hong Kong, includes articles on Taiwanese law and business development as well. Issues published since 2002 are made available online at ABI/Inform Global.

The China Quarterly (1960-), published by the University of London, Contemporary China Institute and Congress for Cultural Freedom, is an academic journal that covers Taiwan legal and political issues. It is available in print and online at multiple journal databases such as Jstor, Cambridge Journals Online, ABI/Inform Global.

There are also plenty of general law reviews and journals in English that contain articles on Taiwan legal issues. A user may be able to quickly locate them by searching by keyword, title, or author in one of legal journal databases such as Lexis, Westlaw, HeinOnline, JStor, Proquest etc.

There are basically four types of Chinese legal periodicals in Taiwan: Academic law review and journals, association periodicals, commercial publications and governmental publications. For example:

Chinese Law Journal (1956-): A quarterly journal by Ministry of Justice.

臺北大學法學論叢 (1966-): a leading academic journal published by National Taipei University Law School.

Chengchi Law Review (1969-): a leading academic journal by National Chengchi University Law School.

National Taiwan University Law Review (1971-)

Soochow Law Review (1976-): leading academic journal by Soochow University Law School.

Fair Trade Quarterly (1993-): a leading publication on fair trade and competition law by Fair Trade Commission of Taiwan

The Taiwan Law Review (1995-): a monthly publication by 元照出版社。

Taiwan Law Journal) (1999-) : a commercial publication covering both scholarly articles and practical articles and issues.

Academia Sinica Law Journal (2007-): a publication by Taiwan Academia Sinica.

Researchers may find more law review and journals in the [library catalog of the Examination Yuan of the Republic of China](#). The library provides table of contents of all the issues of all the journals included in the catalog. In addition, Social Science Research Center of the National Science Council of Taiwan has created a [Taiwan Social Science Citation Index](#) since 2000. It has included eight law journals in the index since then. Researchers may find an even more comprehensive list of law journals through commercial vendors, such as [LawBank](#), which lists over 100 law journals published by government agencies, academic institutions, professional associations, and other publishers. Without a subscription, a user may still be able to browse the table of contents of most the journals.

d. Dissertations and Theses

Dissertations and theses on Taiwan legal issues written in English may be found through Proquest Dissertations and Theses database. For theses and dissertations written in the vernacular, searching an index or a database may be the most efficient way to find a dissertation or a thesis. National Sun Yat-Sen University has created a searchable and browsable database for dissertations and theses. The [database](#) contains over 300,000 dissertations and theses in many areas including law from many academic institutions of Taiwan and worldwide. A researcher may also search on [LawBank](#) for basic bibliographic information about a law dissertation or thesis.

e. Current awareness tools

LawBank offers an online database for legal news from any news sources. Taiwan legal news may also be found on LexisNexis, Westlaw, and Access World News.

f. Translation Tools

More and more laws, regulations and judicial decisions are being translated into English by government agencies in Taiwan. Translations of laws and regulations are generally not considered as official and will almost always be trumped by laws and regulations in the vernacular. An English translated version however may be very helpful for a native speaker of English to understand the material and research, but it is not always reliable or accurate. Online translation engine, such as [Google Translate](#), is neither reliable nor accurate. Human translation services are available usually with very expensive fees. Therefore, a traditional dictionary or a legal glossary created by a governmental agency can be helpful for legal researchers as well:

Bilingual Glossary

[Executive Yuan's Bilingual Glossary](#)

[Judicial Yuan's Bilingual Glossary](#)
[Ministry of Education's Bilingual Glossary](#)

Dictionary

薛波, 元照英美法词典 = English – Chinese Dictionary of Anglo-American Law (2006).
 何高大, 英汉双向法律词典 (2002).
 劉清景, 中英英中法律詞典 (1997).

2. Primary Sources of Law & Judicial Decisions

a. Constitution & Legislative Materials

Constitution in the vernacular Chinese can be found at the [Legislative Yuan's law database](#) and the [Ministry of Justice's Laws and Regulations Database](#). Both databases include not only just text of the Constitution and its amendments, but relevant legislative history materials including legislative records and historical versions of amendments and provisions of Constitutions. The English translation of the texts of the Constitution and its Amendments may be found on [President's website](#). In addition, original PDF image of the texts of Constitution and its Amendments as well as relevant legislative records bilingual or multilingual may also be found on at the National [Parliamentary Library website](#). Researchers may also find pending bills and new acts at the [Legislative Yuan's website](#).

[Presidential Official Gazette](#)s containing presidential promulgation and notices are made available in vernacular Chinese in PDF (July 1997- current) and in Word (1948- June 1997).

b. Laws and Regulations

Laws and Regulations may found on the Ministry of Justices Laws and Regulations Database. In addition, different government agencies have also made their official gazettes online usually including laws, regulations and/or directives issued by their own. They are all available at [National Central Library Gazette Online](#), which includes PDF image usually after 1994 and word format only pre-1994 in the vernacular Chinese.

There have been a few print publications of compiled laws of the Republic of China, usually called “六法全书”, because it includes among laws, six major laws and codes of the Republic of China: Constitution, Civil Code, Criminal Code, Code of Civil Procedure, Code of Criminal Procedure and Administrative Laws. A researcher may also access it online at [S-Link Six Major Laws Online](#), a non-governmental website, for free. In addition, the most current versions of六法全书 in print include:

最新實用六法全書(修訂大字版)(施茂林, 陳維鈞 ed., 2012).
 最新綜合六法要旨增編判解指引法令援引事項引得全書(陶百川 etc eds., 2009).
 新編六法參照法令判解全書(林紀東, etc eds. rev.ed., 2005).

c. Judicial Decisions

Note that judicial decisions are generally not considered as primary sources of law in Taiwan except judicial interpretations issued by the Council of Grand Justices. It is only discussed Judicial Decisions may be found at [Judicial Yuan's case searching database](#), which contains decisions of national courts on all levels and local courts. Date of coverage varies but can be found [here](#). Selective decisions may also be found on [Judicial Yuan's official gazette online](#) (1994-). In addition, the Supreme Court of Taiwan also publishes a few collections of judicial decisions and resolutions in print:

最高法院, 最高法院判例要旨: 中華民國16年 – 94年/Precedents and Resolutions of the Supreme Court, Taiwan: 1927-2005 (2007).
 最高法院, 最高法院決議匯編: 中華民國17年 – 95年/Supreme Court, Taiwan, Resolutions, Compiled: 1928-2006 (2007).
 最高行政法院, 最高法院行政判例要旨彙編: 中華民國22年 – 97年/ (2008).

Judicial Interpretations of the Constitutional Court can be found on its [website](#) (No.1 /1949 to present) in Chinese. An English version of the Judicial Interpretations is published by the Judicial Yuan in paper:

Judicial Yuan, The Republic of China Constitutional Court (Grand Justices Council) Reporter: Interpretations (2000-).

d. International agreements, treaties and conventions

International Agreements and Conventions that Taiwan is a party can be found on Ministry of Justice Laws and Regulations Database under [Convention](#) in both Chinese and English. In addition, agreements and conventions in other languages may also be found at the Ministry of Foreign Affairs [Statements and Communiqués](#) online in PDF.

3. E-Resources

a. [MOJ Laws and Regulations Database](#): an official government database that includes laws, regulations, directives,

conventions, judicial interpretations and decisions in full text in vernacular Chinese and English. It is part of Taiwanese government's efforts to promote transparency and openness of government information and operation. Scope of the database is explained [here](#).

- b. [Global Legal Information Network](#) (GLIN) maintained by the Law Library of Congress also provides laws of Taiwan since 1947 in full text in the vernacular Chinese and abstracts in English for free.
- c. [Asian Legal Information Institute](#) (Asian Lii) also makes freely available Constitutional Court decisions of Taiwan since 1949 in html.
- d. Commercial Databases:
 - i. [LawBank](#) : launched in 2010, offers access to a wide variety of primary and secondary resources in full text online. Some of the content is freely available to the public, however most content requires a subscription.
 - ii. [LawData](#) : a leading commercial database that provides access in full text to both primary and secondary sources online. Its coverage is not just limited to Taiwanese materials, but extends to Mainland China and Hong Kong. It also covers law dictionaries and sample law exams.
 - iii. [ChinaLawInfo](#) : a commercial database offered by a Beijing based company, ChinaLawInfo. Ltd., contains a Taiwanese laws and regulations database.

[[1]] Tonio Andrade, [How Taiwan Became Chinese: Dutch, Spanish, and Han Colonization in the Seventeenth Century](#) (2008)

[[2]] Hsin-Hui Chiu, The Colonial 'Civilizing Process' in Dutch Formosa, 1624-1772 (2008).

[[3]] Tonio Andrade, The Rise and Fall of Dutch Taiwan: 1624-1662, 17 J. World Hist. 429-50 (2006).

[[4]] A Brief Introduction to Taiwan's History & Culture, Taiwan Prov. Admin. Info. Hall, <http://subtpg.tpg.gov.tw/Eng2/history/history-e-1.htm> (last visited Sept. 29, 2012).

[[5]] Tsong-min Wu, Village Franchise System in Dutch Taiwan, 15 Acad. Q. 1 (2008), available at http://www.ith.sinica.edu.tw/quarterly_03-en.php?DB_Qua_MagID=82 (last accessed Sept. 29, 2012).

[[6]] John Robert Shepherd, Statecraft and Political Economy on the Taiwan Frontier, 1600-1800, 74-75 (1993).

[[7]] Changfa Luo, The Legal Culture and System of Taiwan 2-4 (2006).

[[8]] For examples, See [Criminal Code of the Republic of China](#) Arts. 170, 247-479.

[[9]] Tay-Sheng Wang, Legal Reform in Taiwan under Japanese Colonial Rule, 1895-1945: Reception of Western Law, 63-127 (2000).

[[10]] Huang-Chih Chiang and Jau-Yuan Hwang, On the Statehood of Taiwan: A Legal Reappraisal, in The "One China" Dilemma 57-80 (Chow, Peter C.Y. eds., 2008).

[[11]] For example, see James R. James R., The Creation of States in International Law 198-211 (2d ed.2007)

[[12]] For example, see Ko Swan Sik, Taiwan's "Return" to International Organizations, in The International Status of Taiwan in the New World Order: Legal and Political Considerations, 79-116 (Henckaerts, Jean-Marie eds., 1996)

[[13]] For example, see Huang-Chih Chiang and Jau-Yuan Hwang, On the Statehood of Taiwan: A Legal Reappraisal, in The "One China" Dilemma 57-80 (Chow, Peter C.Y. eds., 2008).

[[14]] Tay-Sheng Wang, Legal Reform in Taiwan under Japanese Colonial Rule, 1895-1945: Reception of Western Law 31 (2000)

[[15]] For more detailed discussion, see Victor H. Li., De-recognizing Taiwan: The Legal Problems (1977).

[[16]] For example, see Jianming Shen, Sovereignty, Statehood, Self-Determination, and the Issue of Taiwan, 15 Am. U. Int'l. L. Rev. 1101 (2000)

[[17]] For more detailed discussions, see Changfa Luo, The Legal Culture and System of Taiwan 37-66 (2006).

[[18]] See http://law.moj.gov.tw/Service/standard_en.aspx (last accessed Sept. 29, 2012).

[[19]] See http://ulist.moe.gov.tw/Query/DISCIPLINE?DISCIPLINE_ID=38&DISCIPLINE_NAME=法律學門&page=1

[[20]] Exam under Examination, Taiwan Review, Jun 1, 1995, available at <http://taiwanreview.nat.gov.tw/ct.asp?xItem=108&CtNode=1358> (accessed Sept. 29, 2012).

[[21]] For more information, see <http://www.tpi.moj.gov.tw/lp.asp?ctNode=7709&CtUnit=435&BaseDSD=7&mp=092>

[[22]] For example, see Nigel N.T. Li, The Procuratorate and the Judiciary in Taiwan (nd), available at <http://www.brookings.edu/~media/events/2012/5/14%20taiwan%20democracy/panel%201%20onigel%20li%20presentation>

[[23]] <http://www.foreignlawguide.com/>

[[24]] <http://lib.law.washington.edu/eald/tlr/tres.html>

[[25]] <http://lib.law.washington.edu/eald/OnlineDBsList.htm#Taiwan>