Cases of Theft in 18th Century Myanmar (Burma) with Special Reference to the Atula Hsayadaw Hpyathton

Okudaira, Ryuji*

A collection of judicial decisions called Hpyathton in the pre-modern period of Myanmar was made by thorough investigation of all available sources of law, comparing, examining and selecting, while attaching great importance to the Dhammathats (law books) as the primary source of law, which principally consisted of customary rules and precedents, and also taking the conditions of time and region into consideration.

Although Hpyathtons include anecdotes, the decisions are attributed to historical or legendary wise men. This source of law must also have influenced to some extent the authors of the Dhammathats or the process of making decisions by the judges, although it does not seem to have been often used as an authority of Myanmar law, like the Dhammathats.

This paper introduces the Atula Hsayadaw Hpyathton [ASP], a collection of judicial decisions that seems to have been widely circulated in 18th and 19th centuries. As to the ASP, a few legal scholars, such as Aye Maung, Shwe Baw, Aung Than Tun, referred to it. Among them, Aung Than Tun extracted eight cases in their abridged form of the original language of Myanmar [Aung Than Tun 2007: 137–143]. However, he has not selected any cases of theft committed by monks in it. This paper will, therefore, for the first time, extract, discuss and translate two cases on theft dealt with in the ASP. Then it will compare the way theft is discussed in the two different genres of Myanmar, Dhammathat and Hpyathton.

Keywords: Dhammathat, Hpyathton, pārājika, theft case, Atula Hsayadaw Hpyathton

* an Emeritus Professor, Tokyo University of Foreign Studies

This paper is a revised version of one that was read by this author at the Conference on ‘Buddhism and Law’ held in Belagio in Italy on 6th–11th March, 2006.
though many have been lost. This source material includes the *Dhammathat*, the *Yazathat* (judicial decision by the king), the *Hpyathton* and the *Sit-tan* (inquest by the central government), and other legal literature. This legal literature had been mainly inscribed on palm-leaf (*pe*) with a stylus or recorded in ink on a writing tablet in the form of accordion folds (*parabaik*).

**1-2 Dhammathat (Law Book)**

Among the legal literature of Myanmar mentioned above, the *Dhammathats* or law books are the principal source of Myanmar law compared with other legal sources, such as the *Yazathat*, the *Hpyathton* and others. The *Pitaka Thamaing Sadan* (PTS), the so-called *Thamaing*, compiled in 1888 by Maha Thiri Zeyathu, who was once the Keeper of the Royal Library and later served as the Maing Khaing Myoza, listed thirty-six kinds of *Dhammathats* which were compiled from the earliest times until the end of the Konbaung dynasty [PTS 1905: 183–192]. They are collections of customary rules and precedents.

The *Dhammathats* aimed at peaceful solutions of disputes in accordance with morality and ethics. “They reflect the social customs of the day and expound rules of wisdom as guidance for kings, ministers, and judges to rule by, and for the people to live by” [Maung Maung 1963: 7]. They functioned well in the Theravāda Buddhist Polity under the reign of the Myanmar kings from the Pagan Period (11th–13th centuries) until the fall of the Konbaung Dynasty in 1885.

King Alaunghpaya, the founder of the Konbaung Dynasty [1752–1885], directed all the judges to thoroughly study various *Dhammathats* [(T)ROB III (August 19, 1758) 1985: 214]. King Badon (=Bodawhpaya), his fourth son, also urged the judges to refer to either one or all of the *Dhammathats*, the *Yazathats* and the *Hpyathtons* [(T)ROB IV (3 March, 1782) 1986: 229; (18 August, 1783) *ibid.*: 275; (25 December, 1783) *ibid.*: 307; (T) ROB V (5 December 1789) 1986: 446; etc.] Thus the *Dhammathats* or the *Hpyathtons* were helpful in deciding a case. However, the kings directed the judges to listen to what both the parties concerned had to say and to base the decision on their talks [ROB V (28, January 1795) 1986: 462]. In addition, the Konbaung kings, like King Badon, ruled over the country with benevolence and a proper, as well as an adequate judicial policy [Than Tun (ROB IV): vii].

Although the *Dhammathats* automatically stopped functioning under the British colonial rule, some of the rules of the *Dhammathats* have continued to exist in the daily life of its people and have come to be recognized as law in the decision of the courts [See Maung Maung *ibid.*: 13]. In other words, they gradually came to be confined mainly to family affairs such as marriage, inheritance and succession, etc. and were recognized as personal law [See *ibid.* 32]. Customary laws of later periods up to today have been changing in accordance with times

---

1) It includes law tales and legal maxim.
2) One who was granted the revenues of a town by the king
3) *A Digest of the Burmese Buddhist Law* by Khinwun Mingyi U Gaung who was a member of the Hluttaw (the Council of ministers) as well as the Supreme Law Court, also listed the same [Digest 1898: 4–9].
and conditions. The Dhammathat literature sometimes gives useful information for better arbitration and solution in modern disputes within the personal law [See Huxley 1997: 14].

1-3 Yazathat (Decisions by Kings)

Myanmar kings, as despotic rulers, issued various orders during their reigns on different occasions to maintain law and order and peace in the country. Although a new king, having succeeded to the throne and not responsible for following the orders or decisions of his predecessor, generally accepted them. But they were sometimes altered or rejected. New royal orders or decisions were made by the new king and sent to the individuals or institutions concerned, not excepting the Hlutaw (Council of ministers). Thus Royal orders or decisions bore the force of law. The orders of the divisional officers (Hkayain-wun), the governor of a city (Myo-wun) or the town or village headman (Myothugyi and Ywa-thugyi) issued Hsin-za to execute the royal orders. [Okudaira 1986: 38]. Thus, the royal orders were law, but rarely went against the traditions or religion of the majority of his subjects [See Than Tun 1983a: vii].

Out of the royal orders issued by the kings, judicial decisions made by the kings are called Yazathat, which consists of two major important legal sources sharing with the Dhammathats a function in the Theravāda Buddhist State. While the kings were the defenders and propagators of Buddhism, they were principally the arbitrators of disputes or conflicts between the parties concerned, using the Dhammathats. However, the Dhammathats were overruled by the Yazathats which in turn were overruled by the current customs (dale-htoundan) if both concur with each other. It means that the Dhammathats are overruled by royal ordinance and royal ordinance by contract [Gywe 1910: iii; also see Taw Sein Ko 1913: 275].

1-4 Hpyatthon (Collection of Judicial Decision)

Hpyatthons, sometimes called Siyinhton, which are a collection of decisions or compilations of precedents, have also played an important role in the history of Myanmar legal literature. The Thamaing listed eighty-two Hpyatthons in all, but enumerates only thirty-four Hpyatthons as Dhammathat-hpyatthons. According to a list, there were thirty-five, the extra one, being in the list of the Thamaing, was known as the Yezaajo Hkondaw Hpyatthon [Thamaing 1905: 192–194].

‘Hpyatthons are generally divided into three categories; the first are anecdotes or decisions attributed to mythical personages who appear as the wise or learned; the second relates to religious duty and conduct; and the third consists of the judicial decisions of the kings or the court judges in actual cases.’ [See YKP ibid. (Intro): nga.-sa.]

Among these, the third category includes Duttabaung-min Hpyatthon, Alaungsithu-min Hpyatthon, Shin Kyaw Thu Hpyatthon, Manuyaza Hpyatthon, Maha Pinnyakyaw Shaukhtons, Atula Hsayadaw Hpyatthon and Yezaajo Hkondaw Hpyatthon. In regard to the Maha Pinnyakyaw Shaukhton⁴, some sections are regarded as the Hpyatthons [MPS 1964: nya]

⁴ Shaukhton is a compilation of learned discourse or memorable sayings presented to the kings by scholars or ministers.
including a theft case\(^5\).

The third category mentioned above is of great importance from a legal aspect. Among the aforementioned \textit{Hpyathtons} which fall into the third category, neither the \textit{Duttabaung-min Hpyathton} (a collection of decisions by King Duttabaung in 2\(^{\text{nd}}\) century Pyu dynasty, which is rather legendary), nor the \textit{Alaungsithu Hpyathton} (a collection of King Alaungsithu’s judgments in the early 12\(^{\text{th}}\) century of the Pagan dynasty which served as a code of precedents for later periods), has survived. The \textit{Shin kyaw Thu Hpyathton} is a collection of judgments by Shin Kyaw Thu who was a judge under King Hanthawaddy Hsinbyu-nya Shin (=Bayinnaung) [1551–81] of the Taungu dynasty at Hantharwady Pegu. \textit{Manuyaza Hpyathton} (generally called Mahayazathat), which contains the answers of Kaingza Manuyaza, a learned minister as well as a judge, to the questions propounded by King Thalun [1629–48] of the Nyaunyan dynasty (=the Restored Taunggu dynasty) concerning points which remained unanswered or ambiguous in the former law books.

The \textit{Atula-hsayadaw Hpyathton} is said to be a collection of decisions by Atula Hsayadaw, who was a royal mentor to King Alaunghpaya [1752–60], the founder of the Konbaung dynasty [1752–1885] and his successor, King Naungdawgyi. \textit{Yezagyo Hkondaw Hpyathton} is a collection of decisions by U Hmaing, whose title was Yandameik Kyaw Htin, a judge who served under King Badon (more commonly known as Bodawhpaya) [1782–1819] and a minister to King Bagyidaw [1819–1837]. Among these several \textit{Hpyathtons}, this paper takes up the \textit{Atula Hsayadaw Hpyathton}, though it seems to be special decisions which were related to monks in either one party or both parties. There must have been many judgments in the 18\(^{\text{th}}\) century Myanmar dealing with theft cases. Unfortunately, we have found very few source material which deals with civil cases on theft.

2 The \textit{Atula Hsayadaw Hpyathton} (Collection of the Decisions by Atula Hsayadaw)

2-1 Who is Atula Hsayadaw?

Atula Hsayadaw, whose full title was Atula Yasa Dhamma Yaza Guru, was the preceptor of King Alaunghpaya and was also appointed the \textit{Thangayaza} (Head of the Buddhist Order) by the king. The argument between one-shoulder and two-shoulder robe adherents, which divided the Parakkama line of Paññasami, who was a two-shoulder advocate, seems to have begun in the time of King Sane [1698–1714] of the Restored Taunggu dynasty at the beginning of the 18\(^{\text{th}}\) century [Mendelson1975: 58]. The \textit{Thathana Lingaya Sadan} (“History of Buddhism in Myanmar”) describes that he was a disciple of the Taungbila Hsayadaw, a Parakkama monk [TLS1956: 233] who claimed descent from Sri Lanka oriented lineage (Prakkama) [Mendelson \textit{ibid.}: 44] He fully exploited his position to make Ekamsika practice (=one shoulder robe) because he was an ardent Ekamsika. [Ray 1946: 226]\(^6\).

On the other hand, Atula Hsayadaw also played a role in the development of judicial ideas and decisions for both monks...
and laymen in 18th century Myanmar. Although all the decisions were obviously not made by Atula Hsavadaw himself (because the Atula Hsavadaw Hpyathton includes the pleadings of one hundred and ten pleaders and the decisions of fifty-five judges), it was compiled by Atula Hsavadaw himself as Pitaka Thamain Sadan describes [PTS 1905: 193; see also Shwe Baw 1955: 120]. We will give a brief explanation on the content of the Atula Hsavadaw Hpyathton as below.

2-2 The Contents

The decisions cover the period from 1750 to 1788. The cases decided were those in which either religious property was involved or one or both of the parties were monks. The introduction to the work describes as follows:’ [ASP 1966: 1]

The Primate of the founder of the Konbaung dynasty, known by the name of Maha Atula(ya) Dhammayaza Guru pass the verdict in accordance with the three elements: Law of Buddha (dhamma-kan), Secular Law (dhammathat) and Decision of the king (Yazathat).

Bowing to the Three Gems (Buddha –Law–Monks) and religious Teachers (asariya), this treatise is prepared to assist those learned monks and laymen so as to fulfill their desire to pronounce fair and just verdicts.

In order to understand clearly and to remain in their minds, this treatise is written in such a way as an impression is stamped on the very soft wax.

Taking into consideration the three aspects of legal traditions; the Law of Buddha (dhamma-kan), the Secular Law Book (dhammathat) and the Royal Edict (Yazathat), the monks and laymen alike should evaluate the situation, the creditability of the circumstances and pass decision accordingly. It is easy to accuse but it is difficult to solve. It is easy to be brave but it is difficult to have strength.

For cases involving the Pagoda slaves, monastery slaves, pagoda lands, monastic lands and disputes between monks and laymen as if a hundred and ten pleaders represented the case, as if fifty five judges decided the case, as if one hundred and ten clients/plaintiffs had reached agreement by eating pickled tea together, (which means ‘settle a civil suit by ritual eating of pickled tea leaves together’), I shall conduct the case and give the decision, after following the development of the case, listening to the excuses and arguments presented by the contestants. Therefore a case should be presented fully, clearly and without fear. Only then one can be articulate in argument or passing the verdict.

2-3 The Two Cases of Theft
(1) The First Case–U Nyana vs. Shin Ganbi- Judgment on the full moon day of Tagu, 1118 BE (=14th April 1756AD).

A monk, U Nyana, stole a dah (knife) belonging to a novice, Shin Gambi.

No sentence was passed because the stolen object was considered as being used and was not worth a quarter-tical\(^7\) of silver. ‘The court observed that suitable punish-

---

\(^7\) A quarter called ‘tamat’ in Myanmar is one-fourth of one kyat which is equivalent to about one-fourth of 16.55g=about 4.16; nowadays kyat is an unit of currency.
ment would have been inflicted on the novice if the stolen property had retained its initial value of more than a quarter of a tical. Thus it depends on the value of a stolen property, regardless of the people involved, be it monks or laymen as to the liability for theft or not. [See full translation from the Myanmar language in Appendix-1]

(2) The Second Case—Ma Hpwa Nyo vs. Dun Zan- Judgment on the full moon day of Tagu, 1118 BE (=14th April 1756)

The monk Shin Guna accompanied by two of his disciples, Nga Pan Pyo and Nga Kyaw Pan, (step sons of Dun Zan) came on a pilgrimage to Shwe Yin Hmyaw Pagoda together with other monks. Shin Guna stayed at the Ma Hpwa Nyo’s store house without permission of the owner. After they left the store house, two viss of silver was found missing. The monk Shin Guna and his two disciples were ordered to pay the sum, the other monks had to pay the remaining half because they failed to prevent the monk Shin Guna and his disciples from staying up at the store house [See the full translation from the Myanmar language in Appendix-2].

3 Principles of Judgment

3-1 Taking Account of the Four Conditions

The first case of theft was decided citing as an example a longyi (=a skirt-like garment worn by men) as follows:

The longyi, which is bought with ngwe-tamat—if one strand of thread is lost while washing it the value will be lessened. In order to test the quality of iron used in making the knife, if one stroke is made in whetting it, there is a loss in value. It is no longer worth tamat—it is less than tamat, which is the value before it was whetted. If it is not worth full tamat—it is not considered as theft, it cannot be considered as pārājika9, but only as htoukla-si (=area offence).

Pyinnya accused Gambi of stealing his knife which he said is worth a tamat. Since he had whetted it, it is no longer worth a tamat—it cannot be considered as pārājika. Therefore what Gambi did must be considered as htoulkla-si [ASP 1965: 48; see also Appendix-I]

Myanmar justice sought to mediate and find a compromise between the rival parties taking consideration the four conditions on which the Myanmar traditional law was intended to be interpreted. These four conditions are: (a) time or period (kālan), (b) place or locality (dēthan), (c) value (aggan) and (d) the nature of property (danan) [Manugye Dhammathat (MD)10 1847: 13, YKP 1965: 47]

The case mentioned above shows that

---

8) One viss (peittha) is equivalent to about 3.65 pounds.

9) Pārājika means sins involving expulsion from the priesthood which are the most heinous of the priestly offences enumerated in the Vinaya (=norm of conduct), and are placed at the head of the list [See p. 333, A Dictionary of the Pali Language by Robert C. Childers, 1974 (Fourth impression, London), Rangoon: Buddha Sāsana Council Press. In regard to pārājika, which means ‘defeat offence meriting expulsion, Andrew Huxley, a modern English Jurist, pointed out that the vinayapali is concerned with defeat, not with tortuous compensation [Huxley 1999: 328].

10) It was compiled probably in 1756 by Kyun-wun Bounma Zeya, the minister of moat to King Alaunghpaya, the founder of Konbaung dynasty [1752–1885].
the value (aggan) is of importance in deciding a case. In this case, tamat or quarter of a tical is no longer worth its original value of tamat. The value is less, and the degree of punishment is also less.

In regard to this principle, pārājika, one of the four major crimes in the Buddhist Order, which means one who has committed a grave transgression of the rule for monks (bhikkhus), the monk who stole the knife (which is no longer worth its initial value as claimed by the defendant) is not liable to be considered as a crime.

### 3-2 To Minimize a Serious Affair and To Mitigate a Small Affair

The second case of theft mentioned above describes as follows:

‘According to the Imperial Edicts, it is customary for what is narrow should not be widened, what is small should not be enlarged. Let the big cases be made small and the wide cases be made narrow. It is not only the decrees of kings, but also according to the precepts of Buddha. Except in a case of a small offence, the monks should not enlarge it.’ [ASP ibid.: 22; See also Appendix-2]

Myanmar traditional law has as its purpose the peaceful solution of legal disputes and social differences, based on morality and ethics. Its basic principle was, as a legal maxim says: “to minimize a serious (or big) affair and to mitigate a small affair’ (kyi thaw ahmu ko nge aung/nge thaw ahmu ko pa-pyauk aung) [T)ROB (March 3 1782) 1986: 229]. The Myanmar kings were in favour of this old, legal maxim in a trial to settle disputes at a judicial court. In other words, it is fairness (taya hmyata-ye). This “fairness” does not mean ‘compromise’, but ‘fairness’ that reached a final conclusion taking into account all the conditions to be considered. The second case describes as follows:

‘The judgment which I made is in accordance with both secular and religious concept of the law. e.g., the laws which the kings and emperors had decreed and also what the Lord Buddha had ordered’ [ASP ibid.: 22; see also Appendix-II].

Thus the final decision was made by the judge in such a manner that all the parties concerned were liable for accusation, as the judge commented: Hpwa Nyo, Dun Zan, the monks Guna and his group were accused [ASP ibid. 22; also see Appendix-2].

### 3-3 “To Live and Let Live”

The second case of theft vividly shows us the following principle of Myanmar traditional law; in the light of perennial principles of justice, Myanmar traditional law is found to be just and equitable. It had come up to the standard of pure virtue based on ethics and moral principles. In regard to social justice, the traditional law never espoused class distinctions and the inequality of sexes, though the Dhammathats, under the influence of Hindu law, put forth such ideas. All relationships, such as

---

11) These four are: (a) fornication, (b) theft, (c) taking life (even of an insect) and (d) falsely laying claim to the possession of Arahatship (=the pure one who has destroyed the defilements) or one of other supernatural gifts.
husband and wife, parents and children, medical doctor and patient, master and servant, employer and employee, etc., are equal. ‘To live and let live’ (*mwe ma the dout ma kyo*)\(^{12}\). Under the traditional Myanmar law ‘fit punishment is always meted out to the offender according to the nature of the offence committed’ [Aung Than Tun 1981 (30\(^{th}\), November): 5]

3-4 Ignorance of Pleadings by the Judges

Atula Hsayadaw enunciated such a principle that the judges are accordingly entitled to ignore the pleadings and decide the case so that they should avoid multiplicity of litigation to the vexation to the King’s subjects [ASP *ibid.*: 22]. On this principle, Honourable Justice U E Maung commented in regard to the case of Hpwa Nyo vs. Dun Zan: ‘the Sayadaw [Atula Hsayadaw] directed the addition of a new defendant and, dismissing the defendant impleaded by the plaintiff from the suit, awarded damages to the plaintiff against the defendant brought on the record by the Court.’ [E Maung 1951: 17]. The second case mentioned above is described like this:

‘In some cases, the judges, after listening to the arguments given by the two contestants, decide whether it is plausible or not and then pass judgment accordingly. The judges in some cases, disregarding the words of lawyers, pass judgments after listening only to the original statements made by the contestants.’ [*ibid.*; also see Appendix-2]

In the actual case, after listening to the statements made by Hpwa Nyo and Dun Zan, it was decided that Hpwa Nyo should not have accused Dun Zan. Accordingly, the judgment was passed ordering Hpwa Nyo to pay the expenses incurred by Dun Zan. Hpwa Nyo was dissatisfied with the judgment and if she was not going to withdraw the case against the monk Shin Guna, it will be like widening what is narrow. Saying that Hpwa Nyo had wrongly accused him, Shin Guna will not refrain from making a case against Hpwa Nyo. [*ibid.*; see also Appendix-2]

4 Comparison of the Way to be discussed on Theft between the Dhammathat and the Hpyatton

4-1 Theft in the Dhammathats

1) Definition and Principles

The origin of theft in Myanmar is depicted in the preamble to the *Manugye Dhammathat* as follows:

‘The original inhabitants of the world, taking consideration of shortage of the rice due to their securing the morning and evening meal at once), therefore consulted together and decided to give each a share of rice fields and marked them off. A dishonest fellow, however, fearing his own share would be consumed, stole and ate the share of another. Since then, theft, lying or revilement and punishment became widespread’ [MD 1847: 7].

---

\(^{12}\) The literary meaning is: The snake can go away with its life and body intact at the same time the stick would be undamaged.
The Dhammathats do not define theft. Accordingly, they do not exhibit any unified principle. They, however, describe various kinds of theft [MD1847: IV s.1]. These kinds of theft are ‘including exacting dues more than what is prescribed by law and custom to collect ’[ROB V 1986: 55]. Theft is one of the four major pārājikas among monks and one of the Five Precepts to be abstained from. In this sense, theft is principally a serious offence to the Buddhist Myanmar. In addition, under the reign of King Alaunghpaya, he issued such an edict:

‘Everyone hearing a shout “thief” must turn up to help in catching the thief. Failing to do so is punishable with five lashes or fine of 50 ticals of copper’ [(T)ROBIII (13 January, 1758) 1985: 205]

Shwe Baw, the late Burmese jurist, says that ‘Theft is not restricted to movable property. It includes obtaining property by deceit, fraud, and force as well as other means of unjust enrichment. In most contexts in the Dhammathats, it simply means the appropriation of property in the possession of the owner or some other person on his behalf’ [Shwe Baw 1955: 469].

(2) Kinds of Theft

The Manugye dhammathat describes twenty-five kinds of theft [MD ibid. IV: 111–113]. It includes the stealing of property or goods in transit, theft through a third party, cheating by use of false weights and measures, and hiding property placed on deposit [See MD IV 1: 111–118]. The Wagaru Dhammathat also describes ten kinds of theft [Wagaru ibid. s. 173–182; 64–66 (Myanmar text): 35–36 (English translation)]. The Royal Edict issued by King Badon on the 28th of January, 1795 also referred to twenty five kinds of theft [(T) ROB V: 1986:465]. Apart from these ordinary types of theft, some special ones are also included, such as theft of a flower [Manuthara 1879 s. 453], theft by a monk [Wagaru 1892 XVIII 173; MD ibid. IV 1], theft by a children from parents [Wagaru ibid. XVIII 183], and so forth. The Manugye lays down a rule as follows:

‘If any respectable person, like a monk, a Brahmin, a traveler, or any weak person, such as sick man or child, shall take one or two sugar canes from any field or garden, it should not be regarded as a crime. But if they take as many as seven, they are liable to criminal punishment’ [MD IV s. 1].

A thief of royal property, which is the most serious form of theft shall be banished, while a thief of public property shall be liable for corporal punishment and a fine [Dhammawilatha XI 1,3,9; also see MD ibid. IV s. 1]. In this regard, the Manugye lays down a rule as follows:

‘If any person shall steal the properties of the king, all his property shall be taken and he shall be banished from the country. He shall also make compensation in five times of the amount’ [MD IV s. 1].

A thief of property belonging to the weak and the defenseless, such as a child or
a widow shall be liable to pay double the value of the stolen goods [Dhammawilatha 1749 XI: 4,29; MD ibid. IV s. 1]. The Manugye prescribes as follows:

‘If parents or a teacher or a Puroheit (astrologer Brahmin) shall steal any thing belonging to their children or disciples respectively, they shall not escape from criminal punishment.... If parents shall thoughtlessly steal the property of their children, they shall be liable for punishment’ [MD IV 1].

(3) Characteristics of the Rules of the Dhammathats Laid down on Theft

The Myanmar Dhammathats makes no distinction between theft and robbery, while Hindu law defines theft as taking during the owner’s absence or taking and then denying it, and robbery as taking with violence in the presence of the owner [Manu VIII 332: 312]; also see Shwe Baw 1955: 476]. The Myanmar law prescribed in the Dhammathats requires restitution or corporal punishment regarding theft of a public utility, such as zayats (= a rest house built on sacred premises), a well, etc. The Dhammawilatha Dhammathat lays down a rule as follows:

‘If a man steals a rope from a public well or a bucket, or if he steals articles from a zayat, he shall pay a fine equal to the price of the thing stolen. In addition he shall also be corporally punished’ [Dhammawilatha XI 3; also see Shwe Baw 1955: 477].

The Myanmar Law prescribed in the Dhammathats punishes ordinary theft with a fine and compensation and serious cases with forfeiture of the property of the thief or his banishment. The general rules in the Dhammathats for small theft is two and half times the value of the stolen article for compensation [Shwe Baw 1955: 477]. Myanmar law also fixed penalties by multiples of value, but in regard to specified articles, a certain sum is fixed as compensation of which there would be no variation in value. [Ibid: 478]. The Manugye Dhammathat lays down a rule as follows:

‘Restitution shall be made in five times if a theft is committed in the night and in two and a half times if it is committed in the day. In the case of theft of animate property, the amount of restitution will be fixed differently: an elephant two fold, a horse five and a slave five. In regard to inanimate things, five fold of them shall be recovered in all cases; arms and ornaments ten fold, a paddy two ticals of pure silver’ [MD IV 1].

4-2 The Theft Cases Observed in the Hpyattons

(1) The Relation between the Dhammathats and the Hpyattons

As it has been stated earlier, the Dhammathats are a collection of customary rules and precedents. Customary rules represent laws and customs which are currently prevailing in force. Precedents mostly

---

13) Section 332 on theft in the Code of Manu (Manusmṛti) [=The Law of Manu] describes as follows: ‘An offence (of this description) which is committed in the presence (of the owner) and with violence, will be robbery; if (it is committed) in his absence, it will be theft; likewise if (the possession of) anything is denied after it has been taken’.
mean Hyathtons which are a collection of decisions made in the judicial courts. Thus the Dhammathats do not always reflect the present laws and customs, but reflect the standard texts which present general principles. That is why, as it has been stated, the rules of the Dhammathats were sometimes overruled by the Yazathats or the Hpyathtons and the Yazathats or the Hpyathtons were over-ruled by Dale-htoundan which were prevailing customary rules.

As stated earlier, there exist two major Hpyathtons: one is the Atula Hsayadaw Hpyathton of middle of 18th century Myanmar and the other is the Yezagyo Hkondaw Hpyathton from late 18th to early 19th centuries Myanmar. The former is a work compiled by the highest monk who was also the royal mentor, including decisions by fifty-five judges and the pleadings of one hundred and ten pleaders, during 1750–1788. All the cases dealt with decisions included in the Atula Hsayadaw Hpyathton were connected to Buddhist monks, as has been mentioned in his introduction. The latter is a collection of decisions by the Judge Maung Hmaing, which consists of thirty-two law suits of the Yezagyo local court during 1789–1821 including decisions by other judges after 1833 and royal orders in a later period. In addition, the process of deducing and deciding the case at the Yezagyo judicial court was in accordance with the principles of the Dhammathats through the study of them [YKP 1965, preface-(hta)]. Shwe Baw also pointed out that 'The judgments show that the courts took great care to follow the rules of the Dhammathats. Although they quote the Jataka and sometimes the Vinaya, it was only to fortify the grounds for decisions which they gave, based solely on the rules of the Dhammathats' [Shwe Baw 1955: 122].

However, through analysis of the process towards the decision-making in the thirty-two judgments, we also get the impression that the guiding principle for the judge at the court of Yezagyo was to make judgment with reference to all the available sources of law for a better solution [Okudaira2003: 326]. In other words, when the judge at the Yezagyo judicial court made a judgment on a dispute, he compared, examined and selected source materials from all the available sources of law and decided (siyin) the case [See YKP: 31], while attaching great importance to the Dhammathats as a principal source of law, taking the conditions of the period (hkit) and region (detha) into consideration' [Okudaira ibid.: 326–327], more precisely taking the Four Conditions (Maha Padetha Taya Leba): (a) Kālan, (b) Dēthan, (c) Agga and Danan [YKP 1965: 47] into consideration.

(2) The Way to be decided in the Hpyathton

We have presented an 18th century Myanmar decision: the Atula Hsayadaw Hpyathton comparing it to an another actual decision under the name of the Yezagyo Hkondaw Hpyathton. We cannot compare both the Hpyathtons in relation to theft cases because the latter does not include any theft cases. The former seems to be a collection of decisions which Atula Hsayadaw, the highest monk and royal mentor, edited himself sampling various decisions made by fifty-five judges and pleadings by one hundred and ten pleaders and the same number of the parties concerned. The decisions made by Atula Hsayadaw should be regarded as the actual ones because they are based on actual decisions by court judges, though the cases dealt with
are almost related to religious affairs. However, Myanmar traditional law, presented by the law of Dhammathats, mostly stemmed from the law of Buddha or Buddhist canons. These decisions, therefore, can be adapted to secular affairs including theft.

If, however, we compare the way of decision between the Atula Hsayadaw Hpyathton and the Yezagyo Hkondaw Hpyathton, the former seems not to have directly used the Dhammathats, or at least not cited or referred to them, while the latter made decisions based on the Dhammathats, because the latter is a collection of decisions by civil judges in the civil court at Yezagyo for lay people. But even in such a civil court, all the law suits are decided using such various source material as the Dhammathats, Buddhist canons, precedents, royal edicts, etc. [Okudaira ibid. 326:], taking into account the four conditions mentioned above.

In relation to two theft cases observed in the Atula Hsayadaw Hpyathton, it seems that all the available sources to be selected were used, taking consideration of four conditions and seems to have dealt in more detail with the process to reach final decisions than did the Yezagyo Hkondaw Hpyathton. In regard to the latter, the judges decided the case and their disciples recorded them, writing down only the essence, using the rules of the Dhammathats in a concise, effective and decisive manner without exaggeration or metaphor [YKP ibid., (preface)-hta; see also Okudaira ibid: 327].

5 Conclusion

We have discussed the theft cases which occurred during 18th century Myanmar using the source material, namely the Atula Hsayadaw Hpyathton. There is a paucity of source material due to natural calamities such as a harsh monsoon climate, natural disasters, insects, rodents, fire, catastrophe (like war), and neglect, etc. Because of that, very few examples could be presented. However, we can assess to some extent how these decisions on theft cases were made through the famous collection of decisions, entitled The Atula Hsayadaw Hpyathton.

The judges in the judicial courts of 18th Century Myanmar seem to have made judgments, mobilizing all the sources of law, particularly the three traditional source material such as the Buddhist canons, the Dhammathats and Royal edicts. They took into consideration the prevalent circumstances, such as the four conditions (time, place, value and the nature of property) mentioned earlier.

On theft cases, the Dhammathats do not define any particular principle. In addition, there was a lack of the Hpyathton material which include actual cases on theft. However, we can clarify the characteristics of the theft cases in 18th century Myanmar society. Theft is one of the Five Precepts to be abstained from by the laymen and is one of the four major pārājikas or big offences liable to expulsion from the monkhood against the rules of Vinaya-pitaka and thus to be avoided by the monks. From this aspect, theft cases were principally serious offences for both laymen and monks. It is believed that the paucity of theft cases was due to the fact that most Myanmar
people in general adhered to the teachings of Buddha and the Buddhist scriptures and commonly observed the Five Precepts. One of them was abstention from theft. People were instructed not to break those five precepts, not only in action but also in thought and speech.

The judges always sought for a moderate way and a peaceful manner in deciding theft cases. They attempted to reach an amicable settlement between the parties concerned, in the framework of the whole concept of the Myanmar customary law, referring to the twenty-five kinds of theft prescribed in the Dhammathats, such as Manugye, Wagaru, Dhammawilatha, or Manuthara.

[Appendix: Translation of the Theft Cases]

1. The first case—U Nyana vs. Shin Gambi

I, Nyana make the following statement—Shin Gambi, stole my knife which I had bought with tamat. When it was placed before the monks to enquire—it was declared that he, Gambi was innocent of the crime. The monks of Pintale disregarding the teachings of Lord Buddha and paying attention to Gambi’s parents, they have committed this crime.

I, Gambi make this statement. As Nyana had accused me, as a human failure, I had committed the crime. Before being accused, I have entrusted the knife to the monks. The monks are hesitating to give the decision because they are in a dilemma and are contemplating what to decide. Therefore they are not favouring me—disregarding the teachings of the Lord Buddha.

Both statements are correct. When Shin Pyinnya was asked if he had used the knife, he had answered in the negative. He said that he had not used it. It cannot be considered being used unless it is used for cutting and chopping. When asked if he had done anything with it, after it had been bought, he said he had whetted it in order to see whether it was made of good iron or not. It had not been reduced in value because of this test (whetting). The knife, which had been bought with a tamat, lost its value because of whetting. In order to test the quality of iron used in making the knife, if one stroke is made in whetting it, there is a loss in value. It is no longer worth a tamat, it is less than a tamat. which was the value before it was whetted. If it is not worth a full tamat, it is not considered as theft, it cannot be considered as pārājika but only as htoukla-si (=area offence).

Pyinnya accused Gambi of stealing his knife which he said is worth a tamat. Since Gambi had whetted it, it is no longer worth a tamat, it cannot be considered as parajika. Therefore what Gambi did must be considered as a htoukla-si (an area offence).

Both of them agreed to the explanation and mutually accepted the verdict of the monks and the case was closed on the full moon day of Tagu, 1118B.E. (=14th, April, 1756 A.D.)

2. The Second case—Ma Hpwa Nyo vs. Dun Zan

I, Ma Hpwa Nyo have the honour to make this statement—

The monk Shin Guna accompanied by two of his disciples in charge of horses Nga Pan Pyo and Nga Kyaw Pan (sons of Dun Zan) came on a pilgrimage to Shwe Yin
Hmyaw Pagoda together with other monks. When they reached Pauk Myaing village, the other monks went to the free public rest houses, such as the Zayat and Tazaung.

Shin Guna said that he wished to stay at my high, store house (on stilts) [F-1]. I told him that I have my treasure and property stored there and asked him to stay at other suitable place.

He said “Do you think I would steal your treasure?” and forcibly stayed at my store house.

I dared not contradict him because he was a monk. Dun Zan’s sons Nga Pan Pyo and Nga Kyaw Pan also went up and down, in and out of the store-house.

Because times are bad, I had kept two viss of silver in my store-house. That was lost.

I do not accuse the monk Guna of theft. People saw the disciples of the monk Nga Pan Pyo and Nga Kyaw Pan going up and down the store-house.

Nga Kyaw Pan and Nga Pan Pyo are the step-sons who reside with their step mother Dun Zan and are under the protection of their step-mother.

When the case was taken to court, it was decided that Dun Zan should pay two viss of silver, because Nga Pan Pyo Nga and Kyaw Pan are her step sons who stay with her and are under her protection.

Although the court decided as mentioned above, the monk Guna protested the verdict and thus the case is pending.

“I, Dun Zan have the honour to give this statement—

It is true that I have entrusted my step sons, Nga Kyaw Pan and Nga Pan Pyo into the care of Shin Guna as it is the usual practice among the children of respectable families so as to be instructed in both worldly and religious affairs. I have requested the monk Shin Guna to accept them as his disciples and instruct them.

I did not go to Shwe Yin Hmyaw of Pauk Myaing village, neither did I stay at the store-house.

When Ma Hpwa Nyo lost her property, she demanded that I should compensate her for it and placed me in front of the authorities and sued me. Therefore I am financially, physically and mentally distressed.

The statements made by those in connection with the case regarding the lost of property by Hpwa Nyo.

In order that her step sons become good people, Dun Zan entrusted them to the care of the monk Guna. If he could not instruct and make them good, he should have said, “Take back your sons. I can’t make them good.”

He did not do that. He kept them both near and far from him as his disciples.

The monk Guna is not competent in either religious or worldly affairs.

In spite of the fact that the monks who had come with him on the pilgrimage heard and reported to him that the store-house had treasure in it, taking advantages of his being a mon, he ignored it and put up for the night at the store-house. This fact itself is a violation of the religious rules.”

[Pali sentence] “If goods are lost/destroyed on account of the fact that greedy novices or attendants sat down within the store-house of another one, he (i.e. the keeper of the store house, who in monastic law is a monk, but here perhaps referring to the monk responsible for the novices? ) has to compensate.” [F-2]
If the immoral monks and their disciples put up at the store-house where treasures are kept, whatever goods lost at that treasure house must be compensated by the monks who put up there. Because Hpwa Nyo had stated that she had deposited two viss of silver at her store house, if she dares to take oath and declares that, let the monk (Shin Guna) give back the same amount as compensation.

When Guna unwisely planned to put up at the treasure house belonging to other people, together with the disciples, the monks who had accompanied him had the right to advise and dissuade him. They failed to do that. Therefore, accordingly, out of the two viss of silver, half the amount should be paid by those monks who had accompanied him.

Dun Zan had entrusted her two stepsons into the care of the monk Guna and for a long period of time they constantly accompanied the monks as attendants. They had been with the monk day and night.

While Guna was putting up at the treasure house of Hpwa Nyo, her property was lost.

Just like when catching the runaway cows or buffaloes, instead of pulling them by the nose cord, the foolish person had pulled their tails.

When Hpwa Nyo put up the case, she did not accuse Guna. Instead she accused Dun Zan, the step-mother of Nga Pan Myaing and Nga Kyaw Pan, who are the disciples of Guna, Hpwa Nyo does not have the right to do so.

Therefore Dun Zan should declare the amount of property she had spent and Hpwa Nyo should return the same to Dun Zan.

When the order was passed, the disciples declared that the demand made by Hpwa Nyo was not according to law. So saying Hpwa Nyo and Dun Zan contended.

When the case was placed before the court, Dun Zan declared that it is a rare case for the disciples to be accused of a crime committed by Shin Guna and declared guilty.

Guna, the monk was dissatisfied with the judgment and made an appeal again.

In some cases, the judges, after listening to the arguments given by the two contestants, decide whether it is plausible or not and pass judgment accordingly.

The judges in some cases disregard the words of lawyers pass judgments after listening only to the original statements made by the contestants.

After listening to the statements made by Hpwa Nyo and Dun Zan it is decided that Hpwa Nyo should not have accused and made a case against Dun Zan.

Accordingly the judgment was passed ordering Hpwa Nyo to pay for the legal expenses incurred by Dun Zan.

Hpwa Nyo was dissatisfied with the judgment and if she plans to accuse Guna as well, it will be like making something big.

Dissatisfied with the judgment, if Hpwa Nyo is not going to withdraw the case against the monk Guna, it will be like widening what is narrow.

Saying that Hpwa Nyo had wrongly accused him, Guna will not refrain from making a case against Hpwa Nyo.

Therefore, although there is no laudable excuse (according to law), Hpwa Nyo, Dun Zan, the monk Guna and the group of
monks, were accused.

[Pali Sentence] “A grave offence connected with householders” [F-3]

According to the imperial edicts, it is customary for what is narrow should not be widened, what is small should not be enlarged. [F-4]

It is not only the decrees of kings, but also according to the precepts of Buddha.

In the case of small offence, the monks should not enlarge it.

The judgment which I made is in accordance with both secular and religious concept of law. e.g., the laws which the kings and emperors had decreed and also what the Lord Buddha had ordered.

I did not choose this profession for my living as a judge to deal with cases concerning the monks. [F-5]

Because I was not well-versed in dealing with cases involving the monks, I had made a mistake once and I do not wish to repeat the same mistake. Don’t go to other courts.

When I said that, Hpwa Nyo, Dun Zan, the monk Guna and his disciples, all unanimously agreed to obey the order and the case was closed on the full moon day of Tagu, 1118 B.E. (=14th April, 1756).

[F-1] “A long post or column that is used to support a building above ground level” [See p. 1517, Collins English Dictionary 1995 (Reprinted 1995 of Third Edition Updated 1994)]

[F-2] The translation from Pali into English has been made by Dr. Petra Kieffer-Pulz after correcting the mistake of the original Pali sentence in 1966 type-script version of the Atula Hsayadaw Hpyathton in such a manner that “lolasamanerehi va upatthakehi va parassa bhandagare nisiditatta bhande natthe tassa giva”

[F-3] The translation from Pali into English has been made by the same scholar mentioned in [F-2] making such a comment that as “a grave offences” (garukapatti or thullavajja) comprises all offences belonging to the first two categories of the Patimokka, i.e. the Parajika and Sanghadisesa section belong. We are grateful to Dr. Petra Kieffer-Pulz for her elaborate translations and useful comments on the aforementioned two Pali sentences.

[F-4] We can use another expression: Let the big case be made small and the wide case be made narrow.

[F-5] It is clear that this decision was not made by Atula Hsayadaw himself.

[References]

1 Primary Source

Atula Dhammathat Hpyathton [ASP] by Atula Hsyadaw. 1966. (1) Typed copy of 1211B. E. (=1849 A.D., the copy of 1783 compiled by Atula Hsayadaw) [Reel 58-No. 19, The Catalogue of Materials on Myanmar History in Microfilms, 2004, Vol. 1, the Centre for Documentetion & Area Studies, preserved at the Library of the Tokyo University of Foreign Studies. The cases up to No. 15 also included in pp. 520–550 of Vinaya Pakinnaka Vinicchaya Kyan, 1901. Mandalay Taya Athin Saphon; (2) According to Shwe Baw [1955: 120], the date of compilation inscribed on palm-leaf manuscript 1126B.E. (=1764 A.D.); the first transcription from original, 1160B.E. (=1798A.D.); the final transcription 1209B.E. (=1847 A.D.)

Hanthawaddy Tayama-nyingyi Shin Kyaw Thu Si-yin thaw Hpyatthon (“The collection of decisions by the Hanthawaddy civil court Judge Shin Kyaw Thu”). 1870. Yangon: Myana Thadawhsint Press. (Also see Maung Kin (Bailiff)’s translation of Shin Kyaw Thu’s pyatton. Rangoon 25 February 1881)


Maha Pinnya Kyaw Shaukhton [MPS] by the Advisory Minister to Dayawaddy kings. 1864, Yangon: Hanthawaddy Press. (Also Parabaik manuscript: Reel-10 (3), List of Microfilms deposited in The Centre for East Asian Cultural Studies—Part 8 Burma LMDCEACS-B,1976, Tokyo: The Centre for East Asian Cultural Studies.)


Mye-hmu/Nwa-kye hko-hmu (“Court transcripts of land cases and theft cases concerning cows and buffaloes” 1246B.E. (=1884A.D.), Parabaik manuscript: Reel: 12(3), LMDCEACS-B.


2 Secondary Sources


Kyin Swi. 1965. The Judicial System in the Kingdom of Burma. (Unpublished PhD. Dissertation (University of London)


Research Institute for Languages and Cultures of Asia and Africa (ILCAA), Tokyo University of Foreign Studies, pp. 319–329.


reception 4 July 2014
1. The first case—U Nyana vs. Shin Ganbi

[An English translation from the Burmese text (1966)]

[.Container]

[An English translation from the Burmese text (1966)]
2. The second case—Ma Pwa Nyo vs. Dun Zan

...
Okudaira, Ryuji: Cases of Theft in 18th Century Myanmar (Burma) with Special Reference to the Atula Hsayadaw Hpyathton
दक्षिण एशिया आतिरिक्त राज्यांमध्ये आतिरीपणी व राज्यांमध्ये आतिरी प्रवाहाच्या विकासातील समस्या असे काही काळात आतील. परंतु, आतिरीपणी समस्येच्या दृष्टिकोनातून दर्शते की, आतिरीपणी हा स्थान समस्या असे काही काळात आतील. परंतु, आतिरीपणी समस्येच्या दृष्टिकोनातून दर्शते की, आतिरीपणी हा स्थान समस्या असे काही काळात आतील.

from Tokyo University of Foreign Studies Library