

## ABSTRACT

Thesis Title : Protection of the Employee's Knowledge Skill and  
Experience Related to the Employer's Trade Secrets.

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The protection of trade secret is a law which is developed in parallel with the Competition Law in Continent, while the protection on this respect in the United Kingdom is on the Law of Confidence that relates to the relationship between discloser and discloser. The discloser who binds himself not to disclose or use any information acquired in the course of activity within such relationship without consent from the discloser or any lawful act.

There are a great deal of cases involving relationship between employer and employee have been filed to the court of justice in foreign countries such as the United Kingdom and the United States of America. The relationship between employer and employee in another aspect relates to contract of employment in which the employer can obligate his employee by using a restrictive covenant not to compete after the termination of the employment contract.

Restrictive covenant brings able to consider another area of law that is to say the Restraint of Trade Doctrine developed by the judges of the United Kingdom who

have attempted to intervene by checking and balancing the result of the covenant not to compete in order to promote liberty of trade. The covenant which is considered in restraint of trade is against public policy and void per se. The doctrine is also adapted into Section 5 of the Unfair Contract Terms Act B.E.2540 of Thailand.

One of the most effective defense of the defendant in a law suit related to the trade secret is that of the information in question is not a trade secret of the ex – employer but it is a knowledge skill and experience that belongs to the ex – employee of which he can use or disclose in the course of his work.

In this thesis, therefore, researched the way in which the employee's knowledge skill and experience can be certified and protected both in the area of Trade Secret Law and in the area of Restraint of Trade Doctrine in order to adapt into the Draft Trade Secret Act B.E. .... and the Unfair Contract Terms Act B.E.2540, Section 5 of Thailand.

According to the research, if the information is considered the employee's knowledge skill and experience the employer can not be protected by claiming that such information is his trade secret and if a covenant resulting liberty of the employee's knowledge skill and experience usage other than being the employer's trade secret it is considered against public policy and declared void by British courts, but according to American courts such covenant is considered a covenant in restraint of trade which is valid only when it reasonably restricts an employee.

Hence, it is proposed in this thesis that

1. knowledge skill and experience means information or behavior that occurs and becomes an intellectual ability of an employee due to activities normally done by the employee which can be operated through any media to show that the employee's qualification would benefit to the job of the employee or others. .

2. adding into the Draft Trade Secret Act B.E.... a provision concerning certifying and protecting employee's knowledge skill and experience.

3. adding into the Unfair Contract Terms Act B.E.2540, Section 5 a provision authorizes court of justice to scrutinize content of the restrictive covenant whether it prevents employee from using his knowledge skill and experience or not and

4. employees should recognize and understand their knowledge skill and experience rights in order that they will gain benefit from their own intellectual skills and abilities.