

C270531 : MAJOR LAW

KEY WORD: OBLIGATIONS, IMPOSSIBILITY, SALES, CONTRACTS

SIRIKORN PEUNGNITI : ENFORCEMENT OF OBLIGATION AS A RESULT OF
THE IMPOSSIBILITY OF PERFORMANCE : A CASE STUDY OF SALE CONTRACTS
THESIS ADVISOR : ASSO. PROF. PITOON KONGSOMBOON 96 pp.
ISBN 974-584-199-4

According to the law of obligations and contracts; if the subject of the obligation is the delivery of thing and it becomes impossible to do so; the result of the impossibility of performance shall be based on the rule of Res perit Domino. The substantial of the rule is that the owner of the property is the one who is charged of property risk which neither party is responsible, unless the performance becomes impossible in consequence of circumstance for which one is responsible; the loss or damage will then falls upon him. It's shown that the legal consequences are related to the fault of liability of each other.

The essential of sale contract is that the ownership of property is transferred to the buyer. At the same time, according to the Thai law the agreement to sell or to buy only apply to the immovable property. In the case of thing has not yet been delivered and it becomes impossible without the fault of the seller, the buyer has to bear the risk according to the rule of Res Perit Domino. Even though the principle of law states that the seller is not responsible, there may be a clause of the agreement provided that he shall be responsible therefor; and the supreme court have ruled that this is acceptable because it is not contrary to the public order and compatible with principle of the sancity of contract, so the party must be bound by the term of such clause.

From this research it is found that, the research can be concluded that the sale contract is the one of the reciprocal contract. It should be defined in the case above-mentioned for the fairness of the both parties by introduce the two agreements system of German Civil Code which provide that the ownership shall be transferred by the delivery of thing or it should also be acceptable that the agreement to sell or to buy shall apply to both movable and immovable properties. In the same direction as the principle of stipulate penalty; this research suggest that in the case of the property risk is set up by the cause of the agreement; the court should take part in determining the liability in order to fit the suitable damages with caused by this circumstances.