

## C370598 MAJOR LAW

KEY WORD: COMPETE / RESTRAINT / OCCUPATION

SUNANTA WATANOTAIVIT : THE PROBLEM OF AGREEMENT IN RESTRAINT OF TRADE.

THESIS ADVISOR: PROF. CHAIYOS HEMARAJATA, THESIS CO-ADVISOR : JARAN PUKDITANAKUL

128 pp. ISBN 974-582-918-8

The purpose of this thesis is to acknowledge one type of agreements that may cause problem to society, that is the agreement in restraint of trade between employer-employees. The agreement in restraint of trade has an impact on and is considerably a monopoly.

According to the study, the bargaining strength in society between both parties and the Principle of Authority of the Will cause the trade restriction's problem, rather than a written law itself. However, to void the agreement or to reject the Principle of Authority is not an answer to the problem. Rather, the Justice Court should play its role in order to make an agreement reasonable to both parties and to an orderly society. In other words, in order to put an agreement into practice, the government must emphasize on the public policy.

Speaking in terms of Law; The main emphasis on restraint of trade in England is; the agreement is void when there is an agreement or any indication in restraining trade. It is against the public policy. However, an agreement can be binding if it's reasonable to both parties, and it must not be against the public interest. The restraint of trade is reasonable when the restriction is not overdone in order to protect the benefit of the covenantor. In other words, the restriction in terms of time and place must not be too general or too narrow.

The above decision is quite similar to the court's decision in Thailand, that is we emphasize more on the public policy. Sometimes, it's difficult to define the meaning of public policy, therefore, we do not have a definite law in restraint of trade. It is flexible, changes from times to times, and is considered case by case according to the evidence of facts. However, this must not over exercise to protect the employer's benefits.

Therefore, the reasonable decision of court should mainly arise out of the evidence of facts. The rules for court's decision on an unreasonable trade agreement have been working on by the Justice Courts. These are to make it systematic and to come up with suitable and reasonable solutions to both parties.