

Abstract

In the sale transaction, the law in every country accepts that the seller has the duty to make the goods free from the encumbrance by the third person, which if he do not fulfill his duty, the buyer may receive the damage from the increasing cost, being limited his right to the goods, be unable to use the goods as he wants or even have to return the goods to the third person.

The duty of the seller relating to the title to the goods will be more complicated if it concerns about the international trade, because there may be some legal diversity. Some country, to solve the questions about the international trade, joins as a member of United Nations Convention on Contracts for the International Sale of Goods (CISG) and uses CISG to indicate the relation between the buyer and the seller in international trade. Some country, however, does not join CISG and uses their own domestic law to indicate that relation, such as, England that still uses Sale of Goods Act 1979 (SOGA 1979) or Thailand that still uses Civil and Commercial Code (C.C.C)

This thesis has the objective to research into the provisions of CISG, SOGA 1979 and C.C.C. in the topic relating to the duty of the seller relating to the title to the goods, to compare and find the suitable way to the international trade and to advise the way to develop or legislate the law of Thailand relating to said duty. After the research, the writer found that CISG, SOGA 1979 and C.C.C. have the different ways to indicate the duty of the seller relating to the title to the goods as follow:

1. CISG states that the duties of the seller cover the case which the third person has or has not the right, but SOGA 1979 and C.C.C. state that he seller has the duty only in case that the third person has the existence right.

2. CISG separates between the duty of the seller relating to the intellectual property and the duty that does not relating to the intellectual property, but SOGA 1979 and C.C.C. do not separate the duty as CISG.

3. As to the duty of the seller relating to the right in intellectual property, CISG limits the scope of the duty by indicating the law used to consider the right of the third person, but SOGA 1979 and C.C.C. do not have such limitation.

4. To consider the fulfillment of the duty of the seller, CISG has the case which have to and do not have to consider the knowledge of the seller about the defect in title, but SOGA 1979 and C.C.C. indicate that the seller has the duty even he does not know about the defects in title.

5. CISG uses the time to delivery to determine the fulfillment of the seller, but SOGA 1979 uses many points of time such as the time that the contract is concluded or the ownership is transferred or the time after the possession of the goods is transferred, while C.C.C., in the principle, use the time that the contract is concluded, but, as the exception, may extend to the time after the contracted is concluded if the defects in title results from the fault of the seller.

6. To exclude the liability of the seller, CISG uses both the acceptance and the knowledge of the buyer, but SOGA 1979 and C.C.C. use only the knowledge of the buyer.

7. CISG states that the buyer has the duty to notify to the seller the defects in title, which if he does not do that duty, the seller will be exempted from the liability, but SOGA 1979 and C.C.C. do not indicate such duty.

8. CISG has the exception of the duty by using the agreement to exempt the liability, which its validity is determined by using the domestic law applicable to the case, but England's law and Thai's law, in some case, mandate to use their own domestic rules to determine the validity of the exception of the liability clause.

9. CISG does not have the limitation period for the case relating to the failure of the seller to fulfill the duty concerning to the right of the goods and has the opinion that this case must not be under any limitation period, but England's law and C.C.C. have the limitation period for this case.

In the writer's opinion, CISG is the law that indicates the duty and the liability of the seller concerning to the right of the goods is more suitable than SOGA 1979 and C.C.C, except the rule as to the limitation period. The law relating to this issue should indicate as to the limitation period, because it can make the seller not to have to receive too much responsibility and can make the certainty and predictable to the law. In my opinion, the law as to the limitation period in this issue should consider the case which:

1. The buyer choose to other way to make the seller to remedy than make the seller to cure the defective in title or

2. The seller is asked to cure the defective in title, but he does not or cannot cure in the reasonable period of time or

3. The seller is asked to cure, and the can cure the defective in title, but the buyer still has some damage that cannot be cured.

Because the law used to indicate the liability in the international trade of the seller relating to the right of the goods in C.C.C. is less suitable than CISG, so Thailand should legislate the law about this case by using CISG as a model and adding the topic about the limitation period in which the buyer must ask the seller to remedy.