

## Abstract

Due to termination of a contract shall be damaging all juristic relations between contracting parties, therefore, the right to terminate a contract of the contracting parties has to be carefully exercised in order not to cause damage to the other contracting party. The purpose of this thesis is to construct boundary of the right of an employer in exercising his right to terminate a contract of hire of work in accordance with provisions of the Thai Civil and Commercial Code and to study results of termination of the contract by mean of comparing legal systems of other countries both Civil Law, for instance France and German, and Common Law, for instance England, in order to utilize as a instruction for making practical use and finding solution and suggestion so as to apply provisions of the law, in appropriately and fairly, to related cases.

From the study in relevant parts of nature and result of law stipulated legal rights of the employer, I found that there are different rules in application of each sections which shall be applied for different cases, except in the case of the period of performance is of the essence of the contract according to Section 596 which is deemed to be an exempt provision of Section 388. Therefore, in accordance with this thesis, the discussing issues which shall be explored by this paper are as follows:

1.Means of usage and the result of termination of a contract of hire of work related to the right to claim compensation in accordance with Section 593, termination of the contract: from the study I found that in the event that the contractor conducts any act stipulated by Section 593, the employer is entitled to terminate the contract immediately. However, the employer shall have no right to claim damages. From my point of view, the following additional clause concerning the right to claim damages should be added at the end of Section 593 “..... and is entitled to claim for damages from the rescission of the contract”

2.In the event that the employer can foresee that performance of the contractor may be executed in a defective manner according to Section 594 or performance of the contractor is executed in defective manner according to Section

595: this paper shall explore whether it shall create the right to the contractor to terminate the contract, and shall explore whether the right to claim the liability for defect of the contractor according to Section 595 shall extend to cover the liability for eviction. From the study, I found that in case of Section 594, the employer is not entitled to terminate the contract. However, according to Section 595 the employer can exercise the right to terminate the contract in accordance with Section 387. In addition, the right to claim the liability for defect according to Section 595 does not include the liability for eviction. Therefore, in order to explicitly make application of this section, I suggest that the following rules of liability for eviction should be introduced to the code as follows; “.....liability for defect and liability for eviction are governed by the provisions of this Code concerning sale.....”

3.Rules of usage of the right to terminate the contract according to Section 596 and an effect of termination of the contract to the right of claiming damages: due to the said section does not specify the instruction for using the provision. From the study, I found that Section 596 is an entire exception of Section 388 in the event that the period of performance is of the essence of the contract. And when exercising the right to terminate the contract, the employer is entitled to claim damages from the contractor, except, there are a legal ground which is deemed to be an exemption for the contractor from liability of the said damages. However, if the employer delays in hand-over of the course of work, but the work does not become useless to the employer as the period of performance is not of the essence of the contract, the employer cannot exercise the right to terminate the contract. However, the employer is entitled to a reduction of the remuneration.

4.Termination of the contact, its effect and the extent of the compensation from termination of the contract: from the study, I found that the termination of the contract, in accordance with Section 605, shall be applied in the event that the employer is not in default. Consequently, the employer shall compensate the contractor for compensation and shall have no right to claim any damages from the said termination of the contract. Furthermore, as Section 605 does not determine the extent of the

compensation, the general rule, according to Section 222, shall be applied. The said compensation shall be made, for damage as usually arises from non-performance, for actual damage in consequence of circumstance and for further benefit which the contractor expects that he will obtain from conduct of the contract. Nevertheless, the compensation is not the total remuneration stipulated in the contract. Since termination of the contract according to this provision is consequence of a circumstance that the employer intends not to comply with the contract. From this view, this conduct is deemed to be the fault of the employer. Hence, bearing the burden of proof for compensation by the contractor, who intent not to terminate the contract, is seem to be unfair for the contractor. Therefore, I purpose the new rules of calculation of compensation and purpose that the burden of proof for reduction of compensation should be borne by the employer as amendment of Section 605 as follows. "The employer may terminate the contract. However, if the employer exercises the said right, the contractor is entitled to demand for remuneration stipulated in the contract. Nevertheless, the remuneration shall deduct the amount of expenses which the contractor saves in consequence of termination of the contract or what the contractor acquires or maliciously omits to acquire by a different application of his faculties".

5.The meaning of non-performance according to Section 387 and whether fault of the employer shall be deemed to be a ground for termination of the contract: from the study, I found that non-performance means not performing his obligation entirely. And the contractor does not perform the obligation even though the partial performance is possible to perform. Furthermore, non-performance also includes the event that a person who professes a particular career does not make use of proper care in performance of the obligation. Nevertheless, such non-performance which is claimed as a ground for termination of the contract must be of the essence of the contract and must be reasonable amount. However, fault of the contractor shall not be considered as the essence of the contract of termination of the contract. Fault of the contractor shall be taken into consideration only in the event that an issue of compensation arises, according to Section 215.

6. In the event that the performance becomes impossible in a reciprocal contract, for which a contractor is not responsible, the contractor is relieved from his obligation to perform, according to Section 219, and the contractor shall have no right to claim the performance of the contractor as well, according to Section 372, paragraph one: the facing problems is that, which provision shall be applied if termination of the contract is required by the employer and how to recover an obligation which is already performed because Section 372, paragraph one, does not stipulate rules and procedure of return of a property. In this case, claiming for return of a property which is a consequence of termination of the contract, according to Section 391, cannot be applied as the right to terminate the contract according to Section 387 and 389 cannot be exercised as well. In addition, applying Section 605 for this case is quite unfair for the employer as the employer shall make compensation to the contractor even though such non-performance occurs from fault of the contractor. For this case, Supreme Court purposes two courses as follows: the first course, "shall return a property according to undue enrichment under Section 406, paragraph two (the Decision of Supreme Court: 358/2522) and the second course, "shall return a property according to Section 372, paragraph one (the Decision of Supreme Court: 960/2506, 9241/2539). For this case, I have an opinion that the second course is seem to be fair for the employer more than the first. However, in order to avoid problems of construction and implementation of the law as in fact Section 372 does not formulate the issue of return of a property. Therefore, I purpose that additional provisions concerning rules and result of termination of the contract by mean of return of a property which the contractor already receives in full amount should be introduced as Section 605/1 as follows

*"If the course of work becomes wholly or partly impossible by a cause unattributable to the contractor, the employer is entitled to terminate the contract and the parties shall be restored to the condition in which they were previously.*

*If the course of work is partially accomplished and the employer agrees to accept such work, the employer shall pay partial remuneration at pro rata rate or if the*

employer pay remuneration in advance, the contractor shall return the paid amount exceeding the portion of accomplished work to the employer”.