

Abstract

Sale by description is a specific sale and purchase agreement provided in Article 503, paragraph 2 of the Civil and Commercial Code, requiring that the seller has a duty to deliver the property according to the description to the buyer. If the seller has delivered the property not in accordance with the description, the buyer is eligible to claim for responsibility from the seller within one year since the delivery date according to article 504 of the Civil and Commercial Code. However, the provisions in both articles have not provided or clarify the definition of sale by description so it is not clear on the nature of the sale and purchase agreement which is classified as sale by description and has legally resulted in a binding effect. In addition, if the responsibility of the seller on sale by description has been examined in conjunction with the liability for defect under Article 472 of the Civil and Commercial Code, it is found that both legal concepts are quite similar in scope of enforcement, particularly, if the seller has delivered the property not suitable for the intent under the agreement to the buyer because such responsibilities are related to the nature or quality of the property sold and purchased. Therefore, the application of the law has caused an interpretation problem on how to interpret the law and if such description has actually held an implied agreement that the seller is required to perform, there may be no need to be supported with the provision of the concept in Article 503, paragraph 2 of the Civil and Commercial Code because the provision on general sale and purchase agreement could be applied with the sale and purchase agreement made in such manner.

The study on the legal concept on sale by description in this thesis is to examine the definition and nature of sale by description, including rights, duties and responsibilities of both parties in accordance with the Civil and Commercial Code and other related laws through a comparative study with the concept of foreign laws to look at the conditions of the problems and the restrictions incurred from enforcement of the provisions on sale by description in Thai law.

The study on the problems revealed that the description of the nature, shape, feature or quality of the property sold and purchased should not be restricted to be the act of the seller only. That is, the buyer may described the nature or quality of the

property as well if the seller has provided a guarantee on the nature or quality that is described by the buyer. Besides the description has included the statements that the seller has displayed to the public with respect to the nature of the property, particularly, the statement displayed in the advertising media. To ensure that the consumers have been protected for sale of merchandises through the advertising media. As the concept of Article 503 paragraph 2 may not included the advertising program arranged by the manufacturer, importers or other persons who are not the parties with the buyer. Therefore, it is necessary to enact the law which covers an advertisement arranged by those persons. The student has proposed a further amendment to section 472 of the Civil and Commercial Code.

To prevent any confusion on the application of the law with facts similar to liabilities for defect, as well as to give more protection to the consumers in both prescription under section 474 which is longer than section 504 and seller's liability under section 472 paragraph 2 of the Civil and Commercial Code. The interpretation should be made in a manner that the seller has delivered the property not in accordance with the description and it is categorized as delivery of the defected property under Article 472 of the Civil and Commercial Code because the quality or the nature of the property under sale by description guaranteed by the seller is held the property possessing the nature or quality desired by the party. Such interpretation has provided the buyer a better protection under the law. If the duty of the seller for delivery of the property in accordance with the description, it is found that such duty has implicitly incurred through the agreement that the seller is required to comply. As the description has been prepared in relation to the feature, nature, shape or quality of the property while the sale and purchase agreement is being entered, the intent of both parties has been implicitly presented that the description is a part of the sale and purchase agreement. The student viewed that the provision on general sale and purchase agreement should be employed to enforce the sale and purchase of such manner. Thus there is no need to be supported with the concept provided in Article 503, paragraph 2 of the Civil and Commercial Code. Additionally, to make it clear to enforce the law and to protect the buyer, the student proposed to amend the liability's provision as follow;

“Section 472 In case of any defect in the property sold which impairs either its value or its fitness for ordinary purposes, or for the purpose of the contract, the seller is liable, regardless the seller knew or did not know of the existence of the defect.

Taking into account with any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labeling, have been used to determine the defective of goods in foregoing provision. Unless the seller was not, and could not reasonably have been, aware of the statement in question, or at the time of conclusion of the contract the statement had been corrected, or the decision to buy the consumer goods could not have been influenced by the statement.”