

Abstract

A contract is one of the most important sources of obligation. It is a part of daily life regardless of realisation. A principle which is used to determine the formation of contract in both Thai and foreign legal systems is the doctrine of offer and acceptance. However, under Thai law the application of this doctrine has been facing some difficulties. This thesis, therefore, studies the problems related to the application of the doctrine of offer and acceptance to consider the formation of contract in Thailand compared with foreign legal systems. These issues are as follows;

Issue 1 The distinction between an offer and an invitation to treat

As the Civil and Commercial Code does not provide the meaning of an offer, when determining the formation of contract in some situations, for example, a display of goods in a window shop, legal opinions can be different.

Issue 2 The nature and legal effects of an offer and a promise

In the Code there are some provisions relating to the promise e.g. Section 454 and Section 526. Neither Section 454 concerning a promise of sale nor Section 526 concerning a promise of gift gives a general concept of promise including the definition. This results in the ambiguity of its character and legal effects. It is, for instance, questionable whether it is a unilateral juridical act, a unilateral juridical act requiring the recipient or a unilateral contract. Moreover, the natures of a promise of making a contract and an offer are quite similar as they both can constitute a contract. The overlap between an offer and a promise can be troublesome especially where a person does not clearly express his selection. Nevertheless, the legal effects of promises are different from those of offers. For example, an offer without specifying a period for acceptance ceases to be effective if it is not accepted within a reasonable period of time while a promise without specifying a period for acceptance binds the promiser forever if it is not withdrawn thereafter (as the decision of the supreme court 1004/2485).

Issue 3 Time of conclusion of the contract

An offer and an acceptance are considered as declarations of intention. The rule of effectiveness of the declaration of intention is therefore necessary to determine the formation of contract. An acceptance may lead to a contract, but it is questionable when the contract is concluded. For example, if the acceptance was sent by fax to the offerer after business hours, what is the point that the contract was concluded? Was it concluded at the time it arrived or at the start of next business hours? In addition, in principle the declaration of intention can be made both expressly and implicitly. However, an implicit act may cause some troubles. For example, where a customer picked up an item presented on the shelf with a clear price tag and placed it in his basket, there can be a question as to the time that the contract was concluded. In order to solve this problem, it is necessary to consider some other issues e.g. whether the presentation of the item in question can sufficiently be considered as an offer and whether an acceptance was made by putting it in the basket. Furthermore, a transaction on the Internet is another illustration of the concluded time of contract.

Issue 4 The contract of sales by auction in relation to immovable property, ships of five tons and over, floating houses and beasts of burden

Under the Civil and Commercial Code, sales by auction are classified as specific sale contracts and the law takes care of these types of contract specially. It is generally accepted that an invitation to treat is made when the auctioneer presents the item, an offer is made by a bidder, and the contract is concluded when the auctioneer makes an acceptance by falling the hammer. However, the problem arises from the sales by auction of immovable property, ships of five tons and over, floating houses and beasts of burden whose contracts are required formality (Section 456).

Issue 5 Where the parties agree that the contemplated contract shall be put into writing under Section 366 paragraph 2.

Section 366 paragraph 2 states that if it is agreed that the contemplated contract shall be put into writing, in case of doubt, the contract is not concluded until it is

put in writing. One of the biggest concerns about this provision is its interpretation particularly whether the parties' agreement can be made implicitly. For example, if an employer of a big enterprise verbally agreed to hire a new employee, but wished to repudiate the agreement thereafter. He argues that the employee should have known about the business tradition that hire of services contracts must be put into writing. Then, he concludes that at the point of making the hire of service contract, there has been an implied agreement between the parties to put the agreement into writing. As it has never been put into writing, the hire of service contract never exists.

Issue 6 Effects of void contracts

A contract whose object is expressly prohibited by law, is impossible, or is contrary to public order or good morals is void (Section 150). Similarly, a contract which is not in the form prescribed by law (Section 152) and a contract made under a mistake as to an essential element (Section 156) are void. Theoretical problems are, for instance, what the legal effects of the void contract and whether there is a contract in effect or there is no any contract at all.

Issue 7 Form of contract of gift

The Code states that contracts of gift are valid only on delivery of the property given. The problem is whether delivery in this contract is regarded as a form of contract which affects the validity of the contract. It can be thought that the delivery of the property given is a form of contract which is a core element to determine the validity of contract. Therefore, the contract of gift without a delivery of the property given is not valid. However, some may argue that a delivery of the property given is just a part of the declaration of intention process. The absence of delivery therefore leads to the absence of declaration of intention.

This thesis aims to analytically study Thai legal principles with regard to the problems previously mentioned by comparing them with some foreign legal systems in order to find satisfied solutions.