

Abstract

The author wrote this thesis by studying and analyzing the scope and enforcement of law on the rights and duties of the hirer in hire-purchase according to Financial Institutions Business Act 2551, Unfair Contract Term Act 2540, The Contract Commission Regulation as to The Hire-Purchase of Leasing Cars and Motorcycles 2543, The Contract Commission Regulation as to The Hire-Purchase of Electricity Goods 2544. Particularly, in The Civil and Commercial Code (the CCC) by comparing it with the law of hire-purchase in the foreign countries which are England and Australia. This thesis aims to analyze the applicable law in Thailand especially the CCC whether it is sufficient to solve the arising problems about the rights and duties of the hirer in hire-purchase or not. After studying, the author would like to present the findings and solutions as follows;

1. The duty of payment: English and Australia laws state that the owner has to provide the details about a hire-purchase value clearly and compare it with a cash value in the beginning of the contract in order to protect the consumer to get enough information and to make the right decision. Unfortunately, the CCC has no such provisions. It only provides that the contract of hire-purchase has to be made in writing. Consequently, the author thinks Thai law should specify that the owner has to provide important details about the contract. If the owner breaches this duty, the hirer has a right to terminate the contract.

Nowadays the hire-purchase contract has included the interests in the hire-purchase fee and Thailand has no specific law to control an interest rate in the hire-purchase contract. However, the interest shall not exceed 15% per year unless the owner is a financial institutions then the higher interest rate can be applied according to Financial Institutions Business Act 2551.

The Thai hire-purchase law has not provided the result in case of the subject of the hire-purchase contract is lost or destroyed by a cause not attributable to the hirer. Thus, the author proposes to define the term "lost" should include the case that the subject of the hire-purchase contract is absolutely damaged or damage a lot that it

cannot be fixed. And it should further provide the result that the hirer has not obligated to pay any future payment. Yet, the owner can still claim an overdue hire-purchase fee occurred before the contract is extinguished. The owner also has to deduct an advance payment that the hirer has paid before the contract is ceased, then return an extra to the hirer.

Section 573 of the CCC does not particularly provide the consequence of the termination of the contract by the hirer. The author suggests that the result of the termination of the contract should become effective in advance. It means that the owner has a right to confiscate all of hire-purchase fee that the hirer has paid and has a right to claim an overdue hire-purchase fee occurred before the hirer terminates the contract, yet the owner has no right to claim for damages.

The owner may terminate the contract in case of default of payments under Section 574. However, this section does not give any opportunity to the hirer to fix a mistake which occurs before the owner terminates the contract. In order to protect the hirer, the author suggests the law should state that in case of default of two successive payments, the owner may terminate the contract only after the owner notifies the hirer that the payment is required and the hirer neglects to make a payment. In case of breach of contract by default of the last payment, the owner may terminate the contract only after the expiration of one instalment period and the owner notifies the hirer that the payment is required, but the hirer neglects to make a payment.

In case that the hirer has already paid $\frac{3}{4}$ of hire-purchase fee, there should be a provision to grant more protection for the hirer by setting more steps and conditions to meet before the owner can exercise his/her right to terminate the contract. The author proposes to insert the provision stating that the owner may terminate the contract only when there is a default of three successive payments and the owner notifies the hirer that payment is required. In case of breach of contract by default of the last payment or the last three payments, the owner may terminate the contract only after the expiration of four instalment period and the owner notifies the hirer that the payment is required, but the hirer neglects to make a payment.

Furthermore, Section 574 does not provide the result in case of the hirer misses the payment alternately. The author suggests to provide a provision that grant the owner's right to terminate the contract in case of default of four alternate payments and the owner has to notify the hirer that the payment is required in at least one hire-purchase period and the hirer neglects to make a payment.

Section 574 gives the owner's right to terminate the contract without providing any opportunity for the hirer to amend any mistakes occurred before the owner terminates the contract. To grant more protection to the hirer, the author proposes to add the provision that provides an opportunity for the hirer to fix the mistakes by providing that the owner may terminate the contract only after notifying the hirer to amend the mistakes within one hire-purchase period. In case that the subject of the hire-purchase contract cannot be fixed, the owner can immediately terminate the contract.

Section 574 does not provide the consequence of the termination of the contract. The author proposes that this section should give the owner's right to claim an overdue hire-purchase fee occurred before the owner terminates the contract.

2. The delivery's duty: If the hirer denies taking over the subject of hire-purchase contract, can the owner force the hirer to take over it? And does the denial of the hirer consider being a declaration of intention to terminate the contract under section 573? The author thinks that the present law is sufficient to be used and interpreted to solve the problems. That is to say, the hirer has a right to choose whether to take over the hire-purchased property or not. If the owner correctly hands over the property to the hirer, the hirer can deny accepting it. This also regards to be the termination of the contract by the hirer according to Section 573. In case that the hirer has already take over the hire-purchased property. The hirer may terminate the contract by redelivering the property to the owner.

3. The duty to take care of the property as an ordinary person: The main issue to be considered is how should an entrepreneur who hire-purchase the property to use in his/her business bind to take care of the property? The author believes that the present law is sufficient to be used and interpreted without any amendment to be made.

That is to say, an entrepreneur professes in business, thus the entrepreneur is bound to take as much care of the property as a profession of ordinary prudence would take care of his/her own property pursuant to section 553 of the CCC.

4. Repair's duty: Section 550 is applied with hire-purchase contract. The owner is always liable for any defects except those which are by law or custom to be repaired by the hirer. The author suggests in case that the property is degenerated by the use of the hirer, the law should provide that if the hirer has already paid $\frac{3}{4}$ of a hire-purchase fee, the owner's duty to repair the hire-purchase property under Section 550 is ceased.

Additionally, the author recommends the application and interpretation of the law relating to the owner's repair liability under Section 550 as follow;

(1) The liability of the defect in hire-purchased property under Section 472 accompanied with Section 549. The owner shall be liable for the damage of the property, life, body and other damage in the scope of compensation liability pursuant to Section 222 and 223 of the CCC.

(2) The liability of the defect in hire-purchased property under Section 550. The liability of the owner shall be liable limited only for the money that is used to repair the property. If the hirer previously repairs the property, the hirer may claim for prior expense that he/she has paid from the owner pursuant to Section 547. It should be noted that Section 547 does not state that the owner is bound to reimburse to the hirer any necessary expense for defects of property.

Moreover, the author proposes that the provision on hire-purchase and other related provisions should be considered to be the provision about public order or good morals. Consequently, if the parties to the contract agree to exempt such clause, the clause shall be void.

5. The duty to comply with the clause: It is found that the owner usually imposes the clause that forces the hirer to do something after the contract is terminated. Such clause has a characteristic of an unfair contract term. Here are some examples of

the clause that the author thinks that they should be void according to Section 150 of the CCC.

(1) The clause stating that in case of default of one payment, the owner may terminate the contract.

(2) The clause stating that the owner may immediately seize the property without filling a lawsuit.

(3) The clause stating that in case that the hire-purchased car is lost or damaged, the hirer is still responsible for all hire-purchase fee, regardless that the hire-purchased car is lost or damaged or seized or attached or forfeiture without the hirer's fault.

6. The duty to return the hire purchased property to the owner; The questions are does the owner have the right to follow and recover the property without filing a lawsuit after terminating a contract? And does the clause stated the owner may immediately seize the property when the hirer is in default is against public order or good morals? In order to answer to those questions, the author suggests to interpret the law as follow; if the owner seizes the property with no reasonable argument from the hirer, the owner can lawfully do it according to section 1336. But if the hirer has reasonable arguments, the owner has to file a lawsuit to ask the court's power to enforce his/her debts. Additionally, the clause that the parties agree to enforce their debts arbitrarily is void because it is against public order or good morals under section 150 of the CCC.