Abstract

The intensions of this thesis is to classify between sale contracts and hire of work contracts which have completely different characteristic. A sales contract is a contract where the parties have a purpose of transferring ownership of property. The main obligation of a sales contract is “to deliver possession and to transfer ownership in property” as provided in section 453 and 461 of the civil and Commercial code. Whereas a hire of work contract is a contract where the parties agree to an accomplishment of work. The main obligation of this contract is “to perform” as provided in section 587. However, if both contracts have the same four characteristics, they will be very similar. First, the contract is a contract which has a purpose to deliver and to transfer ownership in property. Second, the property doesn’t exist when the contract was made. Third, the contractor has the duty to make the product. Finally, the contractor supplies all materials or main material. The differences between the two types of contracts in detail depends on applicable laws. There are the formal requirements of that provision, the transfer of ownership, risk distribution, prescription of action, levy and cancellation. These differences effect rights, duties and liabilities of the parties. For instance, we order a computer shop to produce a case processing unit (CPU) for twenty five thousand baht orally. If we consider this contract as a contract for sale of goods, this oral contract is valid but unenforceable as provided in section 456 sub section 3 of the Civil and Commercial Code. On the other hand, if the contract is a hire of work contract, it is valid and enforceable.

The judgments of the supreme court and opinions of legal professors have adapted rules in law to classify these two contracts. The principles which are to be considered for judgment are the substance of the contract, the intentions of parties, the materials and the inspection. Even though all of these principles have their own good motives and justifications, they also have contradicting points. There is no one principle which can distinguish the difference between the truths of the two contracts in every circumstance. As well as this, there is no clarity in the method of determining which

principle is the most suitable to use for the reality of which case. These apparent problems in foreign countries such as the likes of England, The United States, France and Italy are still prevalent because of the difference of laws with respect to the remedies available in case of defects. However, Thai law, Like German law, has taken this contract of mixed contract principles into consideration. As a result, this law does not have an impact on the determination of disparity between the two contracts.

It can be concluded from the study that, in the determination of disparity between the two contracts, there is a need to distinguish and place the contracts into different categories. There are different ways of diagnosing these contracts as follows:

1. Contracts that have as their sole objective to be performed only, with no turning over of property to the other party, can only be considered as a contract for work and materials.

2. Contracts involving materials that belong entirely to the employer(the hirer) and where it is the responsibility of the contractor(the workman) to produce and deliver a good to the employer, that contract is a contract for work and materials.

3. A contract where proprietary right of a product has already been transferred is and can only be considered as a contract for work and materials. This is applicable to contracts where the employer of the contract is the principal supplier of the product and in contracts where the movable property and immovable property is wholly owned by the employer and the contractor has the responsibility to do work on that property only.

4. Contracts that have as their objective, the transference of ownership of property to the other party when the property is already present with no other applicable work involved, is definitely considered a contract for sale of goods.

5. Contracts that have as their objective, the transference of ownership of property and are also a contract for work and materials where the actual work and the property are separable, the deliberation can be considered by determining which

element is the dominant and which is the ancillary. If the property element is the dominant element, the contract is a contract of sale of goods. If the Work element is the dominant element, the contract is a contract to do work.

6. Contracts where the materials belong to the contractor(the workman) and when the work and the materials are inseparable while together forming a new product, the analysis can be done by determining whether the work done, or the ownership of property transferred is of higher importance or of more value. Additionally, the intentions of the two parties to adhere to which aspect of the contract is also a significant factor for consideration. If the transference of ownership of property is of higher importance and value than the work done, the contract is a contract of sale of goods. However, if the work done is of higher importance and value, the contract is a contract to do work.