

Independent study title : Legal Problem on Right of the Purchaser to Reject the Whole Amount
when the Seller Delivers in Excess of the Agreed Amount

Author Name : Ms. Puntipa Soontrong

Degree : Master of Laws (Business Law)

Academic Year : 2013

Advisory : Prof.Phijaisakdi Horayangkura

ABSTRACT

This independent study is intended to study about the buyer's right to refuse delivery of whole goods in case where the seller delivers a quantity of goods greater than that provided for in the sale contract. Section 465 (2) of the Civil and Commercial Code provides that where the seller delivers the properties more than he contracted for, the buyer may accept only the property as provided in the contract and refuse the excess property or otherwise refuse to accept the whole properties. If the buyer accepts the whole properties as delivered by the seller, the buyer shall pay therefore in a proportionate price. With consideration of actual facts, the buyer's right to accept a quantity of goods as provided in the contract and refuse the excess goods, as well as the buyer's right to accept delivery of whole goods and pay therefore in a proportionate price are regarded reasonable enough, and it is rather unfair to the seller if the buyer has the right to refuse delivery of whole goods.

The study of international and foreign laws related to this matter has found that there are three practices in case where the seller delivers a quantity of goods in excess of that provided for in the contract. First, the buyer has the right to accept delivery of whole goods and pay for the excess quantity of goods or otherwise refuse accept the excess quantity of goods. Second, the buyer has the right to accept only a quantity of goods as provided in the contract and refuse the excess quantity of goods or otherwise accept delivery of whole goods and pay for the excess quantity of goods. In this practice, the buyer also has the right to refuse delivery of whole goods. However, this kind of right is not granted for traders or vendors because they have bargaining power and possess skills in trading. For the benefit of fairness, traders and vendors, therefore, are not entitled to refuse the whole goods. Third, the buyer has the right to refuse a quantity of goods until the seller fulfill the obligation under the contract. This is considered as a practice in nature of a bilateral contract.

This independent study also contains a comparative study of the buyer's right to refuse delivery of whole goods in case where the seller delivers a quantity of goods greater than that provided for in the sale contract under Thai law and that under other countries' law. The comparative study suggests that Section 456 (2) of the Civil and Commercial Code should be amended in relation to the buyer's right to refuse delivery of whole goods, and England's relevant practices should be adopted as a model. In case where the seller delivers a quantity of goods in excess of that provided for in the contract, the buyer should have the right to accept a quantity of goods as agreed and provided in the contract or otherwise accept delivery of the whole goods and pay there for in a proportionate price. Furthermore, for the benefit of fairness to all, the right to refuse delivery of whole goods should be granted for consumers only as they have no bargaining power like traders or vendors. While the amendment process has yet to commence, the court should be authorized to construe the existing principles and legal provisions i.e. Principle of Good Faith under Section 5 of the Civil and Commercial Code, trading norms, or the principle of bilateral contract under Section 368 of the Civil and Commercial Code in order to ensure justice for all.