

CONSUMER PROTECTION: THE RIGHT TO RETURN GOODS PURCHASED IN STORED IN THAILAND*

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ABSTRACT

Consumer protection laws and regulations in Thailand impose no requirements on sellers to disclose information about their returns policy. It is consumer's own responsibility to enquire about their right to return the goods. Although some stores began to offer the right to return the goods to consumers when they are not satisfied with the goods purchased, other stores do not adopt the same policy. This article is aimed at exploring the right to return the goods purchased in stores based on consumers' satisfaction in Thailand within the scope of the consumer protection law. It also examines whether and how law concerning consumer protection in the United States, at both federal and state levels, protects consumers by giving them the right to return the goods purchased in store when they are not satisfied with them. This article discovers that although the law in the United States does not grant consumers the right to return the goods purchased in stores, it imposes the duty on sellers to inform consumers of the availability of the right to return. This effectively leads to the adoption of returns policy based on consumers' satisfaction by nearly every store in the United States. In comparison, the right to return goods seems to be alien to consumer protection law in Thailand. The study finds the absence of such right is inadequate for consumer protection. Therefore, the article proposes two possible approaches as the solutions. The first approach is to amend the existing statute on consumers' right, the Consumer Protection Act, B.E. 2522 (1979), by adding the right to return goods purchased in stores based on consumers' satisfaction. The second approach is to use the existing mechanism. By this, the Consumer Protection Board and its relevant ad hoc committees exercise their power given by the Act to regulate or impose the disclosure of information on returns policy on sellers and stores. Finally, whether the first or second approach is adopted, there should be a sanction imposed on sellers for failure to meet the requirement to disclose their returns policy or adhere to the mandatory disclosure of information on returns policy to reach an efficient enforcement of the consumer protection law and policy.

Keywords: Consumer Protection, Right to return goods, Returns policy

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บทคัดย่อ

กฎหมายและข้อบังคับในการคุ้มครองผู้บริโภคในประเทศไทยไม่ได้กำหนดความต้องการให้ผู้ขายต้องเปิดเผยข้อมูลเกี่ยวกับนโยบายการคืนสินค้า ผู้บริโภคมีหน้าที่ต้องสอบถามถึงสิทธิในการคืนสินค้าด้วยตนเอง ถึงแม้ว่าร้านค้าบางร้านได้เริ่มเสนอสิทธิในการคืนสินค้าให้แก่ผู้บริโภคเมื่อผู้บริโภคไม่พึงพอใจในสินค้าที่ซื้อไปแล้ว ร้านค้าบางร้านก็ไม่ได้เสนอนโยบายในรูปแบบเดียวกัน บทความนี้มุ่งที่จะสำรวจสิทธิในการคืนสินค้าที่ซื้อจากร้านค้าในประเทศไทยบนพื้นฐานของความพึงพอใจของผู้บริโภคภายใต้ขอบเขตของกฎหมายคุ้มครองผู้บริโภค บทความนี้ยังวิเคราะห์ด้วยว่าการคุ้มครองผู้บริโภคในประเทศสหรัฐอเมริกาทั้งในกฎหมายระดับสหพันธรัฐและมลรัฐว่ามีการคุ้มครองผู้บริโภคโดยให้สิทธิในการคืนสินค้าแก่ผู้บริโภคที่ไม่พึงพอใจในสินค้าที่ซื้อจากร้านค้าอย่างไร บทความนี้พบว่า ถึงแม้ว่ากฎหมายในสหรัฐอเมริกาไม่ได้ให้สิทธิในการคืนสินค้าแก่ผู้บริโภคที่ซื้อสินค้าในร้านค้า แต่กฎหมายกำหนดหน้าที่ต่อผู้ขายที่ต้องแจ้งให้ผู้บริโภคทราบถึงการมีสิทธิในการคืนสินค้า การกำหนดหน้าที่แก่ผู้ขายเช่นนี้นำไปสู่การรับนโยบายการคืนสินค้าบนพื้นฐานของความพึงพอใจในสินค้าของผู้บริโภคของร้านค้าเกือบทุกร้านในประเทศสหรัฐอเมริกาอย่างมีประสิทธิภาพ ในทางเปรียบเทียบนั้น สิทธิในการคืนสินค้าดูเหมือนจะแตกต่างในกฎหมายคุ้มครองผู้บริโภคในประเทศไทย การศึกษาพบว่าการไม่มีสิทธิดังกล่าวนี้ไม่เพียงพอต่อการคุ้มครองผู้บริโภค ดังนั้น บทความนี้จึงเสนอแนะแนวทางที่เป็นไปได้สองแนวทางในการแก้ปัญหา แนวทางที่หนึ่งคือการแก้ไขเพิ่มเติมบทบัญญัติกฎหมายคุ้มครองผู้บริโภคที่มีอยู่แล้ว คือพระราชบัญญัติคุ้มครองผู้บริโภค พ.ศ. ๒๕๒๒ โดยการเพิ่มสิทธิในการคืนสินค้าที่ซื้อในร้านค้าบนพื้นฐานของความพึงพอใจของผู้บริโภค ส่วนแนวทางที่สองคือการใช้กลไกของกฎหมายที่มีอยู่ โดยวิธีการนี้คณะกรรมการคุ้มครองผู้บริโภคและคณะกรรมการเฉพาะด้านที่เกี่ยวข้องใช้อำนาจที่พระราชบัญญัติคุ้มครองผู้บริโภคให้ไว้กำหนดการเปิดเผยข้อมูลเกี่ยวกับนโยบายการคืนสินค้าต่อผู้ขายและร้านค้า และสุดท้ายไม่ว่าจะใช้แนวทางใดก็ควรกำหนดมาตรการลงโทษต่อผู้ขายที่ไม่ทำตามความต้องการในการเปิดเผยข้อมูลเกี่ยวกับนโยบายการคืนสินค้าของตนหรือการบังคับให้เปิดเผยข้อมูลเกี่ยวกับนโยบายการคืนสินค้าด้วย เพื่อให้การบังคับใช้กฎหมายและนโยบายคุ้มครองผู้บริโภคเป็นไปอย่างมีประสิทธิภาพ

คำสำคัญ: การคุ้มครองผู้บริโภค, สิทธิในการคืนสินค้า, นโยบายการคืนสินค้า

Introduction

The propensity of today's businesses to use marketing and advertising techniques to promote the selling of goods and services to the public is liable to disadvantage consumers who have insufficient knowledge of the industry. Although there are some provisions in law that specify policies to remedy consumers' loss and injury, these procedures are usually time-consuming and costly; therefore, it is necessary to enact a law that provides protection for consumers in order to prevent and remedy them from being disadvantaged. Initially, the legislation in Thailand did not specifically consider consumer protection issues. At that time, the law only sought to maintain public safety and prevent damage caused by public consumption. The relevant Acts included, but not limited to, the Public Health Act B.E. 2484 (1941), the Food Control Act B.E. 2484 (1941), the Sale of Drugs Act of B.E. 2493 (1950), and the Cosmetics Act B.E. 2517 (1974). The government was mandated to establish and

control the standards of businesses that involved public consumption, but not to remedy the damage caused by consumption.¹ Then, the Consumer Protection Act (“CPA”) B.E. 2522 was enacted in 1979, and this led to the reform of consumer protection in Thailand.

The CPA specifically focused on consumer protection matters. The Act established the role of the Consumer Protection Board as the primary organisation with the authority to control consumer protection policies rather than organisations pertaining to foods and drugs authorised by previous acts. Another objective of the CPA was to specify basic consumer rights. The Act divides them into five categories; (1) the right to receive correct and sufficient information and description as to the quality of goods or services,² which includes the right to receive correct advertisements or labels representing no harm to consumers, as well as the right to be made aware of sufficient correct information about a product or service to purchase such product or service without unfairness; (2) the right to enjoy freedom in selecting goods or services,³ which includes the right to select and purchase goods and services without unfair inducement; (3) the right to safety in using goods or services,⁴ which includes the right to receive products or service with the appropriate safety standards of use, not to be harmful to life, body, or property when following the instructions or being careful of the condition of such product or service; (4) the right to a fair contract,⁵ which includes the right to receive a provisional agreement without the businessman taking advantage; and (5) the right to have damage considered and compensated,⁶ The CPA was amended twice in 1998 (B.E. 2541) and 2013 (B.E. 2556), and it is still in force today.

A contract of sale is the most common contract in everyday life. It involves a consumer and a business and it clearly reflects the inequity of the bargaining power of these two actors. The terms and conditions in the contract are usually imposed by the sellers and consumers have no opportunity to negotiate; if they want the goods, they have to accept the terms. The general principle of freedom of contract and *caveat emptor* (let the buyer beware) is no longer adequate to ensure fairness to both parties in a contract of sale, especially the consumer; hence, many consumer protection laws and policies have been enacted to control the terms and conditions of a contract of sale. For example, consumers’ right to return the goods they purchased is a right constituted by the contract of sale between the consumer and the seller. Whether consumers are allowed to return the goods or terminate the contract and on which grounds solely depends on the policies of the seller and the policies of different sellers may vary. They may also vary due to the focus of the protection, and consumer protection law plays a crucial role in this situation.

¹ Susom Supanit, **Commentary on Consumer Protection Laws**, 2014, 24-25.

² Section 4(1) Consumer Protection Act, B.E. 2522 (1979)

³ Section 4(2) Consumer Protection Act, B.E. 2522 (1979)

⁴ Section 4(3) Consumer Protection Act, B.E. 2522 (1979)

⁵ Section 4(3 bis) Consumer Protection Act, B.E. 2522 (1979)

⁶ Section 4(4) Consumer Protection Act, B.E. 2522 (1979)

In the US, consumers' right to return goods is based on product warranties. Sellers have a duty to disclose information about the warranties they extend to consumers. Although sellers are not required to provide consumers with a returns policy, some states have expanded the disclosure principle to include such a policy so that sellers of goods are required to disclose the terms and conditions under which consumers who purchase goods from their stores can return unwanted or defective products. Furthermore, another rule called the Cooling-off rule permits consumers to return goods in some types of sales within an imposed period of time.

In Thailand, consumer protection laws and regulations do not require sellers to disclose their returns policy. Consumers themselves are solely responsible for discovering and being aware of such policies. Although some leading stores in Thailand began to offer their consumers the right to return the goods purchased, many do not adopt the same policy. Whilst, in comparison, almost every store in the US offers their customers the right to return the goods purchased. The main question is what is the legal basis of the right to return goods purchased in stores in Thailand and the US. Is this right recognized by consumer protection law in Thailand and in the US? This article attempts to discover the legal basis of the returns policy in both Thailand and the US. It purports to explore the laws, regulations, and rules related to consumer protection in terms of the right to return goods purchased from stores in the US, where consumers receive more protection, as well as to analyse the inadequacy of the existing laws in Thailand to protect consumers in this respect. The results are expected to lead to some suitable solutions to the problem by comparing Thai law with the appropriate laws and policies of the US and considering the balance between consumers' rights and the burdens of businesses.

This article consists of four parts. The first part explores the consumers' right to return goods in the United States; how are consumers entitled to such rights? What is the requirement and limitation of their rights? The second part explores the consumers' right to return goods in Thailand; whether consumers have the right to return goods under the existing Thai laws? The third part is the comparative analysis of the right in the two countries. And, the final part is the proposal on whether Thailand should or should not entitle consumers to the right to return goods.

Consumers' Right to Return Goods in the United States

When consumers purchase goods, they enter into a contract of sale, which means that they are bound by the general principle of sales with the rights and duties of the buyer under the Uniform Commercial Code Article 2 related to sales. Sellers are generally not obliged to take back the goods unless they do not conform to the contract or there is an agreement with the consumers to do so, while consumers have the right to reject the goods and/or terminate or cancel the contract in certain circumstances, such as improper delivery⁷ or a breach of

⁷ Section 2-601

contract.⁸ Consumers who are merely unhappy with the goods when they have had a chance to inspect or use them have no remedy as long as the goods conform to the description and warranty;⁹ however, they are sometimes entitled to the right to return the goods they purchased from sellers without giving any reason. They are not obliged to explain why they want to terminate the contract; all they need to do is return the goods or send the seller a notice of termination within the pre-imposed period of time.¹⁰ Yet, consumers are not always given this right. Most of the time, whether or not the return is accepted depends on the policies of sellers or stores and they may or may not accept it. The law only requires them to always accept a return in some circumstances for a specific purpose.

Consumers' right to return is based on consumers' product warranty. A warranty may allow the purchased goods to be returned, replaced, or repaired. The federal law that governs all tangible consumer product warranties in the United States is the Magnuson-Moss Warranty Act, which requires manufacturers and sellers of consumer products to provide consumers with detailed information about warranties. In addition, it affects both the rights of consumers and the obligations of warrantors in written warranties. The Federal Trade Commission ("FTC"), the consumer protection agencies at a federal level, with the authority to enforce a large number of federal acts related to products and practices, also participated in adopting the Act itself, regulating its rules, and providing guidelines for businesses and consumers.¹¹ It adopted three Rules under the Act, namely, the rule on Disclosure of Written Consumer Product Warranty Terms and Conditions (the Disclosure Rule), the Rule on Pre-Sale Availability of Written Warranty Terms (the Pre-Sale Availability Rule), and the Rule on Informal Dispute Settlement Procedures (the Dispute Resolution Rule). In addition, it has issued an interpretive rule that clarifies certain terms and explains some of the provisions of the Act. The Act and the Rules contain three basic requirements that may apply to sellers who provide warranties: (1) the seller, as a warrantor, must designate or entitle the written warranty as either "full" or "limited."; (2) the seller, as a warrantor, must state certain specified information about the coverage of the warranty in a single, clear, and easy-to-read document; and (3) the seller, as a warrantor or a seller, must ensure that warranties are available where the warranted consumer products are sold so that consumers can read them before making a purchase.

Since diverse warranties are offered by different sellers and stores, consumers need to be aware of the terms and conditions when they are purchasing a specific product. It is important to understand just what is covered by the warranty and what limitations may apply. Although there are no laws or rules at the federal level that require sellers and stores to have a returns policy, some laws at the state level require them to inform consumers of their policy.

⁸ Section 2-106

⁹ Ben-Shahar, Omri and Eric A. Posner. "*The Right to Withdraw in Contract Law*," 3-4.

¹⁰ Smith, Jan M. "*Symposium Issue Consumer Protection: Rethinking the Usefulness of Mandatory Rights of Withdrawal in Consumer Contract Law: The Right to Change Your Mind?*" 2.

¹¹ *Id.*

The violation of this law could lead to a penalty or more financial burdens. As a result, almost all retail stores in the United States permit customers to return merchandise for a refund within a fixed period of time¹², but different stores specify different durations, from a few days to a very long time.¹³ However, some retailers do not post policies that reflect imposed conditions or limits on accepting returned merchandise, and some do not accept returns at all.¹⁴ As a result, some states impose their own laws on sellers' application of returns policies to their citizens. Thirteen of the fifty US states have laws that cover sellers' refund, return, and exchange policy to protect consumers who purchase goods in stores. The law usually requires returns policies to be prominently displayed at the place of purchase in order to be valid.¹⁵ The mandatory policy posting provided by each state are various. They are different in these aspects: The application of states' policy; the requirements that sellers are obliged to follow; the exceptions for specific types of goods; and the remedy when sellers fail to meet the requirements. The table below shows the comparison of the applications and conditions of return policies among the mentioned thirteen states.

¹² Smith, Jan M. "Symposium Issue Consumer Protection: Rethinking the Usefulness of Mandatory Rights of Withdrawal in Consumer Contract Law: The Right to Change Your Mind?" 2.

¹³ Ben-Shahar, Omri and Eric A. Posner. "The Right to Withdraw in Contract Law," 3-4.

¹⁴ USLegal, "Mandatory Policy Posting," <http://consumerprotection.uslegal.com/purchases-and-returns/returning-consumer-purchases/mandatory-policy-posting/> (accessed August 4, 2015)

¹⁵ Findlaw, "Customer Returns and Refund Laws by State," <http://consumer.findlaw.com/consumer-transactions/customer-returns-and-refund-laws-by-state.html> (accessed August 4, 2015)

	Scope of Application	Mandatory/Optional	Requirements	Effects	Exceptions
California	All retailers who sells goods to the public in a state that has a policy of not giving full cash or credit refunds, or not allowing equal exchanges or any combination for at least 7 days after the date of purchase	It is mandatory to inform their policy to consumers, but not mandatory to have a returns policy	The retailers must conspicuously display that policy, either on signs posted at each cash register and sales counter, at each public entrance, on tags attached to each item sold under that policy, or on the retailer's order forms	The purchaser can return an item for a full refund within thirty days of purchase	The requirements do not apply to food, plants, flowers, perishable goods, goods marked "as is," "no returns accept," or with similar language, goods used or damaged after purchase, customised goods by ordered, goods not returned with their original package, and goods that cannot be resold due to health considerations
	Scope of Application	Mandatory/Optional	Requirements	Effects	Exceptions

Connecticut	Retailers in the state	It is mandatory to inform their policy to consumers, but not mandatory to have a returns policy	The policy must be disclosed to consumers when purchasing	Consumers may return any new, unused item to the store with a proof of purchase within seven calendar days, and get a cash refund on a cash sale, or a credit to consumers' account on a credit sale	The law does not apply to food, perishable items, plants, custom-made or custom-ordered goods, items that have been used, items that cannot be resold under state regulations, or items marked "as is" or "final sale," or consumers return the goods without a proof of purchase
Florida	Sellers who offer goods for sale to the general public and offer no cash refund,	It is mandatory to inform their policy to consumers, but	Sellers must post a sign indicating "no refunds" or	Sellers have the duty to grant consumers, upon request and	The law do not apply to the sale of food, perishable goods, personalised or
	Scope of Application	Mandatory/Optional	Requirements	Effects	Exceptions
Florida (continued)	credit refund, or exchange of merchandise	not mandatory to have a returns policy	"no exchange" at the point of sale	proof of purchase, a refund of the goods within seven days of the date of purchase on condition that they are unused and in the original	custom-made goods on the request of the consumer, or goods that cannot be resold by the seller

				package	
Hawaii	Sellers who sell goods in the state	It is mandatory to have the policy option provided by law. And, it is also mandatory to inform such policy to consumers	Sellers must choose policies from the options provided by law which are: (1) the seller accepts refunds only; (2) the seller accepts refunds OR merchandise credit only; (3) the seller accepts exchanges	Sellers must accept the return	Sellers do not have to accept the return; for example, when there is no proof of purchase, when consumers have retained the goods in excess of sixty days after the purchase, when the goods have been used or damaged
	Scope of Application	Mandatory/Optional	Requirements	Effects	Exceptions
Hawaii (continued)		not mandatory to have a returns policy	OR merchandise credits only; or (4) the seller DOES NOT accept any refunds, merchandise credits, or exchanges. Then they must post a clear sign to notify consumers of it		after sale, or altered by consumers at the time of or after the sale, and when the goods are of a type that is unsuitable for resale
Maryland	Merchants in any retail sale If they fail to do so, a merchant must accept the return within a	It is mandatory to have the policy option provided by law. And, it is also mandatory to inform	The merchants must disclose to all customers in writing, either on the sales form, by a clearly	The merchants must accept the return made within a reasonable time of the purchase	The regulation does not apply to the sale of do not apply to the sale of food, perishable goods,

	reasonable time of the purchase.	such policy to consumers	visible sign, or by conspicuous label on the consumer goods, the terms and		goods which are custom made, or which are custom-altered at the request
	Scope of Application	Mandatory/Optional	Requirements	Effects	Exceptions
Maryland (continued)			conditions of the merchant's refund and exchange policies, or a policy of no refunds or exchanges		of the consumer; or goods which cannot be resold by the merchant because of any valid law or regulation promulgated by a governmental body
Massachusetts	Merchants of goods	It is mandatory to inform their policy to consumers, but not mandatory to have a returns policy	The merchants must clearly and conspicuously inform consumers of their refund, return, and cancellation policies before the transaction is completed	The merchants must accept the return of goods made within a reasonable period of time	The exceptions are as provided by merchants policy
Minnesota	Sellers who regularly sells goods at retail to consumers	It is mandatory to inform their policy to consumers, but not	The sellers must clearly and conspicuously	The sellers must accept the return of goods if they are	The requirements do not apply to home solicitation sales,
	Scope of Application	Mandatory/Optional	Requirements	Effects	Exceptions
Minnesota		mandatory to have a	displayed and printed	judged to be in an	custom or specialised

(continued)		returns policy	in boldface type of a minimum size of fourteen points in their shops	acceptable condition by the seller's reasonable and objective standard, and the consumers return them within a reasonable time from the date of purchase with the proof of purchase	goods ordered by consumers, or sales that are subject to a written agreement or contract under the Uniform Commercial Code
New Jersey	Every retail sellers in the state	It is mandatory to inform their policy to consumers, but not mandatory to have a returns policy	The sellers are required to disclose their refund policy by means provided by the law	Sellers who fail to post their policies are liable to the consumers, for up to 20 days from purchase, for a cash refund or a credit	No exception. The requirements apply to all manchadise sold in a store
	Scope of Application	Mandatory/Optional	Requirements	Effects	Exceptions
New York	Every retail store offering goods to public	It is mandatory to inform their policy to consumers, but not mandatory to have a returns policy	The stores must conspicuously post their refund policy related to all goods, wares or merchandise by the manners provided by law	The store is liable to the consumers for a cash refund or a credit for a period of up to 20 days from the date of purchase, at the buyer's option, provided	The requirements do not apply to retail stores that have a policy of providing a cash refund for a cash purchase or providing a cash refund or issuing a

				that the merchandise has not been used or damaged by the buyer	credit for a credit purchase for a period of not less than 20 days after the date of purchase
Ohio	Sellers of goods in the state	It is mandatory to inform their policy to consumers, but not mandatory to have a returns policy	The sellers' must clearly and conspicuously post their policy where consumers can see before the purchase	Consumers are entitled to a refund on their request	The requirements do not apply to a consumer transaction in connection with a residential mortgage
	Scope of Application	Mandatory/Optional	Requirements	Effects	Exceptions
Rhode Island	Sellers of goods in the state	It is mandatory to inform their policy to consumers, but not mandatory to have a returns policy	The seller must clearly informed consumers of their policy by placing a poster or other appropriate notice at the point of display or at the cash register or at the store entrance indicating that all sales are final and that goods are not returnable	Consumers have right to return the goods within ten business days from the date of purchase	The requirements do not apply to the sale of books, magazines, or any publications, food, perishable items, merchandise that is substantially custom-made or custom-finished, items for internal consumption, items sold "as is", or any items presently prohibited for refund, return, or exchange by

					a retailer by federal or state law or governmental agency regulations
	Scope of Application	Mandatory/Optional	Requirements	Effects	Exceptions
Utah	Sellers of goods in the state	It is mandatory to inform their policy to consumers, but not mandatory to have a returns policy	The policy must be clearly and conspicuously posted at the time of sale at the point of display, point of sale, or store entrance. It may be verbal or written, depending on the type of sale	Consumers can return non-used, non-damaged or non-defective goods with reasonable proof of purchase	The requirements do not apply to food, perishable items, merchandise which is substantially custom made or custom finished
Virginia	Sellers of goods in the state	It is mandatory to inform their policy to consumers, but not mandatory to have a returns policy	The sellers must disclose all conditions, charges, or fees related to the return of goods for refund, exchange or credit	Consumers are entitled to return the goods within a reasonable time from the date of purchase	The requirements do not apply to a merchant who offer a cash refund or credit-card refund within 20 days or more of purchase

Consumers' Right to Return Goods in Thailand

As mentioned above, the CPA specifies and categorises the basic consumer rights that are protected under the law into the following five kinds;

1) The right to receive correct and sufficient information and description as to the quality of goods or services¹⁶

This right includes consumers' right to receive correct advertisements or labels indicating that the product will not harm them, as well as the right to be aware that the information about a product or service is sufficiently correct to enable them to purchase such a product or service without being treated unfairly.¹⁷

2) The right to enjoy freedom when selecting goods or services¹⁸

This is consumers' right to choose, select, and purchase goods and services without unfair inducement.

3) The right to safety when using goods or services¹⁹

This right includes consumers' right to receive safe products or services with an appropriate standard of use, not harmful to life, body, or property when following the instructions or being careful with the conditions of such products or services

4) The right to a fair contract²⁰

This is consumers' right to make a provisional agreement without advantage being taken by the businessman.

5) The right to have injury considered and compensated²¹

This is consumers' right to be protected and compensated for infringement in accordance with clauses 1, 2, 3, and 4 as mentioned.²²

Although the Act guarantees to protect these basic consumer rights by law, consumers also have a duty to protect themselves. The Consumer Protection Board encourages consumers to protect themselves as a preliminary measure by following its instructions.²³

¹⁶ Section 4(1) Consumer Protection Act, B.E. 2522 (1979)

¹⁷ The Office of Consumer Protection Board. **OCPB and Consumer Protection**, Bangkok, 2553, 6.

¹⁸ Section 4(2) Consumer Protection Act, B.E. 2522 (1979)

¹⁹ Section 4(3) Consumer Protection Act, B.E. 2522 (1979)

²⁰ Section 4(3 bis) Consumer Protection Act, B.E. 2522 (1979)

²¹ Section 4(4) Consumer Protection Act, B.E. 2522 (1979)

²² Office of the Consumer Protection Board. "5 Consumer's Rights,"

http://www.ocpb.go.th/ewtadmin/ewt/ocpb_eng/ewt_news.php?nid=10 (accessed August 4, 2015)

²³ Office of Consumer Protection Board, **OCPB and Consumer Protection**, Bangkok, 2553, 6.

Firstly, consumers should use reasonable caution when purchasing goods or services, which means they should examine the label, the quantity, and the price to determine if it is fair and reasonable. They should not believe the text of the advertisement without thoroughly considering it and gathering further information about the goods and services.

Secondly, consumers should examine the language, terms and conditions of the contract thoroughly before entering into it. If there is any doubt about the terms and conditions, they should consult experts or ask for more information until the doubt is cleared.

Thirdly, the terms and conditions that affect consumers' rights and duties should be made in writing and signed by the manufacturer, or the businessman, or the retailer, or the seller.

Fourthly, consumers should collect the documents or any relevant evidence to prove the rights and duties of the parties to the contract. The evidence could be the goods themselves, indicating that the quantity or condition is not as it appears on the label or in the advertisement, or could be harmful to consumers. More importantly, consumers should remember where they bought the goods and services in order to be able to take legal action, if necessary.

Finally, consumers should keep the contract and any written documents if they need to make a claim under the procedures provided by law in cases where there is an infringement of any consumers' rights.

The right to return goods is generally constituted by the contract terms and provisions of the law of contract in the Civil and Commercial Code ("CCC"). Since consumers are accorded their rights and protection by means of consumer protection laws, they are usually buyers in a contract of sale with businessmen and retailers. Therefore, they simultaneously have rights under the general and specific provisions of contract law as they have rights under the specific laws of consumer protection. However, since there are no specific provisions that directly give consumers the right to return goods, it is necessary to determine if there are any laws with provisions that implicitly entitle consumers to return the goods they have purchased.

Consumers are considered to be buyers in a contract of sale; therefore, buyers' rights also apply to them under sale provisions. According to the CCC, buyers and sellers both have duties and liabilities as follows: (1) Sellers have a duty to deliver the goods to buyers,²⁴ including the duty to transfer the ownership of such goods to them; (2) Liability for defect;²⁵ (3) Liability for Eviction;²⁶ and buyers have an implied duty to accept the goods delivered by

²⁴ Section 461 Civil and Commercial Code

²⁵ Section 472 Civil and Commercial Code

²⁶ Section 475 Civil and Commercial Code

sellers. If buyers refuse to accept the goods, they are in default of the contract.²⁷ The only duty of the buyer is to pay the price for the ownership of the goods transferred.²⁸

It could also be implied that consumers' right as buyers that entitles them to return the goods they have purchased is the right to terminate the contract. However, the CCC only allows the party to the contract to terminate the contract on four grounds provided by the provisions in general obligations, contract, and sales, as shown below.

(1) Termination of contract by agreement

According to Section 386, a contract can be terminated by parties' agreement. The parties to the contract are free to agree or make a clause in the contract to allow them to terminate the contract, or make a new agreement to terminate the contract²⁹ as long as the agreement does not violate the public good and morals.³⁰

(2) Termination of contract by legal provisions

The causes of cancelling a contract stipulated by the CCC are non-performance, breach of contract, and impossible performance.

(2.1) Termination of contract because of non-performance

If the party to the contract does not perform his obligations, the other party is generally entitled to demand a specific performance, as well as claiming for damages; moreover, the other party is also entitled to terminate the contract if the breaching party still does not perform his obligations within a fixed period of time,³¹ unless the non-performance was caused by *force majeure*.³² However, if the nature of the object of the contract or the intention declared by the parties mean that it can only be accomplished by a performance at a fixed time or within a fixed period, and such time or period has passed without one of the parties having performed, the other party is entitled to terminate the contract without the notification mentioned above.³³ In other words, the contract is terminated by a breach of contract by the seller.

(2.2) Termination of contract by *force majeure*

If the performance becomes wholly or partly impossible by a cause of the debtor, the other party, the creditor, is entitled to terminate the contract.³⁴ This cause does not

²⁷ Section 210 Civil and Commercial Code

²⁸ Section 453 Civil and Commercial Code

²⁹ Sanunkorn Sotthibandhu, **Commentary on Juristic Act and Contract**. 2013, 33

³⁰ Akrawit Sumawong, **Commentary on Civil and Commercial Code: Juristic Act and Contract**. 2012, 350

³¹ Section 387 Civil and Commercial Code

³² Sanunkorn Sotthibandhu, *Supra* note 35, at 336-337

³³ Section 388 Civil and Commercial Code

³⁴ Section 389 Civil and Commercial Code

apply if it is impossible to complete the performance because of *force majeure* rather than the fault of the debtor.³⁵

(2.3) Termination of contract by other specific causes

Other than those provided by the general provisions of contract, there are more causes provided by specific provisions of sales that also entitle buyers to terminate the contract. These are different depending on the specific criteria of such contracts. Sometimes the party is entitled to terminate the contract without a breach by the other party. In cases of sale by sample and sale by description, the seller has the duty to deliver the same goods as the sample or as described.³⁶ If the seller fails to do so, the buyer may take action for liability on account of non-correspondence to the sample or description within a period of 1 year after delivery.³⁷ A sale on approval is a sale made on condition that the buyer has the opportunity to examine the goods before accepting them.³⁸ The seller can fix a reasonable time for the examination and notify the buyer to answer within that time if he will accept the goods or not.³⁹ If the buyer does not examine the goods and accept them within the time fixed, the seller is no longer bound by the condition of approval.⁴⁰ If the buyer does not wish to enter into the contract of sale after examining the goods, he will either (1) notify the refusal to the seller within the time fixed by the contract, or (2) return the goods within the time, and (3) refuse to pay the price.⁴¹

When the entitled party declares the intention to terminate the contract, the contract is suspended, which means that there has been no contract from the beginning. Each party is bound to restore the other party to his former condition.⁴² The parties must return to their original position as they were before entering into the contract. If any party has received anything from the contract, that party has to return it to the other party.⁴³ In cases where the money has to be repaid, interest is to be added from the time it was received.⁴⁴

The analysis of the CCC shows that the law does not mention or provide sufficient protection for consumers who purchase goods in stores. The CCC provides only general provisions of contract which do not cover the right of the consumers to return the goods, nor the duty of sellers to disclose their returns policy. Likewise, the analysis above demonstrates that neither the CPA, which is the primary law in consumer protection issue, grants consumers the right to return goods nor impose mandatory policy posting requirement on sellers. As a result, return policies solely depend on the stores. The situation in Thailand,

³⁵ Akrawit Sumawong, *Supra* note 35, at 461

³⁶ Section 503 Civil and Commercial Code

³⁷ Section 504 Civil and Commercial Code

³⁸ Section 505 Civil and Commercial Code

³⁹ Section 506 Civil and Commercial Code

⁴⁰ Section 507 Civil and Commercial Code

⁴¹ Section 508 Civil and Commercial Code

⁴² Section 391 Civil and Commercial Code

⁴³ Sanunkorn Sotthibandhu, *Supra* note 35, at 35

⁴⁴ *Id.*

therefore, is that while some stores inform consumers about their return policies, some do not, and some do not accept return at all. Consumers bear the burden of making themselves aware of their right to return the goods they purchase in every shop.

Comparative Analysis

Consumer protection in the United States and Thailand are different, especially in terms of consumers' right to return goods they purchased. This chapter contains a comparative analysis of the different issues between the two countries, which are as follows;

(1) Consumer protection law and policy on the protection of consumers' right to return goods purchased in stores

The study of the policy on consumers' right to return goods reveals that US and Thai law appear to be not very different because they both base it on an agreement between consumers and sellers, a difference, however, is significant. The US's warranties Act requires sellers to disclose their policies on product warranties to consumers. The FTC also adopts the principle which thirteen states have expanded and applied it to returns policy of goods purchased in stores. In some US states, sellers and stores are required to post their policy publicly or advise consumers of it. This is to make consumers aware of the terms and conditions of each seller and store before they make a decision to purchase goods to avoid confusion and damage that could occur when consumers have unclear and insufficient information before entering into a contract. This mandatory posting of policies does not exist under Thai law. Consumers have to bear the entire burden to explore and become aware of sellers' policies themselves. The question arises as to whether by giving consumers the right to return goods, the consumers are protected at the expense of sellers' interest. On the aspect of the balance between consumer protection and the burden of sellers or stores, the mandatory posting of policies does not disadvantage sellers and stores in any way. Since the law does not require sellers to have a returns policy, they can specify any policy they like. They can either have a returns policy with or without conditions or have no returns policy at all. The law only requires them to inform consumers about it so that they do not have to find out about it themselves. Also, consumers have the right to be informed of the information they need to make a decision to purchase goods and services and the returns policy is considered to be part of that necessary information. This policy efficiently protects consumers without imposing too much burden on the sellers; hence, it achieves a good balance between public and private interests.

(2) Remedy for the violation of consumers' right to return goods

The remedy for the violation of consumers' right to return goods under state law in the US is quite clear. The violation of consumer protection imposes liability or a greater burden on sellers, such as they have to accept the return or the period of time to accept it is extended. Meanwhile, since Thailand has no law or policy regarding the right to return goods purchased in stores, consumers can only find a remedy from the general provisions in the CCC and only in some specific laws. Moreover, the remedies available mainly focus on

damage rather than on consumers' right to return the goods. Therefore, unlike their US counterparts, consumers in Thailand do not have legal protection when returning goods. They are only protected in certain circumstances established by law, which is not the same as the disclosure rule or mandatory policy posting rule of the US.

(3) Scope of consumers' protection on the right to return goods

Consumers' right to return goods and the mandatory policy posting rule in the US apply to goods consumers have purchased in stores, but not to every type of goods. Most of the states that enact this rule provide an exception for some goods, such as food, plants, flowers, perishable goods, goods with a mark with similar language to "as is" or "final", goods used or damaged after purchase, customised goods received as ordered, goods not returned with their original packaging, and goods that cannot be resold due to health considerations. In Thailand, the CCC, as a general principle of contract and sales, applies to all goods. The CPA solely apply to specific cases. It mainly apply to contracts involving goods, consumers, and businessmen. According to the Consumer Protection Act: (1) Goods are articles produced or possessed for sale; (2) Consumers are people purchase goods or obtain services and this includes people who duly use goods or those who duly obtain services from a businessman, even if they are not the ones who pay the remuneration; and (3) a businessman is a seller, manufacturer or importer of goods for sale, or a purchaser of goods for re-sale, a person who renders a service, and this includes a person who operates an advertising business. The Act only defines goods roughly and broadly, focusing more on the contract between a consumer and a businessman. Therefore, consumer protection laws generally apply to contracts between consumers and businessmen, regardless of the type of goods.

(4) Purpose of the law and policy on the right to return goods

The US's consumer protection law does not directly allow consumers to return goods in every situations. In fact, the right to return the goods is generally established by agreement. Federal law only requires sellers to disclose the terms and conditions of warranty in the contract, but it is not mandatory to include a clause stating their returns policy. Although sellers are not required to have a returns policy, some states enact a law that requires them to display a poster or verbally inform consumers of this fact, so that consumers know their rights before making a decision to purchase goods from the store. The returns policy also depends on an agreement between the seller and the buyer in Thai law. Neither the general principles of contract nor the consumer protection provisions refer to a returns policy for consumers; therefore, sellers can have any kind of policy they like as long as it does not constitute unfair contract terms. There is no requirement to post a policy or inform consumers if one exists. Consumer protection laws focus more on compensation for consumers who are injured or damaged when using defective goods. Both legal systems leave it to sellers to decide whether or not to have a returns policy; however, the law in the US insists that sellers inform consumers or publicly post their policy, while sellers in Thailand are not required to do so. This may be because the US consumer protection law on this issue tends to focus on the protection of consumers' right to be informed so that they have all the necessary

information about their right to choose before purchasing goods, whereas Thailand's consumer protection law is different. It focuses on remedying the damage caused to consumers than preventing it.

(5) The right to return goods purchased in reality

The study of consumers' right to return goods purchased in stores in the US and Thailand shows that the process to return goods in these two countries is different. In the US, every store offers consumers a returns policy, which is clearly displayed so that consumers are aware of it. Sometimes, the policy is printed on receipts, on electronic mail receipts sent to customers, or on store websites where it is displayed in detail. This complete information about the returns policy is a result of a mandatory requirement of stores to publicly post their returns policy that is enacted in some US states, for example, California, New York, and Virginia. It can be perceived that the right to return goods in the US is well protected in practice, which is a good example of the application and enforcement of law in the protection of individuals' rights. On the contrary, the right to return goods purchased in stores in Thailand is problematic and inapplicable. In practice, there are no laws stipulating that sellers or stores have a duty to publicly their returns policy or verbally inform customers of it. As a result, only a few sellers or stores inform or post such a policy. Although some stores, especially those of multi-national companies, post their policy on the receipt, the text is relatively small compared to other details of the receipts; therefore, customers may not clearly recognise their right to return or the fact that the goods are non-refundable. Hence, consumers' right to return goods purchased in stores in Thailand is inadequately protected in practice, and this is not an ideal representation of the intention of consumer protection law, or even fundamental civil law.

Proposals

According to the above comparative analysis, Thai law does not provide sufficient protection for consumers who purchase goods in stores with regard to the right to return goods, unlike US law. Firstly, either expressly or impliedly, there are no specific Acts granting consumers or any individuals the right to return goods. Also, neither the general law, the CCC, nor the specific law, the CPA or other consumer protection Acts mentioned include the right to return goods as one of the rights of buyers or consumers. The law leaves this matter dependent on a contract between sellers and consumers, and it is this freedom of contract that enables sellers to decide whether or not to offer customers a returns policy. Since there is no law to protect individuals in this area, it is common that most sellers, especially big companies, do not provide consumers with the right to return goods. Inspired by the advantages derived from this study of US law, this thesis primarily argues that the right to return goods should be added to the Thai legal system. It can be done in the two possible approaches described below.

The first approach is to add consumers' right to return goods by enhancing the rights under the existing law. The existing right to terminate the contract provided in the CCC only allows consumers to terminate the contract with sellers when the goods do not conform to the

contract or sellers are in breach of contract, or the goods are defective. For the specific provisions on sales, the right to return goods or terminate the contract on the grounds of consumers' dissatisfaction or other grounds besides breach of contract or defect should be added as one of the buyers' rights. However, the CCC is a general law that applies to all types of contracts. Adding the right to return goods by amending the CCC would have too far reaching effects on other contracts involving sale of goods rather than the ones concerning specifically on consumers. Additionally, imposing consumer right to return goods and sellers duty to inform their policy is a very specific issue, which is not the nature of the CCC. Hence, the alternative proposal is amend a specific Act regarding consumer protection. Since the CPA is the primary consumer protection Act that guarantees basic consumer rights, it is the best choice to add another consumer right to be protected. It is also easier to add the right by amending this specific Act rather than amending the CCC, which is the general provision. The right added could be consumers' right to satisfaction, which is defined as "a consumer's right to have access to basic, essential goods and services, such as, food, clothing, shelter, health care, education, public utilities, water, sanitation." This is similar to the right to satisfaction of basic needs cited in the Consumer International Organisation, but it should be expanded to "include, but not be limited to, the right to be satisfied with goods and services purchased" in order to provide protection for consumers when purchasing goods in stores on a returns policy so that they have the right to return goods on the grounds of dissatisfaction.

Apart from amending the code or the Act, the second approach to resolve this matter is to apply and interpret the existing law to cover it. If the provisions of the existing law are open to interpretation or the authorities can include various consumer protection issues, it is less costly and less time-consuming to make the most of it rather than amending the law. As consumers' right to return goods would benefit consumers and protect them from unfair contract terms with sellers, the right to return goods could be expanded by a broader interpretation of the existing basic consumers' right to fair contract. Also, a duty to inform returns policy to sellers could be imposed by the interpretation of consumers' right to be informed. Furthermore, the CPA has established an ad hoc committee on advertising, labelling, and contract to control specific issues. The committee is authorised to standardise regulations or issue announcements in order to achieve the goal of consumer protection. This ad hoc committee could regulate or announce a consumer protection policy on consumers' right to return goods purchased in store. This approach is easier and faster to apply than the first and second solutions. Another issue of consumer protection of consumers' right to return goods purchased in stores is that sellers have no duty to disclose their returns policy to consumers. Consumers have to bear the entire burden to explore and become aware of sellers' policies themselves. It is unfair to impose such a burden on them, since they already have less bargaining power in the contract. The duty to disclose their returns policy should not be too onerous for sellers compared to the advantages consumers will derive from the protection. Therefore, another suggestion from the results of this study is that the returns policy should be mandatory. Sellers should be required to inform or remind consumers about their policies; moreover, they should be required to post their policy at a notable point in the store where consumers can clearly see it, so that they can know their rights and have sufficient information before making a decision to purchase the goods. In terms of this issue,

since advertisements, brochures, or any documents used to promote products are considered to be part of the contract made between consumers and sellers under consumer protection laws, it is not necessary to amend or pass a new law. As mentioned, the CPA has already appointed ad hoc committees on specific issues regarding consumer protection, and they could regulate or announce the mandatory policy posting of consumers' right to return goods requiring sellers to inform or remind consumers of their policy and/or post their policy at notable points in the store where consumers can clearly see it to their advantage. Returns policy is the statement to be seen or known by consumers, it is considered as an advertisement of the stores. Therefore, imposing a mandatory policy posting to the stores should be the responsibility of ad hoc committee on advertisement. Alternatively, an ad hoc committee on contract has the power to prescribe the business in connection with the sale of goods to be a controlled business with respect to receipt of payment. Then, the committee could regulate that the returns policy has to be informed to the consumers in the receipts or at notable points in the store. The Committee could also impose that sellers post their returns policy in the receipt.

Finally, whether the first or second approach is adopted, there should be a sanction imposed on sellers for failure to meet the requirement to disclose their returns policy or adhere to the mandatory posting of such policy to reach an efficient enforcement of the laws, rules, and regulations on this matter. Firstly, it could be imposed that "if sellers or stores violates the mandatory policy posting requirement by failing to inform or remind consumers of their policy, or to post their policy at notable points in the store where consumers can clearly see it, it shall be assumed, regardless of the actual policy the seller or store has, that consumers are entitled to return the goods they purchased within thirty days from the date of purchase." Furthermore, if the violation causes any loss or damage to consumers, sellers or stores who violate the requirement shall also be responsible for such loss or damage. With regard to the penalty, the thesis suggests that there should be further study in the field of Criminal Law regarding the justification and reason of punishment in this kind of business transaction. It might be researched compared to other cases in the field such as the product liability law or the competition law.

To close, these proposed approaches requiring the sellers and stores to post their policy do not put excessive burden on them because the law does not require them to have a returns policy. Either a returns policy with or without conditions or have no returns policy at all can be set by the sellers. Only the duty to inform policy to consumers is imposed. As a result, the thesis argues that these approaches not only grant more protection to consumers, but also achieve a good balance between public and private interests.

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