

Independent Study Title	The Affect of Juristic Acts and Contract Resulting from Not Separating of Civil Law from Commercial Law
Keywords	Juristic Acts and Contract / Commerce
Student	Pemika Wiwattanaphonphand
Independent Study Advisor	Professor Dr.Phoonphol Tewit
Independent Study Co-advisor	Associate Professor Suphol Ingprasarn
Level of Study	Master of Laws
Faculty	Graduate School, Sripatum University, Choburi Campus
Year	2007

ABSTRACT

Thailand is the country where the civil law system has been applied and the civil law and commercial law were prescribed in the same code as from the law reform was commenced without the explicit separation in the parts of legal philosophy, concepts and the procedures to apply the commercial law are based on the civil law practices ways. Consequently, Thailand has mixed up in applying the civil law and commercial law up to the present time and the commercial law system has lacked the independence from the civil law.

With regard to the word “Civil and Commercial Code”, its name per se clearly identifies that the civil law and commercial law in Thailand are included in the same code just like just like the Civil Code of Swiss and Turkey. However, the certain countries such as Germany and France have separated the Civil Cod and Commercial Code. This is because the traders are required to be subject to the law which is special from the other natural persons. Since the traders wish to expedite their communication and trade and they are well aware and careful for their interest, they are not required to comply with the forms in order to have time to make decision to enter into contracts as the natural persons always do. As Thailand is the developing country, it is necessary to separate the commercial law from the civil and commercial law in order to serve the trade growth of both domestic and international markets. However, since the contents and procedures to enforce the law of Thailand have extremely been affected by the common law system, there are

conceptual confusions and conflicts because the condition and natures of juristic relation among or between commercial traders or parties in such commercial trade are fairly different from the civil juristic relations among or between individuals. As a result, the rules which are regarded as right and fair among general individuals may be the rules which are extremely contrary to the trade traditions or practices among traders who are parties.

With regard to the forms and evidences of juristic acts and contracts, the applicable laws are not appropriate to enforce with civil cases because it is too strict and the interpretation of laws relating to the forms and evidences of juristic acts and contracts is regarded as the interpretation which extremely against the trade traditions. In order to develop the commercial laws with regard to the forms and evidences of juristic acts and contracts, there should be the different proof system from the civil law, for example, in the cases of admission of taking oral evidences for the exception of civil contracts verbally or in such the way of issuing the trade confirmation letter. To do so, the commercial laws should be developed in conformity with the economic development and growth regardless of the fact that the commercial law will be separated from the civil law by enacting the new legislative in the form of special law to be the exception of the Civil and Commercial Code. However, the most important thing to consider is the law development should help promote and spread the trade activities as well as protect and provide the fairness to the honest trade operators effectively.

This study aims to clearly separate Thai Civil and Commercial Code from each other. In this regard, Thailand is required to provide the commercial law system in the parts which are related to the forms and evidences of juristic acts and contracts to be clearly different from the civil law system in order to reduce the restrictions and unfairness in the trade and commercial operations in Thailand. Moreover, it is the appropriate and effective encouragement with the condition and nature of trade and commercial activities. The separation of the Civil Code from the Civil and Commercial Code also promotes Thai trade and commercial activities. Consequently, it enables Thailand to compete with other countries and brings about the additional creditability and faith to all people who are in the trade and commercial fields as well.