

Chapter 1

Introduction

Research Rational and Background

The history and background of Japan and Thailand's legal systems bear similarity since the development of their ancient laws to modernized laws under the influence of the West during its colonization at the beginning of the 19th Century. Back then, both countries decided to follow the continental Europe's legal system, particularly France and Germany, by enacting their own codes resulting which Japan and Thailand have long been classified as countries utilizing the Civil Law¹ legal system as distinct from the Common Law² legal system which is widely used in England and commonwealth countries.

At present, there is no Thai existing law specifically applied to commercial sales including international sales which bear similar natures. The nature of sale provisions under Thai Civil and Commercial Code is domestically and does not specifically conform to commercial sales including international sales. In term of international sales, similar nature exists all over the world and thus emerged a number of initiations to harmonize sales law to be as one or to share the same principles. The International Institute for the Unification of Private Law, or UNIDROIT, established by the Italian government and the United Nations Commission on International Trade Law, or UNCITRAL, established by the United Nations are two major organizations which involved in these initiations by launching the Uniform Law on the International Sale of Goods (ULIS), the Uniform Law on the Formation of Contracts for the International Sale of Goods (ULFIS) and the United Nations Convention on Contracts for the International Sale of Goods (CISG) or, the 1980 Vienna Sales Convention respectively.³ The first two ULIS and ULFIS were the products of UNIDROIT in 1960 but unfortunately were not successful as the number of contracting states were few due to some specific reasons which shall not be discussed here.

¹Or, known as 'Codification System', originated from Roman Laws and widely used in Continental Europe and countries all around the world including Asia.

²Or, known as 'Non-Codification System', originated from customary laws or Judge-made laws.

³Ruangvichathorn, J. (2003). "International Convention, is it about time?" In *Thammasat Law Journal*, pp.1-3.

Followed by UNCITRAL, the United Nations Convention on Contracts for the International Sale of Goods (CISG) or, the 1980 Vienna Sales Convention was adopted in 1980 at a Diplomatic Conference held in Vienna, Austria and effective in 1988 after the numbers of ratifying states reached ten states. Unlike the Uniform Law on the International Sale of Goods (ULIS) and the Uniform Law on the Formation of Contracts for the International Sale of Goods (ULFIS), the United Nations Convention on Contracts for the International Sale of Goods (CISG) or, the 1980 Vienna Sales Convention has been much more successful as the number of contracting states have now reaching 89 states as of 2017 including Japan and more recently is Vietnam⁴ which is the second country in the Association of Southeast Asian Countries (ASEAN) following Singapore.⁵

Japan is currently a contracting state of the United Nations Convention on Contracts for the International Sale of Goods (CISG), or the 1980 Vienna Sales Convention⁶ but not Thailand. Given the fact that both the United Nations Convention on Contracts for the International Sale of Goods (CISG), or the 1980 Vienna Sales Convention and Japanese Commercial Code were specifically designed to apply only to commercial sales⁷ which are distinct in nature from non-commercial sales⁸, the study why Japan decided to adopt the United Nations Convention on Contracts for the International Sale of Goods (CISG), or the 1980 Vienna Sales Convention by analyzing their compatibilities is the aim of this research. On the other hand, the study why Thailand has not yet acceded to the International Sale of Goods (CISG), or the 1980 Vienna Sales Convention despite the fact that Thai Civil and Commercial Code is not compatible with commercial sales including international sales because it was designed to apply to both commercial sales and non-commercial sales which are distinct in nature and currently causes legal obstacle in Thailand⁹ is also the aim of this research. Accordingly, as Thailand needs other sets of law applying to domestic

⁴ Effective on 1 January 2017.

⁵ Ruangvichathorn, J. "International Trade Law and Sales Convention" In Lecture Handouts, the Council of State, 2018.

⁶ Effective on 1 August 2009.

⁷ Ferrari, F. and Torsello, M. (2014). "*International Sales Law – CISG in a Nutshell*". West Academic Publishing, p. 104. (stating that 'CISG excludes the sale of goods bought for personnel, family or household use from its sphere of application which 'leads *de facto* to a limitation of the CISG's sphere of application to commercial contracts'.)

⁸ See Chapter 2

⁹ See Chapter 2

commercial sales and international sales separately from current Civil and Commercial Code¹⁰, this research shall also be beneficial for Thailand if it will ever be used as part of the consideration to develop Thai sales law by (1) separating domestic commercial sales from non-commercial sales, and (2) acceding to the United Nations Convention on Contracts for the International Sale of Goods (CISG), or the 1980 Vienna Sales Convention with the enactment of a new Thai sales law applying specifically to international sales .

In addition, Thailand and Japan share similar legal histories and backgrounds bearing the fact that, at the time of drafting its own codes including the Civil and Commercial Code, Thailand partly utilized Japanese Civil Code as model¹¹. Any comparative study of Japanese Commercial Code and Thai Civil and Commercial Code derived herein shall also be valuable in term of legal history and legal principle particularly in international trade and investment to legal communities as a whole.

Research Objectives

1. To study the compatibility of Japanese Commercial Code regarding sales with the United Nations Convention on Contracts for the International Sale of goods (CISG), or the 1980 Vienna Sales Convention as compared with Thai Civil and Commercial Code in the same aspects.

2. To study the incompatibility of Thai Civil and Commercial Code regarding sales with domestic commercial sales and international sales.

3. To study the significance of Thailand in developing Thai sales law by (1) separating domestic commercial sales from non-commercial sales by any mean, and (2) acceding to the United Nations Convention on Contracts for the International Sale of Goods (CISG), or the 1980 Vienna Sales Convention with the enactment of a new Thai sales law applying specifically to international sales.

¹⁰ See Chapter 2

¹¹ Ruangvichathorn, J. (2015). "The Japanese Civil Code: The forerunner of Thai Civil and Commercial Code". *Sripatum University Press*, pp.18-19.

Research Questions

1. To what extent Japanese Commercial Code regarding sales is compatible with the United Nations Convention on Contracts for the International Sale of goods (CISG), or the 1980 Vienna Sales Convention as compared with Thai Civil and Commercial Code in the same aspects.

2. To what extent Thai Civil and Commercial Code regarding sales is not compatible with domestic commercial sales and international sales.

3. To what extent Thailand will benefit from (1) the separation of domestic commercial sales from non-commercial sales by any mean, and (2) the acceding to the United Nations Convention on Contracts for the International Sale of Goods (CISG), or the 1980 Vienna Sales Convention with the enactment of a new Thai sales law applying to international sales.

Research Hypotheses

1. Japanese Commercial Code regarding sales is compatible with the United Nations Convention on Contracts for the International Sale of goods (CISG), or the 1980 Vienna Sales Convention because they were similarly designed to apply only to commercial sales, not non-commercial sales.

2. Thai Civil and Commercial Code regarding sales is not compatible with both domestic commercial sales and international sales which focus on commercial matters because it was designed to apply to both commercial sales and non-commercial sales which are distinct in nature and thus currently causes legal obstacle in Thailand.

3. It shall be beneficial for Thailand to develop Thai sales law by (1) separating domestic commercial sales from non-commercial sales by any mean, and (2) acceding to the United Nations Convention on Contracts for the International Sale of Goods (CISG), or the 1980 Vienna Sales Convention with the enactment of a new Thai sales law applying specifically to international sales.

Research Scope

1. Studying on selected sale provisions of Japanese Commercial Code and analyze their compatibility with the United Nations Convention on Contracts for the International Sale of goods (CISG), or the 1980 Vienna Sales Convention.

2. Studying on the same selected sale provisions under Thai Civil and Commercial Code and analyze their incompatibility with domestic commercial sales and international sales.

3. Studying on the significance of Thailand to develop Thai sales law by (1) separating domestic commercial sales from non-commercial sales by any mean, and (2) acceding to the United Nations Convention on Contracts for the International Sale of Goods (CISG), or the 1980 Vienna Sales Convention with the enactment of a new Thai sales law applying specifically to international sales.

Research Definition

JCOMC	means	Japanese Commercial Code
JCC	means	Japanese Civil Code
JPC	means	Japanese Procedural Code
TCOMC	means	Thai Commercial Code
TCC	means	Thai Civil and Commercial Code
TPC	means	Thai Procedural Code

Research Significance

1. Learning the compatibility of Japanese Commercial Code regarding sales with the United Nations Convention on Contracts for the International Sale of goods (CISG), or the 1980 Vienna Sales Convention as compared with Thai Civil and Commercial Code in the same aspects.

2. Learning the incompatibility of Thai Civil and Commercial Code regarding sales with domestic commercial sales and international sales.

3. Proposing the significance of Thailand in developing Thai sales law by (1) separating domestic commercial sales from non-commercial sales by any mean, and (2) acceding to the United Nations Convention on Contracts for the International Sale of Goods (CISG), or the 1980 Vienna Sales Convention with the enactment of a new Thai sales law applying specifically to international sales.