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Abstract

Incoterms Rules and Their Usage in Contract Relationship

In the era of today's trade relations contractors are given extensive access to markets over the world. Merchandise of a given contractor is sold in a large number of countries, in larger quantities and in a larger range. However, as scale and complexity of world trade grows, numerous misunderstandings and uncertainties significant for the matter of parties' responsibility are more likely to occur, especially in points of contacts of different law rules that often originate from different law systems.

The subject of *Incoterms Rules and Their Usage in Contract Relationship* doctoral thesis is analysis of main problems and covering of characteristics of International Commercial Terms. Incoterms, created by International Chamber of Commerce (ICC) in Paris, are widespread trade terms, commonly used in both domestic and international turnover. They define in precise way duties and rights of parties of sales and supply agreement, as well as they form basis for control of actions and risk related to delivery of goods. They specify which party is obligated to bring goods to their destination, who is responsible for obtaining insurance and what costs are to be paid by parties. The aim of including three-letter term abbreviation for a given Incoterms rule (e.g. EXW Incoterms 2010) instead of lengthy paragraphs into a contract is to simplify the contract and to make its clauses susceptible to predefined rules - this is expected to increase transparency of a contract provision and to facilitate reaching agreements between parties.

The matter is worth taking up due to its day-to-day significance for turnover and due to lack of its comprehensive study in Polish juridical literature. Such gap may create problems for contractors who are in doubt about what a given provision means. The uncertainties concern also public enforcers, especially since there is not much ruling on how to interpret rules.

Because there is no comprehensive study on the subject at the moment, my research needed to be conducted not only on basis of output of Polish juridical literature but also taking into consideration legacy of foreign legal theory in its broadest sense and laying particular emphasis on jurisprudence in the European Union.

Distinctness of this dissertation is reflected not just in approach taken towards the subject but mostly in described issues and proposed theses which have been so far missed out or covered very concisely in juridical literature. Having regard to the fact that the subject we are going to discuss is also object of interest of another fields of knowledge, we need to be aware that some studies have been done by non-jurists. Such papers are undoubtedly among the most thorough studies on the subject within authors' field of expertise. However, even the best economical analysis cannot substitute legal one for the need of drawing a contract or carrying on a litigation because courts pronounce judgments on the basis of, and within the limits of, the law. A legal rule (and the law in general) are intended to govern social relations but it is interpreted and applied as a separate branch of science.

The aim of this dissertation is to carry out an analysis of issues related to Incoterms that will enable us to prove proposed theses. Next, the Incoterms rules, their legal nature, applicability and usage in contract relationship are going to be explored in depth. Then, the matter of defining Incoterms will be investigated. Such assumptions and structure will allow us to show different aspects and complexity of the institution and roles it performs in international trade.

In trade practice, including a given rule into contract relationship carries a risk of wrong construction of a contract, due to lack of definitions, systematization and placing Incoterms with regard to other sources for commercial law. That is why it is necessary to determine how to apply Incoterms correctly and to point out legal results of incorrect incorporation of a given terms into a contract.

Some problems that arise while using Incoterms are caused by terminology-related issues. The official language of Incoterms is English. Therefore, for contractors from different countries where some notions are understood in different way it is necessary to standardize meaning of clauses and terms used in order to avoid mistakes when applying them.

Because concluding a contract is a multistage process, parties should possess appropriate knowledge of how to incorporate a given rule into the contract, already at the stage of making a bid or invitation to negotiations. The parties should also be aware that effectual rules of local, domestic law may invalidate each part of sales contract, including selected Incoterms rule.

So that template rules such as Incoterms can serve their purpose effectively, they need to be periodically revised. Reason for this is that good trade practice does evolve over time and that channels such as transport or information exchange are constantly changed. That is why it is needed to monitor such changes and circumstances determining them.

The Incoterms correspond to needs of international turnover because their main purpose is to simplify and standardize it. They decrease number of litigations ensuing from interpretation of particular ambiguous terms that would lead to long-lasting and money-consuming trials. Reference of Incoterms to RAFTD and Combiterms, rules being structurally most similar to them, can be considered addition to the main thread.