

บทความวิชาการ (Academic Article)

ความสามารถในการบังคับใช้ข้อจำกัดการโอน
บัตรเข้าชมคอนเสิร์ตในประเทศไทย:
มุมมองทางกฎหมายว่าด้วยสัญญาและการคุ้มครองผู้บริโภค
Enforceability of Ticket Transfer Restrictions in Thailand:
A Contract and Consumer Protection Law Perspective

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บทคัดย่อ

การเพิ่มขึ้นของข้อจำกัดทางสัญญาในการโอนบัตรคอนเสิร์ตในประเทศไทยได้ก่อให้เกิดประเด็นทางกฎหมายที่สำคัญเกี่ยวกับการบังคับใช้ข้อจำกัดเหล่านั้นภายใต้กฎหมายว่าด้วยสัญญาและการคุ้มครองผู้บริโภคของไทย บทความนี้ศึกษาความชอบด้วยกฎหมายของข้อจำกัดห้ามโอนบัตรเข้าชมคอนเสิร์ต โดยพิจารณาถึงขอบเขตของข้อจำกัดดังกล่าวว่าสอดคล้องหรือขัดแย้งกับหลักเสรีภาพในการทำสัญญาและการคุ้มครองผู้บริโภคมากน้อยเพียงใด รวมถึงบทบาทของศาลต่อข้อสัญญามาตรฐานเหล่านั้นด้วย เพราะแม้ว่าหลักสัญญาต้องเป็นสัญญา (Pacta Sunt Servanda) จะรองรับการบังคับใช้ข้อตกลงตามสัญญา แต่พระราชบัญญัติว่าด้วยสัญญาที่ไม่เป็นธรรม พ.ศ. 2540 และพระราชบัญญัติคุ้มครองผู้บริโภค พ.ศ. 2522 ก็ได้กำหนดข้อจำกัดเกี่ยวกับสัญญาที่ไม่เป็นธรรมซึ่งอาจก่อให้เกิดภาระที่ไม่สมส่วนแก่ผู้บริโภคไว้ด้วยเช่นกัน

บทความนี้เห็นว่า ข้อจำกัดห้ามโอนบัตรคอนเสิร์ตอาจเข้าข่ายเป็นข้อสัญญาที่ไม่เป็นธรรม โดยเฉพาะอย่างยิ่งหากข้อจำกัดดังกล่าวได้กำหนดบทลงโทษที่เกินสมควร อันเป็นผลให้เกิดการจำกัดสิทธิของผู้บริโภคโดยไม่มีเหตุผลอันสมควร หรือสร้างความไม่สมดุลของอำนาจการต่อรองระหว่างคู่สัญญาอย่างมีนัยสำคัญ ซึ่งเมื่อพิจารณาถึงลักษณะทางกฎหมายของการโอนบัตรคอนเสิร์ตว่าเป็นการโอนสิทธิเรียกร้องตามสัญญาภายใต้ประมวลกฎหมายแพ่งและพาณิชย์ มาตรา 306 แล้ว พบว่าความสามารถในการบังคับใช้ข้อจำกัดทางสัญญาดังกล่าวในทางกฎหมายอาจถูกโต้แย้งได้ โดยผลการศึกษากฎหมายเปรียบเทียบของสหภาพยุโรปและสหราชอาณาจักรแสดงให้เห็นว่า แม้ว่าเหตุผลทางธุรกิจต่างๆ เช่น การป้องกันการฉ้อโกง จะสามารถยกขึ้นอ้างเป็นเหตุอันชอบด้วยกฎหมายในการจำกัดสิทธิการโอนบัตรคอนเสิร์ต แต่ข้อจำกัดการขายต่อบัตรที่มีลักษณะกว้างเกินสมควรอาจถูกวินิจฉัยว่าเป็นข้อสัญญาที่ไม่เป็นธรรมได้ โดยเฉพาะเมื่อขัดต่อหลักความได้สัดส่วนหรือส่งผลให้เกิดการจำกัดการแข่งขันทางการค้า เช่นนี้ บทความนี้จึงเห็นว่า ศาลไทยควรตีความข้อจำกัดทางสัญญาเหล่านั้นโดยคำนึงถึงหลักความได้สัดส่วนเป็นสำคัญ เพื่อสร้าง

ดุลยภาพระหว่างเหตุผลทางธุรกิจและมาตรฐานในการคุ้มครองผู้บริโภคอย่างมีประสิทธิภาพ

จากผลการวิเคราะห์การตีความของศาลและกลไกการคุ้มครองผู้บริโภค บทความนี้เน้นย้ำถึงความจำเป็นในการกำกับดูแลด้านกฎหมายที่เข้มงวดมากขึ้นเพื่อป้องกันการกำหนดข้อสัญญาที่จำกัดสิทธิผู้บริโภคเกินสมควร โดยเสนอให้ศาลไทยควรเพิ่มระดับการพิเคราะห์ข้อสัญญาในเชิงเนื้อหาอย่างเข้มข้น รวมถึงสนับสนุนการสร้างระบบการขายต่อบัตรที่โปร่งใสและเป็นระบบระเบียบที่จะสามารถป้องกันการฉ้อโกงได้อย่างมีประสิทธิภาพ และพัฒนาแนวทางในการกำหนดขอบเขตข้อสัญญาที่จำกัดสิทธิการโอนหรือขายต่อบัตรคอนเสิร์ตภายใต้กฎหมายไทยให้ชัดเจนมากยิ่งขึ้น

คำสำคัญ: การขายต่อบัตรคอนเสิร์ต; การบังคับใช้สัญญา; ข้อจำกัดทางสัญญา; การโอนสิทธิเรียกร้อง; สิทธิผู้บริโภค

Abstract

The increasing use of contractual restrictions on concert ticket transfers in Thailand raises critical legal questions regarding their enforceability under Thai contract and consumer protection law. This article examines the validity of non-transferability clauses within concert ticket agreements, assessing their compatibility with contractual autonomy, consumer rights, and judicial scrutiny of standard-form contracts. While Thai law upholds the principle of *pacta sunt servanda*, the Unfair Contract Terms Act B.E. 2540 (1997) and the Consumer Protection Act B.E. 2522 (1979) impose limits on unfair terms that disproportionately disadvantage consumers.

This article argues that non-transferability clauses may constitute unfair contract terms, particularly when they impose excessive penalties, unjustifiably restrict consumer rights, or create significant imbalances in bargaining power. By analysing the legal nature of ticket transferability as the assignment of contractual claims under Section 306 of the Thai Civil and Commercial Code, the study finds that the legal enforceability of such clauses is potentially challengeable. A comparative analysis of EU and UK laws reveals that while legitimate business interests such as fraud prevention can justify certain restrictions, excessively broad resale bans may be invalidated when found disproportionate or anti-competitive. Drawing on these comparative perspectives, the article concludes that Thai judicial interpretations should adopt a rigorous proportionality assessment to effectively balance commercial justifications with consumer protection standards.

By examining judicial interpretations and consumer protection mechanisms, this article highlights the need for stronger regulatory oversight

to prevent excessively restrictive ticketing policies. It recommends that Thai courts strengthen their judicial scrutiny of such clauses, promote transparent and regulated resale mechanisms as effective tools for fraud prevention, and establish clearer statutory guidelines defining the permissible limits of contractual restrictions under Thai law.

Keywords: Concert Ticket Resale; Contract Enforceability; Contractual Restrictions; Assignment of Contractual Claims; Consumer Rights

1. Introduction

The growing prevalence of non-transferable ticket policies in Thailand has raised legal and consumer rights concerns, particularly regarding their enforceability under Thai contract and consumer protection law. Concert organisers and ticketing platforms increasingly restrict resale and transfer of tickets, often under the justification of fraud prevention, maintaining pricing integrity, and equitable access.¹ However, such restrictions raise considerable questions about whether consumers retain ownership of purchased tickets and if such clauses violate contractual fairness under Thai law.

Non-transferability clauses typically tie the tickets to the original purchaser, prohibiting resale or transfer without organiser approval. As standard-form contract provisions, they raise concerns about enforceability, proportionality, and compliance with consumer protection laws. While event organisers argue that these provisions are necessary to curb scalping and fraudulent resales, consumers contend that such restrictions unduly limit their ability to make lawful use of their purchases.² This conflict highlights key legal and policy issues, particularly whether a concert ticket grants a transferable right to attend an event or merely a conditional, revocable license.³

¹ For instance, see, Ticketmaster, **Purchase Policy** [Online], 8 June 2024. Source: <https://www.ticketmaster.co.za/help/purchasepolicy/purchasepolicy.html>

² Federal Trade Commission, **“That’s the Ticket” Workshop: Staff Perspective**, FTC Bureau of Consumer Protection (Washington: 2020), p.3.

³ Daysia Tolentino, **Senate Introduces Legislation Addressing Fan Frustration Over Ticket Sales**, [Online], 8 November 2024. Source: <https://www.nbcnews.com/pop-culture/senate-introduces-ticketing-industry-fans-firstact-rcna128791>; Rebecca Black, **“No One Likes Us, We Don’t Care”: The Legality of Ticket Bans on Opposing Fans**, Jeffrey S. Moorad Sports Law Journal, Volume 31 Issue 2 (2024), p. 346.; Sammi

This distinction is crucial in determining resale bans' legality under Thai contract law, the Unfair Contract Terms Act B.E. 2540 (1997), and consumer protection statutes. If resale prohibitions create an unfair contractual imbalance, courts may deem them unenforceable, requiring greater scrutiny of ticketing restrictions within Thailand's legal framework.

1.1 The Rise of Non-Transferable Ticket Policies in Thailand

The imposition of strict ticket transfer restrictions is a relatively recent phenomenon in Thailand, reflecting global trends in the ticketing industry. Traditionally, concert tickets were viewed as freely transferable, with secondary markets enabling consumers to resell or gift their tickets if they could not attend an event.⁴ However, with the advent of digital ticketing and concerns over ticket scalping, many event organisers have introduced policies that limit or entirely prohibit ticket transfers.⁵ These restrictions are often enforced through personalised tickets, requiring attendees to present identification at the venue, or through electronic ticketing systems that invalidate resold tickets.⁶

Proponents of non-transferable ticket policies argue that they serve a legitimate commercial and consumer protection function. By preventing large-scale resales at inflated prices, these policies purportedly ensure that

Elefant, **Beyond the Bots: Ticked-Off Over Ticket Prices or the Eternal Scamnation?**, UCLA Entertainment Law Review, Volume 25 Issue 1 (2018), p. 26.

⁴ James D. Hurwitz, **Restrictive Paperless Tickets: A White Paper by the American Antitrust Institute**, American Antitrust Institute (Washington: 2012), p. 6.

⁵ Ibid., p. 32.

⁶ Ibid., p. 20. For instance, see, Thaiticketmajor Co., Ltd, **Our Policies** [Online], 19 December 2024. Source: <https://corporate.thaiticketmajor.com/policies.php>

tickets remain accessible at their original face value.⁷ Additionally, organisers claim that such measures reduce the risk of counterfeit tickets circulating in the secondary market, thereby safeguarding consumers from fraudulent transactions.⁸

Despite these justifications, opponents argue that blanket prohibitions on ticket transfers disproportionately benefit event organisers at the expense of consumers. They contend that such policies restrict the fundamental rights of ticket buyers,⁹ preventing them from reselling, gifting, or even recovering costs in cases where they can no longer attend an event. Furthermore, critics highlight that non-transferable ticket policies often operate as a mechanism for organisers to monopolise the resale market, compelling consumers to use official resale platforms that impose additional fees and limitations.¹⁰

1.2 The Legal Debate: Do Consumers Have the Right to Transfer Tickets?

At the heart of the legal debate on non-transferable ticket policies is whether consumers retain the right to transfer their tickets under Thai law. The enforceability of resale bans depends on whether a concert ticket is a

⁷ Aditya Bhawe and Eric Budish, **Primary-Market Auctions for Event Tickets: Eliminating the Rents of ‘Bob the Broker’?**, National Bureau of Economic Research (NBER) (Cambridge: 2017), p. 3.

⁸ Dennis Baker, **Cyber-Ticket Touting as Fraudulent Trading**, Journal of Criminal Law, Volume 86 Issue 5 (2022), pp. 353-354.

⁹ Rebecca Black, **“No One Likes Us, We Don't Care”: The Legality of Ticket Bans on Opposing Fans**, p. 327.

¹⁰ Tyler J. Miller, **The End of An “Eras?” Antitrust Law and Policy Making a Drastic Change in Live Entertainment Ticketing?**, Business, Entrepreneurship & Tax Law Review, Volume 7 Issue 2 (2024), pp. 296-297.

contractual claim, which can be assigned, or a personal right, which is inherently non-transferable.

Under Section 306 of the Thai Civil and Commercial Code (Thai CCC), the assignment of contractual claims requires written consent from the obligor (debtor) and is only enforceable if formal notice is given. This raises a fundamental legal question: does a ticket confer an assignable right, or is it a conditional agreement restricting transferability? The answer determines whether resale bans are legally valid under Thai contract law.

Additionally, consumer protection laws impose limits on restrictive contract terms. Section 4 of the Unfair Contract Terms Act B.E. 2540 (1997) (Thai UCTA) empowers Thai courts to invalidate provisions that create an excessive bargaining power imbalance. Given that concert tickets are standard-form contracts, consumers lack negotiation power, and courts may deem excessive resale bans unenforceable if they are unfair or beyond reasonable consumer expectations.

A further issue is the lack of transparency in the incorporation of non-transparency clauses within concert ticket agreements. With advancements in technology, such clauses are frequently embedded within extensive online terms and conditions, rather than being expressly disclosed at the point of sale or on the ticket itself. This practice deprives consumers of clear notice and raises questions of validity under Thai consumer protection law, which requires that contract terms be transparent, fair, and reasonable. Where such clauses are not brought to the consumer's attention in a transparent and intelligible manner, they may be subject to judicial scrutiny for failing to meet the standards of informed consent and contractual fairness.

1.3 Scope and Structure of the Analysis

This article provides a comprehensive legal analysis of the enforceability of ticket transfer restrictions under Thai contract and consumer law. Specifically, it focuses on the enforceability of non-transferability clauses in concert ticket agreements, assessing whether they are valid under general contract principles or infringe upon consumer rights, and under what circumstances they may be deemed unenforceable by judicial scrutiny.

The analysis is structured across four core sections. Following this introductory section, the second section of this article addresses the balance between contractual freedom and consumer rights, focusing on the enforceability of standard-form contracts and the role of the Thai UCTA. The third section examines whether concert tickets constitute contractual claims or personal rights, with reference to Section 306 Thai CCC and relevant judicial interpretations.

The fourth section evaluates when resale restrictions may constitute unfair contract terms, drawing on Thai Supreme Court rulings and enforcement under Thai consumer protection mechanisms. The fifth section introduces comparative perspectives from the EU and UK, examining how courts balance business justifications against consumer protection principles.

The final section sets out legal recommendations, calling for stronger judicial scrutiny, clearer statutory guidance, and legal reforms to ensure fair ticketing policies in Thailand.

Through this analysis, the article contributes to a deeper understanding of the intersection between private autonomy and public regulation in the context of concert ticketing. It argues that Thai law should promote a more proportionate and principled approach to ticket resale restrictions, supporting legitimate business interests while safeguarding

consumer rights, legal certainty and competitiveness within the ticketing market.

2. Contractual Freedom vs. Consumer Rights in Ticketing Agreements

The enforceability of ticket transfer restrictions in Thailand necessitates an examination of the intersection between the principle of contractual autonomy and consumer protection law. While the principle of *pacta sunt servanda*, which upholds the sanctity of contracts, is a foundational tenet of Thai contract law, consumer protection statutes impose necessary limitations on contractual freedom where imbalances in bargaining power render certain clauses unfair.¹¹ In the context of concert ticket agreements, the primary legal question is whether resale bans and non-transferability clauses constitute legitimate contractual stipulations or whether they infringe upon consumer rights to such an extent that they should be rendered unenforceable. This section critically examines the principle of contractual freedom in Thailand, evaluates the applicability of the Thai UCTA to ticket resale bans, and considers judicial scrutiny of standard-form contracts to assess the legal standing of restrictive ticketing policies.

2.1 The Principle of Contractual Autonomy Under Thai Law

Thai contract law is premised on the principle of contractual autonomy, whereby parties are free to negotiate and determine the terms of their agreement within the limits of legality, public order, and good morals.

¹¹ Sakda Thanitcul, *The Regulation of Unfair Terms and Consumer Protection in Thailand* in *Contents of Contracts and Unfair Terms*, Edited by Mindy Chen-Wishart and Stefan Vogenauer, (Oxford: Oxford University Press, 2020), pp. 431-432.

This principle is codified in Section 151 Thai CCC, which signifies that the parties to a contract may determine its content freely, provided that it is not contrary to the law, public order, or good morals. Accordingly, contractual parties are bound by the terms to which they have agreed, reflecting the principle of *pacta sunt servanda* (agreements must be kept).¹²

However, the principles of contractual freedom and *pacta sunt servanda* are not without limitation. Although Thai law recognises the autonomy of contracting parties to negotiate and agree upon restrictions, including non-transferability clauses in ticket agreements, such provisions remain subject to overarching legal principles of fairness, good faith, and consumer protection. This limitation is particularly pertinent in cases involving standard-form contracts, where one party (typically the business operator) possesses significantly greater bargaining power than the other.¹³

In the case of concert ticket agreements, ticket distributors and event organisers unilaterally impose standard-form contracts that dictate the terms of sale, including resale prohibitions and non-transferability clauses. Consumers, bound by these contracts on a ‘take it or leave it’ basis,¹⁴ lack any genuine opportunity to negotiate terms, raising concerns over fairness and enforceability under contract law. While the principle of *pacta sunt servanda*

¹² Sanunkorn Sotthibandhu, **An Explanation of Juristic Acts and Contracts**, 22 ed. (Bangkok: Winyuchon Publishing, 2018), p. 313.

¹³ European Commission, **Unfair Terms in Contracts Concluded with Consumers**, (Luxembourg: Office for Official Publications of the European Communities, 1984), p. 7.

¹⁴ Azimon A. Aziz and others, **Standard Form Contracts in Consumer Transactions: A Comparative Study of Selected Asian Countries**, Malaysian Journal of Consumer and Family Economics, Volume 15 Issue 1 (January 2012), p. 1.; J. Tillotson, **Contract law in perspective**, (London: Butterworths, 1981), p. 80.

upholds the general enforceability of such agreements, judicial and statutory intervention is warranted where contract terms result in an excessive imbalance between the parties,¹⁵ contradicting principles of fairness and consumer protection.

The principle of contractual freedom is further subject to scrutiny when standard-form contracts involve excessive restrictions on consumer rights. A critical question in the context of concert ticket sales is whether a resale ban is a legitimate exercise of contractual autonomy or whether it operates as an unfair and unenforceable contractual provision. To determine this, an analysis under the Thai UCTA is required.

2.2 Unfair Contract Terms Act B.E. 2540 (1997): Can Resale Bans Be Challenged in Court?

The Unfair Contract Terms Act B.E. 2540 (1997) (Thai UCTA) serves as a statutory limitation on the absolute application of the principles of contractual freedom and *pacta sunt servanda*, preventing the enforcement of contract terms that impose undue hardship or unfair conditions on consumers. The Act empowers Thai courts to modify or nullify contractual clauses that create a significant imbalance in the rights and obligations of the contracting parties, particularly in standard-form contracts that lack meaningful negotiation.¹⁶ While Thai courts have yet to directly adjudicate the enforceability of resale restrictions in concert ticketing, judicial interpretations of unfair contract terms in other consumer contexts, coupled with comparative legal frameworks from other jurisdictions such as the EU

¹⁵ J. K. Macleod, **Consumer Sales Law**, (Oxford: Routledge-Cavendish Taylor & Francis Group, 2007), p. 427.

¹⁶ Thai UCTA, Remark.

and UK, suggest that such clauses may be subject to invalidation where they disproportionately impair consumer rights without adequate justification.

2.2.1 Defining an Unfair Contract Term Under Thai Law

Under Section 4 paragraph 1 of the Thai UCTA, an unfair contract term is defined as:

“A term in a contract as between a consumer and a business, trading or professional operator or in a standard-form contract of sale with the right of redemption which renders the business, trading or professional operator or the party prescribing the standard-form contract or the buyer to have unreasonably advantage over the other party is an unfair contract term and shall be enforceable only insofar as it is fair and reasonable in a particular case”.

This provision establishes a critical test for determining whether a non-transferability clause in a ticket agreement is legally enforceable. If a resale prohibition results in an unreasonable disadvantage to consumers, such as preventing them from recovering the cost of an unused ticket, it may be classified as an unfair contract term and deemed unenforceable by the courts.

Furthermore, Section 10 Thai UCTA grants the Thai judiciary broad discretionary powers to modify, restrict, or invalidate contractual provisions that contravene principles of fairness. In cases where a resale ban deprives consumers of fundamental rights, the judiciary has the authority to intervene and rebalance the contractual relationship.

2.2.2 Assessing Whether Ticket Transfer Restrictions Are Unfair

To determine whether a resale ban constitutes an unfair contract term under Thai law, courts may take into account several interrelated considerations.

First, the justification advanced for the restriction is central to the analysis. Event organisers frequently argue that such clauses are necessary to prevent ticket scalping, fraud, and counterfeit sales.¹⁷ However, these justifications should be assessed in the light of the burden imposed on consumers.¹⁸ Where the restriction leaves consumers with no legal recourse, such as in situation where they are unable to obtain a refund or transfer a ticket due to unforeseen inability to attend the event, the clause may be deemed disproportionate.

Second, the effect of the restriction on consumer rights must be examined. Thai consumer protection law upholds the principle of substantive fairness in contractual transactions.¹⁹ Where a resale ban unduly restricts a consumer's ability to exercise control over their purchased ticket without reasonable alternatives, the clause may fail the standards of contractual fairness embodied in the Thai UCTA.

¹⁷ Tyler J. Miller, *The End of An "Eras?" Antitrust Law and Policy Making a Drastic Change in Live Entertainment Ticketing?*, p. 296.

¹⁸ Sections 305–310 of the **German Civil Code (BGB)** establish a **legal framework for fairness and transparency in pre-formulated contractual terms**, prohibiting provisions that **contravene good faith** or **create an unjustified disadvantage for the counterparty**, rendering such terms **void and unenforceable**.

¹⁹ Thai Consumer Protection Act B.E.2522 (1979) and its amendments, Section 4 (3 bis).

Third, the issue of bargaining power asymmetry is worth considering, as concert ticket agreements are almost invariably concluded through standard-form contracts presented on a non-negotiable basis by event organisers or ticketing platforms. In such contexts, consumers lack any meaningful opportunity to negotiate or challenge the clauses. If a resale restriction results in an excessive imbalance to the consumer's detriment, it may be subject to judicial scrutiny and potentially rendered unenforceable.

Finally, Thai courts may also draw upon persuasive authority from comparative legal systems. Legal frameworks in other jurisdictions, such as the EU Unfair Terms Directive (93/13/EEC) and UK Consumer Rights Act 2015, establish a well-recognised standard against the enforcement of excessively one-sided terms in consumer contracts. These comparative insights may offer valuable guidance to Thai courts in assessing whether resale restrictions are incompatible with the principles of transparency, proportionality, and good faith.

2.2.3 Judicial Precedents on Unfair Standard-Form Contracts in Thailand

While Thai courts have yet to establish a clear precedent regarding resale bans in ticket agreements, broader rulings on unfair contract terms in consumer transactions suggest that non-transferability clauses could be subject to judicial challenge.

For example, in Supreme Court Decision no. 6088/2550, the Thai Supreme Court ruled that the clause violated the principles of fairness and consumer protection, rendering it unenforceable under the Thai UCTA. Applying this reasoning to ticketing agreements, a clause that entirely prohibits ticket transfers without offering reasonable alternatives, such as

official resale platforms, may similarly be struck down on the basis of disproportionality and consumer disadvantage.

2.3 Judicial Scrutiny of Standard-Form Contracts and Bargaining Power Asymmetry

The issue of bargaining power asymmetry is a fundamental consideration in determining the enforceability of restrictive ticketing policies. Under Thai contract law, courts recognise that standard-form contracts inherently favour the drafting party, necessitating judicial oversight to prevent abuse of dominance.²⁰

2.3.1 The Problem of Unequal Bargaining Power in Ticketing Agreements

Concert ticket agreements epitomise the archetype of a contract of adhesion, meaning a unilateral, non-negotiable agreement where consumers are left with no meaningful choice but to accept the terms imposed by event organisers. The disparity in bargaining power between ticket issuers and consumers is particularly stark in the digital era, where ticket sales are predominantly conducted through online platforms governed by pre-drafted terms and conditions.²¹ Consumers are bound by standard-form contracts that limit their ability to transfer, resell, or seek redress in the event of cancellation.²² This structural imbalance raises fundamental concerns regarding the legitimacy and enforceability of restrictive ticketing clauses under Thai contract and consumer protection law.

²⁰ See, for instance, Thai Supreme Court Decision No. 2298/2553.

²¹ James D. Hurwitz, *Restrictive Paperless Tickets: A White Paper* by the American Antitrust Institute, pp. 3 and 21-22.

²² Ibid.

2.3.2 Judicial Intervention in Standard-Form Contracts: The Thai Approach

Thai courts have long recognised the inherent power imbalance in consumer transactions, particularly in standard-form contracts that impose unilateral terms drafted by the stronger party. Under the Thai UCTA, judicial scrutiny is warranted where contract terms are disproportionately burdensome, excessively restrictive, or lack a reasonable justification that aligns with legitimate business interests.²³

The principle that courts must intervene to prevent contractual abuse is well established in Thai jurisprudence. Several Thai Supreme Court decisions have ruled that clauses excessively limiting consumer remedies are invalid, holding that it created an undue advantage for the drafting party and unfairly restricted the consumer's rights.²⁴ These judgements emphasised the necessity of fairness and balance in contractual agreements. They reinforced that freedom of contract cannot be used as a shield for oppressive, one-sided provisions, particularly where consumers lack the ability to negotiate alternative terms.²⁵

Applying this reasoning to ticketing agreements, a blanket prohibition on ticket transfers without providing consumers with reasonable recourse, such as an official resale mechanism or refund options, could be deemed unenforceable under the Thai UCTA. The absence of proportionality in such

²³ Thai UCTA, Sections 4 and 10.

²⁴ Thai Supreme Court Decision no.1989/2552, no.69/2552, no.16694/2555, no.4340/2559, no.7364/2558, and no.4566/2561.

²⁵ Andrea J. Boyack, **Abuse of Contract: Boilerplate Erasure of Consumer Counterparty Rights**, Iowa Law Review, Volume 110 (2025), pp. 499-450.

clauses, coupled with their potential to eliminate secondary markets and enhance monopolistic control by organisers, warrants judicial scrutiny.

2.3.3 The Role of the Courts in Defining the Boundaries of Fairness

While Thai contract law upholds the principle of contractual autonomy, courts have a regulatory function in ensuring that contracts remain fair, particularly where the contracting parties do not stand on equal footing. Judicial review of standard-form contracts serves as a corrective mechanism to prevent business operators from exploiting consumers through hidden, unreasonable, or excessively restrictive terms.

The enforceability of non-transferability clauses in ticketing agreements thus hinges on their reasonableness, necessity, and proportionality. The key legal questions Thai courts should address include but are not limited to:

- Does the restriction serve a legitimate business objective? If a resale ban is justified solely on commercial grounds rather than to prevent fraud or protect consumers, its validity should be questioned.
- Does the clause impose an excessive burden on consumers? If a ticket purchaser is entirely deprived of the ability to transfer their ticket, even in unavoidable circumstances (e.g., illness, scheduling conflicts, or travel restrictions), the provision may constitute an unconscionable contract term.
- Is the clause transparent and fairly disclosed at the point of purchase? Courts should assess whether consumers were adequately informed of the resale prohibition and whether the

terms were presented in a manner that ensures genuine contractual consent.

A failure to meet these legal thresholds should render the restriction unenforceable under Thai contract and consumer protection law. Moreover, as digital ticketing continues to evolve, courts should remain vigilant against technological mechanisms that further entrench contractual imbalance, such as digital locks that prevent resale, algorithmic pricing that benefits ticket issuers at the expense of consumers, and unilateral changes to ticketing terms post-purchase.²⁶

2.3.4 Comparative and Future Perspectives on Judicial Review of Ticketing Restrictions

The international legal landscape provides valuable insights into how courts assess restrictive contract terms in ticketing. In the United Kingdom, the Consumer Rights Act 2015 requires that terms imposed by businesses must be fair, transparent, and not excessively detrimental to consumers.²⁷ UK courts have ruled that restrictive resale conditions, particularly where consumers are given no alternative means of recourse, may be deemed unfair trading practices.²⁸ Similarly, the EU's Unfair Terms Directive (93/13/EEC) prohibits terms that create a significant imbalance in the parties' rights and obligations.²⁹

²⁶ Alexander P. Frawley, **Revoking the Revokable License Rule: A New Look at Resale Restrictions on Sport Tickets**, University of Pennsylvania Law Review, Volume 165 (2017), pp. 458-459.

²⁷ For instance, see, **Sections 62** and **68** of the Act.

²⁸ For instance, see, *Rugby Football Union v Viagogo Ltd* [2012] EWCA Civ 55. See also, CMA, **Secondary Ticketing: Recommendations to Government for Improving Consumer Protection**, CMA Report (2021).

²⁹ See, the EU's **Unfair Terms Directive (93/13/EEC)**, Article 3 (1).

These precedents suggest that absolute bans on ticket transfers, particularly where they are designed to preserve monopolistic control rather than protect legitimate consumer interests, would likely be struck down under a rigorous application of fairness principles. Thai courts, in interpreting the Thai UCTA, should take a comparative approach, ensuring that consumer protections in Thailand align with evolving international standards on fairness in contract law.

2.3.5 The Need for Judicial Oversight in Standard-Form Ticketing Contracts

The judicial scrutiny of standard-form ticketing contracts is essential to prevent commercial overreach and ensure contractual fairness. While the principle of *pacta sunt servanda* remains central to Thai contract law, courts should recognise that freedom of contract is not absolute, particularly where standard-form contracts significantly disadvantage consumers.³⁰ The Thai UCTA grants courts broad authority to invalidate unfair, disproportionate, or excessively restrictive clauses, including resale bans in concert ticket agreements.

From this point forward, Thai courts should take an active role in assessing the legitimacy of ticketing restrictions, ensuring that event organisers do not impose unilateral, anti-competitive terms under the guise of consumer protection. Judicial intervention should focus on balancing business justifications against consumer rights, preventing ticketing policies that unreasonably limit consumer choice, restrict secondary markets, or result in unjust enrichment for event organisers at the consumer's expense. Ultimately, the courts have a responsibility to ensure that contractual freedom does not become a tool for consumer exploitation, reinforcing a

³⁰ Thai UCTA Section 4.

legal framework that upholds fairness, transparency, and proportionality in ticketing transactions.

3. Are Concert Tickets Transferable Rights?

The legal characterisation of concert tickets is pivotal in determining their transferability and the enforceability of resale restrictions. The classification of a concert ticket as either a contractual claim or a property right significantly impacts the rights and obligations of both the ticket holder and the event organiser.³¹ Under Thai contract law, particularly Section 306 Thai CCC, the assignment of contractual claims is subject to statutory limitations, raising critical questions about whether and to what extent concert tickets can be transferred. Additionally, judicial interpretations of ticket transferability provide further guidance on the balance between consumer rights and contractual restrictions imposed by event organisers. This section critically examines the legal nature of concert tickets, the implications of Section 306 Thai CCC, and the judiciary's approach to ticket transferability, thereby assessing the extent to which resale prohibitions align with Thai contract and consumer protection law.

3.1 Legal Characterisation of Tickets: Contractual Claims or Property Rights?

A fundamental question in the legal analysis of concert tickets is whether they constitute a contractual right (right in personam) or a property

³¹ A survey conducted by Penn Schoen Berland Research involving 1,000 ticket purchasers revealed that 89% believe that **once they purchase a ticket, it is their property**, granting them full control to **give away or resell it as they prefer**. See, Penn Schoen Berland, **Fan Freedom Project** [Online], 11 February 2025. Source: <https://www.scribd.com/fullscreen/60020276>

right (right in rem). This distinction is crucial because contractual rights are generally assignable only within the constraints of the original agreement, whereas property rights can be freely transferred unless expressly restricted by law.³²

3.1.1 Concert Tickets as Contractual Claims

Concert tickets primarily function as contractual claims—that is, a right to demand performance from the event organiser. The ticket serves as evidence of a contractual agreement between the ticket purchaser and the event organiser, under which the organiser is obligated to provide access to the concert in exchange for consideration (i.e., the ticket price). This classification aligns with Thai contract law principles, which recognise that service agreements create obligations that may be transferrable, unless the contract states otherwise or the transfer contradicts the nature of the obligation.³³

Under this perspective, a concert ticket represents a claim to performance or a contractual license, granting the holder the right to attend a specific event, rather than an independent proprietary asset that can be freely sold or transferred.³⁴ This contractual characterisation means that the rights attached to a ticket may be subject to conditions imposed by the event organiser, including non-transferability clauses that restrict resale.³⁵

³² Thomas W. Merrill and Henry E. Smith, **The Property/Contract Interface**, Columbia Law Review, Volume 101 (2001), p. 773.

³³ For instance, see, sections 577 Thai CCC.

³⁴ Gregory M. Stein, **Will Ticket Scalpers Meet the Same Fate as Spinal Tap Drummers? – The Sale and Resale of Concert and Sport Tickets**, Pepperdine Law Review, Volume 42 Issue 1 (2014), pp. 23-33.

³⁵ E. Allan Farnsworth, **Contracts**, 4 ed. (Burlington: Aspen Publishing, 2004), pp. 691-694.

However, contractual claims are not inherently non-transferable, and limitations on their transferability should comply with the principles of contractual fairness under Thai law, particularly the Thai UCTA. If a non-transferability clause imposes an excessive burden on the ticket holder, it may be subject to judicial scrutiny and potential invalidation.

3.1.2 Can Concert Tickets Be Considered Property Rights?

While event organisers frequently argue that tickets constitute contractual claims, consumers often perceive them as property-like assets that they can freely transfer, resell, or gift.³⁶ This perception aligns with the principle of ownership rights under Thai law, which presumes that the purchaser of a good or service has the discretion to use or dispose of it as they see fit.³⁷

The classification of concert tickets as property rights would significantly alter their legal treatment, as property rights are freely alienable unless explicitly restricted by law.³⁸ If courts were to recognise concert tickets as personal property, resale bans could be challenged on the basis that they unduly restrict the owner's right to dispose of their property.³⁹ This argument has been raised in various jurisdictions where secondary ticket markets have been scrutinised under both consumer protection and competition law principles.

³⁶ *Supra note 31.*

³⁷ Section 1336 Thai CCC.

³⁸ Gregory M. Stein, **Will Ticket Scalpers Meet the Same Fate as Spinal Tap Drummers? – The Sale and Resale of Concert and Sport Tickets**, pp. 23-33.

³⁹ Alexander P. Frawley, **Revoking the Revokable License Rule: A New Look at Resale Restrictions on Sport Tickets**, pp. 433-446.

However, Thai law does not recognise concert tickets as tangible assets or negotiable instruments, which limits the applicability of property law principles. Unlike physical goods or financial instruments, a ticket does not confer an absolute ownership right, but rather a revocable licence to access a service.⁴⁰ This distinction is crucial, as revocable licences are subject to the terms and conditions set by the issuer. Courts in other jurisdictions have similarly rejected the argument that tickets constitute property rights, instead treating them as contractual privileges that are subject to restrictions imposed by event organisers.

This legal reasoning is reflected in *Rugby Football Union v Viagogo Ltd*,⁴¹ where the English courts held that tickets are merely contractual licences, rather than property rights. The ruling clarified that a ticket is simply evidence of a contractual right to access an event, and that the organiser retains full discretion to revoke or restrict its transferability. Similarly, in *R v Hunter*,⁴² the UK Court of Appeal ruled that ticket resale restrictions do not infringe property rights, as the underlying transaction is based on a contractual licence rather than an ownership transfer.

In addition, Section 182 of the UK Copyright, Designs and Patents Act 1988 protects performers' rights, reinforcing the notion that a ticket does not convey an ownership interest in the event itself, but merely grants temporary access to a service controlled by the event organiser. A similar legal interpretation can be drawn under Thai law, where contracts for services, including event tickets, are generally not regarded as property transfers.

⁴⁰ Ibid.

⁴¹ *Rugby Football Union v Viagogo Ltd* [2012] UKSC 55.

⁴² *R v Hunter* [2021] EWCA Crim 1785.

As such, tickets do not fit neatly into the framework of property rights, reinforcing their classification as contractual claims subject to the terms of the agreement. This means that resale bans imposed by organisers are enforceable, provided they comply with consumer protection laws and do not constitute unfair contract terms. However, judicial scrutiny may be required to ensure that such restrictions are not used as anti-competitive measures to monopolise secondary ticket markets at the expense of consumer rights.

3.2 Section 306 Thai CCC: Assignment of Contractual Claims vs. Consumer Protection Limits

The assignment of contractual claims is governed by Section 306 Thai CCC, which establishes specific formalities and limitations on the transferability of obligations. Section 306 states:

“The transfer of an obligation performable to a specific creditor is not valid unless it is made in writing. It can be set up against the debtor or third person only if a notice thereof has been given to the debtor, or if the debtor has consented to the transfer. Such notice or consent must be in writing.”

The debtor is discharged if he satisfies the transferor by way of payment or otherwise before he has received notice of, or has agreed to, the transfer.”

This provision governs the transferability of contractual rights and raises three key issues concerning concert tickets as follows.

3.2.1 Are Concert Tickets Obligations Performable to a Specific Creditor?

The phrase *“obligation performable to a specific creditor”* suggests that if a contractual obligation is uniquely tied to an identified

beneficiary, it may not be freely transferable.⁴³ Event organisers may argue that tickets are issued specifically to the original purchaser, thereby falling within the scope of Section 306 of the Thai CCC.

However, this argument is not always persuasive. Unless the contract explicitly personalises the obligation, a concert ticket should be presumed to be assignable, much like any other contractual right.⁴⁴ The fact that ticketing platforms often allow name changes or official resale through authorised channels further undermines the argument that tickets are strictly personalised obligations.⁴⁵

3.2.2 The Formalities of Ticket Transfer Under Section 306

Thai CCC

Under Section 306 Thai CCC, a valid assignment of a contractual claim requires written notice or consent from the obligor (i.e., the event organiser). This provision could be interpreted to mean that a ticket holder cannot transfer their ticket without formal authorisation from the organiser, reinforcing the legitimacy of non-transferability clauses.

⁴³ Chalor Wongwattanapikul, **Law of Obligations: Section-by-Section Explanation of the Civil and Commercial Code**, (Bangkok: October Printing, 2024), pp. 215-221.

⁴⁴ Paul MacMahon, **Contract Law's Transferability Bias**, Indiana Law Journal, Volume 95 Issue 2 (2020), pp. 492-495.

⁴⁵ Laura D. Nemeth, Steven A. Delchin and James M. Brennan, **2024 Secondary Ticket Marketplace, Guide to US Ticket Resale Regulations** [Online], 25 January 2025. Source: https://www.squirepattonboggs.com/-/media/files/insights/publications/2024/08/2024-guide-to-us-ticket-resale-regulations/2024-us-ticket-resale-guide.pdf?rev=89309dc0915745f7bd1e03aa3f9f420a&sc_lang=en&hash=B576D2F699F43C18AFE422C756ED75A5

However, this interpretation raises consumer protection concerns, as it grants event organisers absolute control over resale without necessarily serving a legitimate consumer interest. Thai courts may consider whether blanket prohibitions on ticket transfers constitute unfair contract terms under the Thai UCTA, particularly where they are used to monopolise the secondary market rather than to prevent fraud.

3.2.3 Discharge of Obligations Before Notice of Transfer

Paragraph 2 of Section 306 Thai CCC states that a debtor is discharged from their obligation if they perform before receiving notice of the transfer. Applied to ticketing agreements, this provision implies that an event organiser is only obligated to honour the ticket for the original purchaser unless they have received official notice of transfer.

However, in practical terms, many secondary market transactions occur without direct notification to the event organiser. If this provision were strictly applied, it could render many resale transactions unenforceable, depriving consumers of legal protection when purchasing tickets through unofficial secondary markets.⁴⁶ This raises further questions about the fairness of enforcing resale bans, particularly where they disproportionately benefit event organisers at the expense of consumer flexibility.

3.3 Judicial Interpretations of Ticket Transferability

Thai courts have yet to issue definitive rulings on the transferability of concert tickets. However, broader judicial principles regarding contractual

⁴⁶ Eric Schroeder and others, **A Brief Overview on Ticket Scalping Laws, Secondary Ticket Markets, and the StubHub Effect**, ABA Forum on the Entertainment and Sports Industries, Volume 30 Issue 2 (2012), p. 2.

fairness, assignment of claims, and consumer protection provide insights into how courts might approach the issue.

In cases concerning assignment of contractual rights, Thai courts have consistently emphasised the importance of clear contractual terms and the need for fairness in contract enforcement, particularly in standard-form contracts where consumers lack meaningful bargaining power.⁴⁷ Where contractual restrictions exceed what is necessary to achieve a legitimate business objective, courts have been willing to nullify or modify oppressive terms.

Furthermore, judicial interpretations of the Thai UCTA suggest that excessively restrictive resale bans could be challenged where they impose unjustified limitations on consumer rights, lack proportionality in balancing the interests of event organisers and ticket holders, or function primarily as anti-competitive mechanisms rather than legitimate fraud prevention tools.

If Thai courts were to adjudicate on the enforceability of non-transferability clauses, they would likely weigh the commercial interests of event organisers against the fundamental rights of consumers. A blanket prohibition on ticket transfers, particularly where no legitimate justification is provided, may be deemed unenforceable as an unfair contract term. These principles underscore the importance of judicial scrutiny in ensuring that resale restrictions do not operate as a means of market manipulation at the expense of consumer rights.

At this point, it is worth noting that concert tickets, while primarily contractual claims, exhibit certain property-like characteristics that make their absolute non-transferability legally contentious. The application of Section

⁴⁷ For instance, see, **Supreme Court Decision No. 1008/2537** and **No. 4183/2565**.

306 Thai CCC suggests that ticket transfers may require formal notification or consent, yet this must be balanced against consumer protection considerations. Judicial scrutiny of non-transferability clauses is necessary to prevent excessive restrictions that unfairly disadvantage consumers, ensuring that ticketing policies remain fair, transparent, and legally justifiable.

4. When Are Resale Restrictions Enforceable?

The enforceability of resale restrictions in concert ticket agreements is a critical issue in contract and consumer protection law, as it implicates the balance between contractual autonomy and consumer rights. While ticketing platforms and event organisers frequently impose resale bans to prevent ticket scalping, fraud, and unauthorised commercial exploitation, such restrictions can also operate as anti-competitive mechanisms that unjustly limit consumer choice.⁴⁸ The question of whether resale bans are unfair contract terms depends on their proportionality, necessity, and compliance with the Thai UCTA. Additionally, consumer protection laws provide legal remedies for unfair restrictions, enabling aggrieved consumers to challenge excessive resale penalties and arbitrary refund limitations.⁴⁹ This section critically examines the enforceability of resale bans, analysing whether they constitute unfair contract terms, assessing Thai Supreme Court rulings on

⁴⁸ Ashley Watson, **Anti-Hero or Villain: Analyzing Varying Competition Laws by Comparing Global Responses to Continued Competition Concerns Surrounding Ticketmaster after The Eras Tour**, SMU International Law Review (2023), pp. 2-3.; Kathleen Bradish, **That's the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment**, American Antitrust Institute (Washington: 2023), pp. 6-7.

⁴⁹ Thai Consumer Protection Act B.E.2540 (1997), Section 4 (1).

standard-form contracts, and exploring legal remedies available to consumers under Thai law.

4.1 Are Resale Bans Unfair Contract Terms?

The enforceability of resale bans in concert ticket agreements depends on whether they constitute unfair contract terms under Thai law. The Thai UCTA limits clauses that create an excessive burden on one party while disproportionately benefiting the other. If resale bans primarily serve to control the secondary market rather than protect consumers, their validity should be questioned.

While *pacta sunt servanda* binds parties to contracts, the UCTA allows courts to modify or nullify terms that unreasonably disadvantage consumers. The key issue is whether resale bans impose an unjustified burden, depriving consumers of rights without legal justification. Courts should assess their nature, purpose, and impact, determining whether they serve a legitimate commercial objective or act as economic coercion against consumers.

One of the primary concerns surrounding resale bans is the imposition of excessive penalties on consumers who attempt to transfer or resell their tickets. Many event organisers invalidate resold tickets without offering refunds or compensation, leaving consumers with no lawful recourse if they cannot attend an event.⁵⁰ This raises serious fairness concerns, particularly where organisers fail to show that resale causes tangible harm. In such cases, punitive restrictions appear less about preventing scalping and more about controlling the secondary market to the detriment of consumers.⁵¹

⁵⁰ Rebecca Black, “No One Likes Us, We Don't Care”: The Legality of Ticket Bans on Opposing Fans, pp. 325-326.

⁵¹ Shepard Goldfein and James A. Keyte, **Sports Tickets: Revocable Licenses or Rights to Resale?**, New York Law Journal, Volume 255 Issue 69 (2016), pp. 1-2.

The issue becomes even more problematic when coupled with non-refundable ticket policies, stripping consumers of any means to recover losses. This structure shields event organisers from financial risk, forcing consumers to bear the full burden of unforeseen circumstances.⁵²

Under the Thai UCTA, courts must evaluate the fairness of such clauses, considering the imbalance of bargaining power.⁵³ Standard-form ticketing contracts are unilaterally drafted by organisers, leaving consumers no opportunity to negotiate. Courts should assess whether these terms reasonably allocate risk or constitute an abuse of contractual dominance, ensuring greater scrutiny of restrictive ticketing policies.

An additional factor that exacerbates the unfairness of resale bans is the lack of transparency in ticketing agreements. Many consumers are unaware of resale restrictions at the time of purchase, as such clauses are often embedded within lengthy and complex terms and conditions that few consumers read in full.⁵⁴ The principle of contractual consent under Thai law requires that all contractual obligations be knowingly and voluntarily assumed.⁵⁵ If resale prohibitions are not clearly disclosed and unambiguously accepted at the time of purchase, consumers may have grounds to challenge their enforceability on the basis of lack of informed consent. The Thai UCTA reinforces the requirement that contract terms must be fair, reasonable, and

⁵² Clare Y. Cho, **Tickets for Live Entertainment Events: Making the Ticket Market Work for Consumers**, Congressional Research Service (Washington: 2024), pp. 12-13.

⁵³ Thai UCTA Section 4.

⁵⁴ Donald J. Vaccaro, **In the Dark: Lack of Transparency in the Live Event Ticketing Industry**, Congressional Hearing (Washington: 2020), p. 2.

⁵⁵ Thai CCC Section 149.

proportionate, particularly in consumer transactions where standard-form contracts are involved.⁵⁶

Furthermore, the comparative legal approach underscores the problematic nature of absolute resale bans. In the United Kingdom, for example, the Consumer Rights Act 2015 prohibits contractual terms that significantly restrict consumer rights without a justifiable business rationale.⁵⁷ Similarly, under the EU's Unfair Terms Directive (93/13/EEC), contractual provisions that create a significant imbalance in the parties' rights and obligations are deemed unenforceable.⁵⁸ These legal frameworks emphasise that any restrictions on resale must be proportionate, necessary, and clearly justified, a standard that should be equally applicable under Thai law.

Courts should also consider the economic implications of resale bans on market competition. By restricting secondary sales, event organisers effectively create a closed market, eliminating the possibility of price competition in the resale market.⁵⁹ The argument that resale bans prevent scalping is not entirely persuasive, particularly in cases where event organisers themselves engage in dynamic pricing strategies that inflate ticket prices based on demand.⁶⁰ If resale bans are imposed not to protect consumers but to preserve the event organiser's monopoly over ticket sales, such restrictions may contravene fundamental principles of fair trading and market competition.

⁵⁶ Thai UCTA Section 4.

⁵⁷ UK Consumer Rights Act 2015 Section 62.

⁵⁸ EU's Unfair Terms Directive (93/13/EEC) Article 3(1).

⁵⁹ Tianxin Zou and Baojun Jiang, *Integration of Primary and Resale Platforms*, *Journal of Marketing Research*, Volume 57 Issue 4 (2020), pp. 659-660.

⁶⁰ Yao Cui Izak Duenyas and Özge Şahin, *Should Event Organizers Prevent Resale of Tickets?*, *Management Science*, Volume 60 Issue 9 (2014), pp. 2160-2162.

Ultimately, the enforceability of resale bans under Thai law depends on whether they serve a legitimate consumer protection purpose or function primarily as an instrument of economic control. While event organisers may argue that resale restrictions are necessary to prevent fraud and unauthorised commercial exploitation, these justifications should be balanced against the undue hardship imposed on consumers.⁶¹ If a resale ban results in economic disenfranchisement, restricts competition, and lacks a clear proportionality rationale, it should be deemed an unfair contract term under the Thai UCTA, rendering it legally unenforceable.

Going forward, judicial scrutiny of resale bans in ticketing agreements should be rigorous and principled, ensuring that contract terms do not unjustly shift risk onto consumers while shielding businesses from accountability. Courts should adopt a consumer-centric approach, recognising that ticket holders have a legitimate interest in being able to transfer or resell their tickets, particularly when no reasonable alternative is provided. If event organisers seek to prohibit secondary sales, they should offer consumers equitable alternatives, such as official resale platforms with fair pricing mechanisms or proportionate refund policies. Without such safeguards, resale bans risk becoming a tool for market control rather than a legitimate contractual provision, necessitating judicial intervention to protect consumer rights and uphold contractual fairness in Thailand's evolving ticketing market.

4.2 Legal Remedies for Consumers

The enforceability of resale bans and restrictive ticketing policies should be considered not only in light of their fairness but also in terms of the legal remedies available to consumers who find themselves adversely

⁶¹ Philip Leslie and Alan Sorensen, **The Welfare Effects of Ticket Resale**, National Bureau of Economic Research (NBER) (Cambridge: 2009), pp. 4-6.

affected by such provisions. Thai contract and consumer protection law provide several avenues through which consumers can challenge unfair contract terms, particularly those that impose excessive penalties, restrict fundamental rights, or create a significant imbalance between the parties. The legal landscape governing ticket resale restrictions is shaped by judicial interpretations of standard-form contracts and statutory consumer protection mechanisms. These frameworks offer consumers both judicial and administrative redress, allowing them to contest restrictive ticketing policies that may constitute unfair trade practices.

The Thai Supreme Court has established a strong precedent in scrutinising unfair standard-form contracts, emphasising the importance of proportionality and contractual fairness. Thai courts have consistently held that businesses cannot impose excessive financial penalties on consumers or unilaterally modify contract terms to the detriment of weaker parties. In Supreme Court Decision No. 6088/2550, for instance, the Court ruled that a contractual penalty clause that imposed an unreasonable burden on the consumer constituted an unfair contract term under the Thai UCTA. The reasoning in this case is particularly relevant to resale bans in ticketing agreements, as such prohibitions often result in the complete invalidation of a ticket without any form of compensation. If a consumer is deprived of both the ability to transfer a ticket and the right to claim a refund, the contractual provision effectively forces them to bear the entire economic loss, while the event organiser remains free to resell the ticket for additional profit. This imbalance raises concerns under the Thai UCTA, which mandates that contractual terms must not impose disproportionate burdens on consumers while granting the business party excessive benefits.

Thai courts have also underscored that consumer contracts must be clear, transparent, and free from deceptive or exploitative clauses.⁶² Many ticketing agreements incorporate resale bans within complex and lengthy terms and conditions, which consumers may not have had a reasonable opportunity to review before purchasing a ticket.⁶³ As previously discussed, the principle of informed consent is a cornerstone of Thai contract law, and consumers who were not adequately informed of restrictive resale policies may have grounds to challenge their enforceability. A contract cannot be legally binding if one party was unaware of a fundamental restriction at the time of agreement, particularly when such a restriction significantly affects their rights. Courts may, therefore, apply the doctrine of unconscionability, invalidating contract terms that were unfairly imposed on consumers without proper notice.

Beyond judicial remedies, consumers can seek redress through the Office of the Consumer Protection Board (OCPB), a regulatory body established under the Consumer Protection Act B.E. 2522 (1979) to investigate and adjudicate claims of unfair business practices. The OCPB has the authority to examine contractual disputes, determine whether ticketing policies violate consumer protection standards, and order corrective measures where necessary.⁶⁴ This mechanism provides an accessible alternative to formal litigation, allowing consumers to challenge unfair ticketing policies without incurring prohibitive legal costs. The OCPB has previously ruled against unfair terms in standard-form contracts, particularly in cases where businesses

⁶² *Supra* note 47.

⁶³ Office of Fair Trading, **Guidance on Unfair Terms in Consumer Entertainment Contracts** (London: Office of Fair Trading, 2003), pp. 7-8.

⁶⁴ Thai Consumer Protection Act B.E. 2522 (1979) Section 10.

exercised disproportionate control over consumer transactions.⁶⁵ The ability of the OCPB to investigate resale bans and refund policies is therefore crucial in ensuring that event organisers do not exploit their market position at the expense of consumer rights.

However, while the OCPB provides an important regulatory safeguard, its enforcement mechanisms remain limited, and consumers seeking direct compensation may still need to pursue civil litigation. Under Thai contract law, particularly the Thai CCC, consumers who suffer economic harm due to an unfair contract term may seek damages or declaratory relief.⁶⁶ If a ticket resale ban leads to an unjust financial loss, consumers could argue that the contractual restriction was both unenforceable under the Thai UCTA and an unjust enrichment mechanism under Thai civil law. A key argument would be that the event organiser benefits financially from resale restrictions, as invalidated tickets can be resold at a higher price, while the original purchaser receives no compensation. Thai courts have recognised that contracts must not unjustly enrich one party at the expense of another,⁶⁷ and where resale bans function as a means of financial exploitation rather than fraud prevention, they may be legally contestable.

Another critical dimension of consumer litigation is the ability to challenge non-refundable ticket policies, which often operate in tandem with resale bans. Thai contract law requires that obligations be performed in good

⁶⁵ See, Office of the Consumer Protection Board, **Consumer Case Rulings** [Online], 7 January 2025. Source: https://www.ocpb.go.th/more_news.php?cid=279

⁶⁶ Daraporn Thirawat, **Restructuring of Contract Law under the Current Crisis – Consumer Protection Law in Thailand with regard to Contracts**, A Paper presented at the 3rd International Symposium on Economic Law Reform in the Aftermath of Asian Crisis: Experiences of Japan and Thailand (Bangkok, 20 March 2000).

⁶⁷ *Supra* note 47.

faith,⁶⁸ and event organisers who enforce strict non-refundable policies while simultaneously preventing resale may be acting in bad faith. Courts have ruled that business operators cannot impose contract terms that strip consumers of all remedial options, particularly where external factors, such as illness, travel restrictions, or force majeure events, prevent attendance.⁶⁹ If a concert is rescheduled or postponed, consumers who are unable to attend the new date should have the right to seek a proportionate refund or transfer their ticket to another party. Blanket prohibitions on ticket refunds and transfers, without consideration for individual circumstances, may be deemed legally excessive and contrary to the principles of contractual equity under Thai law.

The issue of ticket resale bans also implicates Thai competition law and market fairness principles, particularly where organisers monopolise the secondary ticket market through exclusive resale platforms. Courts may need to examine whether restrictive resale policies constitute an abuse of market dominance, preventing competition and inflating ticket prices.⁷⁰ If resale bans serve primarily to channel consumers toward higher-priced resale platforms controlled by the event organiser, rather than to protect consumers from fraud, they may be challenged on anti-competitive grounds.⁷¹ The OCPB and the Trade Competition Commission of Thailand (TCCT) could play a role in ensuring that event organisers do not manipulate resale markets to eliminate

⁶⁸ Thai CCC Section 5.

⁶⁹ UNCTAD, **Voluntary Peer Review of Consumer Protection Law and Policy of Thailand**, (New York United Nations Publications, 2022), pp. 19-20.

⁷⁰ James D. Hurwitz, **Restrictive Paperless Tickets: A White Paper by the American Antitrust Institute**, pp. 1-2.

⁷¹ Yao Cui Izak Duenyas and Özge Şahin, **Should Event Organizers Prevent Resale of Tickets?**, pp. 2160-2162.

consumer choice, thereby maintaining a fair and transparent ticketing ecosystem.

Ultimately, the enforceability of ticket resale restrictions under Thai law should be considered within the broader framework of consumer protection, contractual fairness, and market regulation. While event organisers may have a legitimate interest in preventing fraudulent resales and maintaining ticketing integrity, these interests should be weighed against the disproportionate impact of resale bans on consumers. Courts and regulatory bodies should ensure that ticketing policies do not become instruments of economic exploitation, allowing event organisers to profit from restrictive terms while leaving consumers with no viable recourse. A more balanced approach would involve permitting resale under reasonable conditions, such as through authorised platforms with transparent pricing mechanisms, rather than imposing absolute prohibitions that solely benefit the event organiser.

Going forward, judicial intervention and regulatory oversight should be strengthened to ensure that ticket resale bans comply with Thai consumer protection law. The OCPB should take a more active role in investigating restrictive ticketing policies, while courts should continue to apply the Thai UCTA and Thai CCC principles to prevent consumer exploitation. As the ticketing industry evolves, legal frameworks should adapt to ensure that business justifications for resale bans do not override fundamental consumer rights, ultimately fostering a fair and equitable secondary ticketing market in Thailand.

4.3 Balancing Business Justifications Against Consumer Protections

The enforceability of resale bans in concert ticket agreements depends on whether they serve a legitimate commercial purpose or function as an anti-consumer mechanism. While event organisers have a justifiable

interest in preventing fraudulent sales, restrictions that unreasonably limit consumer rights, impose excessive penalties, or create an unfair financial burden may be subject to judicial invalidation under the Thai UCTA.

Thai courts and consumer protection agencies should ensure that ticketing policies strike an appropriate balance by allowing reasonable restrictions while preventing consumer exploitation. Going forward, judicial scrutiny of resale bans should focus on:

- Ensuring that penalties for resale are proportionate and fair.
- Prohibiting non-refundable ticket policies that impose an excessive burden on consumers.
- Strengthening legal remedies for consumers through administrative and judicial mechanisms.

Ultimately, the legal framework governing ticket resale in Thailand should evolve to reflect contemporary market realities and consumer rights principles, ensuring fairness, transparency, and accountability in the secondary ticketing market.

5. Judicial Review of Resale Bans: Comparative Insights

The judicial scrutiny of resale bans in concert ticketing has gained prominence as courts across jurisdictions grapple with balancing consumer rights, contractual autonomy, and market competition. The question of whether blanket resale prohibitions constitute an abuse of economic power or a legitimate business necessity has sparked significant legal debate.⁷² While Thai law lacks specific jurisprudence on this issue, comparative insights from the European Union (EU) and the United Kingdom (UK) provide a robust

⁷² See, James D. Hurwitz, *Restrictive Paperless Tickets: A White Paper* by the American Antitrust Institute.

framework for assessing how courts approach restrictive resale policies. These jurisdictions have developed legal doctrines and consumer protection mechanisms that may offer valuable guidance in shaping Thailand's judicial response to resale bans.

This section examines the judicial review of resale bans through three key perspectives: consumer law restrictions under EU law, UK competition law challenges against restrictive ticketing practices, and the judicial balancing of fraud prevention and consumer rights. A comparative analysis of these legal frameworks underscores the importance of proportionality, fairness, and competition principles in determining the enforceability of resale bans, highlighting potential legal pathways for Thai courts to consider when adjudicating similar disputes.

5.1 EU Consumer Law Restrictions on Resale Bans

The European Union (EU) has taken a pro-consumer approach to ticket resale, emphasising contractual fairness, market transparency, and the prevention of anti-competitive restrictions. EU consumer law establishes a framework that restricts the enforceability of overly broad resale bans, particularly where such prohibitions unfairly limit consumer rights. The key legal instruments relevant to this analysis include the Unfair Contract Terms Directive (93/13/EEC) and the Consumer Rights Directive (2011/83/EU).

Under the Unfair Contract Terms Directive, contract provisions that create a significant imbalance in the parties' rights and obligations are deemed unfair and, consequently, unenforceable.⁷³ Courts in various EU

⁷³ EU's Unfair Contract Terms Directive 93/13/EEC Article 3(1) stipulates that a contractual term not individually negotiated is considered unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer. Such unfair terms are deemed

member states have applied this principle to invalidate ticket resale restrictions, particularly where such bans serve primarily commercial rather than consumer protection purposes. For instance, the German Federal Court of Justice ruled that absolute prohibitions on ticket transfers could constitute an unfair contract term if they disproportionately restrict consumers while granting event organisers unilateral control over the secondary market.⁷⁴ This ruling aligns with the view that contractual freedom must be tempered by consumer rights considerations, ensuring that businesses do not impose arbitrary restrictions that deprive ticket holders of their reasonable expectations.

The Consumer Rights Directive further reinforces these protections by mandating transparency and fairness in consumer transactions.⁷⁵ Courts have scrutinised resale bans where ticketing terms failed to provide consumers with clear, upfront information regarding transferability restrictions. In cases where ticket purchasers were not explicitly informed of resale bans before purchase, courts have ruled that such clauses were unenforceable due to a lack of informed consent.⁷⁶ This legal reasoning is particularly relevant in Thailand, where standard-form contracts often embed resale bans in lengthy terms and conditions, making them difficult for consumers to detect and evaluate.

unenforceable. This principle is further elucidated in the **European Commission's guidance on unfair terms in consumer contracts**, which emphasises that terms causing a significant imbalance against the consumer are prohibited.

⁷⁴ For instance, see **Case I ZR 74/06**, (BGH's judgement of September 11, 2008) and **Case C-237/02 Freiburger Kommunalbauten GmbH Baugesellschaft & Co. KG v. Ludger Hofstetter and Ulrike Hofstetter**.

⁷⁵ EU Consumer Rights Directive (2011/83/EU), Articles 5 and 6.

⁷⁶ House of Commons Culture, Media and Sport Committee, **Ticket Touting**, (London: The Stationery Office Limited, 2007), pp. 24-25.

Additionally, the EU's stance on digital market fairness has prompted legal challenges against platform-exclusive resale restrictions. The European Commission has investigated cases where event organisers have restricted resale solely to their own secondary ticketing platforms, thereby preventing consumers from accessing competitive market alternatives.⁷⁷ These cases illustrate the principle that business justifications for resale bans must be balanced against consumer rights and fair competition concerns, a judicial approach that may inform Thai courts in future ticketing disputes.

5.2 UK Competition Law Challenges Against Restrictive Resale Policies

The United Kingdom (UK) has taken a strong regulatory stance against anti-competitive resale restrictions, particularly where event organisers seek to control secondary ticket markets through restrictive practices. UK courts and regulatory bodies, such as the Competition and Markets Authority (CMA), have scrutinised resale bans under competition law and consumer protection principles, emphasising that blanket prohibitions on ticket resale may constitute an abuse of market dominance.

A pivotal case in this context is the CMA's enforcement action against Viagogo, a secondary ticketing platform that engaged in unfair commercial practices by failing to disclose key ticketing restrictions to consumers. The case underscored the legal principle that ticketing platforms and event organisers must ensure transparency in resale policies, particularly where resale bans deprive consumers of alternative avenues to transfer their

⁷⁷ European Commission, **Market Places and Digital Services** [Online], 12 February 2025. Source: https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/market-places-and-digital-services_en?

tickets.⁷⁸ Following regulatory pressure, the UK courts ruled that ticket sellers must clearly disclose any resale limitations at the point of purchase, reinforcing the requirement of informed consumer consent.⁷⁹

The UK legal framework also addresses the anti-competitive nature of exclusive resale platforms, a practice commonly employed by event organisers to retain full economic control over the ticketing ecosystem. Courts have examined cases where resale bans were structured not to prevent fraud but to eliminate competition, leading to findings that such practices constitute an unfair market restriction. For instance, *Football Association Premier League Ltd v. QC Leisure & Others*,⁸⁰ despite not directly addressing the issue of restricting resale to a single authorised platform, reflect the broader legal context concerning ticket resale and competition law in the UK, as it unjustifiably eliminated secondary market competition. Additionally, in 2012, the Rugby Football Union (RFU) successfully sued Viagogo to obtain the identities of individuals reselling tickets in violation of the RFU's terms and conditions, highlighting legal actions taken to control unauthorised ticket resale.⁸¹ These judgments reinforce the view that resale bans must not be used as a tool to entrench monopolistic control, a principle that could have direct implications for Thai competition law enforcement in the ticketing sector.

UK courts have also taken a measured approach to fraud prevention claims by event organisers, ruling that resale restrictions must be proportionate to the actual risks involved. While preventing fraudulent

⁷⁸ *Rugby Football Union v Viagogo Ltd* [2012] UKSC 55.

⁷⁹ *Ibid.*

⁸⁰ C-403/08 [2008] EWHC 44.

⁸¹ *Rugby Football Union v Viagogo Ltd* [2012] UKSC 55.

ticketing is a legitimate concern, UK jurisprudence has established that organisers cannot impose absolute bans without demonstrating clear and compelling reasons why less restrictive measures would be insufficient.⁸² Thai courts may look to this precedent in evaluating whether fraud prevention justifications for resale bans are proportionate or merely pretextual mechanisms for economic control.

5.3 Balancing Business Justifications Against Consumer Rights: Judicial Approaches

The judicial balancing of business justifications for resale bans and consumer rights remains a highly contested issue in international ticketing disputes. As discussed previously, courts across jurisdictions have consistently ruled that resale restrictions must be narrowly tailored to serve legitimate interests without unduly burdening consumers. The key legal principle emerging from comparative jurisprudence is that business justifications for resale bans cannot override fundamental consumer protection standards, and courts must assess such restrictions through a proportionality framework.

A central theme in judicial rulings is that while fraud prevention is a legitimate business objective, it does not justify absolute resale bans.⁸³ Courts have recognised that there are less restrictive means of preventing fraud, such as digital ticket verification systems, dynamic barcodes, and official resale platforms with price controls.⁸⁴ In contrast, an outright prohibition on ticket resale effectively transfers all financial risk to the consumer, preventing them

⁸² Ibid.

⁸³ United States Government Accountability Office, **Event Ticket Sales: Market Characteristics and Consumer Protection Issues**, (Washington: U.S. Government Accountability Office, 2018), pp. 36-50.

⁸⁴ Ibid., pp. 34-35.

from recovering the ticket's value even in cases where they are unable to attend the event.⁸⁵ Such a shift in risk allocation raises legal questions about fairness and contractual equity, prompting courts to apply consumer protection principles in limiting the enforceability of resale bans.

Additionally, courts have increasingly taken a context-specific approach to resale bans, assessing whether such restrictions align with broader legal and economic policy considerations. In jurisdictions with strong pro-competition policies, such as the UK and EU, courts have ruled that resale bans that eliminate secondary markets are inherently anti-competitive and violate market fairness principles.⁸⁶ These rulings suggest that resale bans must be examined not only through a consumer rights lens but also within the broader framework of market regulation and economic competition.

For Thailand, the comparative legal insights from EU and UK case law provide valuable guidance in shaping judicial approaches to ticket resale bans. Thai courts could adopt a proportionality-based framework, assessing whether resale restrictions:

- (1) Are clearly disclosed to consumers at the point of sale.
- (2) Serve a legitimate consumer protection function rather than a monopolistic purpose.
- (3) Are proportionate to the risks they seek to mitigate, particularly fraud.
- (4) Do not unduly restrict secondary market competition in violation of competition law principles.

⁸⁵ Andrew Cline, **Banning 'Scalping' Won't Fix the Ticket Resale Market** [Online], 22 January 2025. Source: <https://jbartlett.org/2024/03/banning-scalping-wont-fix-the-ticket-resale-market/>

⁸⁶ See Sections 5.1 and 5.2 of this article.

By adopting this comparative judicial approach, Thai courts could develop a legal standard for evaluating ticket resale bans, ensuring that business justifications for such restrictions are held to rigorous scrutiny while preserving consumer rights and market fairness.

Therefore, judicial review of resale bans in the EU and UK underscores the necessity of balancing consumer rights, competition principles, and business justifications in ticketing disputes. Thai courts and regulatory authorities can look to these legal precedents in shaping their approach to ticket resale restrictions, ensuring that such policies remain fair, proportionate, and legally justifiable within Thailand's evolving legal landscape.

6. Conclusion and Legal Recommendations

The enforceability of ticket resale bans in Thailand presents a legal challenge at the intersection of contract law, consumer protection, and competition law. While event organisers have legitimate interests in fraud prevention and fair ticket distribution, blanket resale prohibitions risk becoming anti-competitive tools that disproportionately burden consumers. This article has highlighted the power imbalance in ticketing agreements, where consumers must adhere to restrictive standard-form contracts without negotiation. Thai courts and regulators should adopt a proportionate, consumer-centric approach, ensuring that resale bans serve legitimate purposes rather than market control.

6.1 Strengthening Judicial Oversight on Unfair Contract Terms in Ticketing

Judicial scrutiny is essential in assessing whether resale bans impose excessive restrictions on consumers. While Thai courts have developed principles of contractual fairness, ticket resale bans remain under-examined.

Courts should apply a proportionality test, requiring event organisers to justify restrictions. If bans impose undue burdens, such as ticket invalidation without refunds, courts should apply the Unfair Contract Terms Act B.E. 2540 (1997) to strike down or modify such clauses.

International precedents, particularly from the EU and UK, offer useful guidance, as courts in those jurisdictions have invalidated disproportionate resale bans. Thai courts should adopt similar reasoning, ensuring resale bans are reviewed on a case-by-case basis. Additionally, non-refundable ticketing policies should receive greater scrutiny. If resale is prohibited and refunds are denied, consumers are left without financial recourse, creating an unfair contractual imbalance that courts must address.

6.2 Allowing Reasonable Resale Allowances While Preventing Fraud

A complete ban on ticket resale is neither legally nor economically justifiable. While fraud prevention and price regulation are valid concerns, less restrictive solutions exist. Thailand should promote regulated resale through official resale platforms that verify ticket authenticity and regulate pricing, similar to policies in Belgium and Denmark.

A tiered resale model could differentiate between individual consumers and commercial scalpers, allowing legitimate resale within reasonable limits while restricting bad-faith resellers engaged in price manipulation. Courts and regulators should encourage authorised resale mechanisms, ensuring bans do not serve monopolistic interests.

Technological innovations, such as blockchain-based ticket verification and digital barcodes, can further reduce fraud without requiring absolute resale bans. Thai policymakers should explore these tools to protect consumers while maintaining market integrity.

While secondary markets for concert ticket resale exist in Thailand, particularly through online platforms such as Ticketmaster, Megatix, and StubHub, they currently operate without a clearly defined statutory framework or regulatory oversight. To address concerns arising from this legal lacuna, including issues of transparency, consumer protection, and the potential for anti-competitive practices, the establishment of a dedicated regulatory framework is imperative. Given its statutory mandate to oversee unfair contract terms and safeguard consumer interests, the Office of the Consumer Protection Board (OCPB) is well-positioned to serve as the primary regulatory authority responsible for monitoring secondary ticketing practices. Additionally, in situations where resale restrictions are used to monopolise the secondary market or exclude competing resale platforms, coordination with the Trade Competition Commission of Thailand (TCCT) would be appropriate to ensure compliance with competitive law. The formal designation of a competent regulatory authority, underpinned by clear legislative provisions, would facilitate the development of a legally coherent and equitable resale regime. Such a framework would accommodate legitimate secondary market transactions while ensuring effective consumer protection.

6.3 Clarifying Legal Limits on Restrictive Contract Clauses in Thai Law

Thailand currently lacks specific statutory provisions governing ticket resale, thereby enabling event organisers to impose restrictive clauses without effective legal oversight. This regulatory gap underscores the need for legislative clarification to codify legal limits of enforceable contractual restrictions within the ticketing industry.

To enhance legal certainty and safeguard consumer rights, statutory reforms should include several core elements. First, resale restrictions must be clearly and prominently disclosed at the point of sale to ensure transparency and informed consent. Second, resale bans that lack necessity and proportionality should be deemed unenforceable. Third, the existing secondary market for ticket resale should be brought under formal regulatory oversight, and made subject to fair pricing requirements, identity verification, and consumer protection standards. Finally, where resale is contractually prohibited, event organisers should be legally obligated to provide alternatives, such as refund or exchange options, to prevent undue financial loss to consumers.

Clarifying these legal limits would promote transparency, contractual fairness, and market accountability, while aligning Thai law with fundamental principles of consumer protection and comparative legal standards.

6.4 Final Thoughts

The regulation of ticket resale must balance business justifications with consumer protection and fair competition. Judicial oversight should intensify to prevent resale bans from being misused for market control. Clear statutory provisions defining permissible resale restrictions should be introduced, ensuring contractual fairness.

A well-regulated secondary ticketing market where resale occurs under transparent and consumer-friendly conditions would enhance fairness, prevent monopolistic practices, and foster greater economic efficiency in Thailand's ticketing industry. Future legal reforms should ensure resale bans are proportionate, transparent, and legally justified, creating a fair and competitive ticketing environment.

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