


Arbitration Dispute: Binding Nature of Commercial Practices

This case brief examines an arbitration case between Company T and Company D regarding the binding nature of informal commercial practices in their distribution agreement. The dispute centers on whether unsigned and unstamped orders constitute binding obligations, and if failure to pay for delivered goods breaches the contract.

Resource: <https://www.viac.vn/thu-tuc-trong-tai/083-%7C-gia-tri-rang-buoc-cua-thoi-quen-giua-cac-ben-a226.html>

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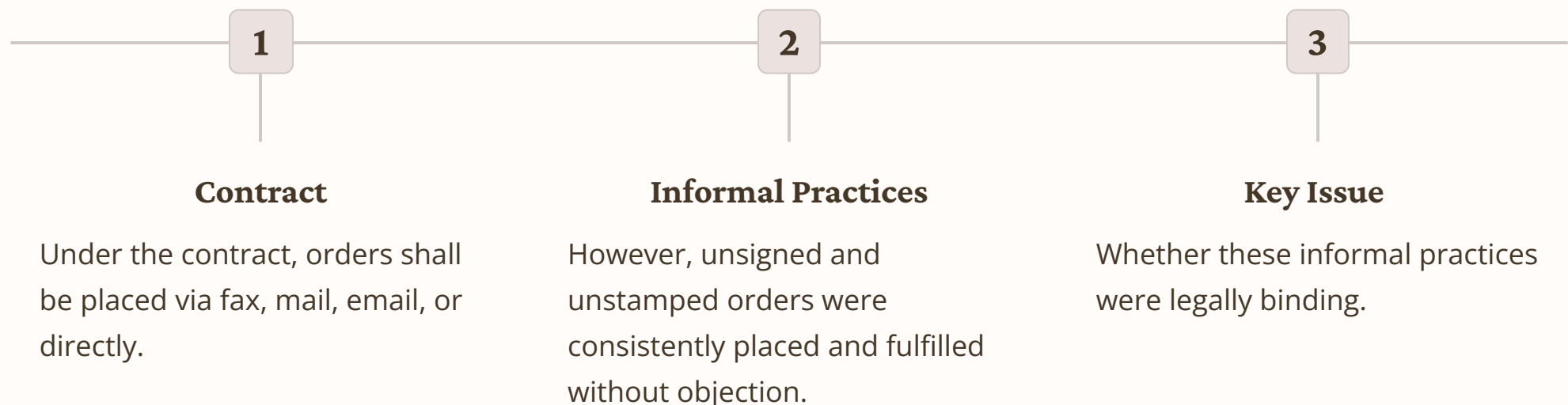
Case Background and Facts

Company T (Plaintiff) entered into a distribution agreement with Company D (Defendant), appointing Company D as its distributor. The contract stipulated that Company D would place orders via fax, mail, email, or directly through Company T's employees, and Company T would deliver the goods within 48 hours after receiving the payment order and confirming the purchase order.

On June 18, 2012, Company D placed an order, but the order lacked the signature and stamp. The delivery notes, dated June 20, 2012, were signed by Mr. A, the Defendant's representative, but also lacked the stamp. Despite this, the goods were delivered and accepted by the Defendant. However, Company D failed to make the required payment for the goods.

The parties had a history of informal practices, where similar unsigned and unstamped orders were consistently placed and fulfilled without objection. By the time of the arbitration hearing on January 4, 2013, the Defendant had still not paid for the goods, prompting Company T to initiate arbitration proceedings.

The key issue before the Arbitration Tribunal was whether these informal practices were legally binding and if the Defendant's failure to pay constituted a breach of contract.





Legal Issue

Whether an established commercial practice between two contracting parties, developed through consistent informal conduct (such as unsigned and unstamped orders), can be considered binding under the law?

Arbitration Tribunal's Holding

The Arbitration Tribunal ruled that the consistent commercial practice between Company T and Company D, despite lacking certain formalities (such as signatures and stamps), constituted a binding commercial practice. The Tribunal further held that Company D breached its contractual obligation to make payment for the goods received.

Tribunal's Reasoning

The Tribunal found that the purchase orders, delivery documents, and invoices, including the disputed June 18, 2012, order, followed the same informal format that had been consistently used in previous transactions between the parties. All documents were signed by Mr. A, representing the Defendant, in line with prior dealings. This consistent pattern constituted a commercial practice as defined in Clause 3, Article 3 of the 2005 Commercial Law. The Tribunal deemed this practice binding under Article 12 of the 2005 Commercial Law, which recognizes that commercial practices established between the parties are binding unless otherwise agreed or in violation of the law. Since the Defendant failed to pay for the goods as required under Article 5 of the contract, the Tribunal determined that the Defendant had breached its payment obligations.

Key Legal Principles

1

Commercial Practice

Commercial practice is defined as a repeated pattern of behavior that is implicitly acknowledged by the parties to establish rights and obligations in a commercial contract.

2

Binding Nature of Commercial Practices

Commercial practices established between parties are binding unless otherwise agreed or in contradiction with the law.

3

Contractual Breach for Non-payment

A party's failure to fulfill its payment obligations after receiving goods constitutes a breach of contract.

Lessons for Practice

1

Informal Practices Can Become Binding

Businesses should be aware that informal practices—such as unsigned or unstamped orders—can become binding if they are consistently followed over time and implicitly accepted by both parties. Even without formal documentation, repeated conduct may establish enforceable rights and obligations.

2

Legal Enforceability of Commercial Practices

Under Vietnamese commercial law, once a commercial practice is established, it can be legally binding, and failure to adhere to these established practices may be treated as a contractual breach. Businesses must carefully monitor their ongoing commercial practices with partners to ensure compliance or expressly reject practices they do not wish to follow.

3

Importance of Payment Obligations

In commercial transactions, even if informal practices exist, payment obligations remain crucial. Failing to meet these obligations, especially after accepting goods, is likely to be viewed as a serious breach of contract, leading to legal consequences.

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