

The Precedent Refers as the Custom of Taiwan's Civil Code §1

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Abstract

The system of precedent in the practice during the trial has played a significant role and formed its own characters for the past 6 decades in Taiwan. The dissenting opinions of The Interpretation of the Council of Grand Justices No. 576 assumed that the system of precedent implemented by our supreme court is more likely to violate the constitution. These opinions for us are worth reconsidering again in this essay.

I especially try to submit the following new explanations, namely: “The ratio decidendi declared in the precedent has obtained the same status as the custom of §1 of Taiwan's civil code with the legal obligation” according to the basic point of view which points out that the custom as the second most important resource of laws has lost its modern definition and effectiveness. Through such a new definition the struggles relating to the status of the precedent can expectively be resolved. The custom law which is gradually losing its original definition in modern society could therefore be restored and used in our modern society.

Keywords: precedent, custom, custom law, judge-made law, the resource of law, Taiwan's civil code §1, legal obligation, the standard formed by a case (Fallnorm)

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