

A Study on the Warranty against Defects of Right

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Abstract

Most civil law scholars in Taiwan argue that both the “warranty against defects of right” and the “warranty against defects of thing” constitute the so-called “warranty system”. Such a warranty system is applied in particular to ensure the transaction security of a contract with consideration, and that is different from the system of “non-performance”. Nonetheless, the author has a different view.

Taiwan Civil Code Article 349 provides that “The seller of a transaction shall secure the buyer that a third party may not claim any right on the subject matter of the transaction.” The purpose of this article, however, is to make sure that the seller is obliged to exclude any right of a third party on the subject matter of the transaction; when the seller fails to exclude the third-party-right, it shall be deemed as a case of “non-performance”. As such, the “warranty against defects of right” is part of the “non-performance” system, and it is different from the “warranty against the defects thing”. Therefore, the author argues that in theory, the seller bear burdens of “warranty against defects of right” shall be based on the theory of “non-performance” system, rather than on the theory of ensuring the balance for a contract with consideration, as claimed by most civil law scholars in Taiwan.

This research project also provides analytical views from common law, the United Nations Convention on the sale of goods of 11th of April 1980, and the newly applied German debt law of 1st of January 2002, in order to explore future

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trends for the Taiwan Civil Code on the system of “warranty against defects of rights”.

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