

The Vesting of the Effect on Substantive Law of the Creditor's Subrogation Right to Exercise the Debtor's Claims

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Abstract

Most Taiwanese scholars and courts consider that the legal effect of the creditor's subrogation right shall belong to the obligor. In addition, a majority of Taiwanese scholars consider that after the creditor exercises his subrogation right and receives the third obligor's presentations, the creditor shall not claim for offset. On the other hand, a minority of Taiwanese scholars consider that the creditor may claim for offset. The judicial interpretation in Mainland China considers that the legal effect of the creditor's subrogation right belongs to the creditor. Most Japanese scholars consider that the legal effect of the creditor's subrogation right shall belong to the obligor. But the views of the scholars and courts that whether the creditor may claim for offset or not are different. This thesis considers that the legal effect of the creditor's subrogation right shall belong to the obligor and the creditor shall not claim for offset.

Keywords: subrogation, subrogation right, creditor's subrogation right (obligee's subrogation right), exercise the subrogation right and receive the presentation, preferential right of payment, lien, offset (setoff)

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