

**The Legal Structure of Objective Scope of Enforcement Force's
Extension: With the Difference between Objective Scope of
Enforcement and Res Judicata**

Shu-Huan Shyu *

Abstract

The objective scope of enforcement of payment judgment is thought to be equal to the objective scope of res judicata, but the foundation isn't well illustrated. Nevertheless, res judicata is the demand in the interior of judicial domain to hold the same decision when re-deciding in later litigation for law stability. In contrast, enforcement force realizes the judgment by a strong hand and is guided with proper intention. Since the purposed and functions are different between res judicata and enforcement, the objective scopes are probably disparate. This article takes some types of cases ruled by Compulsory Enforcement Law and admitted by enforcement practice for example to assert that in circumstances of taking final and unappealable judgment as a ground for execution, the objective scope of enforcement isn't always equal to res judicata. It's because that the function of enforcement force is to compulsory realize the payment interests in grounds for execution. To achieving the purpose of enforcement, the extension of scope of enforcement force is allowable as long as possessing the following legitimacy of substantiality and procedure. 1. From observing payment claim confirmed by grounds for execution and the circumstances before or after the establishment of grounds for execution, the possibility of existence of the creditor's new payment claim (extended claim) is high, and the substantial interests of both claims is similarly the enforcement interests which grounds for execution allow; 2. if the new claim above can't clearly be affirmed by original grounds for execution, enforcement court should

* Associate Professor of Law, College of Law, National Taiwan University.
Email: shyuush@ntu.edu.tw

examine it through the materials addressed by the creditor. Nevertheless, there isn't substantial determining force in the result of examination, and the debtor still can sue for settling substantial disputes. 3. The mutual use of grounds for execution is to achieve the best effectiveness for settling disputes and protect the creditor's procedural interests and lawsuit economy. Because it has no need to demand the creditor to get new grounds for execution for new payment claim, the saving of new one isn't unfair to the debtor. Furthermore, if the debtor doesn't disagree to the existence of new claim, the saving can economize the expense of effort, time and money, and avoid the procedural disadvantage.

Keywords: the objective scope of enforcement force, inherited enforcement, the subjective scope of enforcement force, procedural protection, procedural interest, assumption of litigation at will, the effect to fix party litigant