

Do Mainland China's Final Civil Judgments or Arbitration Awards Recognized by Taiwan Courts Have any Res Juricata: The Analysis of Supreme Court Judgment No.2531(2007) and No.2376(2008)

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Abstract

Does Mainland China's determined judgment or arbitration decision, which was recognized by Taiwan court, have any res juricata? Supreme Court judgment No.2531 (2007) and No.2376 (2008) said "no" mainly because of the absence of explicit legislation. However, these two judgments are far from general opinions. It is a loophole for Act Governing Relations between People of the Taiwan Area and Mainland Area. It is necessary to analogize Civil Procedure Code Article 402 and Arbitration Act Article 37 to affirm the res juricata. As for the nature of res juricata, there is res juricata where there is Due Process. From the viewpoint of judicial assistance, if we deny the res juricata of Mainland China's judgments and arbitration decisions, they may take reprisal measures arising great impact on people between two sides of Taiwan Strait. To solve the dispute, amendment suggestions to Act Governing Relations between People of the Taiwan Area and Mainland Area are provided in this article.

Keywords: Act Governing Relations between People of the Taiwan Area and Mainland Area, public order and morality, doctrine of reciprocity, recognition and enforcement of foreign judgment, objection suit res juricata (finality and conclusiveness of the judgment), legal method, legal loophole, analogy, judicial assistance

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