

The Study of Judicial Act of Profiteering

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Abstract

In Civil Code there are two main significant general provisions which need to be specialized through case-types by civil courts. In addition to the principle of good faith, the other general provision namely is "public order and good morals" (Article 72 of the Civil Code). However, in comparison to the former one which owns so many literatures relating to the principle of good faith, the latter apparently lacks researching. What amongst particularly overlooked is the Civil Code Article 74 regarding the Judicial Act of Profiteering. In Germany, Profiteering is a special form against public order and good morals. Although in essence it is subtype of violation of public order, but it already has its own composition of the elements and effects. Therefore, the study of profiteering belongs to the study of specification of the public order.

The main purpose of the provision of the profiteering system which refers mainly to the criminal law on the provisions of the increased heavy interest is to protect the economically disadvantaged consumers from the economic exploitation. The original idea is to deal with the typical judicial acts of payment of the consumer loans to obtain high interest Profiteering (borrowing and profiteering type) and the judicial acts of taking advantage of the weak statute of lessee by rental lease to seek high rent (leased profits type). Nevertheless, the three main types of practice summarized by Taiwan's decisions of Supreme Court in this article, including "revocation of reconciliation contract type", "revocation of construction contract type" as well as "withdrawal of divorce agreement type" could not found in German literature and has developed our own case type with domestic characteristics.

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In conclusion, according to the result of this research, it is found that the basic elements of the interpretation and understanding of profiteering for our courts while applying the law is still inadequate. Through the analysis of No. 2445 of year 2014 of the judgment of the Supreme Court (case revocation of divorce agreement), it is to indicate its misunderstandings of the interpretation.

Keywords: public policy or good morals, Judicial Act of Profiteering, difficulties, recklessness, inexperience