

An Empirical Study of Duty of Disclosure in Insurance Law: A Focus on Accountability and Consumer Protection

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Abstract

This study aims to reexamine the laws regarding duty of disclosure in Taiwan with comparative law and empirical methods, starting from its revolution in 2015, and then providing recommendations for interpretation and legislation. The subjective element of misrepresentation has been controversial for long time, but amendment in 2015 still failed to solve this issue successfully. The U.K. and U.S. have more discussions about this issue and thus worth further consideration for Taiwan. This paper also argues that the key to the design of duty of disclosure is on finding the optimal specification of subjective elements, objective elements, and legal consequences. This study tries to clarify the tendency of subjective element and other important issues by empirically analyzing relevant cases, and then to explore the optimal regulation model for Taiwan. The trend of consumer protection can be found after comparative law analysis. Then, the empirical study shows that Taiwanese courts have a moderate degree consumer protection. Considering the legislative trend and on empirical evidence supporting significant necessities to broaden or restrict the consequences of breaching duty of disclosure, this study recommends a moderate model. This means that insurers can rescind the contracts only when the insureds have intention or gross negligence. This can be implemented by interpretation in short term, and by legislative revolution in long

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run. For some other issues, courts' judgments are comparative disadvantage to insureds. This is also proved by this empirical study and thus should be modified to improve consumer protection. In conclusion, Taiwanese law generally follows the trend of consumer protection, but the relevant modification and details are waiting for more improvement. With this comparative and empirical study, we hope this research contributes to clarify the trend of legislation and the demand of Taiwan, and then finds a model of duty of disclosure fit for Taiwan.

Keywords: duty of disclosure, empirical study, misrepresentation, concealment, fraud, negligence, intention, causation, materiality, cancellation of contract