

## **Regarding Heir's Creditor's Revocation of Waiver of Inheritance and Partition Agreement of Inheritance**

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### **Abstract**

Could an heir's creditor claim that a waiver of inheritance is an act of fraud and refer to Article 244 of the Civil Code to revoke it? There are pros and cons in legal studies, though the courts stably oppose this claim. However, cases in which heirs' creditors bring this kind of claim to the courts appear continuously. On the other hand, could an heir's creditor claim that a partition agreement of inheritance is an act of fraud and refer to Article 244 to revoke it? This is also a huge dispute. Even though the Supreme Court affirms the possibility, some district courts still insist on the irrevocability. The high courts do not fully agree with the reasonings of the Supreme Court, either. As for the academia, there has been almost no relevant discussion.

In response to this issue, this article refers to the insights of French law and proposes not to use the dichotomy of "whether it is an act of identity" to decide whether an act can be revoked. Instead, revocability should be decided case by case through the examination of the existence of fraudulence. This article also indicates that the objective requirement should be "the debtor's insolvency", and that the subjective requirements, the allocation of burden of proof, and the degree of proof should be decided based on the nature of the parties. In addition, this article also proposes that Taiwanese civil code may in the future introduce an institution which allows creditors to participate in the division procedure. This is to enhance the pre-procedure protection of the creditor and to reduce the need of litigation.

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The above theories and legislative suggestion seem to be more helpful in achieving concrete fairness and reducing the risk of opportunism taken by the parties.

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