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一物二賣: 有效率之不履約或債權之侵害

簡資修

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將財產權分爲債權與物權,以物權具對世效力而債權僅具對人效力,故當物權與債權相衝突時,物權應具優先的效力,是我國財產法上的通說。依此說法,在一物二賣的案件中,如果後買受人已經取得物權,即使其爲惡意,前買受人並不得對後買受人有任何的主張。不過,我國最高法院的判例認爲,在此情況,前買受人得適用民法第244條的規定,聲請法院撤銷後約,因而與此概念操作不一致。因之,此次民法修訂,乃將之刪除。本文主張,從經濟效率、憲法財產權的保障、民法整體體系及實務案件分析來看,此一民法修訂恐有抽象邏輯濫用之嫌。

關鍵詞:債權、物權、一物二賣、有效率之不履約、債權之侵害、特定債權之撤銷權、金錢賠償、強制履行、回復原狀、民法第 179條、第 184條、第 227條、第 244條、大法官釋字第 349 號解釋、補償法則、財產法則、45 台上字 1316 號判例、概 念法學

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本文的初稿,曾以「特定物債權人應否具撤銷權:強制履行或金錢賠償之選擇」之題目,發表於民法研究會第十七次學術研討會 (1999.11.20),該次研討會的實錄已循例刊載於法學叢刊第 45 卷第 3 期 (2000),頁 114-46,作者非常感謝該次與會者的批評指敎。另外,中研院社科所法律組同仁及世新大學經濟系敎授們,在分別的學術討論會中,對本文提供很多的意見,亦要一併致謝。

A Thing Sold Twice: Efficient Breach of Contract or Tortious Interference with Contract

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ABSTRACT

In Taiwan's current jurisprudence, property rights are divided into 'right to person' and 'right to thing'. When 'right to person' conflicts with 'right to thing', the latter prevails. Accordingly, in the situation of double sales, the first buyer cannot make any claim on the second buyer to whom the thing has been transferred, even given knowledge of the previous sale. However, the Supreme Court has held that the first buyer may invoke section 244 of the Civil Code to request the courts to revoke the second sale. So legal formalism and legal practice clash. Based on economic analysis, constitutional property rights, the structure of Civil Code, and the statistical analysis of cases, this paper argues that the holding of the Supreme Court should prevail.

Key Words: obligations, property, right to person, right to thing, efficient breach of contract, tortious interference with contract, right to revoke, liability rules, property rules, restitution, sections 179, 184, 227, and 244 of the Civil Code, specific performance, damages, legal formalism