

民法第 507 條適用疑義之探討

A Study on the Application Issues of Article 507 of the Civil Code

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中文摘要

定作人於承攬契約成立生效後負有給付義務有二：報酬給付義務（我國民法第 490 條）及工作受領義務。定作人之協力義務，其發生、性質及違反之效果，需視情形而定。我國民法第 507 條定作人協力義務之規定乃實務上相當重要之法條。本文除以我國民法第 507 條規定之適用所生實務疑義為內容，反思我國民法第 507 條之釋義結構外，又由於民法債編修正理由強調該條第 2 項係參考德國民法第 642 條第 1 項而定，本文並著重德國法的比較，俾供參酌。另有鑒於承攬契約解除後之回復原狀不易，承攬人視情況需要，不採取解除之救濟方式，而終止契約，或能更加維護其合法權益。

關鍵字：定作人協力義務、附隨義務、不真正義務、受領遲延、解除契約、終止契約

Abstract

After the contract for work becomes effective, the Proprietor bears two primary performance obligations: the duty to pay remuneration (Article 490 of the Civil Code of Taiwan) and the duty to accept the work. The client's duty of cooperation—its occurrence, nature, and the consequences of its breach—varies depending on the circumstances. Article 507 of the Civil Code of Taiwan, which codifies this duty of cooperation in contracts for work, is of notable doctrinal and practical significance. This paper examines the interpretive ambiguities and jurisprudential disputes arising in practice, reassessing the provision's exegetical structure. In particular, given that the legislative history emphasizes that paragraph 2 of Article 507 was modeled on Article 642(1) of the German Civil Code, the analysis places special weight on comparative reference to German law. Finally, in light of the difficulties of effectuating *restitutio in integrum* after rescission of a contract for work, it is argued that termination, rather than rescission, may in certain circumstances constitute a more efficacious remedial mechanism, thereby affording contractors stronger protection of their legitimate rights and interests.

keywords : Proprietor's Duty to Cooperate, Collateral Obligations, Unreal Obligations, delay of acceptance for the performance, rescission of a contract, termination of a contract