

Die Entwicklung des Begriff es der Vertretungs gruenden als die Anwendungsvoraussetzung des Schadensersatzanspruches wegen Pfl ichtverletzung im deutschen Schuldrecht ?

著者名(英)	Yoshinobu Handa
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《Summary》

Die Entwicklung des Begriffes der Vertretungsgründen als die Anwendungsvoraussetzung des Schadensersatzanspruches wegen Pflichtverletzung im deutschen Schuldrecht (1)

Yoshinobu HANDA

In continental civil law systems, including German civil law system, it was widely acknowledged, that for the claim for the damages by the nonperformance of obligation it should be imputed to the (fault of the) debtor (default rule). Until 2. 6. 2020 the Japanese Civil Code also will have the same rule, which requires the fault of the debtor as a requisite of the claim for damages (art. 415(1)). In 2016 the part of obligation law of the Japanese Civil Code was newly revised.

In England and USA the rule of breach of contract has been sustained from the medieval times. The rule of breach of contract means that the debtor must pay for the damages, which occur from the nonperformance of obligation, without his fault. New civil rules of obligation (PECL, PICC etc.), which was edited in the end of 20th century in Europe, include the rule about the claim for the damages by the nonperformance of obligation. This new rule pays respect to the Anglo-American breach of contract. In 2016 Japanese legislators provided the new rule about the claim for the damages by the nonperformance of obligation. According to this rule the debtor is obliged to the damages fundamentally without his fault.

But the part of obligation law of German New Civil Code (2002) preserves the traditional continental rule (default rule). This

traditional continental rule man can find already in Roman law. In roman, german and japanese law system can (could) a creditor generally compel the debtor compulsory performance of obligation. In anglo-american law system must a creditor for the compulsory performance of obligation fulfill the necessary condition for injunction. In Japan a creditor can comparatively easy compel the obligation. The damages, which the nonperformance of obligation causes, amount sometimes to twice or three times of its price. In this case the amount of damages is reduced by the foreseeability of the debtor in anglo-american law. But this rule is so vague and uncertain to limit appropriately the expansion of damages. It is a question from this point of view, that Japanese civil code in this point changed the former german rule (default rule) in 2016.

This treatise is written for the re-examination of the change of the rule concerning the claim for damages by the nonperformance of obligation. The organization of this treatise is as follows: the Adoption of the Default Rule in Roman Law, the Argument in Medieval Law and Natural Law, the Development of the Default Rule in German Law in 19th Century (Pandektenrecht), the Completion of the Default Rule in German Civil Code (20th century) and the Re-examination of the Abandonment of the Default Rule in Japan (2016).