

## 《Summary》

# Die Entwicklung des Begriffes der Vertretungsgruenden als die Anwendungsvoraussetzung des Schadensersatzanspruches wegen der Pflichtverletzung im deutschen Schuldrecht (2)

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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 20<sup>th</sup> 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 19<sup>th</sup> Century (Pandektenrecht), the Completion of the Default Rule in German Civil Code (20<sup>th</sup> century) and the Re-examination of the Abandonment of the Default Rule in Japan (2016). In the second part of this article is contained the Completion of the Default Rule in German Ciil Code (20<sup>th</sup> century) and the Re-examination of the Abandonmen of the Default Rule in Japan (2016).

## On Theory of Tax Accounting and Crossing Classification- Especially on Cafeteria Plan

Byeong Yong KONG

Employee benefits are changing variously in the modern society. The cafeteria plans taken up by writing above all are remarkable employee benefits which correspond to various age brackets and various needs. I introduce a cafeteria plan here, and I consider whether a tax office taxes by a cafeteria plan or whether a tax office doesn't tax and make the mechanism to accomplish tax and tax-free crossing classification clear from general semantics. Thus, when tax and tax-free classify crossing, I make it clear whether it's tax or tax-free by theory of tax accounting.

## Complete Contents of The Liberation (3)

Hisashi INOUE

*The Liberation*, founded by Chinese Communist Party Central Committee in the Yanan period is most authoritative CCP magazine. This is complete contents of *The Liberation*.