

消滅時效制度之整合與變革

一 歐洲契約法原則第 14 章及德國民法典修正之比較觀察*

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關鍵詞：消滅時效、歐洲契約法原則、時效停止進行、時效未完成、誠信原則

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摘 要

時效制度在比較法及我國法上近年來逐漸受到重視，亦為我國民事實務上之重要課題。本文從歐洲契約法原則第 14 章及德國民法時效修正內容之比較法切入，觀察及分析二者之利弊，從消滅時效制度之發展、時效起算基準之相異處、消滅時效更新及時效停止進行及時效未完成、罹於時效之效果、當事人自治及德國新舊法承接問題，依序說明及探討。再進一步指出我國時效制度實務上適用之問題，例如客觀基準不盡公平、期間宜全盤檢討等問題，本文最後總結提出歐洲契約法原則第 14 章及德國民法時效修正內容之比較結果，PECL 比 BGB 更為合宜，並進而提出具體之「起算基準原則採主觀說為宜」、「有必要增設協商為障礙事由」、「尊重當事人自治」等修法建議，供作我國相關立法論之參考。

The integration and reformation of the prescription system- the comparison between Principles of European Contract Law (PECL) Chapter 14 and amended German Civil Code (BGB)

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Abstract

The prescription system is an important issue on comparative law and Taiwan civil law current practice. This article focuses on the comparison of the prescription between the Principles of European Contract Law (PECL) Chapter 14 and amended German Civil Code (BGB), including the development of prescription, the difference of starting time basis, time renewal, suspension and postponement of expiry, the effect, party autonomy and German transition of old law problems. Furthermore, the article entirely examines the application of Taiwan Civil Code prescription on current law practice. The appearing problems such as "the objective basis is not quite fair", "it is necessary to review the time design comprehensively", enables us to realize the difficulties of current law interpretation nowadays. Therefore, it is urgent to amend Taiwan prescription law to seek a complete solution. This article concludes that PECL Chapter 14 is more appropriate than BGB amended prescription on many parts. Finally, this article suggests three legislative proposals in the future as follows: 1. The subjective basis is more better than the objective basis; 2. It is necessary to build negotiation as time suspension or postponement of expiry; 3. It is worth taking into consideration of party autonomy on prescription.