

Abstract

In addition to revocation of gifts by the reason of ingratitude under section 531¹ of civil and commercial code and the donee fails to perform the charge under section 528 of chapter 3 concerning specific contract, it shall be considered under the general principles of juristic act and contracts. More gifts appeared in the social such as gifts money for taxi driver who cheated that he picked the passenger's purse up with more money and then handed over to him, gifts by offering thing and food to a man who disguise oneself as a Buddhist monk, donation for Tsunami victim, but it had been taken for wrong purpose, gives money by the result of called for guardian fee. Gifts as the said example can not excused ingratitude or failing to perform the charge to revoke the gifts but can do under the general of juristic act and contract on chapter 1, 2, and 4. The study of this subject is aiming to present the ideology of revocation of gifts as a whole under civil and commercial code which indicates the relation between principle of gifts contract and general contract concerning the revocation of gifts at reasonable to donor and donee.

The study' results found that there are two principles of revocation of gifts, first, under chapter 3: contracts by the reason of the donee fails to perform the charge and ingratitude, second, general of juristic act and contract by the reason of (1) void act (section 150, 152, 154, 155 paragraph 1), (2) voidable act (153, 157, 159 and 164), (3) the donee make a breach of contract and (4) ownership (section 1336)

Revocation of gifts in relation of specific contract to chapter 1 (general), 2 (obligations), 4 (property) is able to revoke the gifts as follow methods:

1. under enrichment due to a gifts contract is void, the donee fails to perform the charge and ingratitude.

¹Hence, if do not specify the provision of law, it means the civil and commercial code

2. return to the former positions due to a gifts contract is voidable under section 176

3. return to the former position due to the donee make a breach of contract under section 391

4. principle of ownership

Furthermore, the study found that there are some unclear prescription in specific contract about gifts as follow:

(1) Gifts wit encumbered a charge can expand the content to moveable property due to the need to protect the same. And the word in code use “property” should mean both of immoveable and moveable property.

(2) The word “serious misconduct towards the donor” as section 531 should mean the acting towards the property of the donor. The purpose of expand the content which accordance with section 530 BGB.

(3) Due to a gifts encumbered with a charge is relative to a gifts which have the agreement about duties of the donee, so it had to consider to be quite clear. The differences are a gifts encumbered with a charges is prescribed by law to specify the duties of the donee, if the donee fails to perform the charge, a donor can revoke a gifts, but is not exceeded the charges, but a gifts which has agreement specified a duties of donee is a contract under the freedom of contract which is not reciprocal contract. If a donee does not perform as agreements, a donor has a right in rescind a contract under section 387 and then the parties shall back to former position under section 391 and all gifted property can be revoked.

As a result of study, there are two proposal to should be rectified as follow;

1. Rectify by adding the prescription in section 531 paragraph 2 that

“the above contents is enforced with ingratitude of close relations who use the property which is gifted, of the donee and donee do not prohibit or obstruct such ingratitude”

The reason of rectification is to protect donor from the act is unfair.

2. Cancel section 535 (3) gift made in compliance with moral duty

The reason of cancellation is, have not clearance of description, meaning and scope, the judge refuse to use for a long time, moral duty is a defence which is picked up to excuse of donee.