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篇名	從工程承攬契約的兩個實務案型再思考情事變更原則之適用要件——以【物價漲跌型】及【工期展延型】之相關判決為中心
並列篇名	Reconsideration to the Application of the Principle of Clausula Rebus Sic Stantibus from Two Practical Cases of Engineering Contracts: Focus on the Relevant Judgments of 【Price Fluctuation Type】 and 【Duration Extension Type】
作者	吳從周
中文摘要	情事變更原則適用於工程承攬契約實務上的兩種主要爭議類型：即【物價漲跌型】及【工期展延型】之難題，最為重要。就【物價漲跌型】而言，客觀情事重大變更發生之時點並不重要，客觀狀態之變更究竟是在訂約前或訂約後發生，並非所問。如果在訂約前情事即已發生變更，但一直到訂約之後才顯現出來或者迄該時點始為當事人所知者，仍應有情事變更之適用，可參考德國民法第313條第1項規定情事變更之要件作解釋。就【工期展延型】而言，則應參考德國民法第313條第2項，承認雙方當事人共同錯誤（純粹主觀交易基礎欠缺或共同評價錯誤）之「主觀交易基礎喪失」，也有情事變更原則之適用。在方法論上，可以考量引用民法第1條將德國民法第313條第2項規定作為外國立法例，引為法理，加以適用。
英文摘要	The Application of the principle of Clausula rebus sic stantibus (change of circumstances) to the two main types of controversial issues in the construction contracts, namely the problems of [price fluctuation type] and [extension of duration] is most important in the court practice. This article asserts that it is necessary to inherit and refer to the basic theory of foundation of transaction (especially the "loss of foundation of subjective transaction theory") before and after the addition of Article 313 of the German Civil Code. Regarding the price fluctuation type, it does not matter when a major change in objective circumstances occurs. It is not important whether changes in the objective state occurred before or after the contract was made. If there have been some changes in the situation before the contract is made but the change does not occur until the contract has been made or until when the parties have known it—which would definitely interfere with the contractual plan, then the principle of Clausula rebus sic stantibus (change of circumstances) still should be applied since the parties have not been fully understood the situation. Such "objective change" that shakes "society's existence" is ought to refer to the principle of Clausula rebus sic stantibus (change of circumstances) as stipulated in Article 313, paragraph 1 of the German Law and give its Priority to respect the parties' risk allocation through the contractual agreement, so far the contractual agreement of exclusion should have their effect. However, if the agreement precludes the principle of Clausula rebus sic stantibus (change of circumstances) from exceeding the inherent limits of risk allocation or if the occurrence and variation of such risk have not been beyond the scope of "general reasonableness" and are unpredictable, it should be declared as void. In accordance with the original agreement of the payment and treatment of the relationship between the performance of the price which is obviously contrary to the contractual justice, it should return to the principle of Clausula rebus sic stantibus (change of circumstances). Additionally, in terms of the extension of schedule, it should be admitted that "the foregoing affair has been changed but not revealed until after the contract has been made, or as of that moment has become known to the parties." Other than the application of the principle of Clausula rebus sic stantibus (change of circumstances), reference should be made to Article 313, paragraph 2, of the German Civil Code, to recognize that the parties' subjective errors in the subjective formation of a meaningful event at the time of signing have

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common mistakes (so called lack of purely subjective transaction basis or common evaluation of mistakes) should apply of the principle of Clausula rebus sic stantibus. As for the methodology, it may be possible to consider the need for equity balance based on the actual needs of the transaction and the case, and to apply the provisions of Article 313, paragraph 2, of German Civil Code as a foreign legislation by reference to the paragraph 1 “nature of things” of Taiwan civil law.

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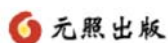
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