

Abstract of Doctoral Thesis

Title: Meaning and Judgement Method of Criminal Result in Fraud

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The purpose of this Thesis is to clarify the crime of Fraud based on legal historical research of Fraud and formulate the judgment method of criminal result in Fraud.

In the Penal Code of Japan, Fraud consists of property fraud and profit fraud (Article 246). The property fraud is required “defrauding a property of another”. The profit fraud is required “obtaining a illegal profit of another”. Both of them are not necessary “damaging property of another” in the text.

In Japan, many criminal law theories have insisted on requiring such “Harm” in Fraud. But, recently, the Supreme Court precedent in Japan don’t fully consider it. This precedent may expand the range of Fraud, because a person who concluded a contract without telling a truth and offered subject to the contract a consideration to other party will always bear the risk of Fraud charges.

In the Chapter.1, we researched the debate about “Harm” of Fraud in Japan and showed the need to return to the legal history of Fraud in order to construct a persuasive theory. In the Chapter.2 and 3, we examined the legal historical research of Fraud in Japan and Germany. It revealed that there is a common foundation between criminal result in Fraud in Germany (“damaging property of another”) and it in Japan. In the Chapter.4, we examined discussion on the criminal result of German Fraud and formulated a method for judging criminal result of Japanese Fraud.

As a consequence of this Thesis, it elucidated that the criminal result of Fraud in Japan is to be judged in two stages of (1)“obtaining property/profit” and (2)“its illegality, and in relation to (1) “remote harm” should be placed outside the consideration of Fraud, to (2) it is a necessary to judge “illegality” from the legal relationship between the parties.