On Judicial Cases Regarding Article 52（5）of the Contract Law in the P.R.C.

Hikota Koguchi

This article aims at analyzing judicial cases regarding the article 52（5）of the Contract Law of China. Article 52（5）is as follows. A contract is invalid under the circumstance that mandatory provisions of laws and administrative regulations are violated.

In this article, what the author points out is as follows.

1. The most numerous cases to which article 52（5）is applied are those of loan of contracts. The next is those of construction project contracts.

2. Very questionably, not a few judgments that made contract of loans invalid are not on the basis of the specified laws and administrative regulations.

3. In some cases, especially in construction project contracts, without laws and administrations, only judicial interpretations are cited in judging whether the contracts are valid or invalid.

4. In not a few cases, we can find out the fact that the differentiation between article 51 regarding the disposal by unauthorized person and article 52（5）are not so clear.

5. One of the most polemical issues among scholars in China is about the validity of contract of real right such as the sale of housing and right to the use of land and so on. For example, is the contract which violates article 191（2）of the Law of Things valid or invalid? Theories of law professors in China
are sharply different from each other. Also judgments are still not unified.