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Rules Governing the Termination of Fixed-Term Contracts on the Licensed Use of a Likeness

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Abstract: With the increasing commercialization of personality rights, contracts on the licensed use of a likeness have become widely used in practice, and the rules governing their termination reveal a tension between the protection of personality rights and contractual stability. Paragraph 2 of Article 1022 of the Civil Code, located in the Book on Personality Rights, establishes a pathway by which a likeness right holder may terminate such a contract for justified reasons, whereas Paragraph 1 of Article 563, in the Book on Contracts, sets out the general statutory grounds on which the parties may rescind a contract. The two provisions differ in their scope of application, standards of assessment, and legal consequences, resulting in uncertainty over the boundaries of the right to terminate or rescind fixed-term contracts on the licensed use of a likeness, as well as confusion regarding the functions of special clauses. This article examines, in sequence, the difficulties in application, their normative causes, and a systematic approach to application. It argues that, on the premise that likeness rights embody both personality and proprietary interests, the termination pathway under Article 1022 should be distinguished from the breach-based rescission pathway under Article 563, and that special agreements such as morality clauses and force majeure clauses should be reviewed by type, so as to clarify the boundaries of the rules governing the termination or rescission of fixed-term contracts on the licensed use of a likeness.

1. Introduction

With the growth of advertising endorsements, entertainment management, and brand collaborations, contracts on the licensed use of a likeness have become an important form of commercial exploitation of personality interests. Such contracts possess both a personality-related character and a transactional character, and their agreed terms may conflict with the likeness right holder's personal dignity, public-image positioning, and social reputation. Accordingly, whether a likeness right holder may terminate the contract before its expiration when the other party has not committed a typical breach has become the central issue in applying Article 1022(2) and Article 563(1). One view holds that “justified reasons” should be confined by the statutory grounds for rescission under Article 563(1), so as to preserve the binding force of contract.1 Another view treats Article 1022(2) as an independent special basis for termination, enabling the likeness right holder to

exit the contract when continued performance would seriously impair personality interests.2 Existing scholarship remains divided over the distinction between "justified reasons" and the standard that "it becomes impossible to achieve the purpose of the contract," the function of the special right of termination, and liability arising from termination, while judicial decisions likewise lack a uniform standard. On the basis of analyzing the difficulties in application and their causes, this article clarifies the functional division and order of application between the two provisions and adopts a typological approach to grounds for termination or rescission contained in special clauses.

2. Difficulties in Applying the Rules Governing Termination and Rescission of Contracts on the Licensed Use of a Likeness

Article 1022(2) of the Civil Code establishes a special termination regime for fixed-term contracts on the licensed use of a likeness, but no uniform understanding has yet emerged regarding its relationship with Article 563(1) and special agreements between the parties, giving rise to difficulties in application.

2.1. Obstacles to Applying Termination and Rescission Rules Arising from the Dual Character

A likeness is connected with personal dignity, personal freedom, and social reputation, and may also possess economic value because of the right holder's fame and market influence. Article 993 of the Civil Code recognizes that personality identifiers such as a name, entity name, and likeness may be licensed to others for use, thereby providing a normative basis for the commercial exploitation of likenesses. In Case (2018) Jing 01 Min Zhong No. 97, eLong used still images of actor Ge You to promote its hotel-booking services. The court examined not only whether authorization had been obtained, but also the commercial value of the likeness. This indicates that the use of a likeness simultaneously implicates public image, social reputation, and market-identification interests. Although the Civil Code recognizes commercial exploitation of a likeness, the proprietary interests involved remain grounded in personality interests, and contractual performance cannot be detached from the logic of protecting personality rights.[1]

Accordingly, although a contract on the licensed use of a likeness serves an economic exchange function, its performance remains constrained by personality interests.[2] If continued use of the likeness would associate the right holder over an extended period with a particular brand, value stance, or adverse public opinion, performance until expiration of the agreed term may impair personal freedom. Yet fixed-term contracts are governed by the principle of pacta sunt servanda and may not be terminated or rescinded at will absent an agreed or statutory ground.[3] The first obstacle to applying the rules is therefore how to preserve space for termination based on personality interests while maintaining contractual stability.

2.2. Unclear Boundary Between the General Rescission Rule and the Special Termination Rule

Article 563(1) of the Civil Code is the general statutory rule on rescission in the Book on Contracts. It centers on whether it becomes impossible to achieve the purpose of the contract, ordinarily requires a breach or an impediment to performance, and primarily serves contractual stability and transactional security.[4] Article 1022(2), by contrast, provides that where the parties have expressly agreed on the time limit for licensed use of a likeness, a likeness right holder may, with justified reasons, terminate the contract on the licensed use of a likeness, but shall notify the other party prior to a rational time limit and compensate the losses caused to the other party by the termination. The provision does not employ standards such as breach of contract or impossibility of achieving the purpose of the contract; instead, it uses justified reasons to coordinate personality interests and contractual interests.[5]

In judicial practice, however, courts usually first examine grounds for rescission under the general rules of contract law and consider personality-related factors only when determining the consequences of the contract. In Case (2025) Yu 1025 Min Chu No. 555, the court applied Articles 563 and 565 to determine whether the media company had committed a fundamental breach, while the person-specific nature of the livestreamer's account affected only the separation of the account. In Case (2024) Su 13 Min Zhong No. 1419, the court likewise first denied the existence of a unilateral ground for rescission under Article 563, and later confirmed that the contractual relationship had come to an end because the parties' cooperation had reached an impasse and the other party consented, while distinguishing the account's personality-related attributes from its economic attributes. Although these decisions did not disregard personality interests, they still placed those interests within the general framework of rescission and did not fully reflect the independent significance of Article 1022(2).

Three principal views have emerged in scholarship: the independent-rule view, the inclusion view, and the parallel-relations view. The independent-rule view stresses that Article 1022(2) has an independent standard of assessment;[6] the inclusion view holds that justified reasons may encompass the circumstances enumerated in Article 563;[7] and the parallel-relations view maintains that the two provisions respond to distinct needs for termination or rescission.[8] The disagreement ultimately concerns whether Article 1022(2) may be applied independently of Article 563. If Article 1022 is wholly subsumed under Article 563, its special enactment loses significance; if it is understood as granting a right to terminate at will, transactional security will be undermined. The key is therefore to clarify the functional division and order of application of the two provisions.

2.3. Inconsistent Standards for Determining Grounds Under Special Clauses

Morality clauses, reputational risk clauses, and force majeure clauses are common in entertainment management, advertising endorsement, and likeness licensing contracts. Morality clauses typically designate unlawful or unethical conduct, serious adverse publicity, or damage to brand image as grounds for termination, rescission, or liability, thereby allocating reputational risk in advance and reducing the evidentiary burden.[9] In Case (2016) Jing 0101 Min Chu No. 19436, the court recognized the validity of a morality clause in an artist contract; in Case (2025) Lu 01 Min Zhong No. 5152, however, the court still returned to Article 563 to determine whether rescission was effective. Force majeure primarily serves to exempt liability, yet in contracts on the licensed use of a likeness, the relevant event may merely alter the context of dissemination, public perception, or market value without making performance impossible.[10] In Case (2025) Liao 03 Min Zhong No. 46, the court likewise considered whether compelled continued performance was appropriate in determining whether the contractual relationship should be brought to an end.

The standards for applying such clauses are therefore inconsistent. If a morality clause treats any adverse publicity as a condition for rescission, mechanical application may unduly broaden the right of rescission. It remains necessary to determine whether such a clause constitutes an independent basis for rescission or an ex ante specification of the standard that it becomes impossible to achieve the purpose of the contract.[11] Force majeure clauses also risk converting a ground for exemption directly into a ground for rescission, thereby conflating the distinct functions of exemption and rescission.[12] The difficulty presented by special clauses thus lies not only in whether their content is sufficiently definite, but also in the absence of a uniform standard governing their rescission function.[13]

In sum, the difficulties in terminating or rescinding fixed-term contracts on the licensed use of a likeness mainly consist of the conflict between personality interests and contractual stability, the unclear relationship between Article 563(1) and Article 1022(2), and inconsistent standards for

rescission under special clauses.

3. Normative Causes of the Difficulties in Terminating and Rescinding Contracts on the Licensed Use of a Likeness

3.1. Different Value Orientations of Personality-Rights Protection Rules and Contract-Rescission Rules

Contracts on the licensed use of a likeness are governed by both personality-rights rules and contract-rescission rules, but the two bodies of rules have different value orientations. Grounded in pacta sunt servanda, Article 563(1) permits rescission only where force majeure, a fundamental breach, or another circumstance makes it impossible to achieve the purpose of the contract, with the aim of preserving the binding force of contract and transactional stability.[5] An agreed term reflects the parties' advance allocation of the period of performance, benefits, and risks; accordingly, the general rules of rescission focus on whether contractual performance has encountered a fundamental impediment.

Although a likeness may be commercially exploited, it remains inseparable from personality interests. Article 992 of the Civil Code provides that personality rights may not be waived, transferred, or inherited; Article 1021 establishes a rule of interpretation favorable to the likeness right holder; and Article 1022(2) permits a likeness right holder, with justified reasons, to terminate a fixed-term contract.[14] The assessment of whether termination is justified should therefore also consider whether continued performance would seriously impair personal dignity, personal freedom, or social reputation.[15] Article 563 focuses on breach or impediments to performance, whereas Article 1022(2) focuses on the continuing constraint imposed on personality interests. Their different objects of evaluation constitute the institutional source of divergent application.

3.2. Different Standards of "Justified Reasons" and "It Becomes Impossible to Achieve the Purpose of the Contract"

The standard that "it becomes impossible to achieve the purpose of the contract" requires the contract's core benefit to be defeated by an objective circumstance such as force majeure, delayed performance, refusal to perform, or a fundamental breach. It is ordinarily assessed by reference to the proportion of performance completed, the seriousness of the breach, and the availability of substitute performance.[16]

By contrast, "justified reasons" centers on a serious impact on personality interests. If the term were confined to the circumstances enumerated in Article 563, Article 1022(2) would lose its independent significance.[17] Justified reasons may be established where continued performance has already, or is sufficiently likely to, seriously impair the likeness right holder's personal dignity, personal freedom, social reputation, or personality development.[6] Even where the licensee is not at fault, termination may be warranted if the context in which the likeness is used clearly conflicts with the likeness right holder's identity or value stance.[18]

The two provisions also differ in the consequences of liability. Where a contract is rescinded under Article 563 on the ground of breach, the breaching party will ordinarily be liable for expectation damages. Where a contract is terminated under Article 1022(2), the likeness right holder should not be regarded as having breached the contract, and compensation should in principle be limited to reasonable costs, preparatory expenses, and losses increased because notification was not given prior to a rational time limit.[19] Subsuming "justified reasons" within the standard that "it becomes impossible to achieve the purpose of the contract" would therefore narrow the personality-protection function of Article 1022(2).

3.3. Unclear Functional Positioning of Exemption and Rescission in Special Clauses

Morality clauses, reputational risk clauses, and force majeure clauses often provide simultaneously for exemption and rescission. Exemption addresses the allocation of liability, whereas rescission determines whether the contract continues to exist; the two must not be conflated.[10]

Articles 180 and 590 of the Civil Code provide for exemption or reduction of liability in cases of force majeure, whereas Article 563(1)(1) makes impossibility of achieving the purpose of the contract a condition for rescission. Force majeure can lead to rescission only where it bears a direct causal relationship to the defeat of the contract's purpose and no substitute means of performance exists.[14] If force majeure in a likeness-licensing arrangement merely changes the context of dissemination or market perception, it remains insufficient to justify rescission.

The legitimacy of rescission under a morality clause depends on whether reputational risk undermines the image-based foundation of the parties' cooperation. Only where negative conduct transforms use of the likeness from a source of benefit into a source of harm may it become impossible to achieve the purpose of the contract.[20] Rescission should not be allowed where the impact is minor or can be eliminated by replacing materials, suspending placement, or similar measures.[11] Special clauses should therefore be examined separately in terms of exemption from liability, defeat of the contract's purpose, and impairment of personality interests, rather than treating their wording alone as conclusive of exemption or rescission.

4. A Systematic Approach to Applying the Rules Governing Termination and Rescission of Contracts on the Licensed Use of a Likeness

4.1. Coordinating Personality and Proprietary Interests in Termination and Rescission

Licensing a likeness exploits its economic value but does not transfer personality rights. Where continued performance would keep the likeness right holder associated with a particular brand, value stance, or adverse public opinion, the determination of termination or rescission cannot be confined to whether the economic purpose remains achievable.[21] Protection of personality interests, however, does not entitle the likeness right holder to exit at will. The licensee's contractual reliance must still be protected through notification prior to a rational time limit and compensation for losses.

As to legal consequences, where the contract is rescinded under Article 563 because of a fundamental breach, the likeness right holder may claim damages for breach under Article 566. Where the contract is terminated under Article 1022(2), the termination does not constitute a breach, and compensation should in principle be limited to necessary expenses, preparatory costs, and losses increased by failure to notify the other party prior to a rational time limit, rather than full expectation damages.[19] The purpose of notification prior to a rational time limit is to give the licensee an opportunity to mitigate losses. Failure to fulfill that obligation gives rise only to liability for reliance damages and does not affect the effectiveness of termination.[6]

4.2. Differentiated Application of Articles 1022 and 563

Article 1022(2) and Article 563(1) should be applied as independent rules. The former responds to the need for termination where personality interests are seriously impaired; the latter governs rescission caused by breach or impediments to performance. Subsuming “justified reasons” under Article 563 would weaken the significance of the special rule, while construing it as a right to exit at will would undermine contractual stability. A serious impact on personality interests should therefore operate as an independent standard, with the right of termination constrained by notification and compensation.

In application, courts should first examine clauses agreed by the parties concerning morality, reputational risk, scope of authorization, context of dissemination, and similar matters. Where such clauses are clear, valid, and substantively related to the purpose of the contract, they should be applied as agreed. Where there is no clear agreement, or the agreement is insufficient to resolve the dispute, Article 563 should apply if the licensee expands the scope of use without authorization, distorts or denigrates the likeness, refuses to perform a main obligation, or force majeure makes it impossible to achieve the purpose of the contract. Article 1022(2) should apply where no general ground for rescission exists but continued performance would seriously impair the likeness right holder's personal dignity, personal freedom, or social reputation. This approach protects personality interests while preventing abuse of the special right of termination.

4.3. Typological Determination of Grounds for Termination and Rescission Under Special Clauses

Special clauses should be reviewed, according to their functions, under the standards of the purpose of the contract and personality interests. A morality clause is an ex ante specification of the circumstances in which it becomes impossible to achieve the purpose of the contract. Rescission should be allowed only where the negative conduct is serious, continuing, and closely related to the purpose of the license, such that it is sufficient to undermine the image-based foundation of the cooperation; broad language such as “any improper words or conduct” should be narrowly construed. Reverse morality clauses should likewise be recognized, but unlawful or unethical conduct by the brand, product-quality incidents, and similar events should constitute grounds for termination only where they seriously impair the likeness right holder's social reputation.

A force majeure clause should distinguish exemption from rescission. Rescission should be allowed only where the event makes it impossible to achieve the contract's core purpose and no substitute means of performance exists; diminished commercial effectiveness is insufficient to support rescission.[10]

A breakdown of the relationship of trust may constitute “justified reasons,” but only where the breakdown relates to personality interests. Likeness licensing is ordinarily founded on brand positioning, shared values, and commercial reputation.[22] Termination may be allowed where continued performance would keep the likeness right holder associated with seriously negative values or reputational risk; poor cooperation, reduced revenue, or a mere change of mind is insufficient.

5. Conclusion

The termination of a fixed-term contract on the licensed use of a likeness cannot be governed simply by the ordinary rules on contract rescission, nor should the protection of personality rights be understood as permitting a likeness right holder to withdraw from the contract at will. Paragraph 2 of Article 1022 and Paragraph 1 of Article 563 of the Civil Code respond to different normative concerns: the former primarily protects the personality interests of the likeness right holder in an ongoing licensing relationship, whereas the latter primarily safeguards contractual stability and transactional security. The two provisions should therefore be applied in a differentiated manner based on their respective functions.

More specifically, the determination of whether a contract on the licensed use of a likeness may be terminated should be based on a balance between personality interests and proprietary interests. Where a breach of contract or force majeure makes it impossible to achieve the purpose of the contract, Article 563 and the relevant rules in the Book on Contracts should primarily apply. By contrast, where the other party has committed no typical breach, but continued performance has already had a substantial adverse effect on the likeness right holder's personal dignity, personal freedom, or social

reputation, the rule of "justified reasons" under Paragraph 2 of Article 1022 should apply. At the same time, special contractual provisions, such as morality clauses, reputational risk clauses, and force-majeure clauses, should be examined either in relation to whether the purpose of the contract has become impossible to achieve or in relation to the impairment of personality interests, depending on their specific functions. Termination or exemption from liability should not be established solely on the basis of the wording of such clauses.

Accordingly, the systematic application of the rules governing the termination of contracts on the licensed use of a likeness should, while respecting the principle of pacta sunt servanda, preserve a necessary avenue of withdrawal for the protection of personality interests and safeguard the other party's transactional reliance through mechanisms such as prior notice within a reasonable time and compensation for reliance interests. Only by establishing a clear order of application between the general rules of contract law and the special rules on personality rights can the right of termination be prevented from being either unduly restricted or arbitrarily expanded, thereby achieving an appropriate balance between the protection of personality rights and transactional security.

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