

A Comparative Law Study on the Property Transfer System in Property Law

Yuhui Li^{1,*}

¹*School of Economics and Management, Beijing Jiaotong University, Beijing, China*

*Corresponding author: 94178105@qq.com

Abstract: *The transfer of property rights system is one of the core contents of the property rights law system, which is related to the protection of the rights and interests of the parties, the order of the market economy, and the construction of a rule of law country. Based on this, this article aims to explore the current situation, problems, and improvement suggestions of the transfer of property rights system. Using a comparative law perspective, it analyzes the advantages of the transfer of property rights systems in the mainland legal system and the common law system. By studying and drawing inspiration from the transfer of property rights systems in the civil law and common law systems, China's property rights law system can be further improved, ensuring the legality and effectiveness of property rights changes, and maintaining the security and stability of transactions. This article proposes suggestions for improving China's property transfer system through legislation, law enforcement, and judicial protection, as well as promoting international integration. The transfer of property rights system is the core content of the property rights law system, which needs to be continuously improved and perfected to enhance fairness, efficiency, and credibility. Therefore, this study has certain theoretical and practical significance.*

Keywords: *Property Law; Property transfer system; Continental legal system; Anglo American legal system; Comparative law*

1. Introduction

With the deepening of globalization, the importance of property law in various countries and regions has gradually become prominent. As the core content of the property law system, the system of property right transfer is directly related to the protection of the rights and interests of the parties, the order of market economy and the construction of a country ruled by law [1]. Therefore, it is of great theoretical and practical significance to study the comparative law of property right transfer system in property law.

A perfect system of real right transfer is helpful to protect the legitimate rights and interests of the parties, maintain the market economic order and build a country ruled by law [2]. At the same time, with the rapid development of China's economy and the increasing international cooperation, perfecting the system of property right transfer will also help to improve China's competitiveness in international economic cooperation [3]. At present, China has accumulated rich experience in the formulation and implementation of property law and other relevant laws and regulations. With the progress of science and technology and the development of society, publicity technology and means are constantly updated and improved. Therefore, it is feasible to improve the system of property right transfer in China [4]. The main purpose of this study is to reveal the similarities and differences between different countries and regions, and to provide reference for the improvement of China's property law system.

2. Basic theory of property right transfer system

2.1 The concept and nature of real right

Property right refers to the right holder's direct control and exclusive right to specific things according to law [5]. It has the following properties: (1) Direct domination: the property owner can directly control its property without the help of other people's behavior. This kind of domination can be possession, use, income and disposal [6]. (2) Exclusivity: Property right has the effect of excluding others' interference, that is, there cannot be more than two conflicting property rights on the same thing. This exclusiveness embodies the absoluteness and objectivity of real right. (3) Publicity: changes in property rights usually need to be publicized in a certain way so that others can know. The way of publicity can be possession,

registration, etc.

2.2 Ways and legal characteristics of real right transfer

The transfer of real right refers to the change of real right between different subjects, that is, the change of real right. It includes the following ways: (1) The change of real right based on legal act: it refers to the change of real right according to the will of the parties. This change can be the legal acts of both parties, such as buying and selling, giving, etc. It can also be a unilateral legal act, such as abandonment and bequest [7-8]. (2) Changes in property rights that are not based on legal acts: refers to changes in property rights that occur in accordance with legal provisions or court decisions. This kind of change includes the change of real right due to inheritance, enforcement and expropriation. (3) Original acquisition of real right: refers to the acquisition of real right without relying on the rights and will of others. For example, by preempting, picking up lost property, finding buried objects and other means to obtain property rights. The legal characteristics of the property right transfer system are shown in Table 1.

Table 1: Legal characteristics of property right transfer system

| Legal characteristics | Describe | Example |
|-----------------------|--|--|
| Legality | The transfer of real right must conform to the conditions and procedures stipulated by law, otherwise the effect of real right change will not occur. | When transferring the ownership of real estate, buyers and sellers must go through the transfer procedures in accordance with relevant laws and regulations. |
| Publicity | The transfer of real right must be publicized in a certain way so that others can know. The way of publicity can be possession, registration, etc. | After the transfer of vehicle ownership, the relevant registration procedures must be handled in the traffic management department. |
| Dimensionless | The transfer of real right is separated from the cause behavior, that is, the invalidation or revocation of the cause behavior does not affect the completed change of real right. | A sold the house to B, and both parties signed a sales contract, but the sales contract was later revoked by the court, but the ownership of the house was transferred to B, and B still enjoyed the ownership of the house. |
| Contemporariness | The transfer of real right has the effect on the world, that is, once the change of real right is completed, the change will have legal effect not only on the parties, but also on all third parties. | After Party A transfers the land to Party B, and Party B obtains the land ownership, no one else may infringe upon Party B's land ownership. |

3. The system of real right transfer in continental law system

3.1 Overview of the system of property right transfer in continental law system

The transfer system of property rights in the mainland legal system mainly follows the principle of "formalism of property rights", which means that the change of property rights not only requires the unanimous expression of the parties, but also requires the completion of certain property rights behaviors, such as delivery or registration. This principle reflects the strict distinction between property rights and creditor's rights, ensuring the safety and stability of property rights changes. In the mainland legal system, there are mainly two ways to transfer property rights: one is based on legal acts of property rights change, such as buying and selling, gifting, etc; Another type is property rights changes that are not based on legal actions, such as inheritance, expropriation, etc. These changes need to follow legal conditions and procedures to ensure the legality and effectiveness of property rights changes.

3.2 The transfer of property rights system in Germany

As one of the representative countries of the civil law system, Germany's property transfer system is

typical. The German Civil Code sets out the basic principles of property rights change, namely "formalism of property rights" and "principle of public disclosure". Specifically, the German Civil Code stipulates the effectiveness of real estate registration, that is, changes in real estate property rights must be based on registration, and the effectiveness of property rights changes does not occur without registration. For movable property rights, the German Civil Code stipulates the principle of delivery, that is, changes in movable property rights must be based on delivery, and delivery can be actual delivery or conceptual delivery.

In addition, the German Civil Code also stipulates the principle of non causation in property rights changes, that is, property rights changes are separated from their causal acts, and the invalidity or revocation of causal acts does not affect the completed property rights changes. This principle aims to protect the security and stability of transactions.

3.3 French real right transfer system

The system of property right transfer in French property law is also representative. The French civil code stipulates the principle of "voluntarism", that is, the change of real right takes effect according to the agreement of the parties' wishes. Different from Germany, the French Civil Code does not clearly stipulate the way of publicity of real rights, but adopts the way of "possession to change" to realize the publicity of real rights of movable property. The French Civil Code stipulates the presumed effect of possession, that is, the possessor is presumed to be the real obligee. When the real right of movable property changes, it is only necessary to realize publicity by means of possession modification. As for the real right of immovable property, the French Civil Code stipulates the compulsory registration system, that is, the change of real right of immovable property must be subject to registration.

4. The system of real right transfer in Anglo-American legal system

4.1 Overview of the system of property right transfer in Anglo-American legal system

The system of real right transfer in common law system mainly follows the "contract principle", that is, the change of real right is mainly carried out through contracts or other legal acts. Different from the civil law system, the Anglo-American law system does not strictly distinguish between property rights and creditor's rights, but pays more attention to actual transactions and contract performance. In the Anglo-American legal system, the transfer of real right is usually realized by delivery, registration or other means stipulated in the contract. In addition, the common law system also emphasizes the importance of publicity to ensure the openness and transparency of transactions.

4.2 British real right transfer system

The system of property right transfer in British property law is unique. English law adopts the principle of delivery, that is, the change of real right of movable property must be realized by delivery. Delivery can be real delivery or symbolic delivery. As for the real right of immovable property, the British law stipulates the registration system of land transfer, that is, the change of real right of immovable property must be subject to registration. English law also stipulates the "priority rule", that is, when there are multiple conflicts of rights in the same thing, the priority belongs to the person who obtains the rights first. This rule aims to protect the interests of the prior obligee and ensure the fairness and stability of the transaction.

4.3 American real right transfer system

The system of property right transfer in American property law is also typical. American law adopts "registration antagonism", that is, the change of real property rights must be registered to achieve the effect against the third party. For the real right of movable property, the American law stipulates the "presumption of possession", that is, it is presumed that the possessor is the real obligee. At the same time, American law also pays attention to the importance of publicity and stipulates detailed publicity methods and procedures. For example, the transfer of real estate must be registered in public records, while the transfer of movable property can be publicized by delivery, possession or other means.

5. Present situation and problems of property right transfer system

At present, the system of property right transfer in China is mainly stipulated in the Property Law of People's Republic of China (PRC) and other relevant laws and regulations [9]. The property law clearly stipulates the concept, nature, change mode and publicity method of property right, which provides a basic legal framework for the transfer of property right. In addition, China has also formulated a series of laws and regulations related to the transfer of property rights, such as the Provisional Regulations on the Registration of Real Estate and the Measures for the Registration of Chattel Mortgage, to regulate the transfer of real estate and chattel property rights. In legislation, China's property right transfer system pays attention to protecting the legitimate rights and interests of the parties, emphasizes the importance of publicity, and stipulates various publicity methods and procedures. At the same time, China has also absorbed some useful experiences from civil law system and common law system, such as the principle of formalism of real right and the principle of contract, so as to improve the system of real right transfer.

In practice, China's property right transfer system has been widely applied and implemented. The real estate registration system has been established nationwide, providing convenient registration services for the transfer of real estate rights. The transfer of real right of movable property has also been realized through delivery and possession. In addition, courts and arbitration institutions in China have accumulated rich experience in handling disputes over the transfer of property rights. However, there are also some problems in practice. For example, the real estate registration system in some areas is not perfect enough, and the registration procedures are cumbersome and inefficient, which affects the efficiency of property right transfer. In the transfer of real right of movable property, some parties have a wrong understanding of delivery and possession, which leads to frequent disputes over real right transfer. In addition, some illegal acts, such as false registration and malicious collusion, also occur from time to time, which damages the legitimate rights and interests of the parties. For example, Table 2 specifically shows the problems existing in China's property right transfer system and their reasons.

Table 2: Problems and reasons of China's property right transfer system

| Question | Describe | Cause |
|--------------------------------------|--|--|
| Imperfect legislation | There are legislative gaps or ambiguities in some details, which lead to difficulties in practice. | The legislative process lags behind the development of social practice. |
| The publicity system is not perfect. | In some areas or fields, there are problems of insufficient publicity and opacity, which affect the openness and credibility of property right transfer. | Publicity technology and means are relatively backward. |
| lax law enforcement | Some law enforcement departments are lax and unfair in handling disputes over the transfer of property rights, which damages the legitimate rights and interests of the parties. | There are management loopholes and uneven quality of personnel in law enforcement departments. |
| Lack of legal awareness | Some parties don't know enough about the legal provisions of real right and the system of real right transfer, which leads to misunderstandings and deviations in practice. | Insufficient legal education. |

6. Perfection of China's property right transfer system from the perspective of comparative law

6.1 Draw lessons from the advantages of real right transfer system in continental law system and common law system

In the process of improving China's property transfer system, we can draw on the advantages of the civil law system and the common law system. For example, the formalism principle of property rights in the civil law system can be borrowed to clarify that changes in property rights not only require a consistent expression of the parties, but also require certain property rights actions to be completed, such as delivery or registration. This helps to ensure the security and stability of property rights changes. At the same time, it is also possible to draw on the contractual principles and disclosure system of the Anglo American legal system, emphasize the importance of disclosure, and establish detailed disclosure methods and procedures to ensure the openness and transparency of transactions. In addition, the flexibility of the Anglo American legal system in dealing with changes in property rights is also worth learning from, which can be handled according to actual situations and contractual agreements.

6.2 Related suggestions

This article focuses on the problems existing in China's property rights transfer system, draws on the advantages of the civil law system and the common law system, and proposes legislative suggestions, law enforcement and judicial protection suggestions to improve China's property rights transfer system, as well as suggestions to promote international integration. Specific suggestions and measures are shown in Table 3.

Table 3: Relevant suggestions and measures

| Suggestions. | Suggested content | Specific measures |
|---|--|---|
| Legislative suggestion | Clarify the concept and nature of real right | Further clarify the concept, nature and types of real right in legislation to avoid misunderstandings and disputes. |
| | Improve the publicity system | Specify detailed and specific publicity methods and procedures, including publicity effectiveness and inquiry, so as to improve the reliability and efficiency of publicity. |
| | Standardize the way of real right change | Adhere to the statutory principle, appropriately introduce the principle of autonomy of will, and allow the parties to independently agree on the way of property right change within the scope of law. |
| | Strengthen the protection of property rights | Set strict legal responsibilities and punishment measures, crack down on illegal acts and protect the legitimate rights and interests of the parties. |
| Suggestions on law enforcement and judicial guarantee | Strengthen law enforcement | Law enforcement departments handle disputes over the transfer of property rights in strict accordance with the law to ensure the fairness and efficiency of law enforcement. |
| | Improve the level of judicial guarantee | Courts and arbitration institutions strengthen the trial and adjudication of disputes over the transfer of property rights to ensure that the legitimate rights and interests of the parties are effectively protected. |
| | Strengthen legal supervision | Establish and improve the legal supervision mechanism, supervise and restrict law enforcement and judicial activities, and prevent abuse of power and corruption. |
| Suggestions on promoting international integration | Strengthen international exchanges and cooperation | Actively participate in exchanges and cooperation in the field of international economic law and property law, and absorb and learn from international advanced experience and practices. |
| | Promote the unification of legal rules | Efforts should be made to promote the unification or coordination of legal rules with other countries and regions and reduce legal conflicts and obstacles. |
| | Improve the level of legal services | Strengthen the training and management of legal service institutions and personnel, improve the level and quality of legal services, and provide high-quality legal services for international economic cooperation. |

7. Conclusions

Through in-depth research on the system of property right transfer, this article draws the following conclusions: firstly, the system of property right transfer is one of the core contents of the property right law system, which is of great significance for protecting the legitimate rights and interests of the parties, maintaining the market economic order and building a country ruled by law. China has accumulated rich experience in the formulation and implementation of property law and other relevant laws and regulations, but there are still some problems and deficiencies that need to be constantly improved. Secondly, this article draws lessons from the advantages of the civil law system and the common law system, and puts forward some suggestions on perfecting the system of real right transfer in China, such as legislation, law enforcement and judicial guarantee, and promoting the integration with the international community.

These suggestions are helpful to make up for the shortcomings of the existing system and improve the fairness, efficiency and credibility of the real right transfer system. Finally, from the perspective of comparative law, this article systematically compares the similarities and differences between the civil law system and the common law system, which provides a useful reference for perfecting China's property right transfer system. At the same time, combined with the actual situation and problems in China, this article puts forward some targeted and operable suggestions.

Although this article has made some achievements in the research of property right transfer system, there are still some shortcomings and limitations due to the limitation of time and space. Future research can further expand the scope and content of the research, and make in-depth analysis and discussion on the relationship and influence between the real right transfer system and other legal systems, and the specific implementation of the real right transfer system in different countries and regions.

References

- [1] Wei Zhenhua. *On the change and publicity of special movable property rights [J]. Western Law Review*, 2017(3):13.
- [2] Sun Kaiyue. *Interpretation of the new rules of mortgage stipulated in the Civil Code [J]. Chinese Sci-tech Journal Database (Full-text Edition) Economic Management*, 2021(5):3.
- [3] He Huan. *Legal research on the rules of property right change in China Property Law [J]. File*, 2018, 008(034):263.
- [4] Zhao Junlao. *Interpretation and perfection of the effective elements of the change of special movable property rights in China Property Law [J]. Legal Science: northwest university of politics and law Journal*, 2017, 35(4):13.
- [5] Qu Dandan. *Research on the transplantation of property law in the era of legal interpretation [J]. Journal of shandong institute of commerce and technology*, 2017, 17(5):5.
- [6] Wang Wensheng. *On the collation of the judicial interpretation of the Property Law and the perfection of the compilation of property rights in the Civil Code [J]. Henan Social Sciences*, 2018, 26(9):6.
- [7] Kang Hao. *Research on the legislation of special movable property ownership in the property right series of Chinese Civil Code [J]. Western Law Review*, 2018, 135(05):1-20.
- [8] Lin Qinjiang. *On the revision and perfection of China Property Law [J]. Legal System and Society*, 2020, 000(036):9-10.
- [9] Liu Jinsong. *On the progressive structure of property law of contract law, property law and tort liability law [J]. Business situation*, 2022(38):0155-0157.