

# The Systematisation of the Civil Code of the People's Republic of China in Book II Real Rights

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**Abstract:** The formulation of civil law into a code is an important process of re-integrating and systematising civil law. Compared to the previous application of the individual laws of the civil law, the most important thing in applying the Civil Code of the People's Republic of China (hereinafter called the Civil Code) is to have a systematic thinking, i.e., unified norms and logical consistency. The legal system of real rights in the Civil Code is the basic legal system for the recognition, use and protection of property, which is fundamental to the country and has a bearing on the interests of people's livelihood. Property rights are the basis of every country's economic development, a prerequisite for exchange and a material guarantee for human survival and development. This paper will elaborate on five aspects, as follows: Real Rights and General Provisions, Real Rights and Contracts, Real Rights and Marriage, Family and Succession, Real Rights and Tort Liability, and the systematic arrangement within Real Rights. In order to achieve the purpose of better application of the Civil Code to solve the problems of property rights.

**Keywords:** The Civil Code; Real Rights; Systematisation.

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## 1. Introduction

On 30 June 1995, the Standing Committee of the Eighth National People's Congress adopted the Guarantee Law. On 16 March 2007, the Fifth Session of the Tenth National People's Congress adopted the Law on Property Rights. On 28 May 2020, the Civil Code was formally introduced and has been in force since 2021 1 January 2020, marking the formal formation of a systematic civil law system in China [1]. The repeal of the Guarantee Law together with the Property Law and the alternation of laws also triggered a change in the system of legal regulation of property rights.

Specifically, the Civil Code is organised in the Pendleton style, with a "General + Sub-Titles" structure, using the "abstract to concrete" or "general to specific" legislative technique to distinguish between the General and Sub-Titles. The legislative technique of "abstract to concrete" or "general to specific" distinguishes between the general provisions of the Code and its sub-titles. The provisions of the various sub-titles are used as a basis for the formation of general rules by means of "axiomatic extraction", which are common to all the sub-titles of the Code.

The arrangement of the legal norms of the Property Title in our Civil Code is mainly reflected in Book II Real Rights, which concentrates on regimes related to property rights. At the same time the Civil Code also considers the regime of property rights in other titles. Firstly, the consideration and application in the General Provisions - legal acts, civil subjects, agency and fundamental principles. Secondly, consideration and application in the Contracts - atypical security (retention of title, financial leases and factoring contracts). Thirdly, consideration and application in the Marriage and Family and Succession titles - legal succession, testamentary succession. Fourthly, consideration and application in the Tort Liability section - safeguarding the proper functioning of property relations.

## 2. Book II Real Rights and Book I General Provisions

The General Provisions of the Civil Code provides for the distillation of the elements of civil legal relations, as well as common rules on civil legal acts and civil liability, and serves as a general provision for each subpart. At the same time, the Civil Code, as a law of rights, is mainly based on the logical sequence of "recognition of rights and remedy of rights". This is true of the General Provisions, as well as of the Property Provisions, which are a concretization of the civil rights in the General Provisions.

The General Provisions of the Civil Code, Chapter I, which sets out the basic principles, Chapters II, III and IV, which set out the civil subjects, Chapter VI, which sets out the civil legal acts, and Chapter VII, which sets out the agency, need to be linked to the General Provisions in the specific application of the Property Provisions. For example, if a contract for the sale and purchase of real estate is entered into and the real estate right is registered, it is necessary to consider whether the change of real estate right is in accordance with the basic principles of civil law and whether it is in accordance with public order and morality; whether the change of real estate right is in accordance with qualified civil subjects and whether there is a contract concluded by a minor; whether the change of real estate right is in accordance with a valid legal act and whether there is a fraudulent material misunderstanding; and whether there is a fraudulent material misunderstanding. It is necessary to consider whether such change in rem is in accordance with the valid composition of agency, and whether there is no powerless agency and apparent agency. The above issues arise in the application of the Title of Property and can be specifically dealt with by means of the rules of the General Part, thus helping to determine the validity of acts in rem.

### **3. Book II Real Rights and Book III Contracts**

The Real Rights and Contracts sections of the Civil Code, although relatively independent, are closely linked and should be applied in a systematic manner, with the correct approach to law and usage. The first title of the Civil Code on Contracts, General Provisions, which regulates the effects of the conclusion of a contract, the performance of rights and obligations and liability for breach of contract, is linked to the Book of Real Rights, which deals with claims for changes in property rights. The atypical security content relating to changes in property rights is also provided for in the Contracts section, allowing for a backward and forward linkage between the Property section and the Contracts section.

For example, a retention-of-title contract - where the parties agree that the seller will continue to retain ownership after the subject property has been delivered to the buyer - is intended to secure the fulfilment of a claim for the price, and the seller's retention of title is therefore considered to be an atypical security right. The Civil Code, for example, expressly provides in the Book of Contracts (Article 641(2) of) that a seller's retention of title is not opposable to bona fide third parties unless it is registered. Moreover, where there are several security rights in the same subject matter, even if there is a retention of title by the seller, the order of satisfaction between the several security rights should be dealt with in accordance with article 414(2) of the Civil Code.

Financial lease contracts - The lessor's ownership of the leased property also serves a security function. The Civil Code provides in the Contracts section (Article 745) that the lessor's title to the leased property is not registered against bona fide third parties. Here the ownership of the leased property is regulated under a contractual system.

Factoring Contracts - The Civil Code, Book of Contracts (Article 768) provides that if a creditor of an account receivable enters into multiple factoring contracts in respect of the same account receivable, resulting in multiple factors claiming rights, the registered one takes the account receivable before the unregistered one; if both are registered, the account receivable is taken in the order of the time of registration; if both are If neither registration nor notification is made, the factor who is first to reach the debtor of the receivable with the notice of assignment shall take the receivable; if neither registration nor notification is made, the receivable shall be taken in proportion to the amount of factoring financing or remuneration for services rendered. This provision also addresses the issue of the publicity rules for rights in rem in the Property Codification.

Thus, article 388 of the Property Title of the Civil Code provides that a guarantee contract includes "a contract with a security function", which in this case includes a contract of sale where the seller retains title under article 641 of the Contracts Book of the Civil Code, a financial lease contract where the lessor has title to the leased property under article 745 and Article 768 provides for multiple factoring contracts. These three articles are referred to as contracts with security functions, i.e., when there are multiple claims to the subject matter of the sale, the financial lease and the factored receivables, the seller, the lessor, etc. have priority over them. As to how to determine the specific attribution of rights, Article 414(2) of the Civil Code applies: "In the case of other registrable security rights, the order of satisfaction shall apply by reference to the provisions of the preceding paragraph",

i.e., the first registered has priority over the later registered, the registered over the unregistered and the unregistered-on a pro rata basis. Another example is that, according to Article 20 of the Interpretation of the Supreme People's Court of the Application of the Relevant Guarantee System of the Civil Code of the People's Republic of China, the provisions of the Civil Code relating to the special protection of guarantors can in many cases be applied to the special protection of guarantors in security interests; the provisions of the Civil Code relating to the prohibition of guarantors by organs and legal persons can be expanded to apply to the prohibition of in rem guarantors, again reflecting systemic application thinking [2].

### **4. Book II Real Rights and Book V Marriage and Family, Book VI Succession**

The Civil Code, in the Marriage and Family section (Article 1065), provides that a man and a woman may agree that property acquired during the marriage and pre-marital property shall belong to each of them and jointly, or partly to each of them. The agreement shall be in writing. If there is no agreement or if the agreement is unclear, the provisions of Articles 1062 and 103 of this Law shall apply. That is, the relationship in rem of property changes between husband and wife is also regulated in that part.

Chapter II of the Civil Code on Succession, on legal succession, and Chapter III on testamentary succession and bequests, all deal with the rules relating to the change of rights in rem, stipulating that succession begins at the death of the decedent. The point at which the heir acquires the right in rem to the decedent's estate is at the time of the decedent's death, and the decedent's estate is not subject to delivery or registration; its right in rem changes naturally with the death of the decedent.

### **5. Book II Real Rights and Book VII Tort Liability**

The Tort Liability Book of the Civil Code (Article 167) provides that if a tort endangers the safety of another person or property, the tortfeasor has the right to request the tortfeasor to assume tort liability for stopping the infringement, removing the obstruction and eliminating the danger. The relevant provisions of this book also guarantee the protection of the legitimate interests of the person concerned in the event of damage to property rights, thereby maintaining the smooth and orderly conduct of the aforementioned changes in property rights.

The protection of property rights is governed by the provisions of the Tort Liability Part [3]. Article 237 of the Book of Real Rights "Where damage is caused to immovable or movable property, the right holder may request repair, reconstruction, replacement or restoration of the original state in accordance with law" and Article 238 "Where an infringement of property rights causes damage to the right holder, the right holder may request compensation for the damage in accordance with the law, and may also request other civil liabilities in accordance with the law", are based on Articles 36 and 37 of the former Property Law (2007), each with the addition of the word "in accordance with the law", the main function of which is to apply the corresponding property rights protection methods, specifically pointing to

the application of the Tort Liability Book.

## 6. Systematic Organization within the Codification of Book II Real Rights

The Civil Code is organised in the Pendleton style, not only in the form of "General Provisions + Sub-Titles". At the same time, the provisions of the various sub-titles are used as the basis for the formation of general rules by extracting the axiomatic formula and forming the common provisions of the various sub-chapters of the Code. The Civil Code is an important part of the systematisation of our code, mainly concerning the possession, use, benefit and disposal of property. Its internal systematisation also exists in the form of a general division, which mainly includes the following aspects:

Firstly, the General Provisions sub-title firstly provides basic provisions on the concept, types, acquisition and protection of property rights, which provides the theoretical basis for the subsequent contents such as the subsequent ownership rights and the application of various types of other property rights. Secondly, the subpart on ownership provides for the types of ownership, including state ownership and collective ownership, private ownership, and owners' ownership of buildings in differentiated areas, etc. Thirdly, the sub-title on usufruct rights provides for the right to contract for land management, the right to use construction land, the right to use residential bases and the right of residence. Fourthly, the sub-title on security interests provides for mortgages, pledges and liens, etc. Fifthly, the Possession sub-section provides for the basic conditions of possession of property, the manner of formation and the protection of the right of possession. At the same time, there are further general subdivisions within the subdivisions or chapters of the Property Title, for example, the security interests are also divided into general provisions and various types of security rights such as mortgages, pledges and liens, and within mortgages they are further divided into general mortgages and maximum mortgages, etc.

The systematic organisation of the Title of Property is comprehensive and systematic from the general provisions to the details, according to the specific provisions involved in immovable property, movable property, security interests, common and joint ownership and protection. In general, the clear structure and layout of the Property section of the Civil Code allows for a better understanding of the various parts of the Civil Code in the application of the law, a clearer understanding of the legal provisions relating to real rights and an easy retrieval of the provisions that need to be found, as well as providing some guidance for the practical operation of property rights.

## 7. Conclusion

All modern national codes have their unique backgrounds and political implications, and the political reasons behind the code debates are always accompanied by the phenomenon of codification itself, which manifests the political trends of republicanism and legislative centrism. The Civil Code, the highest achievement of Chinese civil law legislation, is not only a product of politics, reflecting the general political implications of the rise of the nation-state, but also represents a specific political ideology in itself. The codification of civil

law is a process of "uniting the masses into one" or gathering the masses into a public will. The Civil Code is more holistic and communal than the general process of individual legislation, and it eliminates the differences in human identity, regional differences, and the cultural and customary characteristics of alienation in a specific civil legal sector, and marks them as equal citizens of a unified nation. On the other hand, the enactment of the Civil Code is, by its very nature, an act of the sovereign, the purpose of which is to eliminate the confusion of the sources of law, to exclude or reduce to the maximum extent possible the influence of other sources of law, and to achieve legal unity. The function of legal unification will strengthen political unity and centralism, and realize the "nationalization" of law. The modern code is the result of the doctrine of law and the construction of a systematic approach, a dual system of formalization and materialization. The particular form of the Civil Code also represents the characteristics of China's era and nationality, and is designed to solve a variety of practical problems that need to be faced locally.

The Civil Code to the legal relationship as the "axis" for the compilation of codification, the organic integration of the civil legislation related to property rights, the construction of a complete and systematic system of norms [4]. The systematization of the Civil Code requires that in the process of application, according to the nature of the legal relationship in dispute, based on special provisions over general provisions, superior provisions over inferior provisions, new provisions over old provisions and other rules to find the law; after finding the applicable legal norms, to give full play to the systematization function of the Civil Code, comprehensive consideration of the external normative system and the internal value system usage; In the absence of directly applicable legal norms, the legal loopholes should be filled according to the systematization function. The systematisation of the Civil Code in the title on property rights requires the development of a systemic mindset in the study of law, firstly, to recognise and apply the methodology of property law. Secondly, a systematic mindset is required to recognise the legal norms of property law and to apply the law. As the law is regular and the operation of the law will follow the most basic rules, we need to pay more attention to the general rules in the law, extract the common legal provisions and explore the inherent laws of the change of property rights from the system of the Civil Code.

## References

- [1] Zhiwen Li, Interpretation of the rules on the change of property rights of ships under the systematization of the Civil Code[J]. Xuehai, 2023(02):183-191.
- [2] Wenwen Lin, Yongqing Yang, Jinliang Ma and Guangrong Wu: "The Understanding and Application of the Interpretation on the Application of the Civil Code Concerning the Guarantee System", in People's Justice, No. 4, 2021.
- [3] Xinbao Zhang, "Tort liability codification: improvement and innovation in succession", in Chinese Jurisprudence, No. 4, 2020.
- [4] Xiaorong He, The inherent constraints of systemic thinking on the uniformity of civil adjudication - the application of the Civil Code as a perspective[J]. Chinese Applied Jurisprudence, 2022, No.34(04):1-12.