

# The Study on Civil Law Real Right Behavior in China

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**Abstract:** In this paper, the real right behavior in our civil law discusses, first introduced real right behavior of independence, secondly in ram behavior is legal behavior are stated in detail Above, this paper make public awareness of the law of real right behavior of the civil law, and finally carry the undeserved benefit system on real right behavior for no reason support, right in ram conduct more, Further, this paper has certain theoretical guidance and practical application significance.

## 1. Introduction

In the modern Roman law system the father of the real right behavior German law everyone Gaza Winnie system proposed the real right change theory, and in which includes real right behavior. The important theory, but what is the real right behavior? What is the connotation of real right behavior? Gaza Winnie made no clear explanation. However, the legal system is the cornerstone of the concept of like form, if no clear legal concept, there would be no structure method, tight logic of the legal system, and also can't in the legal system for effective laws applicable. According to legal theory, and the world will know real right behavior of the real right change consensus, thus the effect of the property rights law occurred, so need to write from memory degree of forms. Once complete real right behavior as the act of disposition will show that the parties to the real right certainly change, produce the effect. As a real right accord to the club to prove known for the world, unique form of real right behavior is indispensable. In all, only when there is a chattel the delivery and real estate registration behavior, all of the parties the existence of the real right accord between may only be judgment come out, can the real right behavior such legal fact judgment completed, real right behavior as a unique method. Learning concept to now have not been given clear in law, so, the real right of the civil law behavior exploration is necessary.

## 2. The real right behavior independence

Real right and creditor's rights because division so can opposition exists, when different legal effect, private law practices of core elements "declaration" will make different description. Rights can be according to whether and in all human standards can be divided into the imperium and phase to right. Scholars think creditor's rights as the right of relative effectiveness occur only in the debt law the relationship among the parties, therefore, another person may request specific human line for rights is the essence of the creditor's rights. Because it is request each other for a specific behavior, therefore

The difference between the behavior of creditor's rights to conclude and creditor's rights contained within the "request for the other party of the line for the effectiveness of the ". They are already and possible association. Say "has" the behavior is refers to the creditor's rights debt the parties concluded, this kind of behavior called creditor's rights behavior. Produce Creditor's rights and debts relations are the consequences. (in fact, between the parties to the creditor's rights and claims is not the only reason for the produce, such as debt undeserved benefit and negotiorum gestio debt, all because of legal restrictions produce directly. Here for the convenience of instructions, because only discuss the legal behavior produce claims and debts this kind of circumstance. ) Say "possible" behavior, is refers to the party people in the pursuit of debt's actions that take place. The transfer ownership as the purpose of creditor's rights contract, between the parties have to pursue is the transfer of ownership

behavior. Obviously, this kind of behavior is not creditor's rights behavior.

### **3. The real right behavior is legal act**

La lenz pointed out that legal act is to point to one or more persons engaged in a special fixed behavior or several profound inner link of behavior, and its purpose is for the cause some private law on the legal consequences, that is to say even if individuals and between individuals the legal relation of the changes. Any a per capita by legal behavior means to structure .He and other anyone to build the legal relation between. He also pointed out that the legal behavior is real. Now the basic principles of the German civil code, that is usually in the sense of private law autonomy tools.

Dean'ser · MeiDiKu, retails the "German civil code legislative reason book theory. The so-called legal behavior is mainly refers to private to cause some legal effect Meaning behavior said. Some of the legal consequences can produce according to law, it is because of behavior. People expect it happen. The essence of legal act is mainly in order to cause the meaning of legal effect. The realization of the thought, the legal system is to acknowledge that the ways and means of the world physical law. According to the two German famous scholars of the narrative, method Law behavior have the following features:

1) Says independent, but the meaning of recognition. Meaning says is "refers to the person formed in the inner desire the effect of pursuit meaning representation and the process of outside. Meaning said Want to express clearly in the know, "said can't from the simple exist in thinking of the self Thoughts constitute.

2) Meaning said the pursuit of civil law corresponding degree of significant legal effect. Such as a to b expressed to want to eat to treat the meaning, because do not have legal effect, to also cannot constitute a declaration of intention.

3) Meaning said in the pursuit of the legal behavior effect, that is to say, the laws line for the legal effect and meaning said content is consistent.

### **4. Undeserved benefit system on real right behavior for no reason support**

Real right behavior lead to trade injustice is denying real right behavior of scholars point of view, he

People think, "Real right behavior makes the assignee benefit". In fact, the use of real right act theory

Can't lead to the assignee completely have the thing? Make bargainer or the assignee benefit according to content right behavior theory the basic content of real right behavior is not in the theory of solving the range inside. The final purpose of real right behavior and the only purpose lie in real right transfer. Real right behavior their own not value judgment. Real right behavior and creditor's rights behavior distinguish the final result is no Because of sex. Real right behavior in relatively independent, if want to the effectiveness of the real right behavior will be added .In the creditor's rights behavior, will cause the effectiveness of the real right behavior basically loss: right behavior will with the creditor's rights behavior and the loss of utility, cancellation or pending changes. Shielding the in effect the relationship can truly reflect the effectiveness of the real right behavior after independence. Things Real, more practical in modern social life is real right behavior for no reason. If the parties is in at the beginning of the conclusion of the contract to investigate the prior validity of the contract is how this is how numerous Soar and helpless move. Creditor's rights in law of relativity in reality are disguised to reflect. Don't admit for any reason support, can let each as the transferee face an embarrassing Legal status. Before the cancellation hand trade, the real right will also be go against the river and destroy, so this kind of go against the river and the force will be transmitted to the assignee place, right to the transformation of creditors will assume by the assignee.

### **5. Undeserved benefit system construction**

From undeserved benefit system origin see, the real right behavior for the direct result of the theory. Undeserved benefit system originated from the Roman law, and its formation and Roman law of real right behavior are closely linked. Undeserved benefit generally for obtain the proximate cause of the accidentally the same in law does not exist or invalid remote cause which combines happen, at this time, although real right and creditor's right to obtain recognized, but, people allow victims to for a party may obtain from the other part of the return of property increase lawsuit. As for the system, complete undeserved benefit system, was born in Germany method, because the German pursues real right behavior theory, the reason also invalid relationship does not affect the real right change, make the right side is very bad, therefore in making German civil code draft second, according to the Kiel g and suggestion, in debt relationship set to undeserved benefit system to make unified regulation to relief right vendor. German scholars believe that if the real right law as form method, then undeserved benefit method is fixed form method the essence of the method. More scholars pointed out that undeserved benefit method is based on the theory of real right behavior of the real right law order rectify. Visible, whether undeserved benefit system production, or is its final epitomize, all is in response to real right behavior theory, this theory therefore become with undeserved benefit system production, the development of the whole process of the lubricating oil.

Undeserved benefit system and the theory are of real right behavior logic from card. As stated above, undeserved benefit system is in response to real right behavior theory demands; to overcome the shortcomings of the theory is born. Because, according to the real right behavior theory, Even if the reason relationship invalid or be withdrawn, based on the relationship between the reason on real right change as long as its itself without blemish is still effective, of course, occur pay title to the subject matter of the transfer effect. At the moment, although there is no payment reason, for payment of the actors also cannot return to ownership of lawsuit request payment by the return to the subject matter, and payment of the party by no legal reason to keep the subject matter also violate the principle of fairness, the law endows the payment party the claim for returning unjustified enrichment has, in order to maintain the interests of a client balance, this is the German lawyer Edinburg so-called/undeserved benefit system is used to treat lawmakers real right behavior WuYinXing disease of the system. Visible, the claim for returning unjustified enrichment has to title to the subject matter to have transfer by the payment of the party as the prerequisite, and as the ownership right of return can supplement relief means exists, namely/institute Have the right to return the right of claim and the claim for returning unjustified enrichment has returned, can't coexistence. If you don't admit that real right behavior, title to the subject matter does not occur effective transfer, dens can be based on ownership to demand the return of, don't also should not be applicable undeserved benefit, so undeserved benefit system existence of itself is enough to explain the legislation to the real right behavior theory.

Negative real right behavior will greatly reduction undeserved benefit of optimum Use range, reduce undeserved benefit system in civil law standard system of the land A. Based on the real right behavior theory and undeserved benefit system of mutual Relationship, some scholars pointed out that, based on which the payment claim, the only real right behavior will produce undeserved benefit return claim, for debt Right behavior is concerned, if the lack of reason, the behavior all invalid, property rights Natural reset the owner, beardless undeserved benefit system relief, no cannot produce When employing return room for claim. If negative real right behavior, also Based on the payment means negative produce undeserved benefit, so that don't When employing confined to has no right to dispose, apposition and narrow field. Not only such as This, in France, because do not admit that real right behavior, there is no the civil code Independent undeserved benefit system, although later French science of civil law and case The creation of undeserved benefit system, but it was still in for than other please For right secondary position, the judge in the case, shall first apply real constant Method, only in real constant method no provisions of, can based on/payment Equilibrium 0 natural law principle, applicable undeserved benefit return. Swiss debt Service method to undeserved benefit although have unified regulation, but in theory but also has been Think, the claim for returning unjustified enrichment has for supporting relief means, make its Function big restricted, in legal status is not significant.

The author thinks that, the above about undeserved benefit and the relationship between real right behavior Knowledge is not correct, in fact, undeserved benefit and real right behavior between theory There is no longer any inherent and essential and inevitable relation with that of the real right behavior or Lack of unjust enrichment does not affect the operation of the system, undeserved benefit system collapse Say more mentioned.

Undeserved benefit is not the product of real right behavior theory, also cannot As admitted that real right behavior of the logical proof. In contrast, pass said think Undeserved benefit is based on the concept of lasting changes flat of the system, unjustified benefits basis is fair, with social conscience and justice Consistent; Property value movement, in form generally identified as positive When, but in form relative think not just in time, the concept and in fair Adjust the contradiction, constitute the real intention of the claim. Improper Enrichment from equity is for the purpose of equity, and real right behavior no coherent. Both But the real right behavior theory is not the cause of the claim, and why don't think When employing existence is proved the rationality of the real right behavior?

Negative real right behavior theory, won't reduce undeserved benefit system Applicable scope and functions. Undeserved benefit as the equity idea product, It should be to what extent, through what way is completely depends on the scale Flat requirement. As a kind of legislative policy judgment, countries can root According to the different legal system different its provisions. Although, do not admit that real right line For, in the legal act is invalid, the insurer has all right, and when employing all applicable room, but this is the full measure People, the transferee and the interests of a third person result, it is legal to make rational Choose. The crux of the problem is that not admit in the real right behavior When employing system reduced the scope, but real right behavior theory will vendor The ownership of the right of claim into the claim for returning unjustified enrichment has, thus not appropriate To expand the scope of unjust enrichment. That is to say, not admit things Right behavior, not only not to undeserved benefit system damage, but is right of the system restore.

From undeserved benefit type observation, contributes to the problem to Further. Undeserved benefit including payment undeserved benefit and the improper payment to And, among them, not pay undeserved benefit (such as for has no right to dispose, apposition production, etc Raw undeserved benefit) and real right behavior without any contact; And pay no When the enrichment and real right behavior had certain correlation, payment request of unjust enrichment Right tend to have the regulation for real right behavior theory is born property change of the special specification function, but real right behavior theory to alleviate or abolish improper Enrichment and no significant influence. For payment and happen undeserved benefit, in Denying real right behavior under the legislation style, also have a wide range of applicable value. France and Japan doesn't admit that real right behavior, but all have improper payment to the type of existence. In our civil law does not recognize real right behavior, improper payment employing still have practical significance, such as invalid contract, the assignee consumption the subject matter, vendor can exercise the claim for returning unjustified enrichment.

To undeserved benefit to form, should have a correct understanding. Don't When employing constitute an important aspect, is a party enrichment, but what is enrichment, Should not be too narrow explanation, and will not gain limited to take Have to title to the subject matter. In fact, in does not recognize the real right behavior made Law, legal act is invalid, the licensee shall not obtain ownership is not Italian .Its didn't get any interest. Because, the transferee are often based on the no the effect of behavior of the subject matter has possession, but also occupies itself as a kind of the

Profit, obtain possession shall obtain a legal status, happen of possession the claim for returning unjustified enrichment has. History is still wide sir namely correctly pointed out, not have to If the claims with its elements, not because of the loss incurred for other request Right and realization of the same or similar results, and be reject; Is all In accordance with the ownership of the property right of claim request return, must not again in no When employing regulations request ownership to return, but, all people have to please For the return of belongings of unjust enrichment. This is the ownership right of claim and the claim for returning unjustified enrichment has combined the unexpectedly, the right holder can choose one exercise.

## 6. Conclusions

This article through to real right legal independence and discussion, make public to the real right behavior of a more profound understanding, through the undeserved benefit system on the support of the real right behavior WuYinXing put forward, so as to show that admit Wu YinXing will block the prior trading defects, to ensure that the assignee's the real status of the strong point of view.

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