

Study on the Method of Publicizing the Change of Special Movable Property Right

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Abstract:

Special movable properties hold a distinct and vital role in the everyday lives of individuals. Both in theoretical discussions and practical applications, there is a growing trend favoring the use of delivery as the primary method for effecting changes in special movable property rights. However, an exclusive reliance on delivery as a public method gives rise to a plethora of intricate issues that require careful resolution. One of the prominent issues that surfaces is the limited right to dispose of special movable properties. Unlike other types of properties, these possess unique characteristics that demand a tailored approach to their registration and transfer. Additionally, the complexities of handling multiple sales of special movable properties present formidable challenges. To fundamentally address these problems, it becomes evident that, considering the distinctive nature of special movable properties, a more comprehensive approach is required. This approach should encompass both registration and delivery as complementary methods for effecting changes in property rights. By combining these two mechanisms, buyers of special movable properties can secure not only a legitimate claim to the property but also a complete and unassailable real right. In essence, this dual approach, involving registration and delivery, offers a robust solution to the multifaceted challenges associated with special movable properties. It harmonizes the unique features of these properties with the legal requirements for their transfer, providing individuals with a reliable and comprehensive framework to navigate the complexities of special movable property transactions.

Keywords:

Special Movable Property, Delivery, Register, Change of Right in Rem

1. Introduction

In China, the principle of publicity is the fundamental principle governing changes in property rights. Under the guidance of the principle of publicity, the usual method of publicity for changes in personal chattel property rights is delivery, while for changes in real property rights, it is typically registration. Therefore, there is usually no dispute regarding the methods of publicity for changes in personal and real property rights. However, as society advances and develops, special chattel property

such as motor vehicles, vessels, and aircraft is increasingly applied in real-life situations. Nevertheless, due to the uniqueness of special chattel property, the methods of publicity for changes in its property rights have given rise to numerous issues and debates in both academia and practice.

2. Relevant Issues in Changes of Property Rights in Special Chattel Property

According to Article 225 of the Civil Code of the People's Republic of China (hereinafter referred to as the "Civil Code"), "For the establishment, alteration, transfer, and extinguishment of property rights in vessels, aircraft, and motor vehicles, among others, failure to register shall not prevail against innocent third parties." This article inherits the expression of Article 24 of the now obsolete Property Rights Law of the People's Republic of China (hereinafter referred to as the "Property Rights Law"). [1] According to the provisions of this article, it explicitly establishes the opposition nature of registration for changes in property rights in special chattel property. [2] This article sets forth the registration opposition model for changes in property rights in special chattel property. Article 7 of the "Judicial Interpretation on Issues Concerning the Application of Law in the Trial of Sales Contract Disputes" (hereinafter referred to as the "Judicial Interpretation of Sales Contracts") states, "In a situation where the seller enters into multiple sales contracts concerning the same vessel, aircraft, motor vehicle, and other special chattel property, and all sales contracts are valid, and the buyers under these contracts all demand actual performance of the contracts, if the seller delivers the subject matter to one of the buyers and also processes ownership transfer registration for the other buyers, and if the buyer who received the delivery requests the registration of ownership in their name, the People's Court shall support such a request." China considers the delivery model as the appropriate mode for changes in property rights in special chattel property. However, Article 225 of the Civil Code indicates the registration opposition model, which continues to be a source of contention in practice.

3. Analysis of Methods of Publicity for Changes in Property Rights in Special Chattel Property

Regarding changes in property rights in special chattel property, two distinct viewpoints have emerged within academia, as follows:

3.1. The Delivery Theory

This viewpoint asserts that special chattel property falls within the category of movable property. Therefore, it should adhere to the principle of delivery as stipulated in the Civil Code. Article 225 of the Civil Code is considered to be supplementary to the provisions of Article 224 of the Civil Code regarding the strength and scope of effectiveness and should not be interpreted as a negation of Article 223 of the Civil Code. From a legislative perspective, the provisions of Article 23 of the Property Rights Law should apply to all articles within the movable property section of property rights law, including special chattel property. Supporters of the Delivery Theory argue that within the current legislative environment in China, civil law does not establish specific criteria for changes in ownership of special chattel property. Scholars who hold this viewpoint generally conclude that registration cannot serve as

a fundamental principle for changes in property rights in special chattel property, and Article 224 of the Civil Code is open to debate. [3]

3.2. The Dual Requirement Theory of Registration and Delivery

This viewpoint posits that both registration and delivery are methods of publicity for special chattel property, and only when both legal actions are completed can the transferee fully acquire property rights. Given the unique characteristics of special chattel property, failing to register can easily lead to unauthorized disposal and illicit transfers. For special chattel property, the absence of registration can result in numerous inconveniences and disputes. Based on the distinctive nature of special chattel property, the author is more inclined to support the second viewpoint, which advocates a dual requirement model combining both registration and delivery.

Based on the unique characteristics of special chattel property, the author strongly supports the second viewpoint, which advocates a dual requirement model combining both registration and delivery.

Taking motor vehicles as an example, each motor vehicle has its own distinct license plate number and chassis number, providing clear distinguishing criteria that set them apart from other chattel property. Additionally, motor vehicles vary in tonnage and configuration, even among those with similar appearances, making registration of motor vehicles a convenient process.

In practice, special chattel property involves various forms of delivery, such as instructions for delivery, leasing, and pledging, among others. If one were to determine ownership of property solely based on superficial appearances, it would be inherently unreasonable. If ownership were merely established by delivery and outward possession, it would inevitably lead to instability in transaction relationships and related issues.

From a comparative law perspective, registration is also an essential element of property rights transfers. According to the provisions of Japan's Road Transport Vehicle Law, motor vehicles intended for operation must be registered in the Motor Vehicle Registration Record (Article 4), and registration serves as an essential element for the transfer of ownership of the received motor vehicle. Examining the legislative trends in civil codes worldwide, some countries have gradually evolved to distinguish between registered and unregistered property. Compared to the previous distinction between movable and immovable property, this type of legislation signifies recognition of the effectiveness of registration in property rights transfers.

To elaborate further, it is essential to emphasize that the approach to publicizing property rights changes for special chattel property should encompass both registration and delivery methods. These two mechanisms are not inherently contradictory; instead, their synergy serves to provide enhanced protection for the rights of individuals. However, it's crucial to clarify that the registration-based adversarial model established by the Civil Code does not impose a mandatory obligation for registration. The decision to undergo the registration process remains a voluntary choice made by the involved parties, except when unique legal provisions dictate otherwise in specific circumstances. This approach strikes a balance between flexibility and legal requirements, promoting a more comprehensive and adaptable system for managing property rights changes in the realm of special chattel property.

4. Issues and Resolutions Concerning Special Chattel Property in Theory and Practice

4.1. *Registration's Efficacy on Par with Delivery*

Article 225 of the Civil Code establishes the principle of registration opposition. However, this provision does not offer clear directives regarding the efficacy of delivery concerning special chattel property or the potential conflicts between the effects of delivery and registration. This lack of specificity has resulted in numerous debates and controversies in both theoretical discussions and practical applications. To address these issues, the Judicial Interpretation on Sales Contracts sought to establish a rule favoring the superiority of delivery over registration, but paradoxically, this move has raised further questions. [4]

The uniqueness of special chattel property lies in the fact that registration opposition is an integral component of the transaction. Consequently, it differs in terms of publicity methods from other forms of property. Therefore, advocating for a rule that unequivocally prioritizes delivery over registration is a matter deserving of deliberation.

In practice, legislative efforts have incentivized registration. Parties involved in transactions, driven by the desire to safeguard their interests, often choose to register their ownership rights in special chattel property. While registration is not a mandatory requirement in the relevant provisions of the Property Rights Law concerning property rights changes in special chattel property, completing the registration process empowers the transferee with full ownership rights. [5] Conversely, neglecting to register can lead to the forfeiture of rights against third parties, exposing the transferee to potential risks from bona fide third parties. The credibility of registration far exceeds that of delivery, and countries such as Japan are increasingly emphasizing the importance of registration. As the credibility of registration continues to grow, it assumes an increasingly pivotal role in property rights changes [6]

4.2. *Scope of Bona Fide Third Parties*

The Civil Code, which replaces the Property Rights Law, establishes fundamental principles governing property rights and transactions in the People's Republic of China. Section 225 of the Civil Code deals with the scope of bona fide third parties and their rights regarding property rights changes. It is crucial to delve into the expanded framework of this new legal landscape.

Section 225 of the Civil Code stipulates that, concerning property rights in chattels such as ships, aircraft, and motor vehicles, "rights cannot be asserted against bona fide third parties without registration." This section clarifies and inherits principles previously present in the Property Rights Law.

To understand the scope of bona fide third parties, it is essential to address how they are defined and identified. In essence, bona fide third parties are individuals who lack knowledge or reasonable awareness of changes in property rights. [7]

Common interpretations suggest that bona fide third parties are subject to certain restrictions, particularly concerning property conveyed solely through delivery. Such

property rights can only be asserted against ordinary creditors, excluding general creditors. [8]

To further delineate the scope of bona fide third parties, consider the following criteria:

4.2.1. Bona Fide Intent:

First and foremost, bona fide third parties are characterized by their genuine lack of knowledge regarding prior deliveries of ships, aircraft, or motor vehicles. It is crucial to emphasize their ignorance of the delivery itself, distinct from the terms of a sales contract. Definition of Malevolent Third Parties: The identification of malevolent third parties involves individuals who are aware of property rights changes following delivery or exhibit circumstances indicating that they should have been aware of such changes.

In conclusion, Section 225 of the Civil Code addresses the scope of bona fide third parties in property rights changes. This comprehensive legal framework aims to provide clarity and consistency in interpreting and applying property rights regulations.

4.2.2. Must a Bona Fide Third Party Be Registered to Establish Their Claim?

In cases where delivery occurs without registration, can the acquirer assert their rights against general creditors, or are they also entitled to assert their rights against other property owners?

The author's argument revolves around the adherence of special chattels to the fundamental principle laid out in the Civil Code, which dictates "one object, one right." In practical terms, this principle signifies that a special chattel can only be physically delivered to one party, thereby bestowing property rights upon them. Consequently, apart from the recipient of property rights through physical delivery, any other individual seeking to acquire property rights must resort to the registration process. This intricate dynamic implies that property rights obtained through means other than delivery can be rightfully asserted and defended against any opposing claims.

If we were to prioritize the effectiveness of delivery over registration, it would entail that the effectiveness of delivery would take precedence over any other means. Such a hierarchy would, however, undermine the inherent significance of registration as a robust and widely recognized method for transferring property rights. In this context, Section 225 of the Civil Code, which lays the foundation for the registration counteraction principle, would lose its practical relevance and purpose.

By favoring delivery over registration, the legal landscape would be skewed, potentially leading to complications and conflicts in determining property rights' rightful owners. This scenario could also raise questions regarding the consistency and coherence of the legal framework governing special chattels, undermining the very essence of the Civil Code's principle of "one object, one right."

In conclusion, it is imperative to maintain the supremacy of the registration counteraction model, preserving the integrity of property rights transactions and ensuring a fair and consistent application of legal principles. This approach aligns with the overarching goals of legal systems, which prioritize clarity, fairness, and the protection of individual rights.

4.2.3. Is Registration a Prerequisite for a Bona Fide Third Party?

Generally, it is believed that, according to Section 225 of the Civil Code, delivery does not always take precedence. Registration that precedes delivery indicates that the registrant likely acted in good faith. In the context of special chattels, registration carries a stronger presumption of good faith and can effectively effectuate property rights changes. While the confirmation of property rights is typically associated with immovable property under the Civil Code, the principle can be applied to special chattels when parties engage in transactions and complete registration. [9]

However, there is some debate about whether registration that follows delivery can establish bona fide intent. Some scholars argue that a party registering after delivery should not be able to counteract an earlier delivered party's claim. This argument is based on the premise that the earlier acquirer has already physically occupied and controlled the subject matter, and the subsequent acquirer failed to fulfill due diligence by not investigating the true status of the property rights. Therefore, the later acquirer is deemed to have acted with gross negligence and cannot be considered a bona fide third party.

The author's argument emphasizes that evaluating a party's good faith or bad faith based solely on the order of registration can be overly simplistic and may not capture the complexities of certain situations. In some instances, sellers might deliberately hide crucial information, leading subsequent registrants to complete the registration process while being under the influence of misinformation. In such scenarios, it becomes increasingly challenging for later registrants to detect the fact that special chattels have already been delivered, which blurs the line between good faith and bad faith. Therefore, it is essential to recognize that the sequence of registration alone cannot be the sole determinant of whether registrants acted in good faith or bad faith. Moreover, it is neither practical nor necessary to verify property ownership during every registration process in all transactions, as this could lead to administrative inefficiencies and delays.

The registration counteraction model underscores the importance of the registration process as a means of establishing ownership. However, it's important to highlight a seeming inconsistency between Section 7 of the Judicial Interpretation of the Law on Sales Contracts and Section 10 of the same document when considered alongside Section 225 of the Civil Code. While Section 7 allows a party that has received delivery to counteract other registrants, Section 10 and Section 225 introduce the concept of registration priority, potentially conflicting with the previous provision. This apparent contradiction warrants further in-depth examination, as it could have implications for the legal framework governing special chattels and the rights of parties involved in these transactions. By exploring these intricacies, we can aim to achieve a more comprehensive and coherent legal system that considers the specific nuances of special chattel transactions.

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4.3. The Issues Surrounding the Sale of One Chattel to Multiple Buyers in Regard to Special Chattels

The sale of one chattel to multiple buyers, known as "one chattel, multiple sales," refers to a scenario where a single piece of personal property or real estate is the subject of multiple contracts of sale with different buyers successively. In the context of special chattels, such as motor vehicles, aircraft, or vessels, the owner may sell the same chattel to multiple buyers using both registration and delivery as methods of transfer. This situation gives rise to conflicts between registration and delivery, raising the question of whether registration should take precedence over delivery or vice versa. In this section, we argue that in the case of one chattel, multiple sales, the effectiveness of registration should outweigh that of delivery.

4.3.1. Prioritizing Registration over Delivery Resolves Property Attribution Issues

First and foremost, it is undeniable that the credibility of registration is significantly stronger than that of delivery. Registration is conducted by a state authority acting as an independent third party. It is a means of publicizing special chattels registered in the names of the parties involved, and its authoritative nature is beyond question. Registration involves scrutiny by government agencies, lending it a high degree of authenticity and reliability. Unlike delivery, which is primarily a matter between the buyer and seller, registration offers a clear and verifiable record of property rights changes. Third parties can easily investigate registered content, saving time and effort. Given that special chattels sometimes involve not only individual interests but also public interests due to their unique nature, adopting a registration system alongside delivery can help establish a well-regulated framework for the trade of special chattels.

4.3.2. Limitations of Delivery in Comparison to Registration

Secondly, when it comes to determining the actual ownership of a chattel, delivery falls short in several respects. Delivery alone does not accurately indicate the true owner of a chattel because it primarily pertains to the relationship between the buyer and the seller. It is challenging for third parties to ascertain the purpose, circumstances, and intent behind the delivery. Moreover, the scope and content of the delivery can be unclear and difficult to prove. While delivery signifies a transfer of possession, it does

not provide sufficient transparency regarding the transfer of ownership. If a third party wishes to investigate, it often involves significant time, effort, and financial resources, making the cost of verification prohibitively high.

4.3.3. Comparative Law Perspective on Registration

Finally, from a comparative law perspective, the adoption of registration has played a crucial role in facilitating transactions, particularly in today's information-driven society, where information networks are well-established. Many countries widely use registration systems, especially for special chattels like motor vehicles, aircraft, and vessels. This development reflects the superiority of registration over delivery, especially in the context of special chattels. [10]

In conclusion, in cases of one chattel, multiple sales, registration should take precedence over delivery. The credibility of registration, its ability to provide clarity in property rights attribution, and its comparably lower verification costs make it the preferred method for publicizing property rights changes, particularly for special chattels. By combining both registration and delivery methods, we can better protect the rights of citizens involved in these transactions. However, it is essential to note that the adoption of registration does not imply an obligatory duty. Parties involved may still choose to register voluntarily, except in specific legal circumstances where registration is mandatory.

Prioritizing Registration over Delivery Reduces Instances of "One Chattel, Multiple Sales," and Fraudulent Activities "One chattel, multiple sales" is generally considered an unethical practice that often involves deception, potentially resulting in significant losses for buyers. From the perspective of legislation and the ultimate goal of law, it is essential to prevent such situations. If the effectiveness of delivery takes precedence over registration, it indirectly encourages people not to register their property rights. This can lead to an increase in "one chattel, multiple sales" phenomena, which is not conducive to social stability and the well-being of the people. Adopting registration as a more credible means of publicizing property rights makes it clear to others who owns the property, thereby reducing instances of "one chattel, multiple sales," and fraudulent activities. This aligns with the values of the law and the common pursuit of human society, promoting social stability.

Prioritizing Registration over Delivery Aligns with the Efficiency Principle Although registering special chattels can be inconvenient for the parties involved, the efficiency of determining property rights is significantly higher when using registration rather than delivery. Special chattels are constantly on the move, often in a state of flux across various regions. Multiple changes in ownership occur frequently, making it challenging to determine specific standards for property rights, especially in cases with multiple changes in ownership. Using this as the basis for property rights changes would substantially reduce the efficiency of determining property rights. Additionally, relying on delivery in complex international possession scenarios to ascertain true ownership would consume a significant amount of time, effort, and financial resources for the parties involved. Therefore, prioritizing registration over delivery is more in line with the efficiency principle when determining property rights ownership.

5. Conflicts and Resolution Approaches between the Interpretation of the Sale and Purchase Contract Law and Preceding Laws

The Interpretation of the Sale and Purchase Contract Law (hereinafter referred to as the 'Interpretation') Article 7 stipulates that “If the seller delivers the subject matter to one of the buyers and then transfers the ownership to another buyer through registration, and the buyer who has received the delivery requests the registration of ownership in their name, the People's Court shall support it.” [11]

Undoubtedly, the Interpretation establishes a clear rule that gives precedence to delivery over registration in cases involving special movable property. However, this rule itself raises questions and invites debate. Firstly, a notable contradiction arises between the rule outlined in Interpretation Article 10, which prioritizes delivery, and the rule in Civil Code Article 225, which addresses registration resistance. As stipulated in the Civil Code, without registration, one cannot resist a bona fide third party. However, the Interpretation explicitly asserts that it is permissible to resist a third party who has already undergone registration. This presents an evident inconsistency. In accordance with Civil Code Article 225, when a conflict arises between delivery and registration, registration should be regarded as the exclusive basis, and the party receiving delivery should not be allowed to resist the registered party. Several reasons support this stance:

Firstly, registration serves as a reliable and comprehensive means of publicly disclosing property rights. It involves a thorough review process by government authorities, thereby ensuring the authenticity and credibility of the registered information. In contrast, relying solely on delivery might result in incomplete or misleading information disclosure, which could lead to misunderstandings or disputes.

Secondly, the complexity of special movable property transactions, often involving valuable assets like motor vehicles, aircraft, or vessels, necessitates a standardized and efficient system. A registration-based approach simplifies the process, providing clarity and security to all parties involved.

Lastly, the adoption of registration as the primary basis for determining property rights aligns with international practices and the prevailing trend in modern legal systems. This approach not only enhances legal predictability but also facilitates international trade and transactions.

In conclusion, the priority given to registration over delivery, as emphasized by the Civil Code, offers a more robust and coherent framework for addressing issues related to special movable property. This approach aligns with the principles of transparency, fairness, and protection of individual rights, contributing to a more effective legal system. However, the apparent conflict between the Interpretation and the Civil Code warrants further examination to ensure consistency and clarity in legal proceedings.

5.1. The Rule of Registration Taking Precedence Over Delivery Can Encourage People to Register

Guided by the legislative intent of Article 225 of the Civil Code, the promotion of registration should be a priority. However, the introduction of Article 7 in the Interpretation of the Sale and Purchase Contract Law has led to a greater emphasis on delivery among parties involved in changes of ownership of special movable property. This is due to the fact that, for rights holders who have already registered, they cannot contest delivery. In such circumstances, individuals may question the necessity of

going through the additional step of registration. Clearly, this outcome is not in line with what the lawmakers originally intended, nor does it align with the objectives set forth in Article 225 of the Civil Code.

Therefore, it is essential to acknowledge that, in cases of changes in ownership of special movable property, the rule of registration taking precedence over delivery should be firmly established. The author consistently maintains that only when registration has been duly processed and delivery executed can the buyer secure comprehensive property rights. Implementing the rule of registration as a priority over delivery encourages buyers to actively complete the registration process following delivery. This proactive approach is driven by the prospect of gaining full-fledged property rights and ensuring the comprehensive safeguarding of these rights. As a result, this approach can indeed guarantee a stable trading environment for special movable property.

The enactment of Article 7 in the Interpretation of the Sale and Purchase Contract Law has stirred debates about its implications and the impact it may have on property rights transactions involving special movable property. The primary concern is that it may inadvertently discourage individuals from registering their property rights, as delivery could be perceived as sufficient. However, this perspective overlooks the fundamental objectives of registration, which extend beyond merely documenting ownership.

Registration serves as a powerful tool for public notice and record-keeping, ensuring transparency and clarity in property transactions. It enhances legal certainty and protects the interests of all parties involved, not just the rights holder. Furthermore, it promotes the efficient functioning of the legal system, reduces the risk of fraud, and fosters a secure and predictable business environment.

In the context of special movable property, which often involves unique challenges due to its mobile nature and complex ownership dynamics, registration is particularly vital. It provides a reliable means of establishing the rightful owner, which is essential for preventing disputes and facilitating smooth transactions.

Given these critical functions of registration, it is clear that a legal framework encouraging its completion should be established. This framework should prioritize registration over delivery, as it aligns with the broader objectives of property law and serves the best interests of all parties involved.

5.2. Conflicting Provisions between the Interpretation and Article 225 of the Civil Code

In examining the legal hierarchy of these two legal documents, it becomes evident that the Interpretation is classified as a judicial interpretation, which inherently carries a lower status compared to the nationally recognized Property Rights Law, which is an essential part of the Civil Code. According to fundamental legal principles, lower-level laws, such as judicial interpretations, cannot challenge or override higher-level laws like the Civil Code.

As a result, when conflicts arise between the provisions of the Interpretation and Article 225 of the Civil Code, the latter prevails. This means that Article 225 of the Civil Code takes precedence over Article 10 of the Interpretation. This hierarchical structure ensures that the core legal principles established by the Civil Code are not undermined or contradicted by lower-level interpretations.

Moreover, it's essential to consider the broader legal context. The principles laid out in Article 225 of the Civil Code are consistent with other legal instruments, such as the Maritime Law and the Civil Aviation Law. These laws also emphasize the importance of registration as a means to establish property rights, reinforcing the idea that registration should carry more weight than mere delivery.

From a legislative standpoint, harmonizing legal rules and maintaining a coherent legal system are crucial objectives. Establishing a rule where registration takes precedence over delivery in the context of special chattels' property rights aligns with these objectives. It ensures that the legal system remains consistent and avoids potential conflicts that may arise from contradictory interpretations.

6. Conclusions

In conclusion, while the law may not explicitly resolve the registration versus delivery debate, aligning with legislative intent, legal hierarchy, and international legal practices, it is prudent to affirm the priority of registration while recognizing the complementary role of delivery in determining the effectiveness of property rights transfer for special chattels. This approach ensures a robust legal framework that encourages registration while preserving the fundamental principles of property rights.

Conflicts of Interest

The author declare that there is no conflict of interest regarding the publication of this article.

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