

Research on the System of Bona Fide Acquisition of Stolen Goods

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Abstract: Whether the system of bona fide acquisition is applicable to stolen goods is a controversial issue in the field of civil law theory and practice. The concept, ownership and right relief of stolen goods are blank in our country's civil law and its related regulations. Articles 311 and 312 of the Civil Code only provide for the conditional application of lost property, which is the same as lost property that has been separated from possession. The relevant legislation is scattered, attitudes have changed repeatedly, and the methods of handling lost property in judicial practice are also different. It is urgent to unify them. In addition, whether stolen goods are suitable for good faith acquisition should be a question in the field of civil law, but public law has always been the main issue. Nowadays, with the development of market economy and the diversification of transaction modes, the requirements for transaction security are increasing, and the scope of application of bona fide acquisition is expanding. Most civil law countries in the world also fully or conditionally recognize the application of the system of good faith acquisition to stolen goods. Promoting the application of the system of good faith acquisition to stolen goods not only meets the needs of the times and international development trends, but also reflects China's national conditions. This article will start with the legal analysis of bona fide acquisition system and the concept of stolen goods and other basic theories, and then use comparative law from both theory and practice to analyze the domestic and foreign legislation of stolen goods bona fide acquisition. Then, from the perspectives of jurisprudence and law and economics, this paper explores the legality of the application of good faith acquisition in the theft of stolen goods. Finally, some suggestions are put forward on how to improve this system in order to perfect the

legislation of the good faith acquisition system in China.

Keywords: Stolen Goods; Bona Fide Acquisition; Possession of Detached Property; Balance of Interests; Transaction Security; Ownership Rules; Criminal Stratification; The Right to Request a Response

1. Introduction

The purpose of this study. The problem of stolen goods and acquisition in good faith has a long history. The concept of stolen goods in civil law is not clearly defined in the mainland of our country. On the property of stolen goods, it also excludes the prohibited circulating goods and some special stolen goods. Because of the possibility of circulation of some stolen goods, the problem of obtaining stolen goods in good faith occurs when they are bought by a bona fide third party, become the object of public and private law cross-regulation [1]. Under the background that the property law of our country does not provide the rules of bona fide acquisition of stolen booty, there are different opinions on whether the bona fide acquisition of stolen booty can be applied. Therefore, the purpose of this paper is to clarify the relationship between public law and private law in the recovery of stolen booty by analyzing the above-mentioned problems, and on this basis, to logically deduce the feasible rules of bona fide acquisition of stolen booty in our country, in order to achieve the interests balance between the owner and the buyer in good faith.

The theoretical significance and practical value of this paper. The issue of bona fide acquisition of stolen booty involves not only the criminal recovery of stolen booty, but also the understanding of the theory of civil law itself, the ownership of stolen goods involving bona fide third party is usually criminalized. The establishment of the rules of bona fide acquisition of stolen goods can resolve the

above-mentioned embarrassing situation, and has important theoretical and practical significance. In theory, it is helpful to perfect the system of bona fide acquisition of movables, because both stolen goods and lost property are detached property of possession, the provisions of bona fide acquisition of stolen goods are similar to the provisions of bona fide acquisition of lost property, in practical value, it can achieve the distinction between the civil and criminal effects of stealing booty in good faith, and can clarify the boundary between public and private law and the system connection, it helps to form a unified judicial logic in the trial of a case.

The research innovation of this paper. On the one hand, the current research on stolen goods and bona fide acquisition mainly revolves around the traditional civil law theory, that is, to analyze the problem of stolen goods and acquisition in good faith from a more macroscopic perspective, the research on the system can help to build an effective link between civil and criminal, and form a complete protection system of civil acquisition in good faith [2], in the research method, the combination of jurisprudence analysis, law economic analysis, comparative analysis and other multi-dimensional proof.

2. Basic Theory

Bona fide acquisition is an important system in civil law, especially in the field of property rights. It is the theoretical premise to analyze whether stolen goods can be acquired in bona fide. The legal basis of bona fide acquisition lies in the protection of the trust interest formed by the appearance of Rights, which aims at maintaining the security of real right transaction and improving the transaction efficiency. Bona fide acquisition tries to balance the interests of property static security and transaction dynamic security while shaping the appropriateness of protection of bona fide assignee. The analysis of the essential attribute and its definition of stolen goods, which is labeled as a special object because of the illegal and criminal acts, is helpful to the bona fide acquisition of stolen goods.

2.1 Jurisprudential Analysis of Bona Fide Acquisition System

2.1.1 The origin and development of the bona

fide acquisition system

The bona fide acquisition in civil law refers to a system in which the bona fide assignee (also called the bona fide third party) can acquire the corresponding real right according to law when the person has no right to dispose of the property of others. The system of acquisition in good faith originated from the field of movable property, and there are two different views at home and abroad, the other is from the Roman law of the acquisition of prescription. The majority of civil law scholars believe that the principle of "Protect hands with hands", and some think that both of them have the problem of proportion. The author holds that the effect of Gewere is actually a recognition of possession rights, and the principle of "Hand to hand" distinguishes between loss based on and non-based on one's own will, Gewere's theory of "Dressing" and the modern elements of good faith acquisition with hand-protectors and limited recovery derived directly from it. But it is reasonable that the elements of good faith and ownership change come from the prescription acquisition of Roman law, and the provisions of modern system that exclude the acquisition of detached objects can also be traced back to the prescription acquisition. Therefore, the modern system of acquisition in good faith is not the only direct origin of German law or Roman law, but on the basis of the integration of German law and Roman law, on the basis of the integration and reference of German law and Roman law, the system of acquisition in good faith is the product of modern transaction security and transaction order protection value. Since modern times, the civil law of the countries in the civil law system has stipulated in different ways the relevant contents of the acquisition in good faith of movables, such as the application of the prescription system in France and the ownership system in Germany and Switzerland, etc. , and Japan placed it in the middle of possession system. Furthermore, some countries, such as Germany and Switzerland, protect the interests of bona fide transferees of immovable property by regulating the credibility of immovable property registration, in theory, it is called bona fide acquisition of real estate. Article 106 of the real right law of our country clearly stipulates the scope of application of bona fide acquisition as movable property and

immovable property, which creates a new legislative style of bona fide acquisition system [3].

2.1.2 The theoretical basis and institutional value of the system of bona fide acquisition

2.1.2.1 Theoretical basis

On the theoretical basis of bona fide acquisition, the traditional civil law has the theory of possession effect, the theory of prescription acquisition, the theory of special provisions of law, the theory of appearance of rights and so on. Compared with other theories which have obvious defects, the appearance of right claims the appearance of right based on the publication of the right of trust protection, has the inherent rationality [4]. The transaction of the bona fide counterpart is based on the trust of the trusted facts, which contains the legislative purpose of protecting the trust interests and also embodies the principle of public trust. The public trust of the real right itself enables the bona fide counterpart to obtain the possessory power based on the reasonable trust. In other words, the system of bona fide acquisition is based on the guarantee and convenience of transaction, and makes the third party enjoy the ultimate ownership from the public right of possession, which is the theoretical basis of bona fide acquisition.

2.1.2.2 Institutional value

First, transaction security.

Seen from the development of our country, when the economy was not so developed, there were few transactions and most of them were conducted by acquaintances, there is basically no large-scale trust interest problem. With the development of social commodity economy, the economic communication between unfamiliar subjects is becoming more and more mainstream, in order to protect the "Moving" transaction security, the legal trust between the main body to regulate the superiority of the increasingly apparent. As the result of the change of the concept of social ownership, the system of acquisition in good faith is a kind of system structure which balances the static security of property and the dynamic security.

Secondly, transaction efficiency.

Efficiency refers to the rate at which a society or an individual gives a certain amount of input (labor, resources, etc.) to maximize returns. Efficiency maximization is the goal of modern society, and efficiency is also the

value of modern society's legal system, especially in civil law [5]. In a society with limited resources, efficiency is an important manifestation of justice. The function of civil law to regulate people's life communication is to set up rules to coordinate the conflict of interests among equal subjects. In the case of the third party's bona fide assignment without the right to dispose of another person's property, when the real obligee's property ownership interests conflict with the third party's acquisition interests and can not be reconciled, the compulsory disposition of rights by law is itself the embodiment of efficiency. At this time, the system design of bona fide protection makes traders actively participate in the effective operation of market allocation of resources, reflecting the pursuit of efficiency value of law.

2.2 Overview of Stolen Goods

2.2.1 Basic concepts of stolen goods

According to the traditional theory of civil law, according to whether the transfer of possession is based on the intention of the right-holder or not, it can be divided into the entrusted possession and the detached possession. Based on the owner's subjective intention to express the transfer of possession is the possession of the consignment, the relative non-based intention to express is the possession of the detachment. In this paper, the main study of stolen goods against the original right to the true meaning of the premise through theft, robbery and other illegal means to obtain things. Mr. Wang Zejian's definition of stolen goods in civil law excludes things obtained by fraud and embezzlement. Although these two kinds of goods also belong to the category of stolen goods, they acquire possession because of the intention of the owner, it is not "Stolen goods" under the bona fide acquisition system. Considering the category of stolen goods under discussion, I agree with this exclusion [6].

2.2.2 Characteristics of stolen goods

First, stolen goods must be chattels.

The scope of stolen goods in civil law is narrower than that in criminal law, excluding stolen money in criminal law, as well as real property in stolen goods, which are excluded because they are immovable and are registered uniformly throughout the country. As for the special movables, they have more prominent

credibility because of possession and delivery, and the registration antagonism of the special movables still has the possibility of being stolen goods, therefore, the stolen goods to be analyzed in this paper only cover general chattel and special chattel.

Second, stealing stolen goods is illegal.

The essence of stolen goods is that ordinary goods are labeled with special labels by law because they are the proceeds of crimes, and are not legal goods in natural circulation. But in theory, stolen goods can be transformed into legal property through legal acts under certain circumstances.

Third, stolen goods have the possibility of circulation.

This is determined by the nature of the goods themselves to circulate freely in the marketplace. So there is still the possibility of circulation after the free circulation becomes stolen goods.

Two kinds of special movable property, currency and bearer securities, have certain value and strong circulation ability in a certain range. For these two special movables, "Possession" and "Possession" are highly consistent, can be said that possession is ownership. Based on the above characteristics, the academia generally agreed that it can be obtained in good faith to maintain and consolidate the transaction security [7].

3. Analysis of the Present Situation of Bona Fide Acquisition of Stolen Goods in our Country

The problem of bona fide acquisition of stolen goods is essentially a problem in civil law, but the Civil Code of our country does not stipulate the applicable rules of stolen goods, whether stolen booty can be applied to bona fide acquisition is essentially a question of ownership of stolen booty, which involves a country's choice of value behind the system. Therefore, the investigation of the rules of bona fide acquisition of stolen booty should be based on the evolution of our country's legislative rules and judicial practice, as well as the evaluation of domestic and foreign legislation, only then can we explore our legislators' position and consideration on the application of bona fide acquisition to stolen goods.

3.1 The Legislative Status of Bona Fide

Acquisition of Stolen Goods

3.1.1 The legislative provisions and characteristics of bona fide acquisition of stolen goods in our country

3.1.1.1 Our legislative provisions

At present, the problem of whether the system of bona fide acquisition can be applied to stolen goods in our civil code and corresponding judicial interpretation is still to be solved. In the original "Property Law" provided for the relevant recovery system, but did not appear in the current "Civil Code", at present, it may be considered that the criminal law attribute of stolen goods will produce the conflict with the criminal law and the judicial interpretation.

3.1.1.2 Evolution and characteristics of the rule

According to our country's legislation on the application of bona fide acquisition of stolen goods, the author will make a simple comb from the rule changes since the founding of the People's Republic of China:

In the 1951 reply of the Supreme Court to the question whether the right of ownership acquired in good faith but not directly in the hands of all people should be protected, it was first made clear that theft of booty should not be allowed to be acquired in good faith, by 1953, however, the reply to the recovery and disposal of stolen goods also allowed in principle bona fide acquisition, but provided for exceptions. In the 1965 interim regulations on certain issues concerning the confiscation and disposal of stolen goods issued by the post-multisectoral coalition, it was stipulated that stolen goods could not be obtained in good faith, but criminals were required to redeem them at the original price. It is not difficult to see from it that the bona fide acquisition of stolen goods, even if it does not admit it, in a sense it also takes into account the bona fide third party, which is mainly represented by setting the offender to buy back the loot by himself, the third party in good faith, the original right between the mediation as a supplement to the way of dealing with relevant issues. By 1992, the research office of the Supreme Court made it clear in its telephone reply to the question of whether a judgment can be made on the recovery of the stolen goods after being defrauded, that the principle of "One to the end" should be adhered to and economic crimes should be

severely cracked down, recover booty without exception and may not be obtained in good faith[1]. In 1996, another change occurred, following article 11 of the Supreme Court's interpretation of certain issues relating to the application of the law in the trial of cases of fraud, article 12 of the Regulations on the investigation and punishment of cases of theft and robbery of motor vehicles, issued jointly in 1998, both said that stolen goods were allowed to be obtained in good faith. However, in the property law, which came into force in 2007, in addition to stipulating clearly the constitutive requirements of bona fide acquisition in general, the provisions of bona fide acquisition and its exceptions can not be applied only to the provisions on lost property in principle, however, there was no response to the question of the applicability of stolen property, and the legislation remained blank. Until 2020, the new civil code has not been clearly defined [7].

As can be seen from the above, our country applies the relevant legislation of acquisition in good faith to steal booty, which embodies three characteristics: first, the lack of provisions at the legal level leads to different understandings; However, the different understanding will lead to the confusion of the application of the provisions of the law in the practical circle. The fatal problem in our country lies in the fact that not only the different departments have different understandings, but also the same departments have different understandings. Third, the legislative provisions are scattered, non-specific analysis. Through the changes of the above-mentioned rules, we can find that there is no concrete analysis on how to confirm or deny the system of bona fide acquisition of stolen goods and how to deal with the balance of interests among the parties in our country [8].

3.1.2 The theoretical controversy on the application of bona fide acquisition to stolen goods in our country

At present, there are two opposite factions in our country's civil law theory on whether to apply the acquisition in good faith to stealing stolen goods, namely, the opposition and the support.

3.1.2.1 The logic of the opposition

The opposition argues that the original owner was able to recover the stolen goods in the

name of ownership. The reasons are: first, stolen goods are prohibited by law, allowing them to circulate freely in the market is against the social ethical and moral values, and may therefore encourage crime; Second, allowing stolen goods to be acquired in good faith would harm the interests of the original owners.

3.1.2.2 The logic of the supporters

The supporters believe that the goodwill counterpart can obtain the stolen goods ownership through the normal market transaction, for the following reasons: first, it is conducive to maintaining the dynamic transaction security, as explained above, the essential attribute of stolen goods should still have the natural attribute and commodity attribute of the circulating goods in the market, and the market subject should not be worried about his trading activities by denying the civil legal relationship because of stolen goods, it is not conducive to maintaining a stable order; second, it is conducive to improving economic efficiency. The free flow of property in the market makes the distribution of resources on demand, while the efficient distribution requires the reduction of transaction costs. This is also the right to protect the appearance of trust.

As the controversy shows, the difference between the two sides is essentially a choice of values. The opposition attaches great importance to sanctioning crimes and protecting the static security of all figures, while the supporters emphasize the dynamic security of bona fide assignees.

3.1.3 The judicial practice of bona fide acquisition of stolen goods in our country

In judicial practice, the judgment attitude on whether stolen booty can be obtained in good faith varies, especially during the period from the 1990s to the promulgation of the property law, the attitude to the issue of bona fide acquisition of booty has been ambiguous in both criminal and civil judgments. The attitude of documents in many fields of criminal justice is "Not to recover", but "Not to recover" in criminal cases can not be directly equivalent to the third party can be obtained in good faith, as some studies have said. By searching the criminal and civil cases in the relevant database in recent years, we can find that most of the judgments tend to confirm the bona fide acquisition of stolen goods, and a few do not

support it. The contradiction is that the court has in theory admitted in part that stolen goods were obtained in good faith, and in order to save certain judicial costs, in fact, the public security organs have adopted a default attitude of confiscation, recovery and other treatment methods, can be considered as a kind of implied denial of stolen goods bona fide[9].

3.2 The Analysis of Legislation on Bona Fide Acquisition of Stolen Goods

Since the system of bona fide acquisition is originally originated from the long-term extraterritorial, this paper makes a comparative analysis of the position and legislation of various countries and regions on the application of bona fide acquisition to stolen goods in modern and contemporary times, should be to our country to better improve the relevant legislative system and judicial application of a certain reflection and reference. At present, there are three kinds of legislation in various countries (regions):

3.2.1 Absolutely negative legislation

Most of the absolute negatives are civil-law countries, which are typically inherited from the traditional concept of absolute priority of the owner in Roman law, and completely deny the system of bona fide acquisition of general property, not to mention the discussion of stolen property. Of course, it does not exclude certain common law countries. For example, article 152 of the Civil Code of the Soviet Union in 1964 states: "The possessor of stolen goods and the lost and found goods shall have the right to return the property to the possessor in good faith." And as the Goods Trading Amendment Act of the United Kingdom in 1994 states: "The act of buying stolen goods from the person who steals them and then reselling them to others is invalid, regardless of whether the buyer is in good faith at the time of the transfer." Behind these legislative acts is the importance of static protection of property ownership.

3.2.2 Absolutely positive legislation

The affirmation is represented by the 1942 Italian Civil Code, which unconditionally affirms the bona fide acquisition of stolen goods. Due to the differences in the initial social environment, different countries of legal system hold different values for the protection of ownership. With the rapid development of commodity economy, in order to maintain

economic order and promote trading activities, countries of anglo law system have gradually begun to accept the system of acquisition in good faith, for example, the United States Uniform Commercial Code of 1952 affirmed that the subject matter can be obtained in good faith, in line with the trend of the times.

3.2.3 Eclectic legislation

Eclecticism (also known as conditional application theory), that is, in principle, stolen goods do not apply to bona fide acquisition, but there are exceptional circumstances can be applied. This view is adopted by most civil law countries. Such as the Napoleonic Code of France, the Swiss Civil Code, the Bürgerliches Gesetzbuch and the German civil code. Some scholars in Taiwan, such as Wang Zejian, also support this view. However, there is a certain period of time for the right to request a reply, in order to balance the interests of the owner and the bona fide assignee.

On the whole, I agree with the eclectic view. The Absolute negation view is not in accordance with the present situation of the rapid development of commodity economy, and the absolute affirmation view may lead to the abuse of "Goodwill" and deepen the moral crisis, so both these views are too extreme, too categorical. More on this below.

4. Our Country Steals the Booty to be Suitable the Bona Fide Obtains the Path Choice

When a law specifies a rule, it can not ignore the social cost that the rule may produce, and affect the realization of market efficiency. When some systems that appear to be morally just do not in fact achieve the desired social effects and May, on the contrary, incur even greater costs of social rehabilitation, we have to consider that the rules are both substantially just and reasonable. Therefore, this chapter will analyze the legitimacy of the application of stolen booty bona fide acquisition from the perspective of jurisprudence and law and economics, and try to put forward some suggestions to perfect the system of stolen booty bona fide acquisition.

4.1 Theft of Booty is Subject to the Justification Analysis of Bona Fide Acquisition

4.1.1 Stolen booty is subject to a jurisprudential analysis of bona fide

acquisition

4.1.1.1 The trade-off between individual order and overall order

The real right publicity has the presumption effect of the real right ownership, and the movable property is delivered to possess as the publicity way, once possessed, it has the appearance of the owner in appearance, and the state of possession is the fact protected by law, the third party in good faith shall, naturally, be protected by law when he trusts the seller as the owner on the basis of the state of publication and possession of the real right of movables, and conducts commodity transactions on the basis of trust, this is also the point of view of "The theory of appearance right protection", which is discussed in the preceding article when the theoretical foundation of the system of bona fide acquisition is discussed.

In order to protect the interests of the third party in good faith and the Order of public transaction, the person who obtains stolen booty by illegal means should still bear the responsibility of returning unjust enrichment or tort, or even criminal responsibility. For the possession of detached property, the owner is involuntary loss of the subject matter, but that does not mean that the owner is not at fault, no matter how stolen property is obtained, theft, fraud or robbery, the owner is responsible for some form of miscustody, except that the miscustody is less of a fault than the aforementioned failure to exercise the duty of oversight. Stealing stolen goods is paid for by an unwitting third party in the open market, requiring the original owner to bear part of the responsibility within the scope of the fault of improper custody, but because possession is separated from property, the owner involuntarily loses possession, the fault is relatively minor. Therefore, the application of bona fide acquisition to the possession of loot and other detachments should be given more stringent application conditions [10].

4.1.1.2 The balance between legal rationality and moral sensibility

First, whether stolen goods can be obtained in good faith should be law-oriented, supplemented by moral judgment. The act of buying and selling stolen goods is considered to be immoral, which is closely related to people's legal emotion and legal policy, but it is to protect the original owner's ownership

and the transaction safety expectation of the bona fide third party, and to find the balance of interests in the fierce conflict between the two. Therefore, we should not deny the possibility of obtaining the ownership of the bona fide third party in terms of moral feelings [11].

Second, the original owner and the bona fide assignee have no moral distinction, the law should be given equal protection. Because the "Appearance of rights" that a bona fide assignee believes in does not usually make any difference whether the object being transferred is a trust or a detached object, so the bona fide assignee in the normal transaction because of unwitting stolen goods, lost, or custody of property, etc. in the moral level is essentially no difference. Although in most cases the original owner of stolen goods may not have any fault, but compared with the bona fide assignee's "Innocence", the moral status of both parties should be balanced, should be truly responsible, should be the perpetrator of a crime or malicious assignee. In the competition between the two sides of stealing booty in good faith, morality can not be divided into the winner and the loser. This is the trade-off between the security of the transaction and the security of the property. Sometimes the law needs to favor higher-order values, the higher level of value judgment also comes from People's recognition of the concept of justice. Such institutional arrangement can highlight the implementation of the basic principles of justice in the interests trade-off of our civil law, and is also the embodiment of good law.

4.1.2 Theft of booty is subject to the economic analysis of the law of bona fide acquisition

From the perspective of economics of law, efficiency is the core value objective of law. Therefore, it is reasonable and justifiable to reduce various social costs in order to improve the overall efficiency.

4.1.2.1 Substance of question: the question of the rules governing the ownership of stolen goods

In the beginning, we can explain the division of the possession consignment and the possession detached object from the cost angle. In fact, it is difficult to determine whether the original owner or the buyer is in the position of the least-cost defender, that is, the least-cost bearer, it would cost the state a great deal of justice and even a great deal more than the

possible social gains to make it clear in all cases. Therefore, we usually choose to make and apply the “General rules” to reduce the cost of information required by judicial decisions, in order to typify the scope of application of bona fide access rules. But this kind of rule with inevitable error can not be balanced with the cost of legal information. In essence, bona fide acquisition is a treatment of value conflict, which is difficult to be properly dealt with through the subjective mentality of one party. According to the viewpoint that the infringement is interactive, “Original owner” and “Bona fide buyer” should be regarded as the input factors of the infringement. Therefore, we need to stand on a neutral position to explore the issue of bona fide acquisition of stolen goods, which is essentially a comparative analysis of the ownership of stolen goods rule changes [3].

In all historical periods, “Original owner rule” and “Bona fide buyer rule” are too absolute when they are dominant, which may not only induce one party to invest excessively in the cost, and easily affect the effective use of scarce resources. On the other hand, in order to save the cost of justice, if the judicial organs adopt the method of “Punishment before people” to deal with the problem of stolen property ownership, it is not helpful to solve the problem of unauthorized disposition reasonably, on the contrary: on the one hand, greatly reduce the scope of original owner claims and possibilities, on the other hand, on the social level will greatly increase the cost of state administration. In fact, there is not much connection between “Severely punishing theft” in criminal law and “Defining the ownership of stolen goods” in civil law, behind the two respectively corresponds to the “Prevention and punishment of crime” and “Settle disputes, make the best of everything” of the legislative objectives [12].

4.1.2.2 The essential motivation of the rule change of bona fide acquisition

The essence of the ownership of stolen property is to assign the legal risk between the original owner and the bona fide transferee in order to reduce the number of civil unauthorized disposition. In order to optimize the allocation of resources, it is necessary to define the stolen goods directly to the party who can make the most effective use of them. After the “Original owner rule” and the “Bona

fide buyer rule” occupied the dominant position respectively, the modern times began, from “Original owner rule” to “Friendly buyer rule”. This is due not only to the increasing frequency of commercial and commodity transactions and the increasing separation of possession from ownership, but also to the fact that the continuous advancement of material and technological levels has triggered many social changes, the rule of law requires institutional responses and changes to these social changes. Specific: first, transaction risk increases with transaction distance, time, and frequency; second, the high mobility of human makes the daily transaction from “The repeated game in the traditional rural acquaintance society” to “The single game in the Urbanized Stranger Society”, the credibility of possession is becoming more and more important in the “Society of Strangers”, in the contemporary society, the adoption of the “Bona fide buyer rule” can effectively reduce the number of opportunistic lawsuits; finally, with the steady improvement of people's material level, the ability of the original owners to resist risks has been gradually enhanced, therefore, even the emphasis on “Moving transaction security” will not cause too many social problems. I think this is also the “Buyer's rule” into the mainstream of the rules of rationality, but also for stolen goods to apply the nature of bona fide acquisition of legitimacy.

To sum up, the goal of law-creating system should take fairness, justice and efficiency as the common pursuit of value, and achieve the most effective resource allocation in the balance between the two. To make the most of everything and improve the efficiency of the whole society is to transfer the resources to the people who can make the most of it. This will maintain law and order and ultimately promote the long-term stable development of social order.

4.2 The System of Bona Fide Acquisition is Applicable to Stolen Goods

Through the analysis of the validity of applying bona fide acquisition to stolen booty in the previous section, we can conclude that there is no conflict between the civil law and the criminal law in dealing with the problem of stolen booty ownership, therefore, there is no need to treat the issue with an all-or-nothing

attitude. We can further explore the system of bona fide acquisition of stolen goods in civil law under the framework of “Criminal stratification”.

4.2.1 The explanation plan of “Criminal stratification”

Specifically, the core of “Criminal-civilian stratification” is that when stolen goods are the subject of criminal recovery, no matter how the criminals transfer, hide, or attempt to “Launder” the stolen goods in the form of collusive transactions, can be recovered. It can also be seized when it is uncertain whether the person dealing in stolen goods is in good faith. But when outsiders claim that the stolen goods are obtained in good faith through legal and legitimate ways, the relevant disputes should be treated as disputes in the civil field. If the stolen goods meet the requirements of bona fide acquisition according to the civil rules, bona fide acquisition occurs. At this point, the original owner can claim unjust enrichment return to the person who has no right to dispose of it. If there is no bona fide acquisition, the original owner can claim recovery from the buyer and the buyer can claim restitution of unjust enrichment from the person who has no right to dispose of it. It can also be seen that the layered scheme of “Limiting criminal recovery to criminal field and civil bona fide acquisition to civil field” can effectively solve the problem of bona fide acquisition of stolen booty, at the same time, it can realize the simplicity of theory and rules, and promote the unification of judicial decisions.

4.2.2 Limitation limits the right of reply

It stipulates that the period for the original owner to respond to a request shall be two years. The duration of the right of reply is related to the dual interests of the original obligee and the bona fide third party, especially in the case that it can not be recovered by the judicial organ, and if the time limit is too long, it will increase the

“Worry” risk of the bona fide third party to the real right and threaten the transaction security, affect the third party to the right to property as soon as possible and cause loss of interests. Throughout the legislation of various countries (regions), there are provisions for a certain period of reply, but often vary. The “Napoleonic Code of France” stipulates “Three years from the date of theft”, “Two

years from the date of theft” and “Two years from the date of theft” The “Swiss civil code” provides for a “Request for return within five years of loss”. Because the special reply time limit of Article 312 of the Civil Code of our country is two years, stolen goods and lost goods belong to the category of disowned property, the author thinks that it is more appropriate to stipulate the two-year time limit for the right to reply to stolen goods. The time for exercising the right should be counted from the date when the stolen goods are lost.

It should be noted that because the security of market transactions is protected, the original right of the two-year request for reply can only be exercised to the first bona fide third party stolen goods. If the bona fide assignee has transferred the property to another bona fide counterpart, the original assignee can not exercise the right to reply to the subsequent assignee, only to the right to dispose of the claim for damages. Of course, if the first assignee and subsequent assignees are not out of good faith, we should recognize that the original property rights of the people do not lose the right to recover the property, can still claim to recover their property rights.

4.2.3 The act of returning a transaction with compensation

In general, the bona fide third party for the purchase of stolen goods to pay for a reasonable consideration, if its loss of ownership, its loss of interest to the unauthorized person to claim compensation. In this case, the original owner should return the property free of charge. However, there are special conditions under which a paid reply should be given in the following circumstances:

(1) Movable property obtained through auction. The bona fide third party through the auction relies on the strong trust to receive above the normal market price of stolen goods, the original owner should be at the necessary cost to reply to this property.

(2) Goods traded on the open market. The open market is often a screening exercise for those who can run a business, thus enhancing the goodwill of third parties. Under such circumstances, in order to ensure fair market transactions, the bona fide third party for the transaction to pay the necessary costs should be paid by the original owner.

(3) Through the purchase of stolen goods from

a licensed operator. In this case, the buyer has the appearance of the right to sell such items, it is difficult to judge the defects of the real right to sell. The seller has reasonable and sufficient trust for the person with the right to dispose of the goods.

In the above three cases, the commodity is more mobile and broader, and the cost of recovery for the original owner is naturally higher, while promoting the former owner to exercise the right of reply more conveniently and quickly within the time limit of reply, it also protects the interests of bona fide third parties.

4.2.4 Specify the special circumstances that apply

4.2.4.1 Money, bearer bonds

We have discussed the particularity of “Possession is ownership” of money and bearer securities. Once it is lost, the bona fide third party acquires the right of ownership. Once the flow into the market, the original owner will be difficult to exercise the right to request a reply reflected in: first, flow out and flow into the object is difficult to find, the second is the original object is difficult to identify and recover. Therefore, for the currency, bearer securities do not have the right to request a response and response time. The remedy for the original owner is the right to claim damages directly against the unauthorized disposer.

4.2.4.2 Special stolen goods with personal or emotional attributes

Prizes, medals and other movables of great significance to the owner shall not be subject to the system of bona fide acquisition of stolen goods. Such things with personal attributes or spiritual attributes have an irreplaceable and measurable spiritual value. The act of theft itself is an injury to the owner, and if the stolen property is of great significance and acquired in good faith by others, it causes a secondary injury to the owner. The damage is likely to be severe and irreversible. Therefore, whether in good faith or not, the assignee should promptly return the original property to the original owner [1].

5. Conclusion

Stolen goods as property should not be abandoned by the market, it belongs to the same category as lost property, should apply the same rules of bona fide acquisition. The

problem of stealing stolen goods should not be dealt with by criminal law in our country, which is not in favor of both civil and criminal remedies of the original right holder and the protection of the interests of the bona fide third party. We should adopt the model of separation between criminal law and civil law, so that the criminal law and civil law can play their respective roles and cooperate with each other. Through the comparative analysis of the basic theory and domestic and foreign legislation, this paper proves that the application of bona fide acquisition to stolen booty will not affect social justice. On the premise of proving the validity of the application of bona fide acquisition to stolen goods, some suggestions are put forward to perfect the system of bona fide acquisition of stolen goods in our country, such as limitation of the right to reply, paid reply transaction, and specific provisions. In order to promote the improvement of our country's bona fide acquisition system, realize the balanced protection of the interests of the original right holder and the third party, and finally promote the sustainable, stable and efficient development of society.

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