

Construction of the Right of the Finder of the Lost Property

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Abstract—The Civil Code of Mainland China only stipulates the right of claim for cost reimbursement of the lost property. It does not stipulate the right to claim remuneration for the return of the found property, obtain the ownership of the unclaimed property, nor the lien for the finder to guarantee the realization of his rights. This article defines the concepts of lost property and found, clarifies the scope of lost property, the scope of the lost person, and the subject qualification of the found person. By analyzing the serious imbalance between the rights and obligations of the lost item found person, it is concluded that the law should give the found person enjoyment The conclusion of the right to claim remuneration, obtain the ownership of the found property and the right of lien on the found property. It also draws on the practice of some countries and regions in the civil law system in the world, and puts forward suggestions on constructing the rights of the finder of the lost property.

Keywords—*Found Property; The Right Of The Finder; The Right To Claim Remuneration*

In modern society, people lose things from time to time, and picked up lost things has become a norm in life. In recent years, there have been frequent incidents of picked up lost property disputes that have caused widespread concern and have a greater social impact. For example, on June 19, 2018, "Auntie picked up a mobile phone for 2,000 yuan, but the owner reported it to the police and broke it: I don't give Even if the I break it" [1]; on December 23, 2017, the "Chengdu Dog Falling Incident" [2], aroused the attention and discussion of the "lost property system" from all walks of life. In the increasing number of disputes caused by the lost property, the finder of the lost property asks for remuneration, and there are many disputes caused by the inability to reach an agreement with the lost property. And those who refuse to return and approve as their own exist in large numbers. Behind these phenomena, in addition to accusing people of low moral standards and low personal qualities, they also reflect the unreasonable design of the legal system. Although the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code) provides for lost items, the design of the system for finding lost items overemphasizes the obligation of the person who finds lost items, while ignoring the due rights, leading to The rights and obligations of the picker are out of balance. A phenomenon that cannot be ignored is that the number of lost property finder actively looking for the owner to return the lost property and handing in the lost property is less and less. This is also a strong evidence that the finder's hard work has not been repaid.

I. LOST AND FOUND

For the definition of the concept of lost property, academic views are not consistent. There are mainly two representative ones: the first is to emphasize the existence state of things to define the concept of lost things. For example, Mr. Wang Zejian believes: "Lost things refer to movable property that is

unoccupied but has the owner thing"; [3] Mr. Shi Shangkuan believes: "Lost things are not owned by anyone, and have not become unowned." [4] The second is to emphasize the subjective psychological state of the possessor to define the concept of lost things, such as Xie Zaiquan. According to Mr.: "Lost property refers to the movable property that has lost possession not based on the intent of the possessor and is now unoccupied"; [5] Huixing Liang and Chen Huabin believe that: "Lost property refers to the loss of possession not based on the intent of the possessor," It is now unoccupied and is not unowned movable property." [6] Mr. Mei Zhongxie believes: "The owner of the lost property does not mean to abandon the possession, and accidentally loses the movable property in possession." [7] The author agrees the first kind of conceptual definition of lost property emphasizes both the objective state of existence that no one possesses, and the legal state of the owner's property. As for emphasizing the subjective psychological state of the possessor when the possessor loses possession, that is, the loss of possession not based on the intention of the possessor, the author believes that it is unnecessary. When the possession is lost due to the intention of the possessor, it can still constitute a lost property. For example, stealing other people's property and deliberately abandoning it will also constitute a lost property to the original legal possessor or owner. Even if it is a legal possessor, such as a custodian deliberately discarding what is under custody, it does not affect the composition of the lost property. It can be seen that it is improper to emphasize the subjective psychological state of the possessor at the time of loss of possession to define the lost property.

The author believes that the lost property refers to the owner's property that the possessor loses possession and is not possessed by anyone. Based on this, it can be seen that the elements of the lost property are as follows: First, it must be movable property. Due to its nature, real property cannot constitute a lost property; second, it must be the owner's property. Unowned objects are things that do not belong to anyone at present, and unowned objects are preemptive objects. The preemptive system applies, which is different from the picked up lost things system; third, it must be movable property that no one possession. Once possessed by others, it is no longer a lost property.

Lost and found, also known as Found the lost property, "refers to the discovery and possession of the lost, but in fact the latter is important." [8] It can be seen that the recovery of lost and found must have two elements, namely, discovery and possession. Discovery is to realize the location of the lost property. Only discovery without further possession cannot constitute the picked up of the lost property. Possession is the core element of lost property discovery. The so-called possession is the de facto control of things.

It is generally believed that the found is a factual act rather than a legal act, so it does not require the seizure person to have the corresponding behavioral ability. As long as the finder obtains possession of the lost property, it constitutes the found of the lost property and establishes the relationship of rights

and obligations between the lost person and the finder. What I want to explain here is that the lost person can be a direct possessor or an indirect possessor. Normally, it is the owner, but not limited to the owner. For example, if the owner lends his bicycle to A, the owner is an indirect possessor, and A actually controls the bicycle and belongs to direct possession. When A loses the bicycle, both the owner and A are the losers. However, if A deliberately abandons the bicycle, only the owner is the loser. Therefore, the determination of the lost person should be comprehensively determined according to the specific circumstances. As for the finder, since the behavioral ability of the perpetrator is not required, anyone who has the conscious ability can become a finder. Therefore, in principle, all natural persons can become finder. Since a legal person is also a civil subject, it can of course be a finder. It is only necessary to clarify the specific pickers according to the specific situation and design the corresponding system based on this. For example, for public servants who are responsible for protecting the public interest, the finder should be the public agency where the public servant belongs to the lost property obtained while performing his duties. For example, if the policeman obtains the lost property while on duty, the finder cannot be a policeman. In the process of fulfilling the duties instructed by the legal person, the found person shall be a legal person. Otherwise, the found person is an employee of the legal person.

II. LOST PROPERTY FINDER'S RIGHTS AND OBLIGATIONS ARE OUT OF BALANCE

China has a long history. From ancient times to the present, it has always maintained the historical tradition of "return money found" and "the road does not pick up", which is regarded as a traditional Chinese virtue. Affected by this, the design of the system for picking up lost items also fully reflects the unreasonable layout of focusing on the rights of the lost person and neglecting the rights of the person who has picked up. Article 317 of the Civil Code stipulates the right of the finder to claim expenses and the right to get remuneration as promised by the loser (that is, the reward advertisement issued to find the lost property promises to pay), but it does not stipulate the right to claim remuneration. The finder will spend a certain amount of money to find the lost property, and it needs to pay various costs such as financial resources, time, and energy. In order to eagerly find their own lost items, or the lost items are of great value, or special items with important memorial significance, the lost person will spare no expense to make a reward advertisement for finding the lost items. Theoretically, it is unanimously believed that the nature of reward advertisements is a legal act. Once the finder returns the lost property, he will be paid according to the reward advertisement, which conforms to the legal principle. If the lost person refuses to pay the promised remuneration, the finder can of course request public relief as a creditor. However, in daily life, there are very few advertisements for rewards due to lost items. In the absence of promised remuneration, the Civil Code denied the right to claim remuneration for the picker. Article 318 of the Civil Code stipulates that the lost property shall belong to the state if it is unclaimed within one year from the date of the announcement of the discovery. The possibility for the finder to acquire the ownership of the lost property was also denied, and the system chose to give the country rather than to the finder. However, the obligations of the finder are a group: the obligation to return, the obligation to notify in time, the obligation to submit it to the relevant department, the obligation to keep it properly, and so on. If the lost property is damaged or lost due to deliberate or gross negligence, it shall also be liable for compensation. From this point of view, the rights and obligations of the person who found the lost property are indeed unbalanced.

Then, does the traditional virtue of "return money found" exclude the right to claim rewards? The author believes that there is no inevitable correlation between the two, and there is no either-or repulsion. As the name suggests, "return money found" what is found, not taking it for yourself. This is not only a moral principle, but also a legal rule. Because the law stipulates the obligations of return, notification, and handing in, the first of which is the obligation to return the lost property. Therefore, it is not unattainable, but a basic requirement. that it is the "traditional virtue" of history, It's just that this is undoubtedly a "virtue" compared to the "to pocket the money one has picked up", this is undoubtedly a "virtue". However, it is too far from the subject that the finder cannot enjoy the right to claim remuneration. Therefore, the inability to enjoy the right to claim remuneration is just an exaggeration and misinterpretation of the "return money found".

In the same way, at the expiration of the notice period, the lost person fails to come to claim the lost property, Whether the finder obtains the ownership of the lost property is also irrelevant to "return money found". As for "the road does not pick up", it is certainly a "traditional virtue" in history, and it also demonstrates the orderly governance of the ruler's society. However, in today's complex and complicated social activities, there is a lot of people coming and going, and there is a lot of traffic. It is almost impossible for the lost person to look for the lost thing and get the lost thing again. Even if no one finds it, it will be left outside for a long time, and it will be a big loss to the lost. It will not be able to "make the best use of everything" and it will not benefit the lost. If "the road does not pick up" is a kind of "virtue" for the ancient society of acquaintances with sparse population and sparse communication, it is really not a "virtue" today. Therefore, regardless of the traditional virtues of "return money found" or "the road does not pick up", it is not appropriate to consider the design of the legal system.

In summary, the imbalance between the rights and obligations of the person who found the lost property is indeed the Civil Code overestimating the moral standards of the world. It is unrealistic to encourage pickers to contribute willingly, regardless of remuneration.

First, the finder can only claim the right to claim expenses. In fact, it is not commensurate with the finder's real payment and does not conform to the principle of consideration. The cost of locating the lost property is actually paid by the finder for the management of the lost property. Based on the cost incurred by the lost property, the lost person repays the cost of the finder, which is justified. However, the finder needs to prove the source and reasonableness of the expenses. Once the proof fails, the finder cannot be compensated. This is just a financial contribution, and there are also time and energy contributions and so on. There is only one risky "right to claim for reimbursement", which is undoubtedly unfair to the picker.

Second, the lost person has his own fault, if he does not pay any price, he can lost and recovered, the fault does not match the responsibility. This not only promotes the carelessness of the lost person, neglects the high degree of duty of care for their own belongings, and lacks respect for the return behavior of the finder. This will be a high social cost. What's more, even if the lost person finds the lost property on his own, I am afraid that it will have to pay a considerable cost. Not to mention the expenses of the finders, they also bothered. If the finders are allowed to have the right to claim remuneration, this is not only a monetary compensation for the finders, but also an affirmation and reward for "return money found". The finder gets pleasure, and the enthusiasm for handing in the lost property will be greatly increased. This not only achieves a balance between fairness and rights and obligations, but also an optimization of social relations.

Third, the state's acquisition of the ownership of the unclaimed lost property is not appropriate. Regardless of the fact that the state should not compete with the people for profit, when the state obtains the ownership of the unclaimed lost property, it is a civil subject, and the status of the finder is almost the same. There seems to be no suitable reason for the state to obtain the ownership of the unclaimed lost property without paying any price. This is not only contrary to the legislative trend of most countries in the world, but also unfair to the pickers. The unclaimed lost property belongs to the state, and its operation cost is very high. Because of the establishment of relevant institutions, the procedures for vesting in the national treasury must also be initiated. There must be an institutional supervision process, and the possibility of corruption will always exist. What's more, there are some lost items that have not started the value of attributable to the country, and may even have negative value. In the process from custody to auction, the value of the lost property itself is being depleted, and it is impossible to talk about "making the best use of the property". Therefore, it is neither profitable nor economical for the state to compete with the people for this advantage. At the same time, it greatly dampened the enthusiasm of the finder to hand in the lost property. On the contrary, it is low cost and more economical for the finder to obtain the ownership of the unclaimed lost property. At the same time, it can greatly stimulate the enthusiasm of the finder to hand in the lost property. It is illegal and immoral to claim for oneself without permission. However, if you obtain the ownership of the lost property in accordance with the legal procedures, you can declare your rights in a fair manner, so why not do it? Of course, the issue of the ownership of unclaimed lost items has nothing to do with morality, whether it goes to the country or the person who found it.

In short, a good system will guide people to make good behaviors. On the contrary, there is neither the right to claim remuneration nor the ownership of the unclaimed lost property. The imbalance of the rights and obligations of the finder will cause the finder to "only pick up, not hand in", and finally the final evil result of "taking it for yourself" (if hidden It is an important item that is rare for the lost person, such as the only information, which will be catastrophic for the lost person). It seems that the lost person has suffered a loss due to the payment of remuneration expenses, but in fact the lost person is the true beneficiary in most cases. The law presupposes that everyone has the noble morality of "return money found", which is inconsistent with the social reality and will lead to the failure of the system. This is obviously the result of the confusion between the legislator's morals and the law. Therefore, giving the finder the corresponding rights and matching the rights with the obligations is an inevitable requirement for perfecting the legal system for the picked up the lost property.

III. PERFECTION OF THE RIGHTS OF THE FINDER OF LOST PROPERTY

From the above analysis, it can be seen that in addition to the right to claim expenses as stipulated by the law, the finder should also add the right to claim remuneration and obtain the ownership of the found property in the legal system.

1. The right of claim for remuneration

After the finder finds the lost property, if he fulfills his obligation of notification, report and submission, proper custody and return, the finder shall obtain the right to claim remuneration. The difficulty now lies in how to set the amount of remuneration to balance the interest relationship between the loser and the picker.

Regarding the amount of remuneration, from the world's perspective, there are two main legislative models: one is the differentiated model, which is adopted by Germany and Italy. The difference model stipulates different remuneration ratios according to the value and type of the lost property. For example, Article 971 Item 1 of the German Civil Code stipulates that the finder can request a reward from the entitled recipients. When the value of the item does not exceed 500 euros, the finder rewards 5% of the value of the item; when it exceeds 500 euros, it is 3% of the value of the value; in the case of animals, it is 3%. If the found items are of value only to the right holder, the reward of the found person must be determined in accordance with fair discretion. [9] The other is the unified model, adopted by Japan and Taiwan. The unified model does not distinguish the value and type of the lost property, and stipulates a uniform remuneration ratio. In the unified model, Taiwan and Japan are somewhat different. Article 805 of the Taiwan Civil Code stipulates that when the right holder claims the lost property, the finder can request remuneration. But it must not exceed 3/10 (that is, 30%) of the value of the property. However, Japan stipulates that the person who receives the item returned shall pay the finder no less than 5% of the item price and no more than 20% of the item price. Comparing the above regulations, each has its advantages, but the author believes that a unified model is preferable because it can reduce the cost of remuneration calculation, avoid cumbersomeness, and is simple and easy to implement.

How to choose China's future legislation? If the proportion of remuneration is too high, it will inevitably "punish" the lost person too much for his own fault; if the proportion of remuneration is too low, it is not enough to provide incentives for rewarding money. Balancing the interests of the finder and the lost is the starting point for consideration. The author believes that uniformly stipulating a fixed maximum ratio, like the Taiwan Civil Code, is more feasible and reasonable. The maximum percentage is limited to 20%, which should be appropriate.

When calculating the value of the lost property, it shall be comprehensively determined based on the market price at the time when the lost person claims the right to return. If it is difficult to determine its value, various factors must be considered to determine the amount of remuneration. For example, the income and economic status of the lost person, the importance of the lost property to it, the difficulty of obtaining items similar to the lost property, the possibility of substitution, and so on.

Among the subjects who receive remuneration for found goods, those who have the responsibility to protect the property rights of others, such as the official conduct of the police on duty, cannot be remunerated.

2. Obtaining ownership of found objects

At the expiration of the announcement period of the lost property, it is unknown who the lost person is and the lost person fails to come to claim it, and the finder will obtain the ownership of the found property because of the expiration period. As the ownership of the found property is obtained, there will be a major consequence of the ownership change, therefore, a process of public announcement is required. Without an announcement, no matter how long it takes, the finder cannot obtain ownership. According to the provisions of the Civil Code, the agencies that hand over the lost property are the public security organs and other departments. Therefore, in principle, the main body of the announcement should be the public security organ (a lost property management department recognized by the government can also be used). The Civil Code stipulates that the announcement

period is one year, starting from the day when the announcement of recruitment is issued. At the expiration of the time limit, if the right holder fails to claim it, it shall be deemed to have abandoned the ownership of the lost property and shall be obtained by the finder. Once the announcement period expires, the ownership of the lost property is transferred to the finder, and the finder has the right to request the return of the property from the management department of the lost property. Where the lost property is damaged or lost due to the intentional or gross negligence of the lost property management department, the person who found it may request compensation for damages. After the expiry of the announcement period, the lost property management department is obliged to notify the finder or issue a notice of collection. If the picker who has obtained the ownership fails to collect it within 180 days from the date of notification or announcement of the collection, it shall be deemed to have abandoned the ownership. The author believes that it is appropriate to set a 180-day exclusion period. The time limit is too long, which is not conducive to the use of the object; the time limit is too short, and it is not enough to protect the interests of the finder.

It should also be noted that if the finder knows who the right holder is, or the right holder has declared his rights to the lost property management department, the announcement period expires and the finder cannot obtain the ownership. However, except where the right holder expressly waives the ownership afterwards.

In addition, in order to guarantee the realization of the right of the finder to claim the repayment of the right holder's expenses, the right to claim remuneration for the promise of the advertising, and the right to claim remuneration for the return of the lost property, future legislation should also specify the lien of the finder on the found property. Otherwise, the powerful moral influence of "return money found" will be extremely detrimental to the realization of the above-mentioned rights, even in vain. Although the Civil Code provides for the lien system, it does not apply to lost property. Because the lien requirement of the current system must be that the possessor legally possesses the debtor's movable property, the movable property lien by the creditor should belong to the same legal relationship with the creditor's right, which is inconsistent with the picked up lost property. Therefore, the law needs to specifically stipulate the lien of the finder. Since the lien itself is a legal right, as long as the future legislation clarifies the lien on the lost property, the specific rules can be applied to the specific rules on the lien in the Civil Code.

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