

## Contract Rights in Rem

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### Abstract

Traditionally, the distinction between contract rights in personam and property rights in rem has been a fundamental concept in civil law. However, this article questions whether these two categories are truly in opposition to each other.

The answer should be in the negative. This article argues that rights in rem refer to the rights availing "against persons constituting a very large and indefinite class of people," while rights in personam are rights that the owner can "claim against a single person." The former relates to the protection mechanisms of rights, while the latter pertains to the content of allocations. These two concepts are neither mutually exclusive nor situated at opposite ends of a single spectrum.

"The power to claim and accept" as well as "immunity" serve as the primary protective model, supplemented by various "secondary claims" as the secondary form of protection, including, but not limited to, claims based on unjust enrichment and tort law. Contract rights can be similarly effective against others, precisely, against persons constituting a very large and indefinite class of people. Therefore, contract rights should also be classified as rights in rem. The fundamental distinction between contract rights and property rights lies, therefore, in the "content of allocations." The traditional view that denies the classification of contract rights as rights in rem stems partly from a potential misunderstanding of the "content of contract rights," and partly from an overly narrow interpretation of the "third party protection mechanisms."

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In conclusion, contract rights possess both in rem and in personam characteristics. The binary opposition between "contract rights in personam and property rights in rem" does not hold. Thus, the reason why property law and contract law adhere to different principles, such as property law's acceptance of the numerus clausus principle and the principle of publicity, presents a critical issue that must be addressed in the future.

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