

Developments in the Civil Law in 2019

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Abstract

This article believes that the factual right of disposal of illegal buildings should not be allowed to “apply by analogy” Article 767 to request return from the defendant who has no right to possess. Because there is no legal loophole in this place. More importantly, illegal buildings should not constitute property rights out of customary law and become the objects of protection under Article 184, Item 1 of the Civil Law. From the overall provisions of the Taiwan Construction Law, it can also be seen that the law does not grant the existence of property rights in illegal buildings. Regarding the protection of the status, the Supreme Court’s index judged whether to use “property rights” or “customary law property rights” as the subject of tort protection, which I cannot agree with. In addition, the Supreme Court’s index judgment also misunderstood that the “possession itself” received by the payment-type improper gains can be used as the content of the benefits received by the non-payment-type improper gains (= the object of return), so in fact, the disposition right holder is based on it Article 179 of the Civil Law still cannot request the defendant to return the illegal building “itself” that he does not have the right to “possess”, but can only request the return of the interest equivalent to the calculation of rent that he has received because he has no right to occupy the illegal building. In short, the person with the de facto right to dispose of an illegal building can only enjoy the protection of the right to request the return of possession under Article 962 of the Civil Code.

Regarding the judgment of pet victims and pet owners’ request for spiritual comfort, this article believes that with reference to the spirit and characteristics

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of pets stipulated in Article 3, paragraph 5 of the Animal Protection Law, the judicial authorities may consider making judgements through the level of “enacting extra-legal legal continuation” The method is limited to those whose pets are both “dogs and cats” pet owners who can request spiritual comfort payments, and in the case the victim proves that they have the “significant circumstances” of legal interest infringement. When the subject's personality or identity rights are infringed, the protection of compensation for spiritual comfort money should be given.

Keywords: illegal construction, customary property rights, unjust enrichment, property rights, pets, animals, owner of pets, spiritual comfort money