

## *Original Paper*

# On the Definition and Scope of Application of the Claim for Restitution of Property after Contract Invalidation

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### ***Abstract***

*The claim for restitution of property under the system of property recovery after contract invalidation is a crucial component of the remedial framework for defects in the validity of civil juristic acts. However, it faces challenges. This study begins with Article 157 of the Civil Code, we subdivide right to claim for property return belongs to the right of real claim or the right to claim for restitution of unjust enrichment. The ternary structure of property acquisition will be established as the rule system for restitution, and possessory interests will be distinguished, and differentiated restitution rules will be adopted. Furthermore, the principle of specificity of the object should be adhered to in the return of subrogated items, strictly limiting the boundaries of return in transformed forms. The restitution of benefits shall be confined to those actual receipt, and objective value standards shall be applied to calculate fees for capital occupation and use of the subject matter. The claim for restitution of property should also be separated from the right to claim for damages, and a dynamic interpretive approach should be adopted to balance the value conflicts between restoration to the original state and equitable compensation.*

### ***Keywords***

*contract invalidation, claim for restitution of property, unjust enrichment, substituted property, restitution of benefits*

### **1. Introduction**

The invalidity system of civil juristic acts constitutes one of the foundational rules within the civil code framework for safeguarding transaction security and fairness and justice. The right to claim restitution of property following the invalidity of a contract, serving as a core instrument for rectifying illegal alterations of benefits, sees its theoretical construction and the clarity of its applicable boundaries directly impacting the uniformity and predictability of judicial practice. Article 157 of the Civil Code

provides a unified stipulation for the restitution of property after a contract is invalidated, revoked, or determined to be ineffective (Shi, G. B., 2021, p. 5). It establishes remedial norms following the invalidity or revocation of civil juristic acts, thereby becoming the commonly invoked basis for claims of property restitution after contract invalidity in current practice (Mao, S.W., 2018, p. 20).

Given that the norms concerning restitution of property, compensation for losses, and compensation by valuation under the former Article 58 of the Contract Law and Article 157 of the Civil Code are overly abstract, and fail to sufficiently clarify the nature definition of the right of restitution, its scope of object, and its relationship with other remedial measures, these provisions have consequently generated numerous academic debates, such as the theory of real right claim, the theory of unjust enrichment claim, and the theory of concurrence of the two. Regarding the nature of “restitution of property,” if acts in rem are recognized, it constitutes a right to claim restitution based on unjust enrichment; if acts in rem are not recognized, it constitutes a right to claim restitution of ownership (Zhong, R. D., 2025, p. 34).

Theoretically, most scholars believe that the consequences of contract invalidity should be addressed by corresponding norms such as unjust enrichment and property rights. Some scholars, however, argue that Article 157 of the Civil Code serves as an independent basis of claim (Ye, M. Y., 2022, p. 176), and that the restitution of property due to contract invalidity is not a form of civil liability but rather a legal effect naturally arising from the invalidity of the contract, which may be termed the statutory consequence of non-expressive act (Zhao, J. L., 1999, p. 63). In judicial practice, parties often adopt a litigation strategy of requesting the court to confirm contract invalidity and to order mutual restitution of property. Judgments in such cases possess a dual nature of confirmation and performance. However, courts at various levels and in different localities often apply inconsistent standards in determining what constitutes “property obtained” and employ divergent adjudication standards regarding restitution of substitute property and restitution of benefits. There is even a phenomenon of conflating restitution of property with damages, which undermines the certainty of application of law.

The Interpretation on the General Provisions of the Contract Part of the Civil Code, promulgated in December 2023, has to some extent addressed issues in judicial practice such as inconsistent standards for determining “property obtained” based on the invalidity of the contract. Nevertheless, due to the differing adjudication standards for restitution of substitute property and restitution of benefits, this judicial interpretation still contains numerous areas requiring further refinement. On the one hand, although provisions such as Articles 24 and 25 of this judicial interpretation briefly stipulate operational methods like the “return of the possessed subject matter” and the “correction of the registration record,” they do not define the nature of the right of restitution, thereby failing to fundamentally resolve disputes concerning its nature. On the other hand, the judicial interpretation’s provisions regarding the practical need for the distribution of appreciation in special property such as equity and real estate, as well as the calculation standards for restitution of substitute property and restitution of benefits, remain overly general and insufficient to fully address these issues (Zhu, G. X.,

2020, p. 8). In comparative law, Germany has established an autonomous system of right of restitution through unjust enrichment rules (Dieter, M., 2000), while Japan has achieved a similar effect by utilizing a system of restitution of benefits. These foreign legislative experiences hold significant reference value for China.

## 2. Elements of Acquisition of Property

Regarding the core concept of “acquisition of property”, traditional theory tends to narrowly interpret “property obtained” as the original subject matter directly received by the recipient. Article 157 of the Civil Code merely uses the phrase “property acquired as a result of the act” to define the object of restitution (Cui, J. Y., 2021). The abstract nature of this formulation has become a source of dispute over the scope of restitution in judicial practice. The diversification of modern forms of property and the complexity of benefit circulation necessitate an expansive interpretation. Article 24 of the Interpretation on the General Provisions of the Contract Part of the Civil Code also indirectly broadens the scope of “property obtained”. This paper argues that the composition of “acquisition of property” should encompass a tripartite system consisting of proceeds, substitutes, and benefits. The differentiation and refinement of these elements are prerequisites for constructing scientific rules of restitution.

### 2.1 Proceeds of Property: The Direct Vehicle of the Original Interest

Unlike the traditional concept of the “original object”, acquisition encompasses not only tangible property, such as houses and equipment, but also rights, such as mortgages and intellectual property, possession, such as control over chattels, and negative interests, such as debt release (Liu, J. A., 2021, p. 95). In theoretical classification, acquisition can be distinguished into the acquisition of real rights, the acquisition of obligatory rights, and acquisition by possession: the acquisition of real rights corresponds to changes in absolute rights, such as ownership and usufructuary rights; the creation of contractual obligatory rights or the extinction of debts manifests as obligatory right-type proceeds; acquisition by possession involves the factual control over the object (Sun, S. Y., 2005).

According to Article 24 Paragraph 1 of the Interpretation on the General Provisions of the Contract Part of the Civil Code, the forms of acquisition are characterised by diversity. Linked to this diversity of forms, the legal characteristics of acquisition are also multifaceted, evident in three aspects. First, directness: the acquisition must originate from the performance under the void contract; indirectly obtained benefits, such as secondary benefits from investing received funds, do not fall within the scope of acquisition (Xie, H., 2020, p. 89). Second, specificity: at the time of receipt, the acquisition must have a definite object of right or identifiable content of interest, such as the transfer of ownership of specific immovable property or the possession of a specific sum of funds (Zhou, J. H., 2022, p. 128). Third, fundamentality: acquisition is the prerequisite for the generation of substitutes and usufruct; without acquisition, subsequent benefits have no basis for attachment. For instance, in judicial practice, following the invalidity of a house sale and purchase contract, courts typically determine that both the

registered ownership of the house and its actual possession obtained by the purchaser constitute proceeds. Restitution must then be effected through two distinct methods: cancellation of registration and vacating the house. This fully demonstrates the complexity inherent in the restitution process. Consequently, the proceeds, which serve as the direct vehicle for the original benefit, encompass both tangible assets and proprietary interests, such as ownership, money, rights in rem over another's property, intellectual property, and obligatory rights (Ye, M. Y., 2022, p. 176).

### *2.2 Substitutes: The Transformed Form of Original Benefit*

A substitute constitutes an alternative benefit arising from the transformation of an acquisition due to causes such as damage, destruction, or transfer. The rules of restitution governing it concern the continuation of value when the original object cannot be returned. Although the Civil Code of China does not explicitly define the concept of a substitute, the provisions on "compensation by discount" in Article 24 of the Interpretation of the General Provisions of the Civil Code on Contracts in fact relate to substitutes. Furthermore, Article 33 of the Understanding and Application of the Minutes of the National Courts' Civil and Commercial Trial Work Conference (hereinafter referred to as the Nine-Minutes) directly enumerates typical forms of substitutes, such as insurance proceeds, compensation, and indemnity (Compiled by the Civil Division II of the Supreme People's Court, Understanding and Application of the Minutes of the National Courts Conference on Civil and Commercial Adjudication, 2019). From a comparative law perspective, the German Civil Code includes substitutes within the scope of "benefits obtained" under Article 818(1), which is generally understood to encompass compensation obtained for infringement of rights, expropriation compensation, and insurance payment (Larenz/Canaris, *Lehrbuch des Schuldrechts, Besonderer Teil, Halbband 2*, 13. Aufl., München: C. H. Beck; 1994).

The formation of a substitute requires the satisfaction of a dual requirement. Firstly, there must be a causal relationship. The substitute must arise from a transformation in the form of the original acquisition, such as compensation received after the compulsory purchase of a house or insurance proceeds obtained following the destruction of equipment<sup>[15]</sup>. Secondly, there must be identity. The substitute must maintain a value connection with the original acquisition, enabling it to fulfil the function of restitution in place of the original benefit (Ye, M. Y., 2022, p. 176).

Regarding whether the consideration obtained from a sale constitutes a substitute, there remains debate in both academic circles and judicial practice. The core of the controversy lies in whether the proceeds from the sale of an asset constitute a substitute. Some scholars argue that the consideration received by an enriched debtor from selling an asset obtained without legal cause is not equivalent to a substitute. Their reasoning is that such consideration incorporates the contribution of the seller's transactional ability (Wang, H. L., 2025, p. 12). While this view has its merits, judicial application tends to favour the affirmative theory. For instance, in cases concerning the invalidity of an equity transfer contract, some courts often order the defendant to make restitution of the entire proceeds obtained from the subsequent sale of the equity. This article posits that consideration should be recognised as a substitute

if it fully corresponds to the value of the original object and is not commingled with the operating proceeds of the enriched debtor. Conversely, the labour proceeds of the enriched debtor should not be classified as a substitute.

### *2.3 Usufruct: The Independent Restitution of Derived Benefits*

In comparative law, the issue of restitution and settlement concerning benefits conferred following the invalidity of a contract is subject to considerable debate, with particular controversy surrounding value restitution and the restitution of benefits derived (Franz, B., 2023). The benefits subject to restitution refer to the derivative benefits acquired by the recipient through possession and use, including natural fruits (such as fruit from trees), legal fruits (such as interest on funds), and benefits of use (such as the occupation of a house). These derivative benefits, predominantly interest, arise from the recipient's acquisition through possession and use. Article 157 of the Civil Code does not provide a clear definition for the restitution of benefits derived, fruits, and interest. Theoretical discussions have largely focused on value restitution when the return of the original object is impossible, with insufficient depth in the study of benefits derived, fruits (Shao, Y. L., 2024, p. 145), and interest. Article 25 of the Interpretation on the General Provisions of the Contract Part of the Civil Code systematically establishes rules for the restitution of fees for occupation of funds and fees for use of the subject matter, signifying that the independent status of restitution of benefits derived has received judicial confirmation (The Second Civil Division and the Research Office of the Supreme People's Court, Interpretation and Application of the Supreme People's Court's Judicial Interpretation on the General Provisions of Contracts in the Civil Code, 2023).

Within the scope of benefits derived, the definition of monetary fruits is subject to considerable debate in domestic academic circles, and foreign legal systems also adopt different provisions. Article 100 of the German Civil Code defines benefits derived as "the fruits of a thing or a right and the benefits of use", and it distinguishes between the standard of return based on actual gains and that based on ordinary possible gains (Siehe, S., 2024). Interest saved by an enriched debtor, which would otherwise have been payable for borrowing money, due to funds acquired through investment or lending constitutes a benefit of use. This benefit of use also falls within the scope of acquisition and is subject to restitution. The theoretical basis for the restitution of benefits of use lies in the principle of disgorgement of benefits within the law of unjust enrichment: an enriched debtor has no right to retain accretion benefits obtained under an invalid contract (Zhao, W. J., 2015, p. 1190). In cases involving movable property such as production equipment, where its use value is closely related to the equipment's lifespan, the judge may need to conduct a dynamic calculation that takes into account both the actual depreciation of the equipment and the benefits obtained by the recipient (Yu, C. Y., 2016, pp. 93-104).

The delineation of the scope of benefits derived must also adhere to two guiding principles. The first is the principle of actual receipt, which stipulates that the obligation to make restitution is contingent upon the recipient having actually obtained the benefits; expected gains that have not materialised fall

outside the scope of restitution (Siehe Reuter/Martinek, Ungerechtfertigte Bereicherung. Teilband 2. 2.Aufl.Tübingen: Mohr Siebeck; 2016). The second is the principle of objective value, whereby when benefits are difficult to quantify, reference is made to the market price or an ordinary standard for calculation, for instance, determining the fee for occupation of funds by reference to the Loan Prime Rate or the use of a house by reference to the market rent.

### **3. The Definition and Scope of Application of Restitution of Acquisition**

Proceeds restitution constitutes the core link within the property restitution system. Its nature definition and rule design directly determine the function realization of the restitution claim. Regarding the nature of proceeds restitution, academic circles are divided among three competing theories: the theory of real right claim, the theory of unjust enrichment claim, and the theory of claim concurrence (Sonja, M., 2020). An analysis of the strengths and weaknesses of these respective theories reveals that an integrated solution, which is grounded in the theory of unjust enrichment claim while also accommodating the effects of real rights, demonstrates both rationality and feasibility.

#### *3.1 Clarifying the Nature of Proceeds Restitution: From Binary Opposition to Systemic Integration*

Compared to the vindication claim theory and the unjust enrichment claim theory, judicial practice tends to favor the concurrent claims theory, reflecting a shift from binary opposition to systemic integration.

Vindication claim theory. The vindication claim theory posits that if an invalid contract renders the transfer of property rights void, the transferor retains ownership; therefore, the essence of the restitution claim is the return of the acquired property to the transferor. The advantage of this theory lies in its reinforcement of transfer protection. However, it struggles to provide a basis for the restitution of obligatory rights proceeds and conflicts with the theory of the right of simultaneous performance defence in bilateral contracts (Cui, J. Y., 2021).

Unjust enrichment claim theory. The unjust enrichment claim theory holds that after a contract is invalidated, the recipient's retention of benefits lacks legal cause, and the unjust enrichment rules stipulated in Article 985 of the Civil Code should apply (Zhang, G., 2013). The right to claim restitution of property is not a right to claim restitution of the original thing, but rather a right to claim restitution of unjust enrichment. These two differ fundamentally in their rules regarding the restitution of benefits derived and the deduction of expenses (Zhang, G., 2020, p. 958). This theory can uniformly handle various types of proceeds restitution, though it may potentially weaken the protection afforded to specific things (Ran, K. P., & Huo, C. X., 2025, p. 45).

Concurrent claims theory. The concurrent claims theory attempts to reconcile and mediate the positions of the vindication claim theory and the unjust enrichment claim theory. It posits that when the original thing exists, the transferor has a right of choice: they may choose to exercise either a vindication claim or an unjust enrichment claim. When the original thing no longer exists, the transferor's right of choice is limited to the unjust enrichment restitution claim (Shi, G. B., 2021, p. 5).

This article endorses the revised theory of claim concurrence. However, the concurrent claims theory requires further clarification regarding three specific rules. First, the vindication claim should be limited to situations involving the physical return of the object and cannot be asserted against a bona fide third party (Liu, J. A., 2021, p. 95). Second, the unjust enrichment claim should serve as the fundamental rule, governing derivative remedies such as compensation by valuation and restitution of benefits. Third, in bilateral contracts, the obligation of restitution may be subject to the right of simultaneous performance defence as stipulated in Article 525 of the Civil Code.

### *3.2 Typology of Restitution Rules*

Given the differences in forms of acquisition, the rules of restitution must be categorized and applied in conjunction with the type of subject matter involved. When returning immovable property, it is necessary to complete the cancellation of registration, such as the cancellation of house ownership transfer registration or the revocation of mortgage registration (The Second Civil Division and the Research Office of the Supreme People's Court, Interpretation and Application of the Supreme People's Court's Judicial Interpretation on the General Provisions of Contracts in the Civil Code, 2023).

When returning movable property, the transfer of possession is required, for instance, the return of equipment or goods. For special movable property, such as motor vehicles, a change of registration is also necessary, such as the cancellation of transfer registration.

It is noteworthy that the obligation to cancel registration lies with the recipient. If the recipient refuses to perform this obligation, the obligor may petition the court to compel its completion. The associated costs are to be apportioned according to the degree of fault.

The restitution of proceeds from creditor's rights focuses on the extinguishment of the benefit. Upon the invalidity of a guarantee contract, if the creditor has realized the guarantee benefit, such as the guarantor having made a compensation payment, the repayment amount must be returned. The donee's creditor's claim right becomes void after the invalidity of a gift contract. Following the invalidity of an assignment of claim contract, if the obligatory right has not been realized, the assignee must return the obligatory right to the original creditor. If the obligatory right has been realized, for instance, the debtor has made repayment to the assignee, the assignee shall return the repayment amount to the debtor.

The core of restitution for acquisition by possession is the transfer of possession. For example, after the invalidity of a house lease contract, the tenant must vacate and return the house. If the possession is exercised by an auxiliary person, such as an employee of the lessee, the lessee may directly demand that the auxiliary person return the possession to the lessee. In the case of loan contract invalidity, the borrower should return the IOU. In the restitution of acquisition by possession, attention must be paid to the impact of the possessor's good faith or lack thereof on the deduction of expenses. Pursuant to Article 460 of the Civil Code, a bona fide possessor is entitled to claim reimbursement from the right holder for necessary expenses incurred for the maintenance of immovable property or chattel.

### *3.3 Standard for Monetary Compensation in Lieu of Restitution When Restitution Is Impossible*

When restitution of benefits is rendered impossible due to damage, transfer, or legal restrictions, such as bona fide acquisition by a third party or expropriation, the rule of compensation by discount stipulated in Article 157 of the Civil Code may be applied. The application of compensation by discount follows the rule set forth in Article 24 Paragraph 1 of the Interpretation on the General Provisions of the Contract Part of the Civil Code, which is based on the market value of the property (The Second Civil Division and the Research Office of the Supreme People's Court, Interpretation and Application of the Supreme People's Court's Judicial Interpretation on the General Provisions of Contracts in the Civil Code, 2023).

However, a distinction must be drawn between de facto impossibility and legal impossibility. In cases of de facto impossibility, such as the destruction of a house by fire, compensation shall be based on the market price at the time of contract invalidity. For legal impossibility, for instance where the house has been acquired by a bona fide third party, compensation may be determined by reference to the transfer price. If the transfer price is excessively high or low, resulting in gross unfairness, an adjustment shall be made by reference to the market price at the aforementioned valuation reference point.

## **4. The Definition and Scope of Application of Restitution of Substitute Property**

Where one party has performed under a void contract and the counterparty has accepted such performance, if the counterparty's acquisition is damaged or destroyed and a substitute arises from the destruction of that acquisition, issues such as restitution of the substitute property may also arise (Wang, H. L., 2025, p. 12). Restitution of substitute property constitutes an extension of gain restitution, and its rule design must balance the preservation of original benefit value with the freedom of action of the recipient. Current judicial practice exhibits significant divergences regarding the identification criteria for substitutes, the interface with compensation by valuation, and the scope of restitution. These divergences urgently require resolution and systematic integration. Concerning the right to claim compensation by valuation, most scholars regard its nature as a right to claim unjust enrichment, which should accordingly be governed by the relevant norms on unjust enrichment (Cui, J. Y. (Ed.), 2024). However, some scholars have expressed concern that equating compensation by discount with the right to claim restitution for unjust enrichment would entail significant drawbacks (Ran, K. P., & Huo, C. X., 2025, p. 45). It is considered that the direct application of unjust enrichment rules in the context of compensation by valuation may encounter issues such as whether a bona fide beneficiary can invoke Article 986 of the Civil Code to argue that the proceeds no longer exist and thereby be exempted from the obligation of compensation by valuation. Other scholars maintain that compensation by valuation possesses its own independent value and that reliance on the unjust enrichment rules is unnecessary (Ye, M. Y., 2022, p. 176). From a comparative law perspective, Article 121-2 of the Japanese Civil Code uniquely establishes separate rules of restitution following contract invalidity and expressly rejects the application of unjust enrichment rules (Wang, R. Q., 2018, p. 127). The legislative technique

employed to address the issue of restitution of substitute property possesses certain instructive value.

#### *4.1 The Typology and Identification Rules of Substitutes*

The restitution of a substitute should be premised on the satisfaction of the constituent elements of the right to claim restitution based on unjust enrichment (Wang, H. L., 2025, p. 12). Based on their causes of generation, substitutes may be categorised into three types. First, disposition-based substitutes, which refer to the benefits obtained by the recipient through the disposal of an acquisition by legal act, such as proceeds from the transfer of a house or rental proceeds from equipment. Second, damage or destruction-based substitutes, which refer to the benefits arising from the physical loss of an acquisition, such as insurance proceeds or compensation. Third, use-based substitutes, which refer to the gains derived from utilising an acquisition for business operations, such as returns on investment of funds or profits from production using equipment.

The identification of a substitute must adhere to stringent criteria. First, there must be a causal connection. The substitute must arise directly from the form transformation of the acquisition; indirect benefits, such as profits gained from the reinvestment of transfer proceeds, do not constitute a substitute. Second, there must be value correspondence. The substitute should correspond, either wholly or in part, to the original object value. If it incorporates a significant contribution from the recipient, for instance, where the restoration of cultural relics substantially increases its value, restitution requires the division of the substitute. Third, there must be identifiability. The substitute must be capable of being distinguished from the recipient's other property. Where it becomes commingled and unidentifiable, the remedy should convert to compensation by discount.

#### *4.2 Rules of Restitution and Protection of Good Faith*

Where substitute property exists, the principle that restitution of substitute property takes precedence over compensation by discount should be applied: the recipient must first return the existing substitute, and compensation by discount may only be initiated when the substitute is lost or cannot be returned (Compiled by the Civil Division II of the Supreme People's Court, *Understanding and Application of the Minutes of the National Courts Conference on Civil and Commercial Adjudication.*, 2019). This measure aims to prevent the recipient from improperly diminishing their restitution obligation by consuming the substitute. Secondly, the interests of third parties must not be harmed: if the substitute is acquired by a bona fide third party (for example, where insurance proceeds have been paid to the insured), the obligor may not pursue the substitute itself but may request the recipient to make restitution of the corresponding value (Wang, L. M., 2020).

The limitation of liability for a bona fide recipient constitutes another key issue. The restitution of a substitute may be governed by the rule under Article 986 of the Civil Code, which stipulates that a bona fide beneficiary is only obliged to return the existing benefit. Where the substitute is lost due to a non-attributable cause, such as the theft of insurance proceeds, the bona fide recipient is relieved of the obligation of restitution. In contrast, a malicious recipient is required to compensate in full for the substitute, for instance, where insurance proceeds are received despite knowledge of the invalidity of

the contract.

#### *4.3 To Interface with the System of Compensation at a Discounted Value*

When the substitute cannot be restored, the process naturally proceeds to the stage of compensation by discount. Consequently, restitution of substitute property and compensation by discount constitute a sequential relationship. In determining compensation by discount, the standard of compensation should be comprehensively established based on the benefits obtained by both parties at the time of the loss of the subject matter, and should be grounded in the price agreed upon by the parties in the transaction. The benefits derived from the loss of the subject matter include compensation received by both parties, such as insurance compensation (Wang, H. L., 2025, p. 12).

There are two methods for calculating discounted compensation. Firstly, compensation by discount may be calculated based on the market value of the property at the date of contract invalidity. Secondly, the calculation should comprehensively consider factors such as the expenditure on transaction costs for acquiring a substitute property, property appreciation proceeds, and depreciation loss. It must also take into account the degree of fault of both parties to ensure the reasonableness of the compensation amount. These two discounted compensation calculation methods each have their own emphasis, and attention should be paid to the differences in their calculation basis. Taking the dispute over the sale and purchase contract of a house with limited property rights between Zhang and Li as an example: after the sale and purchase contract for a house with limited property rights signed by Zhang (the buyer) and Li (the seller) was confirmed as invalid based on Li's claim, Zhang suffered damage to the benefit of the opportunity received. That is, if that invalid contract had not been signed, Zhang could have entered into a house sale and purchase contract with another person to purchase a house and thereby obtain the benefit from the increase in house value (Dai, M. Y., 2009, p. 71). If the house which is the subject matter of the small property right housing sale and purchase contract between Zhang and Li is expropriated, and is replaced by Li's right to claim restitution of the expropriation compensation payment as substitute property, then, after the contract is confirmed as invalid, the enriched debtor Zhang shall return the compensation payment to Li. As the small property right housing sale and purchase contract entered into by Zhang and Li is a bilateral contract, the purchaser Zhang should return the substitute property, namely the expropriation compensation payment, while the seller Li must also return the purchase price (Compiled by the Civil Division II of the Supreme People's Court, *Understanding and Application of the Minutes of the National Courts Conference on Civil and Commercial Adjudication*, 2019).

A special circumstance arises when the value of the substitute exceeds the original gain: if the transfer price is higher than the original price due to market fluctuations, such as a premium on the resale of a house, the prevailing view holds that the excess portion need not be returned. This is because it stems from the recipient's transactional opportunity rather than the value of the original property (Cui, J. Y., 2021). However, if the excess portion arises from the natural appreciation of the original property, such as a land value increase due to planning adjustments, it shall be apportioned proportionally based on

the principle of equity (Compiled by the Civil Division II of the Supreme People's Court, Understanding and Application of the Minutes of the National Courts Conference on Civil and Commercial Adjudication, 2019). The expression in Article 33 of the "Minutes of the Ninth National Conference on Civil and Commercial Trials" regarding "taking market factors into account, and the transferee's operational or additional actions" provides discretionary scope for such an allocation.

Furthermore, in relation to advance payments or pre-performance made on the basis of a void contract, the issue of restitution of intermediate interest may arise, particularly where the agreement was concluded under circumstances such as fraud or duress (Ye, M. Y., 2022, p. 176).

If the unjust enrichment debtor resells what they have obtained, the unjust enrichment creditor may claim compensation based on the value received by the debtor. Where the debtor disposes of the enrichment at a price significantly below its market value, the creditor is still entitled to seek restitution measured by the objective market value of the subject matter acquired by the debtor. Judicial decisions generally allocate such losses between the parties following principles applicable to damages and contributory negligence (Wang, H. L., 2025, p. 12).

## **5. The Definition and Scope of Application of Restitution for Unjust Enrichment**

The issue of restitution of benefits frequently arises in the process of restitution of property following contract invalidity. The prerequisite for such restitution is that the constituent elements of the right to claim restitution of unjust enrichment are satisfied (Wang, H. L., 2025, p. 12). The purpose of restitution of property is to restore the transferor's rights over the original property, with the scope encompassing both the original property itself and its fruits (The Second Civil Division and the Research Office of the Supreme People's Court, Interpretation and Application of the Supreme People's Court's Judicial Interpretation on the General Provisions of Contracts in the Civil Code, 2023). Restitution of benefits constitutes a crucial component within the system of property restitution for achieving the function of restitution in integrum. The design of its rules must balance the conflicting values of stripping unjust gains and prohibiting excessive penalties. Although Article 25 of the Interpretation of the General Provisions of the Civil Code on Contracts establishes a framework for the return of fees for use of funds and fees for use of the subject matter, further clarification is required regarding the specific application of calculation standards, set-off rules, and exceptional circumstances. In judicial practice, benefits generally do not include appreciation.

### *5.1 Refund and Differential Calculation of Fees for Use of Funds*

Where a Party has occupied funds of the other Party under an invalid contract, it shall, upon returning such funds, also pay a fee for use of funds. The calculation standard for this fee shall be determined by distinguishing between different circumstances and taking into account the degree of fault of the Parties. In the absence of fault, the fee shall be calculated at the deposit interest rate; where fault exists, it shall be calculated with reference to the Loan Prime Rate (The Second Civil Division and the Research Office of the Supreme People's Court, Interpretation and Application of the Supreme People's Court's

Judicial Interpretation on the General Provisions of Contracts in the Civil Code, 2023). That is to say, if the party in possession of funds is at fault for the contract invalidity, compensation to the transferor for the alternative financing cost shall be calculated according to the bank's same-period same-category loan interest rate (LPR). Conversely, if the party occupying the funds is not at fault, only the minimum guaranteed return from the appreciation of the original property should be returned, for instance, calculated based on the bank's same-period same-category deposit benchmark interest rate.

Furthermore, following contract invalidation, if reciprocal restitution obligations arise between the parties, this constitutes a situation of concurrent performance. Consequently, the parties may assert a right to simultaneous performance. Where the party in possession of the subject matter has used or could have used it, the other party is entitled to request a set-off between the funds occupation fee it is liable to pay and the subject matter usage fee it is entitled to receive (The Second Civil Division and the Research Office of the Supreme People's Court, Interpretation and Application of the Supreme People's Court's Judicial Interpretation on the General Provisions of Contracts in the Civil Code, 2023).

However, the dispute centres on whether adjustments should be made to the restitution amount when the recipient's actual gain falls below or exceeds the statutory standard, such as when funds are used for high-risk investments yielding substantial profits. In this regard, reference may be made to the German approach of subjective adjustment. Where the actual gain is significantly lower than the statutory standard, a good faith recipient may be permitted to return only the actual gain. Conversely, where the actual gain surpasses the statutory standard, a bad faith recipient is required to return the full amount of the excess profit (Siehe, S., 2024). This scheme requires the clarification of the starting point and the cut-off date for the capital occupation fee. The starting point should be the actual fund occupation date, with the capital occupation fee for each instalment payment calculated separately based on the respective receipt date. Where resolution is achieved through litigation, the expiry date of the judgment performance period serves as the demarcation, and the cut-off date should extend until the actual fund repayment date. In judicial practice, such as in invalidity disputes of revolving loan contracts, courts often adopt the segmented calculation method. This method calculates the repaid portion up to the repayment date and the unrepaid portion up to the judgment date, thereby fully embodying the principle of fairness.

### *5.2 The Return and Objective Assessment of Subject Matter Usage Fees*

The non-monetary characteristics of the subject matter usage fee render its calculation more complex. Judicial practice has established an assessment principle that prioritises objective value while considering subjective value as supplementary: for leasable property, such as housing and equipment, reference is made to market rent; for non-leasable property, such as customised equipment, assessment is based on depreciation cost or use benefit. It is noteworthy that the application of the objective standard does not require actual use as a prerequisite; it is presumed that the recipient obtains the benefit of use merely through possession of the subject matter.

According to section 33 of the Minutes of the Ninth Civil and Commercial Trial Work Conference of Courts Nationwide, if the value of the property to be restituted, such as equity interest or housing, has changed relative to the contract price, market factors, the operational activities of the transferee, and the relationship between accession activities and the increase or decrease in the property's value should be comprehensively considered. The aim is to prevent any party from obtaining a benefit due to contract invalidity. Operational activities primarily arise in the context of the restitution of equity interests, whereas accession activities are mainly relevant to the restitution of real property, such as houses (Compiled by the Civil Division II of the Supreme People's Court, Understanding and Application of the Minutes of the National Courts Conference on Civil and Commercial Adjudication, 2019).

The calculation of the usage fee requires the deduction of necessary expenses, which are borne by the recipient. These expenses primarily comprise two categories: firstly, maintenance costs, such as the cost of repairing buildings or equipment; secondly, value-added costs, such as those incurred for renovation and improvement which enhance the value of the subject matter. The rules concerning the right to claim expenses by a bona fide possessor, as stipulated in Article 460 of the Civil Code, are applicable to scenarios where the calculation of the usage fee following an invalid contract necessitates the deduction of such necessary expenses (Liu, J. A., 2021, p. 95).

In relation to accession activities, the subjective good or bad faith of the unjust enrichment debtor must be considered. If the unjust enrichment debtor is in good faith, then only the existing benefit need be restored (Wang, H. L., 2025, p. 12). For instance, where Wang (the buyer) and Xu (the seller) entered into a sales contract for a piece of uncut jade priced at 10,000 yuan, and after acquiring it, Wang had the jade processed at a craft workshop, transforming it into a refined piece valued at 13,000 yuan. Wang paid the workshop a processing fee of 500 yuan for this work. Following the acknowledgement of the invalidity of the contract between Wang and Xu, if Wang acted in bona fide, he may require Xu to first deliver the said 500 yuan fee together with the 10,000 yuan purchase price before Wang assumes the responsibility for the restitution of the possession of the jade.

### *5.3 Set-off and Exceptions to Restitution of Use*

The coexistence of a capital occupation fee and a subject matter usage fee is a common occurrence in disputes concerning invalid contracts. When such an issue arises, the parties may request that the capital occupation fee they are liable to pay be set off against the usage fee for the subject matter they are entitled to receive (The Second Civil Division and the Research Office of the Supreme People's Court, Interpretation and Application of the Supreme People's Court's Judicial Interpretation on the General Provisions of Contracts in the Civil Code, 2023).

In contract invalidity dispute cases, exceptions to the restitution of benefits may also arise. The exceptions to the restitution of benefits after contract invalidity include: first, where the subject matter has not been actually occupied (for example, it is seized by a state organ immediately upon receipt); second, where the contract invalidity is caused by the obligor's fault and there is a failure to timely claim restitution, in which case the expanded loss of benefits should be deducted; third, where

consumables have been reasonably used (such as food or fuel), and the restitution of benefits is subsumed into compensation by valuation. These exceptions reflect the corrective function of the principle of good faith under the Civil Code upon restitution liability.

## 6. Conclusion

The property restitution claim after contract invalidation serves as a crucial pillar of the remedial system under the Civil Code. Its scientific construction is integral to balancing autonomy of will with transaction security. Based on systematic research, the relevant findings are summarised as follows.

First, the nature of the property restitution claim should be positioned as a “right to claim payment based on unjust enrichment”. The traditional dichotomy between the real right claim and the unjust enrichment claim has become inadequate for addressing complex practical scenarios. Future judicial interpretations should clarify the uniform application of unjust enrichment rules, while preserving the owner’s priority protection status in the context of returning corporeal property.

Second, the tripartite structure of “property acquired” (comprising proceeds, substitute property, and benefits derived) represents a systematic formulation of the restitution rules. Restitution of proceeds is differentiated according to the type of property involved. For property in the real rights category, the creditor’s rights category, and the possession category, the rules of registration correction, extinguishment of rights, or transfer of possession apply respectively. Restitution of substitute property should adhere to the principle of specificity of object, strictly limiting the traceability scope of transformed forms such as insurance proceeds and compensation. Restitution of benefits derived must be limited to what was actually received, promoting an objective calculation standard for the fee for occupation of funds and the fee for use of the subject matter.

Third, the key to avoiding judicial confusion lies in the complete separation of the claim for restitution of property and the claim for damages. It is recommended that when amending section 2 of article 24 of the Interpretation of the General Provisions of the Contract Book of the Civil Code, it should be clarified that the amount of restitution is calculated based on objective value, while the amount of damages is determined according to the degree of fault. The phrase “taking into account the circumstances of property restitution or compensation by valuation” should be deleted. Fourth, restitution rules should be subject to special adjustments in specific scenarios. In cases of unlawful contracts, the principle of set-off based on fault may be applied to effect appropriate restitution of the original property. For appreciating property such as equity interests and real estate, a balance of interests should be struck, taking into account the respective contributions of each co-owner to the appreciation, while considering both the value of the original property and the returns to investors.

The qualification and applicable rules of the post-invalidity restitution claim should also be clarified in emerging areas such as restitution for invalid foreign-related contracts and digital asset restitution. Future research could further expand the boundary of the scope of application for the right to claim restitution of property by integrating the rules of private international law with the characteristics of

digital property. In judicial practice, it is recommended that the Supreme People's Court refine the rules for qualifying substitute property and calculating benefits derived through guiding cases, thereby providing guidance on adjudicative norms to ensure consistency of adjudication.

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