

Legislation Comparison of Negotiorum Gestio System

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Abstract: As is known to all, the negotiorum gestio system originated from the Roman law and matured in the continental law countries (regions). However, in the Anglo-American legal system, it is a very fresh term. Although there is no concept of negotiorum gestio and related systems, it is not completely without a contract, or the Anglo-American law is nearly admitting that the negotiorum gestio system is more appropriate. Therefore, it is necessary to study the relevant regulations of the countries (regions) on the negotiorum gestio system, and to take the essence and discard the dregs.

1. Introduction

As one of the main legal facts about the occurrence of debt, the relevant data shows that the earliest of negotiorum gestio system originated from Roman law, and then went through the development of history for thousands of years. Although this important legal system has experienced the baptism of the past thousand years, which should have been developed, its development is very limited. In the Anglo-American legal system, negotiorum gestio is a very fresh term, and there is no concept or management system. In the traditional civil law countries, it has not grown up based on its long history. For thousands of years, the system has not had a major breakthrough and development, even in a declining trend. For example, there are two simple clauses in our country's law on the negotiorum gestio. Nowadays, with the unprecedented development of human civilization, people have more and more demands on the real life, and the lack of the negotiorum gestio content is becoming more and more obvious. In our country, the current legal provisions on the negotiorum gestio refer to article 93 of the "General Principles of the Civil Law": "Without statutory or contractual obligations, has the right to require the beneficiary to pay the necessary expenses incurred thereby. ". In article 132 of "the Opinions of General Principles of the Civil Law", there has: "The administrator or the servicer who is not in charge may require the beneficiary to pay the necessary expenses, which includes the costs of direct expenses incurred in management or service activities, as well as actual losses incurred during the activity. " These two laws simply tell us the definition of negotiorum gestio and the rights that can be enjoyed by no manager. For others, there are still many loopholes in the relevant laws.

It is a good shortcut to utilize and borrow the foreign research of the negotiorum gestio system. As is known to all, the negotiorum gestio system originated from the Roman law and matured in the continental law countries (regions). However, in the Anglo-American legal system, it is a very fresh term. Although there is no concept of negotiorum gestio and related systems, it is not completely without a contract, or the Anglo-American law is close to admitting that the negotiorum gestio system is more appropriate. Therefore, it is necessary to study the relevant regulations of the countries (regions) on the negotiorum gestio system, and to take the essence and discard the dregs.

2. Negotiorum gestio provisions in civil law

It is said that, as with many important civil law systems, the system negotiorum gestio is originated from the source of the civil law system--the Roman law. It was first applied to the management of people who were not there, especially those who were out on the expedition. But at that time there was no independent legal system, it was in the form of quasi-contract in Roman law. In ancient Rome, there was no legal adjustment before the "Lex Aebutia". But in terms of social

morality and economy, this kind of behavior is advantageous. It reflects both the virtues of mutual aid and the loss of personal and social property. However, if there is no limit, then anyone can interfere in the affairs of others and infringe upon the freedom and interests of others. Therefore, it must be regulated and regulated by law. On the one hand, the law should uphold the legal principle of "It is illegal to meddle in other people's affairs. ". Under certain conditions, on the other hand, for the sake of social moral and economic factors, the law have to make an exception and allow others under certain conditions intervention has the deterrent effect of illegal transaction behavior. At the end of the Roman Republic, the management of the negotiorum gestio had been formally adjusted by the civil law.

The "Code Civil des Francais" follows the Roman law. It takes negotiorum gestio as a kind of "quasi-contract". There has for requirements from article 1372 to article 1375.

The "German Civil Code" rejected the Roman law and the "quasi-contract" of the "Code Civil des Francais", it regulates the cause of the negotiorum gestio as an independent debt. But the German civil law has not completely escaped the influence of Roman law and the "Code Civil des Francais". It still has the tendency to contract it in the nature of the negotiorum gestio. There were 11 provisions in the code, namely from article 677 to article 687.

There is no special difference between the provisions of the Japanese civil law and the "German Civil Code" on the content of negotiorum gestio. However, in the arrangement of the style, the Japanese civil code has made a breakthrough and development on the provisions of negotiorum gestio, and has highlighted its position in the debt law. The Japanese civil code coordinates the negotiorum gestio and contract, unjust enrichment and tort, together as the cause of the debt, and build the whole system of debt system on the basis of this. As a result, the system of civil law's debt system has been improved, and it also reflects the increasingly important status of the negotiorum gestio system in modern civil law. Although the provisions of the "civil code" in Taiwan's "civil code" are mostly drawn from the "German Civil Code", there are still differences between them. That is, as with the "Japanese Civil Code", the cause of the debt is recognized as a debt. The Japanese civil jurist Sakae Wagatsuma believed this law of negotiorum gestio ("civil code" in Taiwan) is more like the Swiss debt law, it is similar to the Japanese civil law, but there is no significant difference between the two laws.

3. Negotiorum gestio provisions in common law

In the Anglo-American law system, there is no concept and system of negotiorum gestio. There are two main reasons: First, because of historical and geographical reasons, Britain was largely free from the influence of Roman law, and therefore, the free management system in Roman law was not inherited in Britain. Second, the Anglo-American law adheres to the principle of individualism, which is based on the thought concept of "It is illegal to interfere in the affairs of others. ", and does not recognize the non-administrative system.

Of course, we can't absolutely believe that the Anglo-American law is totally against the Volunteer. In some cases, the courts will also support the demands of volunteers. For example, the maritime salvage rules enacted by the British maritime court require the common courts to do the same. The "necessary agent" principle includes the provision of daily necessities litigation and the maintenance of property litigation. Compared with the continental law, the principle of "necessary agency" in Anglo-American law is more emphasized on the necessity and urgency of interfering in other people's affairs. It does not acknowledge that the administrator has the right of claim. Even in the case of the rescue of the lives of others, the heroic deeds of the rescuers were called for medals and honors, not money. Moreover, the Anglo-American law argues that the amount of compensation is not private.

Therefore, the author thinks that although there is no concept and system of negotiorum gestio in Anglo-American law, there has no such thing as a quasi-contract. Otherwise, the Anglo-American approach is close to admitting that the system is more appropriate.

4. Comparison between continental law and Anglo-American law

Table 1 Legislation comparison of negotiorum gestio system.

		The legal facts of negotiorum gestio (constitutive requirements)	Debt concept of negotiorum gestio	
			Same	Differences
Comparison of continental law.	Roman law	Quasi contract		
	The French law	Quasi contract	Compare with Roman law. The practice of using the Roman law.	1. Eliminate the unnecessary right to claim for expenses incurred by the administrator in the absence of management. 2. There is no independent unjust enrichment system.
	German law	Negative quasi contract, negotiorum gestio is one of the bases for debt management.	Compare with French civil law. 1. The obligations of the administrator may be subject to the provisions of the commission. 2. The administrator shall have the right to request the return of his expenses when he manages the affairs in his own interest..	Compare with French civil law. 1. The management and management methods of the manager are clearly and more strictly regulated.。 2. Reduce the responsibility of the administrator in public welfare and emergency management.
	The Swiss civil law	Negotiorum gestio is one of the bases for debt management.	Compare with German civil law. 1. The style is similar. 2. The content is similar, for example: the appropriate management obligation of the manager, the duty of care, the situation of reducing and aggravating the responsibility, my compensation and the obligation of compensation. Compare with French civil law. Same with the French civil law, the admission of the manager's claim is directed against his services, not to his own advantage [1].	Compare with French civil law. In the Swiss law, people can act in their own name when they interact with a third person, in France low he must act in his own name. [1].
	Japanese law	Negotiorum gestio is one of the bases for debt management and more prominently in the debt law.	Same with other civil laws, it also stipulates the supervisor's duty of care, notification obligation, continuing management obligation and administrator's fee reimbursement claim	Unlike other civil laws, Japanese law emphasizes the objective necessity of management in determining whether the management of the manager is appropriate
	Civil law in Taiwan.	Negotiorum gestio, contract, tort, unjust enrichment and the basis of the debt. It is similar to the Japanese civil law, but there is no significant difference between the two laws. [3].	Compare with Swiss law. Similarity:1. Enumerate the scope of the administrator's compensation includes the necessary and beneficial expenses, and the appointment of the contract does not distinguish the nature of the costs.2. Negotiorum gestio shall be subject to the application of the mandate. [2] Compare with German civil law Similarity:1.The administrator's right of claim and responsibility are closely related to whether the management is in accordance with his own meaning and interests.	Different from German law and Swiss law.: It is not necessary for the manager to claim the benefits within the scope of his own benefit.
The common law	There is no concept and system of negotiorum gestio	Although the Anglo-American law adheres to the principle of individualism, and regards interfering interference as a fundamental prohibition, there is no reason to compensate those who voluntarily provide unrequested and unpopular services. Although there is no concept and system of negotiorum gestio in Anglo-American law, there has no such thing as a quasi-contract. Otherwise, the Anglo-American approach is close to admitting that the system is more appropriate.		

The author compares the continental law and common law through the form and analysis about the regulation of negotiorum gestio system. Hope readers can learn more vivid image of the

provisions of negotiorum gestio. Table 1.

5. Conclusions

Through the comparison and analysis of the above contents, it is not difficult to see that there is no great difference in the regulations of the countries on the negotiorum gestio. The main difference is that in the macro architecture, the other rules are basically the same. There is a slight difference in the balance of interests (between managers and their rights and obligations). The big difference is the Anglo-American law on the rule of the big difference is the Anglo-American law on the rule of non - cause management. Britain, after all, the medieval legal tradition and developed the tradition of common law and from the Roman law and set up from continental law from historical background and geographical location, there is a huge difference. Therefore, it is not surprising that in the continental law, there is negotiorum gestio system for the millennium development history.

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