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硕士研究生学位论文

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继承财产制度之构建

**Analysis on the Non-Inheritance Property System in Mainland
China——From the Perspective of Comparative Law**

姓名：陈璋

学号：MB049011

院系：法学院

专业：中文法学硕士学位

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导师姓名：唐晓晴 教授

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目 录

前言——问题的提出.....	1
一、现行继承法下中国无人继承财产的认定以及相关法规.....	3
二、立法上潜在的不足	4
第一章、无人继承遗产理论的确立.....	8
一、无人继承遗产的界定	8
二、与类似财产的比较	12
（一）、无人继承之遗产与无主财产的比较.....	12
（二）无人继承之遗产与无人承认继承之遗产的比较.....	13
（三）无人继承之遗产与古代户绝财产的比较	13
（四）无人继承之遗产与“五保户”遗产的比较	14
三、本文观点.....	14
第二章、各国及港澳台三地的无人继承遗产制度.....	16
一、台湾的遗产无人继承制度.....	16
二、澳门地区的遗产无人继承制度立法概况.....	17
三、香港的遗产无人继承遗产制度	22
四、其它国家与地区的无人继承遗产制度.....	25
（一）日本.....	25
（二）法国.....	27
（三）瑞士.....	28
（四）德国.....	29
（五）英国.....	29

(六) 韩国.....	30
第三章、无人继承遗产制度与中国无人继承遗产制度的确立.....	32
一、无人继承遗产的确定程序与确定机构.....	32
(一) 我国的现行规定与现有研究观点.....	32
(二) 比较与探讨.....	33
(三) 小结.....	35
二、无人继承遗产的管理.....	37
(一) 遗产管理人制度的地位以及其建立的意义.....	37
(二) 比较与探讨.....	39
(三) 小结.....	42
三、无人继承遗产的债务清偿.....	44
(一) 比较与探讨.....	45
(二) 小结.....	46
四、无人继承遗产的归属.....	50
第四章、对我国遗产无人继承制度的立法建议.....	56
一、应设立搜索继承人和遗产债权人的公告程序.....	56
二、应增设遗产管理人制度.....	56
三、应对遗产的债务清偿做出规定.....	58
四、对剩余遗产的移交也应作出详细的规定。.....	60
五、适当的扩大法定继承人的范围.....	60
结语.....	62
参考文献.....	63

文献： 63

论文： 65

致谢 67



从比较法角度论中国地区无人继承财产制度之构建

中文摘要

财产的所有人死亡之后，有的有继承人，有的无继承人；而有继承人的，可能放弃继承或者丧失继承人。因此，只要遗产继承存在，就有可能出现无人继承遗产的状况。于是，为了保持社会的稳定，法律就必须设立无人继承遗产制度。在我国，最早在唐代便有这种制度，依唐令拾遗（丧葬令、户绝条），“诸身丧户绝者、所有部曲、客女、奴婢、店宅、资财、并令近亲（亲依本服不以出降）转易货卖，将营葬及量营功德之外，余财并与女（户虽同、资财先别者，亦准此）。无女，均入以次近亲，无亲戚者，官为检校。”1930年民国民法典继承篇参照了德、日、瑞士等国民法典的规定，也设立了无人继承财产制度。而从世界范围来看，罗马法时期，死者无继承人时，其遗产为据产，应归属国库，由国库负责清偿死者的债务；当遗产不足以清偿债务时，便由遗产债权人依变卖遗产之程序而受清偿。时至今日，我国经济迅速发展，公民个人财富也逐渐增多，家庭结构也相应发生了变化。1985年颁布的现行继承立法与相关的司法解释在一定程度上滞后于社会的发展。在无人继承财产方面，未有统一的界定。因此，借鉴其他国家与地区的经验，构建我国的无人继承财产制度是十分有意义的。本文首先对无人继承财产的理论进行了界定，并与其他类似财产进行了比较，明确其本质上的区别，从而在无人继承财产的性质认定方面有了更清晰的认识。其后运用对比分析的方法，对各国与各地区无人继承财产制度进行评析，包括确定程序与确定机构、遗产管理人制度、债务清偿、归属效力等。分析我国目前立法上的不足，针对存在的问题，提出完善立法的构想。

关键词：财产继承法律制度，遗产无人继承，遗产管理人



Analysis on the Non-Inheritance Property System in Mainland China—From the Perspervtive of Comparative Law

Abstract

After the death of the owner of property, some properties have legal **inheritor** (s), but some do not. In some cases, the **inheritor** (s) may give up or lose the right of succession. Therefore, there could be properties without inheritors as long as there exists the succession of property. Thus, it is urgent and necessary to establish the legislative system of the non-inheritance property in order to maintain the social stability. In China, the earliest non-inheritance property system can be traced back to the Tang Dynasty. By adopting the non-inheritance rules of Germany, Japanese and Swiss, the Minguo Civil Code has also established this system. In the period of Rome Law, if the owner of property does not have a inheritor after his death, his inheritance belongs to the state treasury, and the state treasury is responsible to paid off the debt for the owner of property. If the debt can not be paid by his inheritance, the creditor is paid by disposing the borrower's inheritance according to related laws in order to settle the debt. With the rapid development in the economy of China, people's wealth and property have been accumulated increasingly, and the family structure has been changed accordingly. However, the Inheritance Law of China established in 1985 falls far behind the social development. In Chinese Civil Law, there lacks of a unified definition of non-inheritance property, the inheritance management system, the process of identifying, and the identifying institution as well as. A plenty of problems which can be not explained or solved by the present Inheritance Law, such as debt settlement and the ownership of the non-inheritance property. Therefore, taking references and utilizing the experience of other countries and regions is of great significance in establishing the non-inheritance property system in China. This paper examining the methods of solving the above problems in order to clarify and state clear some basic issues in non-inheritance property system, and proposes some advice to the establishment of the system in China.

The present paper makes a clear definition of the non-inheritance property at the first place; compares and contrasts the similarities and differences between it and the other types of properties in order to provide a clear and in-depth understanding of the identification of none-inheritance property. Then, this paper applies the contrastive analysis method to discuss the system of no inheritance of property of different countries and regions, including the process and constitution of non-inheritance property, the system of the deceased property manager, debt settlement, ownership effect, etc. This paper aims to examine the inefficiency of Chinese legislation system, and propose a way to make the system more complete.

Key words: none-inheritance property, manager of the deceased property, heritage ownership, debt settlement.

