

## 摘要

本文將共有六章。除用於說明論文的寫作目的與過程等事宜的第一章以及歸納論點的第六章外，論文的結構和思考進路如下：

第二章和第三章為上篇，第四章和第五章為下篇。上篇主要介紹法律行為的概念與現有的關於法律行為效力依據的理論現狀，下篇將深入主題，探討動態體系理論以及法律行為效力依據的動態體系。

第二章旨在為論文的寫作作場景設定，在本章中將簡述法律行為之術語、法律行為的概念以及傳播。

第三章將對現有的法律行為效力依據的各種理論進行探討。這一章的小結中將得出的結論是：透過單一要素無法解釋法律行為效力。

第四章將會介紹可以協調多項要素的體系思維以及動態體系理論。

在第五章中，本文將驗證《澳門民法典》關於法律行為效力的規定是否符合動態體系理論。最終可以發現《澳門民法典》關於法律行為效力的規定符合動態體系理論。

## Abstract

This thesis includes six chapters in total. Besides the first chapter presenting the purpose and process of writing and the sixth chapter concluding arguments, the structure and approaches of this thesis are as follows:

This thesis consists of two parts. The first part, including the second and the third chapter primarily, introduces the concepts of legal transaction\* and the existing doctrines concerning the basis of the effect of legal transaction. The second part, including the fourth and the fifth chapter, explores in depth the subject matter: the theory of flexible system and a flexible system approach to the basis of the effect of legal transaction.

The second chapter aims to set the scene for this thesis writing. This chapter briefly describes the legal transaction terminology, the concept of legal transaction and its transmission.

The third chapter explores the existing theories concerning the basis of the effect of legal transaction. The study of this chapter concludes that the effect of legal transaction cannot be explained through a single factor.

\* 此處將法律行為 (negócio jurídico) 的英文寫作「legal transaction」而非從字義上而言和中文「法律行為」更為對應的「legal act」，考慮了本文使用的法律行為 (negócio jurídico) 的歷史淵源和傳統。「legal act」常被用來指稱一般意義上的法律行為 (也就是常說的「法律上的行為 (acto jurídico)」)，「legal transaction」更強調意思在相關行為中的作用 — 不僅決定行為的做出，也決定行為的效果。當然，「legal transaction」這個譯法也是參考了一些德文法律及書籍的英譯，例如在 Walter Loewy 翻譯的《德國民法典》中，使用了「legal transaction」來表述「Rechtsgeschäft」，見 *The Civil Code of the German Empire*, translation by Walter Loewy, Fred B. Rothman & Co. of Littleton, Colorado, 1997, p. 26, ss. 以及 Hans Kelsen, *Pure Theory of Law*, translation by Max Knight, University of California Press, 1978, p. 256.

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The fourth chapter introduces the system thinking and the flexible system theory.

In the fifth chapter, we will verify the regulations regarding the effect of legal transaction in the Civil Code of Macao comply with the theory of flexible system. Eventually it reveals that the regulations regarding the effect of legal transaction in the Civil Code of Macao conform to the theory of flexible system.

## 聲明

本人所提交的論文，除了經清除列明來源出處的資料外，其他內容均為原創；本論文的全部或部分未曾在同一學位或不同學位中提交過。

本人聲明已經知悉及明白《澳門大學學生學術誠信處理規條》和《澳門大學學生紀律規章》。



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