CHINA'S APPROACH TO THE CREDITOR'S RIGHT OF REVOCATION: APPLICATION AND IMPROVEMENT

Zhu Jingjing

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Since the enactment of the Civil Code, the creditor's right of revocation in China has undergone significant development and has become increasingly refined. However, in practical application, issues persist regarding the lack of consensus on the relationship between the creditor's right of revocation and the application of malicious collusion rules, the ambiguity in standards for determining the fraudulent nature of the debtor's actions, and the incomplete realization of the legal effects of the creditor's right of revocation. These issues can be addressed through a three-tiered structure of 'norm selection, constituent elements, and legal effect realization'. In norm selection, the focus should shift from substantive law to procedural law. Malicious collusion should be positioned as a defense that courts may invoke ex officio. It should be clearly established that the procedural application of the creditor's right of revocation follows malicious collusion in order of precedence. In terms of constituent elements, a dual standard should be adopted to assess the fraudulent nature of the debtor's actions. This standard should specifically address the determination of fraudulence at the time the debtor's actions are undertaken and at the time the creditor exercises their rights. In terms of legal effect realization, on the one hand, creditors should be granted the right to request the return of property from the counterparty and to apply for enforcement against the counterparty; on the other hand, in specific circumstances, the counterparty should be imposed with a notice obligation, requiring them to notify the creditor when returning property to the debtor.

I. INTRODUCTION

Across all legal systems, the principle of 'repaying debts' is a widely accepted societal norm. It prohibits the intentional depletion of assets to evade liabilities and requires debtors to make all assets available for the

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payment of creditors' claims.[1] The creditor's right of revocation is a crucial legal tool in upholding this principle. It prevents abnormal changes to a debtor's property by nullifying unauthorized transfers of rights. This right extends beyond the concept of privity in contracts, granting creditors the authority to intervene in a debtor's asset disposition. As a robust legal mechanism, it plays a vital role in protecting creditor interests, particularly in strengthening the business environment and addressing issues like corporate debt evasion. As a result, this system has been incorporated into the legal frameworks of various countries, including China. The creditor's right of revocation in China has experienced substantial development, evolving from the pre-Civil Code era to the Civil Code era. This progression has followed a structured trajectory. It includes theoretical preparation, legislative incorporation, practical application, theoretical refinement, and rule optimization. These steps have led to significant enhancements in the regulatory framework of the creditor's right of revocation.[2] Among these improvements, the advancements in the legal effects of this right are particularly noteworthy.

The ongoing refinement of China's creditor's right of revocation has likewise spurred advancements in related judicial practices. Courts across the country frequently designate cases involving the creditor's right of revocation as representative,[3] with some even elevated to the status of guiding cases.[4] Nonetheless, the application of this system is not without issues and challenges, which inevitably impede its full effectiveness. Some of these challenges arise at the macro level, concerning the place of the creditor's right of revocation within the legal framework. The most notable example is how it relates to the laws governing contract invalidation, which in some situations directly dictate whether the creditor's right of revocation is applicable. At the micro level, challenges center on operational aspects, such as satisfying the constitutive requirements for invoking the creditor's right of revocation and realizing its legal effects. These specifically include problems identifying whether a debtor's acts were fraudulent and successfully

1 *See* Xu Defeng, *Debtor's Assets in Fulfilling Obligations: A Shared Basis for the Creditor's Right of Avoidance, Subrogation Right, and the Protection of Corporate Creditors*, 18(1) Tsinghua Law Journal 25, 27 (2024).

2 *See* Zhu Jingjing, *On the Private Benefit of Creditors' Right of Avoidance and Its Realization*, 6 Social Sciences in Xinjiang 120 (2021).

3 Such as the first batch of typical cases on optimizing the business environment released by Yongren People's Court, and the typical case on optimizing the business environment released by Pingxiang Intermediate People's Court: *Pingxiang Rural Commercial Bank v. Liu Moumin, Xiao Fang & Liu Mouqiang (Third-Party Participants) (Dispute Concerning Creditor's Right of Revocation)*.

4 Such as Guiding Case No. 118 of the Supreme People's Court: *Northeast Electric Development Co., Ltd. v. China Development Bank Corporation, Shenyang High Voltage Switch Co., Ltd., et al. (Case of Enforcement Reconsideration)*.

enforcing the legal ramifications of the creditor's right of revocation. These issues and challenges, to varying degrees, erode the robust functionality of the creditor's right of revocation. Therefore, for China, addressing the key issues in the effective application of the creditor's right of revocation in the Civil Code era is one of the urgent tasks to be accomplished.

A three-tiered framework of 'norm selection, constituent elements, and legal effect realization' is necessary for the proper implementation of any legal system. The difficulties in implementing the creditor's right of revocation can also be examined within this framework. This essay explores the working mechanics of the system within this tripartite framework, building on an analysis of these issues in the context of China's creditor's right of revocation. It seeks to suggest a distinctively Chinese strategy for guaranteeing the efficient exercise of the creditor's revocation right.

II. THE EVOLUTION AND DEVELOPMENT OF THE CREDITOR'S RIGHT OF REVOCATION IN CHINA

The creditor's right of revocation traces its origins to the *actio Pauliana* in Roman law, which allowed creditors to annul fraudulent transactions. This legal mechanism has been adopted by the legal systems of various countries and regions, including France and Japan. China's creditor's right of revocation has undergone a long developmental process, including the stages of 'theoretical preparation, legislative adoption, practical implementation, theoretical refinement, and rule optimization.'[5] From a temporal perspective, the development of the creditor's right of revocation in China can be divided into two distinct periods: the era before the *Civil Code* and the era following the enactment of the *Civil Code*.

A. The Creditor's Right of Revocation in the Pre-Civil Code Era

If the pre-Civil Code era is defined as the period prior to the promulgation and implementation of the *Civil Code of the People's Republic of China*, the emergence of the creditor's right of revocation can be traced back to the *Draft Civil Code of the Qing Dynasty*, completed by the Qing government in 1911, although it was never enacted. In 1915, the *Draft Civil Code of the Republic of China* retained provisions on the creditor's right of revocation. After the founding of the People's Republic of China, the *Complete Six Codes*

5 *See* Zhu Jingjing, *supra* note 2.

was abolished, and for a significant period, China lacked a formal system for the creditor's right of revocation. This gap facilitated debtor practices such as transferring property at a low price or gratuitously, which resulted in substantial harm to creditors. In order to provide stronger protection for creditors, China formally established the creditor's right of revocation in the *Contract Law of 1999*, with its provisions outlined in articles 74 and 75. Article 74(1) specifies the circumstances under which a creditor may exercise the right of revocation, such as when the debtor transfers his property without consideration or transfers his property at an obviously low price. Article 74(2) addresses the scope of the creditor's right of revocation and the allocation of related costs. Article 75 sets forth the time limits for exercising the right of revocation. It is evident that the provisions concerning the creditor's right of revocation in the *Contract Law* are limited. However, overly simplistic legal texts impede the effective application of this right. Following the establishment of the creditor's right of revocation under the *Contract Law*, subsequent judicial interpretations have provided further clarification and supplementation. Notably, the *Interpretation I of the Supreme People's Court on Several Issues Concerning the Application of the Contract Law of the People's Republic of China* (hereinafter referred to as the Interpretation I of the Contract Law) and the *Interpretation II of the Supreme People's Court on Several Issues Concerning the Application of the Contract Law of the People's Republic of China* (hereinafter referred to as the Interpretation II of the Contract Law) have played a key role in this regard.

The Interpretation I of the Contract Law supplements the creditor's right of revocation through four provisions, addressing procedural issues such as the jurisdiction over revocation actions, the identification of defendants and third parties, and the consolidation of trials. It also adds provisions on the legal effects following revocation and the allocation of costs incurred while exercising this right. Compared to the *Contract Law*, the most notable additions in the Interpretation I of the Contract Law are the clarification that the debtor is the defendant in a creditor's revocation action, the counterparty is considered a third party, and the legal effect of revocation is retroactively null and void. The Interpretation II of the Contract Law outlines two provisions specifying the circumstances under which the creditor's right of revocation may be applied. These circumstances include gratuitously disposing of his proprietary rights and interests by waiving his claims, waiving the security for his claims, and maliciously extending the period of performance of his due claim. It also further refines the criteria for determining 'obviously unreasonably low price' and 'obviously unreasonably high price'.

Following the supplementation through judicial interpretations, the creditor's right of revocation has been significantly improved. However, with the ongoing development of the theoretical doctrine and the accumulation of practical case law, the deficiencies of the system before the enactment of the *Civil Code* have become increasingly apparent. One of the most notable shortcomings lies in the growing diversification of methods employed by debtors to evade their obligations. This requires an expansion of the scope of the creditor's right of revocation. Additionally, the legal effect of exercising this right remains limited to declaring the debtor's actions void *ab initio*, which does not fully protect the interests of creditors.

The compilation of the *Civil Code* has provided an opportunity to re-examine the creditor's right of revocation. The shortcomings and gaps in the provisions of the *Contract Law*, the Interpretation I of the Contract Law and the Interpretation II of the Contract Law that previously governed this system were addressed and refined during the compilation of the *Civil Code*. Consequently, the creditor's right of revocation has entered a new era.

B. The Creditor's Right of Revocation in the Civil Code Era

The Civil Code era refers to the period following the promulgation and implementation of *China's Civil Code*. During this time, significant advancements have been made to the creditor's right of revocation compared to the pre-Civil Code era. First, in terms of legislative scope, the number of provisions addressing the creditor's right of revocation has increased from two to five articles. Second, regarding substantive content, the Civil Code era retains certain aspects of the pre-Civil Code framework while introducing notable updates. The retained elements primarily include specific applicable circumstances, the scope of the right's exercise, and the time limits for its invocation. The retention also incorporates provisions that were previously contained in judicial interpretations, now codified within the formal text of the *Civil Code*. The updates focus on three key areas: expanding the applicable circumstances of the creditor's right of revocation, redefining the parties involved in revocation actions, and enhancing the legal consequences of successful revocation claims. The expansion of applicable circumstances is exemplified by article 43 of the *Interpretation by the Supreme People's Court of Several Issues Concerning the Application of Part One General Provisions of Book Three Contracts of the Civil Code of the People's Republic of China* (hereinafter referred to as the Interpretation of Part One

General Provisions of Book Three Contracts), which includes actions such as property exchanges, debt set-offs, property leasing, and intellectual property licensing at manifestly unreasonable prices within the scope of revocable transactions.

This reform enables a more flexible response to fraudulent activities concealed under various ostensibly legitimate forms, reflecting a more rigorous approach to scrutinizing the debtor's conduct.[6] In terms of parties to revocation actions, both the debtor and the third party are now designated as joint defendants. Since the creditor's right of revocation pertains to transactions between the debtor and a third party, it raises issues such as the third party's defenses, the exercise of the revocation right, and its legal effects. To ensure comprehensive protection of the third party's litigation rights,[7] the legal consequences of the creditor's right of revocation have also been significantly enhanced in the Civil Code era. During the compiling process, a proposed provision contemplated the simultaneous exercise of the creditor's right of revocation and the creditor's subrogation right.[8] However, this provision was excluded from the final text due to concerns that substantive legislation should not directly regulate procedural matters.[9] Lastly, article 46 of the Interpretation of Part One General Provisions of Book Three Contracts introduces procedural mechanisms that greatly improve the enforceability of the creditor's right of revocation. It allows creditors to request that the third party return the property to the debtor, provide monetary compensation, or perform outstanding obligations. Furthermore, it authorizes courts to adjudicate claims and obligations between the debtor and the third party within revocation proceedings and permits creditors to enforce rights that the debtor holds against the third party. These provisions mark a significant breakthrough in the practical application of the creditor's right of revocation, enabling creditors to obtain remedies directly from the third party and substantially strengthening the right's protective function.[10]

Building on the foundations laid in the pre-Civil Code era, the creditor's

6 *See* UNDERSTANDING AND APPLICATION OF THE CONTRACT PART OF THE CIVIL CODE OF THE PEOPLE'S REPUBLIC OF CHINA (VOLUME I), at 538 (Leading Group of the Supreme People's Court for the Implementation of the Civil Code ed., People's Court Press, 2020).

7 *See* UNDERSTANDING AND APPLICATION OF THE JUDICIAL INTERPRETATION ON THE GENERAL PROVISIONS OF THE CONTRACT PART OF THE CIVIL CODE OF THE PEOPLE'S REPUBLIC OF CHINA, at 493 (The Second Civil Division & Research Office of the Supreme People's Court eds., People's Court Press, 2023).

8 Article 331(2) of the *Second Deliberation Draft of the Civil Code* stipulates: where a creditor petitions the people's court to revoke a debtor's act, the creditor may, in their own name and in accordance with the law, simultaneously exercise by subrogation the rights the debtor holds against the counterparty following the revocation of such act.

9 *See* Long Jun, *Debt Preservation System in the Civil Code*, 4 Journal of Comparative Law 120, 129 (2020).

10 *See* Wang Hongliang, *Creditor's Right to Revocation: Its Legal Effect and Procedural Realization*, 3 Journal of Comparative Law 93 (2024).

right of revocation has undergone significant development in the Civil Code era. Notable advancements in the system can be seen in the responses of the legislature and the Supreme People's Court, which reflect a profound understanding of the shortcomings in the previous framework. However, this does not suggest that the creditor's right of revocation under the *Civil Code* is perfect. Challenges in its practical application continue to expose limitations and reveal opportunities for further refinement.

III. POTENTIAL ISSUES IN THE APPLICATION OF THE CREDITOR'S RIGHT OF REVOCATION

The effective exercise of the creditor's right of revocation depends on its proper application in practice. This, in turn, requires attention to both its macro-level positioning within the legal system and its micro-level operational mechanisms. At the macro level, positioning refers to the institution's place within the broader legal framework, clarifying its interaction with other legal rules and principles. This enables precise normative selection, determining whether the creditor's right of revocation is applicable to a given case. At the micro level, operation encompasses the detailed process of applying the rules, including satisfying the requisite elements and achieving the intended legal effects. These steps are essential to the practical realization of the rule's objectives.

Accordingly, the effective application of the creditor's right of revocation involves a three-tiered structure: normative selection, element substantiation, and legal effect realization. While the Civil Code-era provisions on the creditor's right of revocation have achieved greater doctrinal completeness, challenges remain in their practical application. These challenges also arise within the framework of the three-tiered structure. And each, to varying degrees, undermines the full functionality and intended effectiveness of the creditor's right of revocation.

A. Disputes Concerning the Interrelationship Between the Creditor's Right of Revocation and Malicious Collusion

The controversy stems from the partial overlap between the constitutive elements of the creditor's right of revocation and malicious collusion. In certain cases, both norms may be simultaneously satisfied, resulting in normative concurrence. For example, a creditor's monetary claim may be harmed by a fraudulent act arising from malicious collusion between the debtor and a third party. While there is general agreement among scholars regarding the existence of concurrence between these two norms, the precise nature of their relationship remains contentious.[11] Two primary perspectives have emerged in this regard.

The first perspective characterizes the relationship as one of optional concurrence, arguing that both the creditor's right of revocation and malicious collusion serve to protect the creditor's rights but have distinct strengths and weaknesses. Under this view, creditors may freely choose between the two remedies based on their assessment of which best suits their interests.[12] The second perspective frames the relationship as one of exclusive concurrence, asserting that the two norms cannot be applied simultaneously but must instead follow a sequential order. This view is further divided into two subcategories: proponents of the priority of the creditor's right of revocation and advocates of the priority of malicious collusion. Supporters of prioritizing the creditor's right of revocation contend that it is a more specific rule with clearer elements and more straightforward legal consequences, making it the more appropriate norm for primary application.[13] Conversely, proponents of prioritizing malicious collusion argue that it addresses the validity of legal acts, whereas the creditor's right of revocation pertains to the performance of the contract. Since validity determinations logically precede performance considerations, they assert that the rule on malicious collusion should take precedence.[14]

Neither the *Civil Code* nor the Interpretation of Part One General Provisions of Book Three Contracts provides clear guidance on the relationship between the creditor's right of revocation and malicious collusion. The Supreme People's Court, in its 'Understanding and Application' book series, suggests that creditors can choose between exercising the right of revocation or requesting the declaration of invalidity.[15] However, this view has not been fully adopted in judicial practice. In actual judicial proceedings in China, some courts allow creditors to choose whether

11 For cases where the same set of facts meets the constituent elements of multiple legal provisions, legal theory categorizes such situations into three types: cumulative concurrence of laws, elective concurrence of laws, and exclusive concurrence of laws. *See* KARL LARENZ, METHODENLEHRE DER RECHTSWISSENSCHAFT, at 339 (The Commercial Press, 2020).

12 *See* Cao Hongguang, *The Elective Application of the Creditor's Right of Revocation and Invalid Contracts*, 8 Research on Rule of Law 99 (2009); WANG LIMING, RESEARCH ON CONTRACT LAW (VOLUME I), at 647 (China Renmin University Press, 2015).

13 *See* Mao Shaowei, *Malicious Collusion, Creditor's Right of Revocation, and the Legal Consequences of Contract Invalidity: Substantive Law Commentary on Supreme People's Court Guiding Case No. 33*, 2 Contemporary Law Review 14, 21-24 (2018).

14 *See* Liu Yang, *The Competition and Application Relationship Between Creditor's Right of Revocation and Invalid Contracts*, 2(8) Tsinghua Law Review 161, 163-174 (2015).

15 *Supra* note 6, 533.

to apply malicious collusion to seek a declaration of invalidity or to pursue a revocation action.[16] Other courts have combined cases where creditors file separate actions for the declaration of invalidity and the exercise of the revocation right. This is especially common when the debtor engages in multiple fraudulent acts.[17] Additionally, certain courts, bypassing the restrictions imposed by the creditor's right of revocation dispute provisions, prioritize determining the contract's validity, thereby giving precedence to the application of malicious collusion.[18] Since the creditor's right of revocation and malicious collusion differ in terms of statutes of limitations and legal consequences, these varied judicial approaches may result in inconsistent outcomes in similar cases, which contradicts the principle of 'uniformity in judgment for similar cases' within the judiciary.

B. The Ambiguity in Determining the 'Fraudulent Nature' in the Creditor's Right of Revocation

The creditor's right of revocation involves an intervention in the legal relationship between the debtor and the third party, implicating three parties: the creditor, the debtor, and the third party.[19] Consequently, the constituent elements of the creditor's right of revocation are inherently complex. These elements typically include the existence of a lawful and valid claim by the creditor against the debtor, the debtor's fraudulent act, and the impact of that act on the creditor's ability to realize their claim. The *Civil Code* differentiates between gratuitous and onerous transactions, prescribing distinct rules for each. Among these elements, fraudulent nature plays a pivotal role as the decisive factor in determining whether a debtor's act is subject to revocation. Although article 43 of the Interpretation of Part

16 Such as *Chen Zongyao et al. v. Shanghai Guodian Investment Co., Ltd. et al. (Case Concerning the Declaration of Contract Invalidity)*, No. 10103 Final Civil Judgment of the Second Intermediate People's Court of Beijing (2019); *Zhou Chengxiang v. Ningbo Yinzhou Jiabang Electric Appliance Co., Ltd. (Case Concerning the Declaration of Contract Invalidity)*, No. 1354 Final Civil Judgment of the Intermediate People's Court of Ningbo, Zhejiang Province (2019).

17 Such as *China Development Bank Corporation v. Shenyang High Voltage Switch Co., Ltd., New Northeast Electric (Shenyang) High Voltage Switch Co., Ltd., New Northeast Electric (Shenyang) High Voltage Isolating Switch Co., Ltd., et al. (Case Concerning Loan Agreement and Right of Revocation Dispute)*, No. 23 Final Civil Judgment of the Supreme People's Court of the People's Republic of China (2008).

18 Such as *Li Changrong et al. v. Xiao Yingchun et al. (Case Concerning Creditor's Right of Revocation Dispute)*, No. 22 First Civil Judgment of Chongqing Shuangqiao District People's Court (2008); *Jian Tianzhu et al. v. Jian Chunxing* (*Case Concerning Creditor's Right of Revocation Dispute Appeal*), No. 1486 Final Civil Judgment of Zhangzhou Intermediate People's Court (2016); *Jin Minming, Zhongping Company v. Shen Qi, Tang Jinrong & Fuhong Real Estate Company (Case Concerning False Asset Transfer Revocation Dispute)*, No. 0084 Final Civil Judgment of Lianyungang Intermediate People's Court, Jiangsu Province (2012); *Lv Jianzhi v. Wu Wenke et al. (Case Concerning Creditor's Right of Revocation Dispute)*, No. 256 First Civil Judgment of Quanzhou Intermediate People's Court, Fujian Province (2015).

19 *See* HAN SHIYUAN, THE LAW OF CONTRACT, at 458-459 (Law Press • China, 2018).

One General Provisions of Book Three Contracts expands the scope of the creditor's right of revocation by explicitly enumerating additional scenarios, the complexities of real-world cases often exceed the framework anticipated by legislators.

The aforementioned issue is particularly pronounced in the commercial context, where debtors frequently adopt sophisticated strategies to obscure the fraudulent nature of their acts. These tactics may vary across situations. For instance, in cases involving undervalued exchanges, a debtor might exchange high-value property for low-value property from a counterparty, subsequently transferring the acquired property to others under an agreement for an inflated price. Whether the agreed payment is genuinely deposited into the debtor's account often remains concealed. Under such circumstances, identifying whether the debtor's actions constitute a fraudulent nature presents a significant challenge in establishing the elements of the creditor's right of revocation. Judicial practice has already encountered such cases, where courts of first and second instances have reached conflicting conclusions regarding the fraudulent nature of the debtor's actions and the applicability of the creditor's right of revocation.[20] These inconsistencies highlight the inherent difficulty of assessing the fraudulent nature in such contexts.

Furthermore, in practice, specific scenarios may arise where a debtor exchanges tangible property for monetary claims, including claims that have not yet matured. In such cases, assessing the presence of fraudulent nature requires evaluating the actual value of the monetary claim and addressing issues related to its maturity. These considerations, absent from the explicit language of legal provisions, necessitate case-by-case judicial evaluation. This reliance on individualized assessments amplifies the inconsistency in standards for determining fraudulent nature. It poses significant challenges to the uniform application of the law.

C. Insufficient Realization of the Legal Effects of the Creditor's Right of Revocation

The legal effects of the creditor's right of revocation have consistently been a focal point of academic inquiry and practical discourse in various jurisdictions, including China. This issue was particularly contentious in the pre-Civil Code era, where significant theoretical debates emerged regarding

20 *Supra* note 4.

the outcomes of exercising this right. Broadly, three principal views can be identified within the academic community.

The first view asserts that the exercise of the creditor's right of revocation merely nullifies the debtor's act, rendering it legally ineffective. Under this perspective, the debtor's property, once restored, becomes subject to general security for all creditors, without granting any specific priority to the revoking creditor. The second view contends that exercising the creditor's right of revocation not only invalidates the debtor's act but also establishes the creditor's entitlement to demand restitution from the third party. Within this framework, two interpretations have been proposed. The first interpretation limits the creditor's role to requesting the third party to return the property to the debtor, without conferring any direct right for the creditor to receive the restitution themselves. In contrast, the second interpretation suggests that, to prevent the debtor from either refusing to accept restitution or redisposing of the returned assets, the creditor may act on the debtor's behalf to receive the restitution directly.[21] The third view grants the revoking creditor a preferential repayment right over the assets restored through the revocation. However, scholars diverge on the specific mechanisms for implementing this preferential right. Some argue that the legal effect of the creditor's right of revocation inherently includes a priority for the revoking creditor to recover the returned property ahead of other creditors.[22] Others propose achieving this priority by linking the creditor's right of subrogation to the exercise of the creditor's right of revocation.[23]

In the Civil Code era, significant advancements have been introduced by the Interpretation of Part One General Provisions of Book Three Contracts. However, certain issues regarding the legal effects of the creditor's right of revocation remain unresolved. First, the Interpretation of Part One General Provisions of Book Three Contracts enhances the substantive impact of the creditor's right of revocation by allowing creditors to apply for compulsory enforcement against the counterparty. However, it fails to address directly whether the creditor's right of revocation inherently possesses the nature of a claim. This omission leaves the long-standing debate unresolved from the pre-Civil Code era about the fundamental legal nature of the right. Second, the compulsory enforcement mechanism provided in the Interpretation of Part One General Provisions of Book Three Contracts raises additional concerns.

21 *See* Han Shiyuan, *A Study on the Creditor's Right of Revocation*, 3 Journal of Comparative Law 34, 48 (2004).

22 *See* Zhang Changqing, *On the Scope of the Creditor's Right of Revocation and Its Priority in Satisfaction*, 10 Journal of Law Application 23, 24 (2003).

23 *See* Long Jun, *supra* note 9.

These include a lack of authority for enforcement, excessive interference with the legal relationship between the debtor and the counterparty, and the inability to prevent the debtor from transferring assets or colluding with the counterparty to evade the restoration of responsible assets.[24] The first two concerns primarily reflect theoretical and structural inadequacies. The last issue, however, poses a significant practical challenge and severely impairs the realization of the legal effects of the creditor's right of revocation.

IV. THE THREE-TIERED STRUCTURE FOR THE APPLICATION OF THE CREDITOR'S RIGHT OF REVOCATION

As noted earlier, the effective application of the creditor's right of revocation is structured into three interrelated levels: 'norm selection, constituent elements, and legal effect realization'. Each of these levels presents potential challenges. To address these issues systematically, the subsequent analysis will explore the difficulties associated with the application of the creditor's right of revocation across these three dimensions, with the ultimate goal of enhancing the operational framework of this legal mechanism.

A. Norm Selection: The Procedural Postposition of the Creditor's Right of Revocation

On the surface, the theoretical debate between the creditor's right of revocation and malicious collusion may push their application relationship into a subjective realm of interpretation. However, this is not necessarily the case. In China, the creditor's right of revocation must be exercised through judicial or arbitral proceedings. Consequently, disputes regarding the interplay between the creditor's right of revocation and malicious collusion only become relevant after the creditor initiates legal action. Determining which legal provision to invoke is left to the plaintiff's discretion. For the creditor as the plaintiff, this decision hinges on two primary considerations: first, the creditor's circumstances, including the evidence available and the specific outcomes sought; second, the court's established approach, particularly its reasoning and practices in handling similar cases. After all, the law merely declares certain legal acts invalid; until a court officially confirms such invalidity, the parties involved may continue to treat the act as

24 *See* Wang Hongliang, *supra* note 10, 102.

valid.[25] This means that the applicability of the creditor's right of revocation and malicious collusion essentially depends on the logical approach adopted by the court in handling such cases. The issue can thus be reframed as a procedural question: whether the court must, *ex officio*, prioritize the application of malicious collusion in determining the validity of the debtor's acts. If such prioritization is required, the creditor's right of revocation becomes procedurally subordinate. If not, the creditor is free to choose between invoking the right of revocation and applying malicious collusion. Accordingly, the analytical focus must shift from substantive considerations to procedural ones.

From a procedural perspective, the critical issue in determining whether a court may invoke malicious collusion *ex officio* to assess the validity of a debtor's act hinges on whether this doctrine constitutes a defense norm concerning the creation of rights. Within the framework of claim-based reasoning, norms governing the validity of legal acts are regarded as defense norms tied to the formation of rights.[26] These defenses, classified as substantive under civil law, do not rely on the parties' assertions or claims but are instead subject to the court's *ex officio* examination.[27] This procedural characteristic is closely intertwined with the legal effects arising from the application of malicious collusion.

The norms governing the validity of legal acts, when categorized as substantive defenses, consistently point to the absolute invalidity of the legal act. However, there are two dominant interpretations within Chinese legal scholarship regarding the legal consequences of malicious collusion: the theory of absolute invalidity and the theory of relative invalidity. The theory of absolute invalidity asserts that all malicious collusion acts are automatically, categorically, and definitively invalid from the outset.[28] Conversely, the theory of relative invalidity, which addresses cases where malicious collusion infringes upon the interests of specific third parties, offers two distinct viewpoints. The theory of subjective relative invalidity holds that the act is only ineffective *vis-à-vis* the particular third party.[29] The revocation-relative invalidity theory holds that invalidity can only be asserted

25 *See* DIETER MEDICUS, ALLGEMEINES BÜRGERLICHES RECHT, at 372 (Law Press • China, 2000).

26 *See* Wu Xiangxiang, *Types of Norms in the Civil Code of People's Republic of China: Examined in Perspective of Basis of Claim Right*, 58(4) Journal of Nanjing University (Philosophy, Humanities and Social Sciences) 120, 123 (2021).

27 *See* Cao Zhixun, *Reconsidering Judicial Power to Examine Validity of Civil Contracts Sua Sponte in Civil Process*, 27(3) Law and Social Development 205, 211-213 (2021).

28 *See* Zhu Guangxin, *The Systemic Position and Normative Construction of the Provision on the Invalidity of Malicious Collusion*, 7 Law Science 131, 141 (2018).

29 *See* Wang Yi, *Legislative Proposals for Validity System of Juristic Acts in General Provisions of Civil Law*, 2 Journal of Comparative Law 171, 174-175 (2016).

by a specific third party.[30] From the perspective of judicial practice, however, the theory of relative invalidity is of little significance. First, the theory of subjective relative invalidity, while narrowing the scope of invalidity, does not substantively alter the outcome. This is because, in the framework of civil procedure, litigation requires a legitimate interest. It means that even under the absolute invalidity theory, the effects of invalidity typically benefit only the creditor who initiates the revocation lawsuit. Therefore, the practical outcomes of the two theories are virtually identical. Second, the revocation-relative invalidity theory bears striking resemblance to the legal treatment of voidable acts, to the extent that some scholars equate the two.[31] However, this view does not align with China's current judicial practices.

In Chinese courts, claims based on malicious collusion are treated as declaratory actions, and the defense of prescription does not apply, whereas actions based on the creditor's right of revocation are treated as constitutive actions. Even in jurisdictions where the distinction between void and voidable acts is minimized, procedural law continues to maintain the distinction.[32] Thus, malicious collusion must be treated within the context of legal invalidity, not revocation. The creation of a separate category for 'revocation-relative invalidity' is unnecessary. Therefore, there are no significant obstacles to incorporating malicious collusion within the framework of substantive defenses related to the creation of rights. Judges should proactively review whether a debtor's action should be invalidated due to malicious collusion. As a result, the creditor's right of revocation assumes a procedurally subordinate role.

Based on this conclusion of procedural subordination, the relationship between the creditor's right of revocation and malicious collusion can be outlined as follows. If a creditor files exclusively for a declaratory judgment of invalidity, the court will directly determine whether the debtor's actions are valid. Upon completion of such proceedings, there is no remaining opportunity to invoke the creditor's right of revocation. If the creditor files solely for the revocation right, the court must first, *ex officio*, examine the validity of the debtor's action and apply the malicious collusion doctrine

30 *See* Chang Peng'ao, *The Negation of the Theory of Equation on the Relationship Between Voidable Legal Acts and Relatively Invalid Legal Acts: Based on the Development of Chinese Civil Law*, 5 The Jurist 13, 22 (2020); WANG LIMING, RESEARCH ON THE GENERAL PRINCIPLES OF CIVIL LAW, at 554 (China Renmin University Press, 2018); LI YU, ESSENTIALS OF THE GENERAL PRINCIPLES OF CIVIL LAW: INTERPRETIVE COMMENTARY ON NORMS WITH CASE ANALYSIS AND ANNOTATIONS, at 714-716 (Law Press • China, 2017).

31 *See* Mao Shaowei, *supra* note 13, 23.

32 *See* Yin Qiushi, *The Validity and Effect of Legal Transactions*, 6 Journal of Comparative Law 13, 17 (2017).

to declare it void. If the court's judgment does not address the issue of the contract's validity and bases its decision solely on the creditor's right of revocation, it is presumed that the court implicitly regards the contract as valid prior to invoking the revocation right.[33] If the creditor simultaneously files for both a declaratory judgment and a revocation claim, the court may consolidate the two claims under the framework of preparatory joinder.[34] The claim for confirmation of invalidity should be heard first.

B. Requirements Substantiation: Dual Judgment of the Fraudulent Nature of the Debtor's Actions

The central importance of 'fraudulent nature', which is fundamental to establishing the creditor's right of revocation, has been emphasized in various discussions. However, the judgment standard is often vaguely described as follows: the debtor's act of disposing of property leads to a reduction of their assets, making it impossible to satisfy the creditor's claims.[35] Yet, this formulation does not address the issues of the time of judgment and the persistence of fraudulent nature, which is imprecise. Considering that the creditor's right of revocation involves an intervention in the debtor's conduct, it is necessary to establish stricter criteria for its constitutive elements. Based on this, the dual judgment of the debtor's fraudulent nature is proposed, meaning that the debtor's action must have a fraudulent nature at the time of execution, and the fraudulent nature must persist when the creditor exercises the right of revocation. This dual judgment is easily applied in cases where the debtor sells their assets at a low price to obtain money. The value of the consideration obtained remains unchanged when the debtor performs the act and when the creditor exercises the right of revocation. Therefore, in the second judgment of fraudulent nature, it is sufficient to examine whether the debtor's overall ability to settle debts has been restored through other actions without the need to revisit the debtor's previous sale behavior.

A more complex situation arises when the debtor exchanges their property for that of another party. In cases where the debtor exchanges property with the transferee at a low price, the transferee 'pays' non-monetary assets to the debtor. The main difference between non-monetary assets and

33 *See* Cao Zhixun, *supra* note 27, 207.

34 *See* LI LONG, ON THE OBJECTIVE JOINDER OF CLAIMS IN CIVIL PROCEDURE, *in* PROCEDURAL LAW REVIEW, at 405-406 (Law Press • China, 2000).

35 *See* CIVIL LAW, at 418 (Higher Education Press, 2022).

money is that the former's value may fluctuate over time due to factors like market changes. It means that the value of the exchanged property at the time of the debtor's act and when the creditor exercises the right of revocation may differ.[36] The dual judgment standard can be applied in reverse order to address this. Specifically, the creditor should first examine the debtor's ability to settle debts when exercising the right of revocation. If the debtor has sufficient ability to settle debts at that time, there is no need for another judgment of fraudulent nature, and the creditor's right of revocation is not established. If the debtor lacks this ability, it must be confirmed that a fraudulent nature existed at the time of the debtor's action and that fraudulent nature persists when the creditor exercises the right of revocation. The following will further elaborate by taking two relatively special situations as examples: the substitution of property for a creditor's right and the continuous occurrence of substitution actions.

Firstly, in the case where the debtor exchanges property for a money claim, unlike tangible assets, which can be valued through market or cost methods, the value of claims often relates to the debtor's ability to repay, which is influenced by various factors. The first step is to determine that when the debtor exchanges property for a money claim, the claim's value should be assessed based on the debtor's ability to perform, rather than simply the displayed objective amount. Some practical cases have acknowledged this point. For example, in Guiding Case No. 118, the debtor exchanged their equity holdings with the principal and interest of a debt held by a counterparty. Regarding whether this exchange constituted an 'obviously unreasonably low-price transfer of assets', the court determined that the debt was classified as a non-performing asset, as the debtor of the creditor's right was determined to be incapable of performing during the enforcement process due to a lack of assets and failed to prove their ability to perform during the trial. However, not all cases involve enforcement circumstances. In the absence of enforcement issues supporting the value of the monetary claim, the debtor must bear the burden of proof regarding their ability to perform. If they fail to provide evidence, the claim's value may be assessed through methods like debt capital contributions or the evaluation of non-performing loans by commercial banks.[37] Specific valuation methods include expert scoring,

36 *See* HAN SHIYUAN, *supra* note 19, 464.

37 *See* Song Lianggang, *On the Legal Issues and Countermeasures of Creditor's Contribution: A Commentary on Article 16 of the Judicial Interpretation (III) of the Company Law*, 29(6) Tribune of Political Science and Law 131, 133 (2011); Cheng Fengchao, *A Study on the Comprehensive Evaluation Methods for Financial Non-Performing Loans*, 10 Accounting Research 71, 71-78 (2004).

transaction case comparison, comprehensive factor regression analysis, credit evaluation, cash flow debt service, and hypothetical liquidation methods.[38] These methods can also be applied when the creditor exercises the right of revocation to assess whether a fraudulent nature persists in the exchange behavior. Additionally, what if the creditor's right exchanged is valuable but not yet due, or if the maturity of the right is later than that of the creditor's claim? In this case, the creditor's claim cannot be satisfied in a timely manner, which could be considered another form of damage to the creditor's interests. In judging the fraudulent nature of such an exchange behavior, this paper treats it similarly to cases where the debtor 'maliciously extends the period of performance of his due claim.'

Secondly, in the case of continuous exchanges by the debtor, the debtor may continue to exchange the assets obtained from the initial exchange, forming a chain of exchanges. In Guiding Case No. 118, after the debtor exchanged their A-shares for the B-shares of another party, they went on to sell the B-shares. Although the value of the B-shares was much lower than that of the A-shares, making the exchange contract 'obviously unreasonable low-price', the debtor later sold the B-shares for a price roughly equal to the value of the A-shares. The first-instance court compared the value of the A-shares and the sale price of the B-shares, concluding that the debtor's actions lacked a fraudulent nature based on the equivalence of the two amounts. However, the appellate court reached the opposite conclusion, reasoning that since the second sale contract for the B-shares had not been truly performed, the price comparison was excluded, and thus, the debtor's exchange behavior was deemed to have a fraudulent nature. Both the first and second-instance courts failed to understand the continuous exchange scenario clearly. One issue is the confusion between exchange actions and performance actions. Under the basic understanding that claims are assets,[39] the non-performance of a contract does not equate to the loss of the debtor's property. Even if there are obstacles to contract performance, the original claim can transform into a remedial right, which still has considerable value. The judgment approach for the fraudulent nature in the scenario where the exchange asset is a money claim can be applied here. There is another special circumstance in Guiding Case No. 118. In the second transfer, the

38 *See* ZHENG WANCHUN, RESEARCH ON KEY TECHNIQUES IN THE DISPOSAL OF FINANCIAL NON-PERFORMING ASSETS, at 177 (China Financial Publishing House, 2008).

39 *See* Zhang Gu, *A Preliminary Analysis of the Various Uses of the Term 'Property' in Chinese Private Law*, 9(1) Archiv für Chinesisch-deutsches Privatrecht 133, 138 (2013).

transferee paid the full amount for the B-shares, but the debtor later returned the payment to the transferee. The appellate court thus denied that the transfer price had been paid. It confuses the validity of the contract with the performance of the action. The frequent changes in the payment amount may relate to the authenticity of the intent behind transferring the B-shares between the debtor and the transferee, which should be addressed at the contract validity level, focusing on whether malicious collusion or fraudulent representation existed between the parties.

Based on this, when the debtor engages in continuous exchanges of property, the creditor must first identify which exchange action of the debtor they intend to revoke. Once identified, previous exchange actions should not be considered, but the action and subsequent exchange behaviors should be examined separately under the dual judgment framework. Specifically, the first judgment of a fraudulent nature should focus on the actual value of the exchanged property at the time of the debtor's action and whether a fraudulent nature exists at that point. The second judgment of fraudulent nature occurs when the creditor exercises the right of revocation after the entire chain of exchanges is completed. In this stage, the creditor must first evaluate whether the debtor's ability to settle debts has been restored, and subsequent exchange actions are considered part of the overall change in the debtor's assets. If the debtor's ability to settle debts has not been restored, the creditor must assess whether the fraudulent nature of the debtor's action still persists.

C. Legal Effectiveness: Implementation of the Third Party's Obligation to Return

The final structural element for the effective application of the creditor's right of revocation is the realization of its legal effect, which has been widely debated in academic circles.[40] In cases involving a creditor's right of revocation, the court's support of the creditor's revocation request does not necessarily mean that the creditor's objective has been achieved.[41] This is particularly true when the debtor's property has already been transferred;

40 For different perspectives, *see* Xu Defeng, *The Legal Effects of Exercising the Creditor's Right of Revocation in the Civil Code*, People's Court Daily, July 30, 2020, at 6; HAN SHIYUAN, *supra* note 19; Zhang Changqing, *supra* note 22; Long Jun, *supra* note 9.

41 *See* Jiang Jiadi, *The Legal Effect of the Creditor's Revocation Right and the Implementation Path of Creditor's Rights: Centered Around Article 46 of the Interpretation of the General Principles of Contract Compilation of the Civil Code*, 1 China Journal of Applied Jurisprudence 51, 52 (2024).

only when the third party fulfills its obligation to return the property can the debtor's ability to repay be truly restored. In practice, however, the third party may not voluntarily return the property, and the debtor may fail to demand the return from the third party. Although article 46 of the Interpretation of Part One General Provisions of Book Three Contracts grants creditors the right to apply for compulsory enforcement against the third party, it does not rule out the possibility that, after the third party returns the property to the debtor, the debtor disposes of it again, rendering the creditor's objective in the litigation unattainable. Therefore, it remains necessary to analyze further the realization of the legal effect of the creditor's right of revocation.

The first issue that needs to be addressed is the third party's failure to return the property. Article 542 of the *Civil Code* provides that the legal effect of the creditor's right of revocation is that the revoked act 'does not have legal effect *ab initio*.' Still, it does not specify the requirement of property return, which aligns with the effects of exercising a general revocation right.[42] In practice, however, applying the creditor's right of revocation is more practical and flexible. Creditors often file claims for both revocation and return in their lawsuits. Courts generally take a pragmatic approach, balancing the creditor's claims with the intended outcome, and are inclined to support the creditor by ordering the third party to return the property to the debtor.[43] Such cases account for approximately 85% of cases where the creditor prevails.[44] Article 46(1) of the Interpretation of Part One General Provisions of Book Three Contracts also confirms that 'If the creditor, during the revocatory action, requests the other party of the debtor to bear legal consequences by making restitution of property, paying compensation for assessed value, and performing due obligations, among others, to the debtor, the people's court shall uphold the request in accordance with the law.' However, article 46(1) does not explicitly require creditors to include a return claim when filing for revocation. There is debate in the legal community regarding whether courts

42 *See* INTERPRETATION OF THE CONTRACT SECTION OF THE CIVIL CODE OF THE PEOPLE'S REPUBLIC OF CHINA, at 182 (Huang Wei ed., Law Press • China, 2020).

43 Such as *Chen Dongzhao et al. v. Chen Lingling (Case Concerning Creditor's Right of Revocation Dispute)*, No. 2343 First Civil Judgment of the People's Court of Ouhai District, Wenzhou City, Zhejiang Province (2016); *Chen Zhansheng v. Huang Lingxia et al. (Case Concerning Creditor's Right of Revocation Dispute)*, No. 637 First Civil Judgment of the People's Court of Qinyang City, Henan Province (2017); *Zhuang Renbi et al. v. Wu Kuishui (Case Concerning Creditor's Right of Revocation Dispute)*, No. 6569 First Civil Judgment of the People's Court of Huli District, Xiamen City, Fujian Province (2015); *Li Yiwei v. Xu Meiai (Case Concerning Creditor's Right of Revocation Dispute)*, No. 1057 Final Civil Judgment of the Intermediate People's Court of Putian City, Fujian Province (2018).

44 *See* RESEARCH ON COMPREHENSIVE SUPPORTING REFORMS OF THE JUDICIAL SYSTEM AND ISSUES IN CRIMINAL ADJUDICATION (VOLUME II), at 169 (Hu Yunteng ed., People's Court Press, 2019).

must proactively address the issue of return when the creditor has not made such a request.[45] Nonetheless, this issue does not affect the implementation of article 46(3). Some scholars argue that article 46(3) does not specify the exact form of enforcement: whether the creditor should apply for enforcement based on the creditor's claim against the third party, the creditor's claim against the debtor, or the debtor's claim against the third party, or whether enforcement should be sought based on the creditor's claim against the debtor for the debtor's claim against the third party.[46] The prevailing view holds that the provision adopts a substitutionary enforcement model,[47] focusing on whether an enforceable legal document exists between the creditor and the debtor with a payment obligation, without requiring such a document between the creditor and the third party.[48] The primary function of a revocation lawsuit is to clarify that the debtor holds property rights subject to enforcement.[49] Therefore, whether the creditor requests the return of the property in the revocation lawsuit does not seem to impact the creditor's subsequent enforcement application. Of course, if the creditor does raise a return claim in the revocation lawsuit and clearly specifies the amount and nature of the debtor's claim against the third party, it would undoubtedly improve the efficiency and success rate of subsequent enforcement. On this basis, this paper argues that if the creditor does not request the return in the revocation lawsuit, the return can still be realized through the court's clarification.[50] Following the principle of 'resolving the dispute in one go', it may even be possible to consider expanding the scope of the trial *ex officio*

45 For supporting views, *see* Song Shichao, *On the Approach of Realizing the Judgment in Favor of the Creditor's Right of Revocation: Centered on Instructive Case No. 118*, 1 Political Science and Law 149, 153 (2021). For opposing views, *see* Zhu Hu, *Legal Effect of the Creditor's Right of Revocation*, 41(6) Law Review 85, 90 (2023); Zhu Yuchen, *Suing-Judgment Relationship and Trial-Execution Relationship of Procedure Regarding Creditor's Revocation Right: Also Commenting on Guiding Case No. 118 Issued by the Supreme People's Court*, 8 Law Science 117, 122 (2023); Wang Limin & Pan Chongyang, *The Triple Protections to Avoidance Right Holder in the Interpretations of Contracts Part: Focus on Article 46 of the Interpretations of Contracts Part*, 39(1) Journal of Shanghai University of Political Science and Law (The Rule of Law Forum) 1, 6-7 (2024).

46 *See* Wang Limin & Pan Chongyang, *supra* note 45, 9.

47 *See* Jiang Jiadi, *supra* note 41, 56; Chen Longye, *Refinement and Specific Application of the Creditor's Rescission Right Rules*, 1 China Law Review 65, 74 (2024).

48 *See* Zhang Xiaoru & Xu Teng, *On the Theoretic Foundation and Legal Structure of Forcible Execution to the Creditor's Rights: And on the Drawbacks of Execution of Subrogation*, 29(8) Hebei Law Science 106, 108 (2011); Zhuang Jiayuan, *A Probe into the Theoretical Foundation of Debt Enforcement Procedure: Challenges on the Lack of Enforcement Title and Construction Trial of Recovery Process*, 39(3) Modern Law Science 132, 136 (2017); Liu Wenyong, *A Re-Examination of the Theoretical Basis of Subrogation Execution Procedure: A Discussion on the Execution Basis and Its Legitimacy*, 18(2) On Civil Procedure 95, 99 (2017).

49 *See* Jiang Jiadi, *supra* note 41, 58.

50 *See* INTERPRETATION AND APPLICATION OF THE MINUTES OF THE NATIONAL COURTS' CIVIL AND COMMERCIAL TRIAL WORK CONFERENCE, at 271-272 (Supreme People's Court Civil Trial Division II ed., People's Court Press, 2019).

to facilitate this.[51]

The second issue concerns the situation where, after the third party returns the property to the debtor, the debtor further disposes of the property, and the creditor fails to take appropriate measures regarding the returned property, thereby undermining the purpose of safeguarding the creditor's claim. One view posits that if the third party directly returns the property to the debtor following the creditor's application for enforcement, such enforcement should be interpreted as a statutory transfer of the claim. By analogy to the rules on claim assignment, this act of return by the third party does not result in the discharge of the debt.[52] However, this view does not address instances where the third party returns the property to the debtor before the creditor applies for enforcement. This scenario similarly jeopardizes the creditor's ability to safeguard their claim. Guiding Case No. 118 addresses this issue by imposing a 'notification obligation' on the third party. When returning the property to the debtor, the third party is required to notify the creditor. If the transferee's failure to provide such notification prevents the creditor from taking timely measures, such as seizure or attachment, and ultimately results in failing to preserve the debt, the transferee's return may be deemed invalid.[53] This calls for further discussion on the nature and scope of this 'notification obligation'.

From the perspective of the nature of the obligation, the notification obligation is a duty to act. In civil law theory, a duty to act typically either arises from the mutual consent of the parties or from specific legal provisions that impose such duties.[54] In the context of the creditor's right of revocation, however, there is no mutual agreement between the creditor and the third party. Thus, the source of the notification obligation must be found in the special statutory duties to act. These include duties arising from specific relationships, statutory duties based on professional obligations, duties triggered by prior actions, duties of safety, and those derived from the principle of good faith.[55] Of these, the duty arising from a specific relationship most closely aligns with the notification obligation. In revocation cases, the special relationship between the creditor and the third party is rooted in the debtor-creditor relationship. Within this relationship, non-consensual obligations, based on the trust and specific interests of the

51 *See* Ren Zhong, *On the Boundary of the One-Time Settlement of Civil Disputes*, 39(3) Tribune of Political Science and Law 94, 95-99 (2021); Ren Zhong, *On the Relationship Between the Object and the Claim of Civil Litigation*, 2 China Legal Science 245, 245-263 (2021).

52 *See* Zhu Hu, *supra* note 45, 93.

53 *Supra* note 4.

54 *See* CHENG XIAO, TORT LAW, at 219 (Law Press • China, 2021).

55 *Id.*, 220-222.

parties, are known as ancillary duties. These duties serve to protect the creditor's interests, assist in fulfilling the creditor's claim, and prevent harm to the creditor's personal or property interests.[56] The notification obligation in revocation actions allows the creditor to take protective measures such as sealing or freezing the returned property, thus enabling the creditor to secure, to some extent, the benefits of a favorable judgment. Therefore, the notification obligation should be considered an ancillary duty to act.

However, the notification obligation is, after all, an additional burden imposed on the third party and should not be subject to excessive misuse. This paper contends that the notification obligation should be subject to the following limitations. First, the obligation to notify should only apply when the creditor's claim has become due. It is because the purpose of requiring the third party to inform the creditor is to facilitate timely actions, such as sealing or freezing the debtor's assets. These protective measures can only be implemented once the creditor's debt has matured. Second, the notification obligation should apply only when the third party acts in bad faith. In practice, the loss of the creditor's opportunity to secure or freeze the property often results from both the third party's failure to notify and the debtor's subsequent disposal of the returned property. The third party's failure to notify creates the temporal condition for the debtor's further disposal. Such disposals by the debtor can be categorized into three types: (1) transactions made in good faith, (2) malicious disposals by the debtor alone, and (3) collusion between the debtor and the third party. In cases involving good faith transactions, the debtor receives a corresponding countervalue, and the property in question is not diminished, allowing the creditor to apply for sealing or freezing the debtor's existing assets, without necessitating a notification requirement for the third party. In cases of malicious disposal by the debtor alone, the third party may be unaware of the debtor's subsequent actions. If the third party, who failed to notify the creditor, were held accountable for the resulting harm, it would essentially place the creditor in a position of greater protection than the third party, which is unjustified. Such an outcome lacks legal justification. If the third party were to bear responsibility for the debtor's malicious disposal, the third party would be required to return the property to the debtor once again. Ultimately, the third party would bear the burden of the loss. However, if the creditor were to bear the loss, the creditor could still invoke the creditor's right of revocation to undo the debtor's malicious disposal, resulting in the

56 *See* WANG ZEJIAN, PRINCIPLE OF DEBT LAW, at 82 (Peking University Press, 2013).

return of the property to the debtor. This outcome is more legally justifiable. In cases where the debtor and the third party engage in malicious collusion, the third party is not entitled to protection due to repeated malice, making it entirely justifiable for the third party to bear the consequences of failing to fulfill the notification obligation. It can be viewed as a legal repudiation of the malicious conduct involved.

V. CONCLUSION

The creditor's right of revocation is a vital mechanism for creditors to protect their claims. In China, after evolving through two key stages—the *Contract Law*, the Interpretation I of the Contract Law and the Interpretation II of the Contract Law, followed by the *Civil Code* and the Interpretation of Part One General Provisions of Book Three Contracts—significant progress has been made in the application of this right. Nevertheless, several challenges persist in its practical implementation. These challenges primarily involve (i) the relationship between the creditor's right of revocation and the rules on contract invalidity, (ii) the determination of fraudulent conduct by the debtor, and (iii) the realization of the legal effects of the creditor's right of revocation. These issues align with the three core stages of 'norm selection, constituent elements, and legal effect realization.' This paper seeks to address these concerns at each stage, thereby ensuring the effective application of the creditor's right of revocation.

At the normative choice stage, this paper argues that attention should be given to the procedural aspects of the case, with malicious collusion classified as a defense that the court may raise *ex officio*. It would clarify the subordinate nature of the creditor's right of revocation within the context of procedural application. At the requirement establishment stage, the core issue lies in assessing the fraudulent nature of the debtor's actions. This paper advocates for a dual assessment: first, evaluating the fraudulent nature of the debtor's actions at the time of the transaction, and second, assessing the fraudulent nature of the creditor's exercise of the right of revocation. At the stage of realizing legal effects, this paper acknowledges the creditor's right to request the third party to return the property and to apply for enforcement against the third party. Furthermore, the right to initiate enforcement does not require a prior claim for return within the context of the revocation litigation. In cases where the creditor's claim has matured, and the third party has maliciously returned the debtor's property, a subsidiary notification obligation may be imposed on the third party. It would allow the creditor to seize and freeze the returned property.

In applying the creditor's right of revocation, other nuanced or exceptional issues may not be addressed in this paper. These issues can still be analyzed within the framework of the 'three-tiered structure'. If this framework can effectively address such issues at each level, the vitality of the creditor's right of revocation will undoubtedly be enhanced.

(Edited by Gong Li)

中国债权人撤销权制度的适用与完善

内容提要 民法典时代的中国债权人撤销权在经历一系列发展后已经日趋完善。但在具体适用过程中，仍然存在与恶意串通规则适用关系的争议频发，债务人行为诈害性的判断标准模糊以及债权人撤销权法律效果未能完全落实的问题。对于这些问题，可从“规范选择—要件证成—法效实现”的三层结构中进行一一回应。在规范选择层面，应从实体法转向程序法，将恶意串通归入法院可依职权适用的抗辩范畴，明确债权人撤销权在程序适用上的后置性。在要件证成层面，应对债务人行为的诈害性设立双重判断标准，分别对应于债务人行为时的诈害性和债权人行权时的诈害性。在法效实现层面，一方面应赋予债权人请求相对人返还和对相对人申请执行的权利；另一方面应在特定情形对相对人课加通知义务，要求其在向债务人进行返还时应通知债权人。