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The Contrast and Legal Principles Between Hong Kong's "Ding House" and "Ding Rights" Transfer Rules

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Abstract. Hong Kong's Ding house policy presents a striking paradox in operation: once a ding house is built, it can be freely transferred, while the transaction of Ding rights itself is criminalized. This article starts with the theory of binding of power, revealing the roots and essence of this phenomenon. This article argues that both Ding rights and Ding houses originate from a conditional policy concession, granting original residents the qualification to build houses for self-occupation. From the perspective of constraints, all five rights of a Ding house are complete and applicable to private law logic; The disposition power of the Ding rights is separated by public law regulation and applies the logic of public law regulation. This division is a government-deliberately designed discretionary regulation, but its consequence is the creation of arbitrage space for regulation, which is the market's spontaneous response to regulation. This paper introduces the concept of normative fracture, redefining Ding rights as property rights subject to public law regulation of disposal rights and provides a new analytical framework for understanding the contradictory nature of Ding rights.

Keywords: Contrast and legal principles, Ding house, Ding rights

1. Introduction

Since 1972, Hong Kong's Small House Policy has granted male indigenous villagers a once-in-a-lifetime right to build a small house. Over half a century, a paradox has emerged. On one hand, completed Ding houses can be freely traded. According to the Lands Department, about 86% of Ding houses—built on private farmland via Free Building Licences—are freely transferable five years after completion without land premium; only those built on government land require full premium payment [1]. In the 1997 case "Li Peiyun v. Wong Mei Yin," the Hong Kong Court of Appeal explicitly supported the sale of small houses, believing that "the public interest is more beneficial than harmful" [2].

Conversely, the sale of Ding rights—known as "Tao Ding"—has been criminalised. In HKSAR v. Li Kam Pui (2015), landless indigenous villagers sold their entitlements to developers, who provided land and bore construction costs. The court convicted the participants of conspiracy to defraud, holding that they obtained building licences through false land declarations and violated the self-occupation policy [3].

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This paradox leads to the core research question of this paper: Why can the "product" (Ding house) be freely transferred, while the "qualification" (Ding right) itself is prohibited from trading?

This paper adopts doctrinal analysis as its core method, examining Article 40 of the Basic Law, Ding house policy documents, grant clauses, and relevant case law. It applies the bundle of rights theory to dissect the internal power structure of Ding rights, supplemented by case analysis of Sung Wai Kiu v. Wong Mei Ying (1997) and HKSAR v. Li Kam Pui (2015) to reveal judicial attitudes toward Ding right transfer rules.

This article clarifies the institutional logic of "equal rights, different fate," helping to understand the essence of the Ding House issue and avoiding reforms falling into a binary debate of "either reserve or cancel." This paper juxtaposes the previously discussed "can sell" and "cannot sell" perspectives, uses the boundle of rights to reveal the fragmented state of the Ding right disposition authority, and introduces concepts such as "selective regulation of powers," "normative fracture," and "regulatory arbitrage," providing a new framework for understanding Ding rights.

Issues of gender discrimination under the policy have been explored separately by other scholars [4]. Broader comparative studies on housing rights across different jurisdictions provide additional context for understanding Hong Kong's unique position [5, 6].

2. Background of the Ding house policy system

2.1. The origin and content of the Ding house policy

Introduced in 1972, the Small House Policy was a product of historical compromise. In the 1960s, surging population and new town development demanded extensive land resumption in the New Territories, while the 1898 nationalisation of land had already eroded indigenous residents' permanent ownership. Combined with the 1967 social unrest, the colonial government negotiated with rural representatives and introduced the policy to stabilise the countryside [1]. Lai observed that the policy was a colonial invention rather than an indigenous tradition. Eligibility is restricted to male villagers aged 18 or above, descended from 1898 recognised villages, with a lifetime limit of one application and buildings capped at three storeys and 700 sq ft per floor. Three land grant models apply, differing significantly in share. Free Building Licences (86%) rely on applicants' own farmland, permitting construction at nil premium and free transfer after five years; Private Treaty Grants (11%) cover landless qualified residents, with government land supplied at concessionary rates but transfers requiring full market premium—this model was struck down at first instance in Kwok Cheuk-kin but reinstated on appeal [7].

The overall institutional logic is based on the strictness of land source transfer and division, relaxed restrictions on the transfer of self-owned land and housing construction, and strict government control over land supply, which are key institutional foundations for interpreting the contradiction between the transfer of Ding houses and the prohibition of trading Ding rights [2].

2.2. The common origin of Ding rights and Ding houses

Both Ding rights and Ding houses originate from the same 1972 policy entitlement: the right to build a small house. This core entitlement enables eligible indigenous residents to build once in a lifetime within designated areas and carries a dual nature—both an administrative concession (public law) and an asset convertible to economic value (private law).

This article defines their common source as a "conditional policy concession." It is administratively granted and historically rooted in indigenous housing needs. The conditionality

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reflects the policy's "self-occupation" purpose.

"Ding rights" (in the narrow sense) refers to the entitlement itself—the concession in its qualification form; "Ding houses" refers to its materialised outcome—the completed physical structure. Same source, two forms. This distinction underpins the analysis of the "same right, different fate" phenomenon.

3. Case analysis

In the case of Sung Wai Kiu v. Wong Mei Ying (1997), the seller reneged on a Ding house sale agreement. The appellate court upheld the agreement, ruling that Ding house sales do not violate public policy on three grounds: completed Ding houses are lawful private property subject to disposal; transfer restrictions existed but were never proactively enforced; and permitting transfers brings net public benefits—generating land premium revenue, increasing housing supply, and enabling financially strained villagers to realise asset value, thereby recognizing the circulating value of small houses from a functional perspective [2].

In the case of HKSAR v. Li Kam Pui (2015), landless indigenous villagers privately agreed with developers to transfer land temporarily, applied for building licences under their Ding rights, and concealed these arrangements. After completion, the houses went to developers, and the villagers received payments. The court convicted all defendants of conspiracy to defraud, holding that the applications contained false statements, and that the transactions were purely profit-driven, fundamentally deviating from the policy's self-occupation purpose [3].

These two cases vividly illustrate the "same right, different fate" contrast across four dimensions. The former involves completed Ding houses sold after construction; the latter involves Ding rights traded before materialisation. The sale of physical houses enjoys judicial support on public interest grounds, whereas trading the bare entitlement is criminalised for false declarations and policy violations. Thus, the same policy concession is legally transferable once materialised into a Ding house, but strictly non-transferable as a mere qualification [2, 3].

4. Analysis of harness theory

4.1. Theoretical framework of the power bundle

The Bundle of Rights Theory is the core analytical framework of property law. According to this theory, property rights are not a single entity but a bundle of rights composed of multiple powers [2]. Based on the general theory of property rights in Hong Kong common law, complete private property rights can be broken down into five core powers: possession, use, benefit, disposition, and exclusivity. The following provides a comparative analysis based on this classification.

Among these, the right of disposal is regarded as the core power of property rights. Whether a right constitutes a complete property right largely depends on whether the right holder has the right to transfer it to others [2]. If the right of disposal is strictly restricted by law and free transfer is prohibited, the market-oriented circulating value of the asset will significantly decrease, but this does not mean the property property is completely lost. The right to dispose is important because it connects the value and circulation of property. If the law prohibits the transfer of an asset with market value, then although the rights holder owns it, they cannot realize its economic value through transfer. This price without market situation is key to understanding the nature of the Ding right conflict.

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4.2. Analysis of the Ding house's powers: the private law logic of materializing results

From the perspective of the theory of constraints of rights, all five rights of a Ding house are complete: the original residents can actually possess the small house, thus maintaining their ownership. Residents can live in it themselves or rent out, so the usage rights are complete. Rent can be collected or sold for profit, thus holding the right to income. Residents can freely transfer the land after 5 years of completion without paying the land premium, so the disposal rights are complete. Residents can exclude illegal interference from others, thus maintaining complete exclusivity.

The integrity of the right to dispose of Ding houses stems from the following three levels of institutional logic.

Firstly, at the land source level. 86% of small houses have been approved for duty free building licenses and are built on indigenous villagers' own private farmland. The land was not given by the government but was passed down from the ancestral homes of the indigenous people. During this process, the government only granted construction permits and did not provide land resources [1].

Second, at the level of private law logic. The land belongs to the original residents, and the houses are built with the money of the indigenous people. According to the basic logic of private law, the rights holder has the right to dispose of their own property [2]. Simply prohibiting residents from selling houses built on their own land lacks private legal support; However, the government may set a reasonable time threshold for transfers based on public planning and to curb speculation.

Third, judicial confirmation aspect. The 1997 "Li Peiyun v. Huang Meixian" clearly confirmed that the sale of small houses did not violate public policy and "brought more benefits than harms to the public" [2]. From a functionalist perspective, the court affirmed the market circulation value of small houses, believing that allowing transfer is not only harmless but actually helps increase housing supply and assist economically disadvantaged indigenous residents in cashing out. Therefore, the complete disposal rights of the ding house are the result of private law logic being dominated.

4.3. Analysis of the authority of Ding rights: public law regulation of qualification itself

Unlike Ding houses, the structure of Ding rights is in a split state: residents can exercise and thus have ownership rights. Residents can exercise for self-occupation, so they have the right to use it. It can be partially exercised, thus granting income rights. Exclusivity can also be exercised normally. However, since Ding rights cannot be transferred, they do not have the right to dispose of them. Therefore, the only thing Ding rights lack is the right of disposition, that is, the right to transfer the qualification itself.

The absence of the right to dispose of Ding rights stems from the following four levels of institutional logic

First, the source of qualifications. Ding rights are not inherent natural rights of indigenous people, but preferential treatment granted by the government through administrative arrangements. When the policy was formulated in 1972, the government clearly stated it was a temporary measure and that it would be abolished if abused.

Second, at the policy objective level. The original intention of the Ding House policy was to allow indigenous residents to live for themselves and improve the rural living environment, rather than allowing them to profit from selling their qualifications [8]. Policymakers have clearly warned the Heung Yee Kuk: if abused, the entire plan will be canceled.

Third, the logical level of public law. Since qualification is a government granted preferential treatment, the government has the right to impose restrictions on it. The ban on transferring

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qualifications is intended to prevent this privilege from becoming a financial speculative tool [8]. Under unregulated free trading, capital hoards large amounts of Ding rights for profit, squeezing the self occupancy quotas of ordinary indigenous residents; If supporting facilities are capped at prices and the government preferentially redeems a mechanism, it can appropriately balance circulation and residential goals.

Fourth, judicial confirmation aspect. The 2015 "Hong Kong Special Administrative Region v. Li Qinpei case" clearly confirmed that selling Ding rights constituted "conspiracy to defraud" [3]. The court's reasoning was the applicant made a false statement at the time of application and his actions contradicted the original intention of the policy of self-occupation. Therefore, the lack of the right to dispose of the Ding right is the result of the logic of public law regulation.

The above comparison reveals a core finding: the same conditional policy concession applies to private law logic after being materialized into a small house and applies public law regulatory logic under qualification forms. As a tangible achievement, the Ding house has detached from the form of policy grants and has become a tangible physical asset. The land belongs to the original residents, and the houses are built at their own expense—private law logic naturally dominates, and the right to dispose is complete. Ding rights, as qualifications themselves, have always been within the scope of policy control. Qualification is a preferential treatment granted by the government for the purpose of self-occupation public law regulation naturally dominates, lacking disposition powers. This is the root of the power binding principle of same power, different fate: same source, two logics, two destinies.

5. The logic and consequences of regulation

5.1. Government design logic: selective regulation of powers

There are significant differences between the rules for the transfer of Ding houses and Ding rights, which are differentiated regulatory arrangements proactively designed by the government [3, 7]. The policy allows the transfer of Ding houses and strictly prohibits the transfer of Ding rights. The core distinction lies in the materialized form of rights: small houses are physical real estate, built with funds from original residents' own land, and the government recognizes full disposal rights; Ding rights are only for self-occupation discounts allowing transfer would deviate from the original intent of the housing policy. This article defines this governance approach as power selective regulation, meaning the same right is split into different powers and differentiated management [3, 7]. The government retains the rights to possess, use, and benefit from Ding rights, separately strips away disposal rights, and sets transfer bans. Specifically, there are two regulatory paths: first, applying private law logic to physical dinghouses, allowing free buying and selling after five years, recognizing residents' complete property rights, but prohibiting transfer lacks legal support [2]. Second, public law constraints are imposed on Ding rights qualifications, explicitly prohibiting sales, and incorporating "Ding rights holders" into criminal accountability to prevent policy benefits from becoming speculative targets [3, 8].

5.2. Purposeful authority restrictions

At the property law level, restrictions on disposition rights are divided into procedural and objective types [9, 10]. Procedural restrictions regulate transaction processes without denying the right of alienation itself, whereas purposive restrictions directly strip transferability to serve public policy—the Ding right ban falls into the latter category. The legal consequences diverge sharply: ordinary

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house sales raise only civil issues, while false declarations to obtain land premiums constitute criminal fraud. Courts have also cited violations of the self-occupation policy as the core rationale [3]. The legitimacy of this restriction is based on the positioning of New Territories Housing. If the Ding rights trading is liberalized, developers will acquire large numbers of qualified land for hoarding land for development, squeezing the demand for local indigenous residents for self-occupation. The legal consequences differ significantly: ordinary house transfers only have civil defects, and the fraudulent use of false declarations to obtain land price reductions or exemptions is suspected of criminal fraud. Judicial rulings also cited violations of self-occupation policies as the core reason [3]. The legitimacy of this restriction is based on the positioning of New Territories Housing. If the Ding rights trading is liberalized, developers will acquire large numbers of qualified land for hoarding land for development, squeezing the demand for local indigenous residents for self-occupation. When the policy was implemented in 1972, relevant officials had already warned of institutional abuse risks caused by qualification speculation, and the transfer ban was precisely to avoid this risk [8].

5.3. Contrast leads to regulatory arbitrage

Differentiated regulation does not eliminate Ding rights transactions; it only promotes the creation of underground alternative channels, which can be summarized as regulatory arbitrage [1]. There are two main conditions for regulatory arbitrage: the target has stable market value, no legal public trading channels, and the Ding rights fully meet these characteristics. The black market price for Ding rights can reach hundreds of thousands to millions of Hong Kong dollars. Estimates show that developers make about 1.75 million HKD per project from arbitrage, and about a quarter of all completed Ding houses in Hong Kong have collusion between residents and developers to trap them, resulting in strong transaction demand [1, 2]. Although legally non-transferable, Ding rights are traded through evasion. Parties formally apply for building licences and transfer completed small houses, while substantively transferring the entitlement itself through misrepresentation—a classic arbitrage that is compliant in form but violative in substance [3, 8]. Rather than eliminating transactions, the ban spurred private agreements, raising risks, enforcement costs, and developer profits, while encouraging false declarations and rent-seeking. This reveals a core paradox of purposive restrictions: banning the transfer of high-value rights does not stop trading—it merely drives it underground, at greater social cost [8-10].

This chapter examines the regulatory logic behind the "same right, different fate" paradox. The government permits Ding house transfers to protect property rights but restricts Ding right alienation to prevent financial speculation. This "valuable but non-transferable" configuration creates regulatory arbitrage, fueling tension between market demand and legal trading channels. Tao Ding is a market response, not a systemic flaw—the ban merely shifts the transaction form without eliminating transfer demand. At its core lies a normative fracture: economic value diverges from legal transferability, perpetuating underground speculation.

6. Conclusion

The "same right, different fate" between Ding houses and Ding rights arises from two legal logics applied to the same conditional policy concession. Completed Ding houses built on private land enjoy full property rights recognized by judicial precedents and protected by private law. By contrast, the Ding right itself, the mere entitlement to build—is subject to public law restrictions, and its transfer constitutes fraud. Under the bundle of rights theory, Ding houses possess all five

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property entitlements, while Ding rights lack only the power of alienation. The essence is a normative fracture: Ding rights hold substantial market value, yet public law strips their transferability, creating a state of valuable but legally non-transferable. This difference is not a systemic oversight, but rather a deliberate design by the government to selectively regulate disposition powers, allowing property circulation and banning qualification transactions to prevent financial speculation, but it also fosters regulatory arbitrage, with a large number of "trapping" gray transactions circumventing legal constraints, and the ban only pushes transactions underground and cannot eradicate market demand.

This paper forms six theoretical contributions. Unified traceability of Ding houses and Ding rights to conditional policy concessions. Using the theory of binding of powers, the differences in power between the two are deconstructed. Introducing three new analytical concepts: purposeful power limitation, normative break, and regulatory arbitrage. Redefine ding rights as special property rights subject to public law with disposition rights, breaking free from the traditional binary dispute framework.

There are multiple limitations in the research. The analysis focuses solely on disposition power and does not address mature topics such as gender discrimination or comparative law research. Only normative and case law analysis methods are used, without field research or quantitative empirical evidence. Subsequent extended studies can be conducted, such as assessing the feasibility of reform plans such as Ding Sha and Ding rights redemption.

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