

# 由中國大陸合同法第 51 條規定 論出賣第三人之物的契約效力

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**關鍵詞：**出賣第三人之物、物權變動、物權行為、處分權、無權處分、自始主觀不能、權利瑕疵、善意取得

**Keywords：**The Sale of Property of the Third Party, Alteration of Property Rights, Disposition of Property Rights, Right of Disposal, Disposal Without Right, Initial and Subjective Impossibility of Performance, Defects of Rights, Bona Fide Acquisition

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## 摘 要

由於世界各國對於物權變動之模式採取不同之立法例，有採承認物權行為存在之形式主義（例如我國或德國），或者不接受物權行為理論之意思主義（例如法國或日本）或形式意思主義（例如西班牙）。因此，出賣第三人之物的契約效力如何？即與一國是否承認物權行為之存在有所關連，如在物權變動採行形式主義之國家中，其解釋應為買賣契約仍為有效，僅處分行為因構成無權處分而效力未定。

然而，在多數學者認為物權變動係採形式意思主義之中國大陸民法下，其合同法第 51 條卻仍有類似我國民法第 118 條無權處分之規定，則其意義是否代表出賣第三人之物的契約將因出賣人欠缺處分權而全然不生效力？此於中國大陸民法界產生極大之歧異見解。而在兩岸交流頻繁之今日，吾人對於彼岸法律仍有加以認識之必要。為此，本文擬由物權變動模式先行說明，繼而藉由中國大陸民法理論、實務界之觀點，以及國際上未採形式主義之立法例所為的規範方式，說明中國大陸合同法第 51 條之合理適用範圍，藉以釐清出賣第三人之物的契約應有之效力。

## The Validity of the Sale Contract Selling the Third Party's Property under the Article 51 of China Contract Law

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### Abstract

There are various legislations of alteration of property rights in different countries, where the formalism adopts the concept of disposition of property rights, such as Taiwan and Germany. On the other hand, the expressionism and formal-expressionism take the opposite theory with formalism that they deny the existence of disposition of property rights. France and Japan endorse the expressionism, and Spain acknowledges the later one. Thus, the validity of the contract that sells the third party's property will depend on which legislation is adopted in the country. In the country where the formalism is adopted, the sale contract would be still deemed to be effective, but the effect of disposition of property rights is undecided for its disposal without right.

In China's civil law, the majority of academic opinions recognize formal-expressionism. However, the content of Article 51 in China's Contract Law is very similar to that of Article 118 in Taiwan Civil Code, which stipulates the rule of disposal without rights. There are academic controversies in China's civil academia that raise the question whether the contract of selling the third party's property is valid or not. Owing to frequent cross-strait exchanges, it's necessary that we have to learn more about the laws and regulations in China. This essay is trying to clarify the validity of selling the third party's property and the statements that will start with the models of alteration of property rights, and then integrate the views of China's civil practical theory and the foreign legislations to illustrate the reasonable scope of Article 51 in China's Contract Law.