

# THE TRANSFER OF SHIP OWNERSHIP UNDER CHINESE LAW

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## Table of Contents

I. INTRODUCTION .....	2
II. THE TRANSFER OF SHIP OWNERSHIP RULES .....	3
A. Pre-Maritime Law Period: Whether Validity Elements And Confrontation Elements Are Consistent .....	3
B. Post-Maritime Law Period: Validity Elements And Confrontation Elements Are Inconsistent.....	5
III. THE TRANSFER OF SHIP OWNERSHIP CASES .....	6
A. The Validity Elements in the Transfer of Ship Ownership .....	6
B. The Legal Significance of the Ship Ownership Registration.....	7
IV. THE TRANSFER OF SHIP OWNERSHIP THEORIES .....	8
A. The Validity Elements in the Transfer of Ship Ownership .....	8
B. Registration versus Delivery.....	10
C. The Publication Methods of the Ship Ownership .....	11
D. The Credibility of Registration.....	12
V. MARITIME LAW ANALYSIS ON THE TRANSFER OF SHIP OWNERSHIP .	12
A. Validity Elements versus Confrontation Elements .....	13
B. Registration versus Delivery.....	14
C. The Publication Methods .....	15
D. Registration has Weak Credibility.....	16
VI. CONCLUSION.....	16

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### *Abstract*

*There has been ongoing controversy regarding the rationality of Chinese special registration antagonism rule for the transfer of ship ownership. Draw upon the summary of legislative history, relevant cases, and academic theories, this paper adopts a positive stance towards the special transfer rule, asserting its alignment with the demands of reality. First, the transfer of ship ownership follows the parties' agreement. If there is no agreement on when the ship ownership will be transferred, the ship ownership will be transferred after delivery. Delivery is the default rule for the transfer of ship ownership. Second, regarding selling the same ship to multiple parties, since the registration in this situation is unqualified, the person who complete the delivery can act against the person who completed the registration. Third, both possession and registration are the methods of publication, however, only registration could be a credible publication method of ship ownership. Fourth, since parties can obtain ship ownership without registration, ship ownership registration has relatively weak credibility, which creates a rebuttable presumption of ship ownership. If parties cannot persuade the judge that they are the shipowner, judges will adopt the information recorded in the registration. However, registered information may also be overridden based on evidence presented by the parties.*

*Key Words: Transfer of Ship Ownership; Ship Ownership Registration; Ship Ownership; Maritime Law*

### I. INTRODUCTION

Property can be divided into movables and immovables and are applied to different rules respectively under Chinese law.<sup>1</sup> In a movable transaction, the process of transferring consists of the agreement between parties and the delivery of the items. In an immovable transaction, the process of transferring consists of agreement plus registration.

However, ships seem neither movable nor immovable, since there are special rules for ship transactions, which raises questions for both theory and practice. Chinese scholars have conducted extensive research on the transfer of ship ownership. While maritime law scholars focus on ships,<sup>2</sup>

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<sup>1</sup> Movables are personal property, for example, bicycles. Immovables are real property, for example, houses.

<sup>2</sup> See, e.g., LI HAI (李海), CHUANBO WUQUAN ZHI YANJIU (船舶物权之研究) [RESEARCH ON PROPERTY RIGHTS IN SHIP], FALÜ CHUBAN SHE (法律出版社) [LAW PRESS·CHINA] (2002); LI ZHIWEN

civil law scholars regard ships as special movables, as special movables like a vehicle and aircraft,<sup>3</sup> and currently, they still cannot reach a consensus. Therefore, this study will contribute to an existing theoretical debate. In addition, this research also has practical implications, as there are a large number of disputes involving ship transactions in the courts. Currently, Chinese Maritime Law is in the process of being revised, which may affect the rules of the transfer of ship ownership.

Section two will introduce the legal rules regarding the transfer of ship ownership. Section three will summarize selected cases regarding the transfer of ship ownership. Section four will explain the current debates on the transfer of ship ownership, these questions focus on the validity elements in the transfer of ship ownership, registration versus delivery, the publication methods of the ship ownership, and the credibility of registration. Section five will respond to these selected key questions on the transfer of ship ownership.

## II. THE TRANSFER OF SHIP OWNERSHIP RULES

The history of the transfer of ship ownership can be divided into two stages by the enactment of the Maritime Law of the People's Republic of China (1992) (hereinafter referred to as the 1992 Maritime Law).

### *A. Pre-Maritime Law Period: Whether Validity Elements and Confrontation Elements are Consistent*

Before the 1992 Maritime Law was issued, the transfer of ship ownership was governed by departmental regulation.<sup>4</sup> Article 7 of the Rules for the Registration of Seagoing Vessels of the People's Republic of China (1986) (hereinafter referred to as the 1986 Seagoing Vessels

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(李志文), CHUANBO SUOYOUQUAN FALÜ ZHIDU YANJIU (船舶所有权法律制度研究) [RESEARCH ON THE LEGAL SYSTEM OF SHIP OWNERSHIP] FALÜ CHUBAN SHE (法律出版社) [LAW PRESS·CHINA] (2008).

<sup>3</sup> Minfa Dian (民法典) [Civil Code] (promulgated by the Nat'l People's Cong., May 28, 2020, effective Jan. 1, 2021), art. 225 (Chinalawinfo) stipulates: "The creation, modification, transfer, or extinction of the real right in a vessel, aircraft, or motor vehicle, among others, if it is not registered, shall not be set up against a bona fide third party." Therefore, civil law scholars think the vessel, aircraft and motor vehicle, etc. are special movables.

See, e.g., Wang Liming (王利明), Teshu Dongchan Wuquan Biandong de Gongshi Fangfa (特殊动产物权变动的公示方法) [The Publication method of Special Moveables Rights], 4 FAXUE YANJIU (法学研究) [CHINESE JOURNAL OF LAW] 124 (2013); Cui Jianyuan (崔建远), Zai Lun Dongchan Wuquan Biandong de Shengxiao Yaojian (再论动产物权变动的生效要件) [Re-Exploration on the Requirements of Validity on the Change of the Real Right Movables], 5 FAXUE JIA (法学家) [THE JURIST] 49 (2010).

This paper chooses "ships" as the topic instead of "special movables" because there are still differences between a ship, car, and aircraft. For example, most shipowners are businessmen, but most owners of cars are not businessmen. Generally, spending on a ship is higher than spending on a car. These distinctions may influence legal analysis. Therefore, this paper only discusses ships.

<sup>4</sup> In China, departmental regulation is the rule set by ministries and commissions of the National Council, for example, the Ministry of Transport of the People's Republic of China can formulate departmental regulation.

Registration Rules)<sup>5</sup> stipulates: “The acquisition, change, and cancellation of ship ownership, mortgage rights, and bareboat charter rights should be registered and shall take effect from the completion of registration.” Parties can obtain the ship ownership after completing registration, which indicates registration is the effective element of the transfer of ship ownership. As for the reasons behind this rule, the legislator noted that it is consistent with the characteristics of ships as global means of transportation, and is conducive to the protection of ship ownership.<sup>6</sup>

In addition, the validity elements and confrontation elements in the ship ownership transferring transaction were virtually identical under the 1986 Seagoing Vessels Registration Rules.<sup>7</sup> After completing the registration, the party can obtain the ship ownership and act against the third party, at the same time. If selling the same ship to multiple parties,<sup>8</sup> the party who completed the registration is entitled to obtain the ship ownership.

However, paragraph 2 of article 72 of the General Principles of the Civil Law of the People’s Republic of China (1986) (hereinafter referred to as the 1986 Civil Law General Principles) stipulates: “Unless the law stipulates otherwise or the parties concerned have agreed on other arrangements, the ownership of property obtained by contract or by other lawful means shall be transferred simultaneously with the property itself.”<sup>9</sup> Accordingly, some scholars concluded that the transaction practice and judicial practice regarded the ship as movables and the ship ownership is transferred after the delivery.<sup>10</sup>

The foregoing analysis reveals that there was a certain conflict of rules prior to the enactment of maritime law. If the 1986 Seagoing Vessels Registration Rules were applied to the ship, the ownership would be transferred after the registration. If the 1986 Civil Law General Principles was applied, the ship would be transferred after the delivery. Considering the hierarchy of the 1986 Civil Law General Principles is higher than that

<sup>5</sup> Haichuan Dengji Guize (海船登记规则) [Rules for the Registration of Seagoing Vessels] (promulgated by the Ministry of Transport, Jan. 1, 1988, effective Oct. 15, 1986; avoided by the Ministry of Transport, Dec. 2, 2003) (Chinalawinfo).

<sup>6</sup> Guowuyuan Fazhi Bangongshi (han Guowuyuan Fazhi Ju) guanyu “Zhonghua Renmin Gongheguo Haishang Fa (Caoan)” de Shuoming (国务院法制办公室 (含国务院法制局) 关于《中华人民共和国海商法 (草案)》的说明) [Explain from the Legislative Affairs Office of the National Council (including Bureau of the Legislative Affairs) about the draft of Maritime Law] (promulgated by Legislative Affairs Office of the National Council Dec. 7, 1992, effective Jul. 1, 1993) art. 1 (Chinalawinfo).

<sup>7</sup> Validity elements mean the elements that can transfer the ship ownership, if the parties complete all of the validity elements in the transfer of ship ownership, the ship ownership will be transferred from the seller to the buyer. Confrontation elements mean the elements that can act against a third party, if the parties complete the confrontation elements, any third party cannot obtain the ship ownership.

<sup>8</sup> Selling the same ship to multiple parties means the shipowner sells one ship to more than one buyer.

<sup>9</sup> See also Minfa Tongze (民法通则) [General Principles of the Civil Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Aug. 27, 2009, effective Aug. 27, 2009), art. 27. (Chinalawinfo) Paragraph 2 stipulates: “Unless the Law stipulates otherwise or the parties concerned have agreed on other arrangements, the Ownership of property obtained by Contract or by other Lawful means shall be transferred simultaneously with the property itself.”

<sup>10</sup> Li Zhiwen (李志文), Minfa Dian Tixihua xia Chuanbo Wuquan Biandong Guize Jieshilun (《民法典》体系化下船舶物权变动规则解释论) [Interpretation of Ship’s Real Rights Change Under the Systematization of the Civil Code], 2 XUEHAI (学海) [ACADEMIA BIMESTRIS] 183, 184–85 (2023).

of the 1986 Seagoing Vessels Registration Rules, the issue here is whether the property mentioned in paragraph 2 of article 72 of the 1986 Civil Law General Principles includes the ship.

In conclusion, it seems that during this period the ship ownership was transferred after delivery, but there is a conflict between the rules for the transfer of ship ownership. However, this conflict was resolved with the promulgation of the 1992 Maritime Law.

*B. Post-Maritime Law Period: Validity Elements and Confrontation Elements are Inconsistent*

The issuance of the 1992 Maritime Law marked the beginning of a new stage in the transfer of ship ownership. The 1992 Maritime Law introduced a completely new approach to the transfer of ship ownership, and since there has been a distinction between the validity elements and confrontation elements. Whether the party has obtained the ship ownership and whether the ship owner can act against a third party are two different issues.

The reason is that some departments and experts have pointed out that if the acquisition or transfer of ship ownership is not registered with the ship registration authority, the unregistered ship ownership still has a legal effect between the parties, but the unregistered ship ownership will not have a legal effect on third parties. The unregistered ship ownership should not be stipulated that it will not have legal effect at all.<sup>11</sup> Therefore, paragraph 1 of article 9 of the 1992 Maritime Law stipulates: “The acquisition, transference or extinction of the ownership of a ship shall be registered at the ship registration authorities; no acquisition, transference or extinction of the ship’s ownership shall act against a third party unless registered.”

According to the 1992 Maritime Law, parties can obtain ship ownership without completing registration and might face the risk in private law. Take the example of selling the same ship to multiple parties again, if a shipowner sells the ship to the first buyer without registering the ship, while the latter buyer in good faith delivers the ship and completes the registration, the registered buyer acquires ownership.

Subsequent laws did not change the transfer of ship ownership rules at the core. First, the validity elements and confrontation elements are no longer consistent.<sup>12</sup> The unregistered ship ownership cannot act against a third party in good faith. However, unregistered ship ownership can act

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<sup>11</sup> Quanguo Renda Falü Weiyuanhui guanyu Zhonghua Renmin Gongheguo Haishang Fa (Caoran) Shenyi Jieguo de Baogao (全国人大法律委员会关于《中华人民共和国海商法(草案)》审议结果的报告) [Report about the review Review result Result from the Law Committee of the National People’s Congress about the draft Draft of the Maritime Law of the People’s Republic of China] (promulgated by the Law Comm. Nat’l People’s Cong, Nov. 2, 1992) (Chinalawinfo).

<sup>12</sup> See Chuanbo Dengji Tiaoli (船舶登记条例) [Regulations Governing the Registration of Ships] (promulgated by St. Council, June 2, 1994, effective Jan. 1, 1995) art. 5, para. 1 (Chinalawinfo); Wuquan Fa (物权法) [Property Law of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., Mar. 16, 2007, effective Oct. 1, 2007) art. 24 (Chinalawinfo); Chuanbo Dengji Tiaoli (船舶登记条例) [Regulations Governing the Registration of Ships] (promulgated by St. Council, July 29, 2014, effective July. 29, 2014) art. 5, para. 1 (Chinalawinfo); Minfa Dian (民法典) [Civil Code] (promulgated by the Standing Comm. Nat’l People’s Cong., May 28, 2020, effective Jan. 1, 2021) art. 225 (Chinalawinfo).

against a third party in bad faith. Second, the transfer of ship ownership rules are more clear. Based on the nature of ships as movables, it stipulates the ship ownership is transferred at delivery,<sup>13</sup> which is consistent with the general rule of the movables. Third, the distinction between validity elements and confrontation elements also raises some problems. For example, in selling the same ship to multiple parties situation, some person might delivery the ship, and some person might complete the registration. Which party should the court support? The answer is that the court will support the person who delivers the ship.<sup>14</sup>

The transfer of ship ownership is one of the topics in the process of revising the 1992 Maritime Law. The scope of third party is not defined in the 1992 Maritime Law which leads to many disputes in theory and practice. Limiting the scope of third party to the category of “third party in good faith” is consistent with the property law, and is also in line with the development of judicial practice. If the ship ownership cannot act against a third party in bad faith, it will not be conducive to the transaction.

### III. THE TRANSFER OF SHIP OWNERSHIP CASES

Generally, the judges’ understanding is in line with the transfer of ship ownership rules, and relevant cases can be used to interpret the transfer of ship ownership rules. The below cases mainly disclosed the validity elements in the transfer of ship ownership and the legal significance of ship ownership registration.

#### *A. The Validity Elements in the Transfer of Ship Ownership*

Judges have discussed whether delivery or registration are the validity elements in the transfer of ship ownership.

First, the delivery is the validity elements in the transfer of ship ownership. Among the decisions rendered by different courts, a case describes the ship as movables,<sup>15</sup> and another holds the ship as special

<sup>13</sup> Guanyu Zuigao Renmin Fayuan guanyu Shiyong Zhonghua Renmin Gongheguo Wuquan Fa Ruogan Wenti de Jieshi (Yi) Da Jizhe Wen (关于《最高人民法院关于适用〈中华人民共和国物权法〉若干问题的解释(一)》答记者问) [Interpretation I of the Supreme People’s Court on Several Issues concerning the Application of the Property Law of the People’s Republic of China] (2016) (Chinalawinfo).

<sup>14</sup> See Zuigao Renmin Fayuan guanyu Shenli Maimai Hetong Jiufen Anjian Shiyong Falü Wenti de Jieshi (最高人民法院关于审理买卖合同纠纷案件适用法律问题的解释) [Interpretation of the Supreme People’s Court on Issues Concerning the Application of Law for the Trial of Cases of Disputes over Sales Contracts] (promulgated by Sup. People’s Ct. May 10, 2012, effective July 1, 2012) art. 10, subpara. 4 (Chinalawinfo); Zuigao Renmin Fayuan guanyu Shenli Maimai Hetong Jiufen Anjian Shiyong Falü Wenti de Jieshi (最高人民法院关于审理买卖合同纠纷案件适用法律问题的解释) [Interpretation of the Supreme People’s Court on Issues Concerning the Application of Law for the Trial of Cases of Disputes over Sales Contracts] (promulgated by Sup. People’s Ct. Dec. 29, 2012, effective Jan. 1, 2013) art. 7, subpara. 4 (Chinalawinfo).

<sup>15</sup> Liang Zhuanyou Su Zhang Yongtian deng Chuanbo Quanshu Jiufen An (梁转有诉张永填等船舶权属纠纷案) [Liang Zhuanyou v. Zhang Yongtian and Others], (2012)广海法初字第549号 (Guangzhou Maritime Court, 2012).

movables.<sup>16</sup> Different understandings of the nature of ships do not lead to different legal analyses. Since the ship is movable in nature, the principle of the movables should apply to the ship. Therefore, the ship ownership was transferred after the parties completed the delivery.<sup>17</sup>

Second, the rulings also clearly demonstrate that the registration is not an validity element in the transfer of ship ownership. The party cannot obtain the ship ownership through registration. Registration is the confrontation elements of the transfer of ship ownership. If the registration reflects the true situation, the registration has a confrontation effect. The ship ownership without registration cannot act against a third party in good faith.<sup>18</sup>

In short, in the judges' view, the ship ownership should have been transferred after delivery.

### *B. The Legal Significance of the Ship Ownership Registration*

First, if the registration does not reflect the true situation, the registration's effect in private law is limited. The shipowner can request the court to confirm the ship ownership. The courts would focus on whether there is ownership in fact, and would not completely trust the registration. To determine the actual owner, the party should have a substantial connection with the ship.<sup>19</sup>

Second, the ship ownership registration has a certain credibility.<sup>20</sup> The judge did not explain what is the meaning of "certain credibility" and expressed that ship ownership registration has certain credibility as a conclusion. Seems that in the judge's view, the credibility has a degree difference.

Third, the registration creates a rebuttable presumption of ship ownership. This is the rights presumption function of the ship ownership registration. If the parties cannot persuade the court, to show that they have the ship ownership, the court will trust the registration. The registered person will obtain the ship ownership.<sup>21</sup>

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<sup>16</sup> Wang Kefu yu Chizhou Yuanhang Chaunwu Youxian Gongsi Chuanbo Jingying Guanli Hetong Jiufen Yishen Minshi Panjue Shu (王科富与池州远航船务有限公司船舶经营管理合同纠纷一审民事判决书) [Wang Kefu v. Chizhou Yuanhang Shipping Co., Ltd.], (2015)武海法商字第01259号 (Wuhan Maritime Court, 2015).

<sup>17</sup> See Shi Zhouai, Li Xinggang deng Shenqing Zhixing Ren Zhixing An (施周爱、李兴刚等申请执行人执行案) [Execution Case of Shi Zhouai, Li Xinggang and Others], (2015)蚌民一初字第00016号 (Anhui Bengbu Interm. People's Ct. 2015).

<sup>18</sup> See Yan Qiang Deng su Cangzhou Bohai Xinqu Rong Xiang Haiyun Youxian Gongsi Chuanbo Quanshu Jiufen An (颜强等诉沧州渤海新区荣翔海运有限公司船舶权属纠纷案) [Yan Qiang et al. v. Cangzhou Bohai New District Rongxiang Shipping Co., Ltd.], (2017)津72民初598号 (Tianjin Maritime Court, 2017).

<sup>19</sup> See Chen Yude yu Zhu Jianmin Anwai Ren Zhixing Yiyi zhi Su Yishen Minshi Panjueshu (陈欲得与朱健敏案外人执行异议之诉一审民事判决书) [Chen Yude and Zhu Jianmin regarding Objection to Execution by an Outsider], (2017)鄂72民初1552号 (Wuhan Maritime Court, 2017).

<sup>20</sup> Chen Lin, Xie Changlian deng Shenqing Zhixing Ren Zhixing An (陈林、谢长连等申请执行人执行案) [Execution Case of Chen Lin, Xie Changlian and Others Application Executor], (2014)蚌民一初字第00147号 (Anhui Bengbu Intermediate People's Court, 2014).

<sup>21</sup> See Jiang Yunxue, Li Yinzhu deng Shenqing Zhixing Ren Zhixing An (蒋云雪、李银珠等申请执行人执行案) [Execution Case of Jiang Yunxue, Li Yinzhu and Others Application Executor], (2015)蚌民一初字第00017号 (Anhui Bengbu Intermediate People's Court, 2015).

Fourth, the Maritime Administrative Department's review of ship ownership registration is only a formal review. The judge did not explain the reason for it, but cited the theory of formal review to explain that sometimes the registered person and the shipowner could be different people in practice. In the current domestic shipping market, individual shipowners may seek to obtain the ship operation qualification and apply the bank loans, which explains the reason the individual shipowners registered the ship under the other person's name. People who have the qualification to operate the ship can easily register under the maritime department's non-substantive review. Therefore, the shipowner and the registered person could be different.<sup>22</sup>

#### IV. THE TRANSFER OF SHIP OWNERSHIP THEORIES

Numerous discussions have arisen regarding the transfer of ship ownership, with scholars delving into various associated issues. A consensus, however, still needs to be reached on many of these topics. This paper consolidates the discussion into four primary concerns: "The Validity Elements in the Transfer of Ship Ownership," "Registration versus Delivery," "Publication Methods of the Ship Ownership," and "The Credibility of Registration." Section IV will explore the diverse theories related to these four concerns.

##### *A. The Validity Elements in the Transfer of Ship Ownership*

There are generally three prevailing theories concerning the elements of the transfer of ship ownership: the "agreement theory," the "registration theory," and the "delivery theory."

Some argue that the "agreement theory" is the dominant view.<sup>23</sup> This paper found a several articles supporting this perspective. Under the "agreement theory," an agreement is the essential component affecting the transfer of ship ownership. Firstly, registration is not the validity elements in the transfer of ship ownership. The expression in property law shows that registration is not the element in the transfer of ship ownership. Secondly, delivery is not viewed as a element in the transfer of ship ownership either. A singular property typically has just one publication method. For ships, registration serves as this method, implying that delivery doesn't serve as a publication method for ships. Thirdly, the systematic interpretation of the property law shows that the "agreement theory" is applied to the transfer of ship ownership.<sup>24</sup> Lastly, while the "registration theory" and "delivery

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<sup>22</sup> See Liu Changlin Su Wuhu Shi Hang Yun Hangyu Youxian Zeren Gongsidi deng Chuanbo Quanshu Jiufen An (刘长林诉芜湖市行运航运有限责任公司等船舶权属纠纷案) [Liu Changlin v. Wuhu Xingyun Shipping Co., Ltd. and Others], (2013)武海法商字第01011号 (Wuhan Maritime Court, 2013).

<sup>23</sup> Han Qiang (韩强), Woguo Chuanbo Wuquan de Biandong Gongshi Fangfa yu Shanyi Qude (我国船舶物权的变动公示方法与善意取得) [The Method of Publication and Bona Fide Acquisition of Ship Property Right in Our Country], 11 FAXUE (法学) [LAW SCIENCE] 116, 117 (2008).

<sup>24</sup> See Dai Yongsheng (戴永盛), Lun Teshu Dongchan de Wuquan Biandong yu Duikang (Xia) (论特殊动产的物权变动与对抗(下)) [The Transfer and Confrontation of Property Rights in Special Movables (II)], 6 DONGFANG FAXUE (东方法学) [ORIENTAL LAW] 28, 37 (2014).



theory” emphasize transactional security, the “agreement theory” protects the agreement between the parties. Given the infrequent nature of ship transactions, the “agreement theory” does not jeopardize transactional security within the shipping industry. It is crucial to prioritize the protection of the involved parties’ contracts. Consequently, the “agreement theory” is appropriate for ships.<sup>25</sup>

The “registration theory” posits that registration is the validity element in the transfer of ship ownership, regarding ships as real property. Firstly, the registration bridges the gap between relevant private and public laws. While general property law applies to ships, ship nationality registration rules also pertain to ships.<sup>26</sup> Secondly, the “registration theory” protects the transaction security. In the shipping industry, the shipowner and the ship operator are not always the same entity. The vessel finance is an example. The financing company is the shipowner, but the financing company does not possess the ship. The charterer is the ship operator. Therefore, in comparison with possession, the registration can show the shipowner clearly and the registration can protect the transaction.<sup>27</sup>

Numerous articles found by this study back the “delivery theory.” According to this theory, delivery is the validity elements of the transfer of ship ownership. Firstly, the “delivery theory” is in line with the shipping industry customs. International ship transactions often utilize standard form contracts, typically featuring detailed ship delivery clauses.<sup>28</sup> Secondly, though ships are special movables, they remain movables by nature. Legal interpretation suggests that regulations for movables can be applied to ships. As such, the transfer of ship ownership is not exceptional. Just as the transfer of movables hinges on both “contract” and “delivery,” so does the transfer of ship ownership.<sup>29</sup> Thirdly, the 1992 Maritime Law lacks specific provisions concerning the transfer of ship ownership. Since no unique rules for this exist in the 1992 Maritime Law, general property law should be

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<sup>25</sup> See Li Zhiwen (李志文), *Minfa Dian Tixihua xia Chuanbo Wuquan Biandong Guize Jieshi Lun* (《民法典》体系化下船舶物权变动规则解释论) [Interpretation of Ship’s Real Rights Change Under the Systematization of the Civil Code], 2 XUEHAI (学海) [ACADEMIA BIMESTRIS] 183, 187 (2023).

<sup>26</sup> See LI ZHIWEN (李志文), *Chuanbo Suoyouquan Falü Zhidu Yanjiu* (船舶所有权法律制度研究) [Research on the Legal System of Ship Ownership], FALÜ CHUBAN SHE (法律出版社) [LAW PRESS·CHINA], 115–117 (2008).

<sup>27</sup> See Zheng Lei (郑蕾), *Chuanbo Suoyouquan Biandong Xiaoli Lifa Moshi zhi Fansi* (船舶所有权变动效力立法模式之反思) [Reconsideration of Legislation Mode Regulating the Effect of Transfer of Ownership of Ship], 4 ZHONGGUO HAISHANG FA YANJIU (中国海商法研究) [CHINESE JOURNAL OF MARITIME LAW] 106, 109 (2013).

<sup>28</sup> Chu Beiping (初北平) & Zhou Jin (周瑾), *Wuquan Fa Queli de Chuanbo Wuquan Zhidu Jieshi* (物权法确立的船舶物权制度解析) [Analysis of the Property Rights System of Ships Established by the Property Law], 15 RENMIN SIFA (人民司法) [PEOPLE’S JUDICATURE] 84, 84 (2007).

<sup>29</sup> See CUI JIANYUAN (崔建远), *ZHONGGUO MINFA DIAN SHIPING · WUQUAN BIAN* (中国民法典释评·物权编) [INTERPRETATION AND COMMENT ON THE CIVIL CODE OF CHINA·PROPERTY RIGHTS PART], ZHONGGUO RENMIN DAXUE CHUBAN SHE (中国人民大学出版社) [CHINA RENMIN UNIVERSITY PRESS], 139 (2d ed. 2021).

applied.<sup>30</sup> Consequently, delivery is deemed the element in the transfer of ship ownership.<sup>31</sup>

### *B. Registration versus Delivery*

The registration plays a crucial role in the context of ship ownership transfers. Consider a scenario of selling the same ship to multiple parties: the first person registers the ship, while the second person delivers it. In this situation, the question arises: who truly owns the ship? There are two prevailing opinions on this matter.

The first opinion advocates for the individual who registered the ship. Firstly, according to the expression in the property law, the effect of registration is stronger than the effect of delivery. Therefore, the court should support the person who registered the ship.<sup>32</sup> Secondly, the registration has strong confrontational effect is conducive to the transaction security. In comparison with the delivery, registration is conducive in protecting a third party in good faith. The information in registration is clear. The administrative department has the duty to register the ship. The administrative department may substantial review when it is necessary and the administrative department will burden the damages to the mistakes of the registration. Therefore, the registration has strong credibility. However, there are many ways to possession. If the possession is the publication method with strong credibility, different parties may apply rights based on different types of possession. The results are unhelpful to the clarity of the legal relationship, and a third party cannot find out the true rights status, and it is harmful to the transaction security.<sup>33</sup>

The opposing view supports the individual who delivered the ship. The function of registration is to supply the effect and the scope of property rights. The validity elements of special movables is the delivery, instead of the registration. If the parties completed the delivery without registration, the parties obtain the property rights. However, this kind of property rights cannot act against a third party in good faith. If the parties only completed the registration, the parties do not obtain the property rights.<sup>34</sup> Under the

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<sup>30</sup> Special law and general law are relative. For example, the law of maritime contract in the Maritime Law (1992) compared with the law of contract in the Civil Code (2020), the former is a special law, and the latter is a general law.

In maritime cases, if the cases cannot find the rules in the Maritime Law (1992), the cases can apply the rules in the Civil Code (2020).

<sup>31</sup> See LI HAI (李海), CHUANBO WUQUAN ZHI YANJIU (船舶物权之研究) [RESEARCH ON PROPERTY RIGHTS IN SHIPS], FALÜ CHUBAN SHE (法律出版社) [LAW PRESS·CHINA], 58-59 (2002).

<sup>32</sup> See Cheng Xiao (程啸), Lun Dongchan Duochong Maimai Zhong Biaodiwu Suoyouquan Guishu de Queding Biaozhun (论动产多重买卖中标的物所有权归属的确定标准) [The Criteria for Determining the Ownership of the Subject Matter in Multiple Transactions of Movable Property], 6 QINGHUA FAXUE (清华法学) [TSINGHUA UNIV. L. J.] 61, 69 (2012).

<sup>33</sup> See Wang Liming (王利明), Teshu Dongchan Yi Wu Shu Mai de Wuquan Biandong Guize — Jian Ping “Maimai Hetong Sifa Jieshi” Di Shi Tiao (特殊动产一物数卖的物权变动规则 — 兼评《买卖合同司法解释》第 10 条) [Transfer Rules of Special Personal Property Sold for Times: Comment on Article 10 of Judicial Interpretation of Sales Contract], 6 FAXUE LUNTAN (法学论坛) [LEGAL FORUM] 5, 9 (2013).

<sup>34</sup> See Cui Jianyuan (崔建远), Zai Lun Dongchan Wuquan Biandong de Shengxiao Yaojian (再论动产物权变动的生效要件) [Re-Exploration on the Requirements of Validity on the Change of the Real Right Movables], 5 FAXUE JIA (法学家) [THE JURIST] 49, 52 (2010).

model of registration as confrontation elements, if the registration has strong credibility, the results are the property rights without registration become the obligation rights in fact. Under the background of the registration system is imperfect and the credit system is imperfect, if the registration has strong credibility, this situation easily causes selling the same property to multiple parties, and unauthorized disposition. This situation also easily causes moral crisis and disorder. The function of registration as confrontation elements to protect transaction security may be destroyed by endless litigation of confirming property rights from the third party in good faith.<sup>35</sup>

### C. The Publication Methods of the Ship Ownership<sup>36</sup>

The debate centers around whether ship ownership should have one or two publication methods. Two prominent opinions exist on this matter.

The first opinion is that the ship ownership has one publication method. The property rights publication may have three effects. The effect of transferring property rights, the effect of presuming the property rights correctness, and the effect of protecting the good faith. These three effects have a strong connection. One publication method should involve these three effects. In the situation that the delivery or registration are not the validity elements, there are only two effects which are the effect of presuming the property rights correctness and the effect of protecting the good faith. One publication method should involve these two effects.<sup>37</sup> In short, this opinion thinks the publication methods have several effects. Since these effects have a strong connection, these effects should be included in a sole publication method. Therefore, the publication method in one type of property should only have one.

The contrasting view posits that ship ownership should encompass two publication methods: possession and registration. There are a few rationales behind this stance. First, ships are distinctive entities; each has a unique name, making them suitable for registration method. Especially in vessel financing situations, the ship also needs registration as a publication method. Second, while ships can be classified as special movables, they inherently remain movables. As such, they should adhere to general movable property rules. Since possession acts as a publication method for movables, it should also naturally extend to special movables.<sup>38</sup> To summarize, given the inherent nature and distinctiveness of ships, there is a solid basis for recognizing both possession and registration as viable publication methods.

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<sup>35</sup> Jing Guangqiang (景光强), Teshu Dongchan Wuquan Biandong Jieshilun (特殊动产物权变动解释论) [Interpretation of the Transfer of Special Moveables Property Rights], 6 FALÜ SHIYONG (法律适用) [JOURNAL OF LAW APPLICATION] 43, 49 (2016).

<sup>36</sup> Publication methods mean the methods that can show the information of property.

<sup>37</sup> See Dai Yongsheng (戴永盛), Lun Teshu Dongchan de Wuquan Biandong yu Duikang (Shang) (论特殊动产的物权变动与对抗(上)) [The Change and Confrontation of Property Rights in Special Movable Property (Part I)], 6 DONGFANG FAXUE (东方法学) [ORIENTAL LAW] 42, 53–54 (2014).

<sup>38</sup> See Wang Liming (王利明), Teshu Dongchan Wuquan Biandong de Gongshi Fangfa (特殊动产物权变动的公示方法) [The Publication Methods of Special Moveables Rights], 4 FAXUE YANJIU (法学研究) [CHINESE JOURNAL OF LAW] 124, 125–128 (2013).

#### D. The Credibility of Registration<sup>39</sup>

The first opinion posits that the registration has credibility. The expression “ship ownership cannot act against a third party unless registered” implies that the ship ownership will only be recognized against a third party after it has been duly registered. If registration lacks credibility, a third party cannot trust the registration, then registration becomes meaningless to a third party. On the other hand, if registration is deemed credible, it fosters trust among third parties, eliminating the need and associated costs of independently verifying ship ownership. Consequently, a reasonable registration system promotes and facilitates transactions.<sup>40</sup>

The second viewpoint thinks that the registration does not have credibility. Firstly, a credible registration system could inadvertently harm the property’s legitimate owner and diminish transactional convenience and efficiency.<sup>41</sup> Secondly, maritime liens, which don’t necessitate registration, pose a challenge. And thus, it is hard to find out the maritime liens. The maritime liens are extinguished according to the law, and the maritime liens cannot extinguished after the transaction. The buyer in good faith cannot avoid these burdens.<sup>42</sup> Lastly, if the registration is the confrontation elements of ship ownership and the review of the administrative department is a formal review, the registration should not have credibility. A third party has to bear the cost that investigating the actual situation of ship ownership.<sup>43</sup>

#### V. MARITIME LAW ANALYSIS ON THE TRANSFER OF SHIP OWNERSHIP

The crux of this paper is to highlight the soundness of rules under maritime law and property law concerning the transfer of ship ownership. This is further accentuated by judges whose interpretations and opinions largely conform to these rules. While various theories have raised pertinent questions, this paper is confident in providing answers grounded in legal understanding.

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<sup>39</sup> Whether a third party can trust the registration depends on whether the registration has credibility. If the registration has credibility, a third party in good faith can trust the registration and complete a transaction with the shipowner, when disputes arise on the ship ownership, the court will support the third party.

<sup>40</sup> See Qu Maohui (屈茂辉), *Dongchan Wuquan Dengji Zhidu Yanjiu* (动产物权登记制度研究) [Study on the Institution of Registration of Movable], 5 HEBEI FAXUE (河北法学) [HEBEI LAW SCIENCE] 9, 14–15 (2005).

<sup>41</sup> Hu Xuyu (胡绪雨), *Chuanbo Erchong Maimai Zhong Shanyi Qude de Luoji Goucheng yu Xinlai Jichu* (船舶二重买卖中善意取得的逻辑构成与信赖基础) [The Logical Composition and Trust Basis of Good Faith Acquisition in the Dual Sale of Ship], 5 FA SHANG YANJIU (法商研究) [STUDIES IN LAW AND BUSINESS] 130, 139 (2020).

<sup>42</sup> See Li Xiaonian (李小年), Li Pan (李攀), *Wuquan Fa Di Ershisi Tiao Guiding dui Chuanbo Suoyouquan Biantong de Yingxiang* (《物权法》第24条规定对船舶所有权变动的影响) [The Influence of the Article 24 of Property Law to the Transfer of Ship Ownership], 11 FAXUE (法学) [LAW SCIENCE] 111, 115 (2009).

<sup>43</sup> Hu Xuyu (胡绪雨), *Chuanbo Wuquan Biantong yu Dengji Duikang de Luoji Goucheng he Guize Shilun* (船舶物权变动与登记对抗的逻辑构成和规则释论) [The Logical Composition and Rule Interpretation between the Change of Ship Property Rights and the Confrontation of Ships Registration], 5 ZHENGFA LUNCONG (政法论丛) [JOURNAL OF POLITICAL SCIENCE AND LAW] 13, 18 (2023).

First, this paper will discuss the validity elements and confrontation elements in the transfer of ship ownership. Second, this paper will analyze the delivery and registration in the situation that selling the same ship to multiple parties. Third, according to the general principle of publication methods and credibility, this paper will prove that there is only one publication method with credibility. Fourth, this paper will explain the credibility of the registration, unraveling its significance and implications.

#### *A. Validity Elements versus Confrontation Elements*

The disputes among the “agreement theory,” “registration theory,” and “delivery theory” revolve around discerning the elements that determine the transfer of ship ownership.

The “registration theory” posits that the validity elements and confrontation elements are the same. However, applying this theory to the transfer of ship ownership seems misplaced. Ships, unlike houses, have a distinct nature and function. Ships form the backbone of countless commercial designs necessitating a clear distinction between validity elements and confrontation elements. This differentiation becomes particularly evident in situations like ship affiliation and vessel financing.

In the shipping market, some smaller shipowners, due to commercial considerations or qualification issues, often list their ships under the names of more prominent shipowners. Despite the nominal ownership resting with the larger shipowner, the actual owner remains the smaller entity. This model, known as ship affiliation, typically involves a contractual agreement delineating rights and obligations for both parties. This phenomenon is common in the Chinese shipping market.<sup>44</sup> From a legal standpoint, this business model is not viewed unfavorably. In the judge’s view, this business model is not the model that should be prohibited,<sup>45</sup> and it tends to protect this business model,<sup>46</sup> because this model is in line with the current status of Chinese ship operations and relevant management regulations.<sup>47</sup>

<sup>44</sup> Xie Hua (谢桦), Zhang Kexin (张可心), Huang Siqi (黄思奇) & Luo Sumei (罗素梅), *Guanyu Chuanbo Guakao Falü Wenti de Diaoyan Baogao* (关于船舶挂靠法律问题的调研报告) [Research Report on the Legal Issues of Ship Affiliation], 23 *RENMIN SIFA* (人民司法) [PEOPLE’S JUDICATURE] 58, 58 (2009).

<sup>45</sup> See *Gan Dongsheng yu Yin Jinliang, Wuhu Shi Hanghai Chuanwu Youxian Gongsi Chuanbo Quanshu Jiufen An* (甘冬生与殷金良、芜湖市航海船务有限公司船舶权属纠纷案) [*Gan Dongsheng v. Yin Jinliang, Wuhu Navigation and Shipping Co., Ltd.*], (2015)武海法商字第01514号 (Wuhan Maritime Court, 2015).

<sup>46</sup> See *Dui Hubei Sheng Gaoji Renmin Fayuan “Guanyu Renmin Fayuan Neng Fou dui Guakao qie Dengji zai Bei Zhixing Ren Ming xia Yingyun de Chuanbo yuyi Qiangzhi Zhixing de Qingshi” de Dafu Yijian* (对湖北省高级人民法院《关于人民法院能否对挂靠且登记在被执行人名下营运的船舶予以强制执行的请示》的答复意见) [Reply to the Hubei Higher People’s Court “Request for Enforcement of a Ship Affiliated and Registered in the Name of the Debtor”], 最高人民法院 (2013) 执他字第14号文件 (Supreme People’s Court, 2013), quoted in *Jiang Yunxue, Li Yinzhu deng Shenqing Zhixing Ren Zhixing An* (蒋云雪、李银珠等申请执行人执行案) [Execution case of JIANG Yunxue, LI Yinzhu and Others Application Executor], (2015)蚌民一初字第00017号 (Anhui Bengbu Intermediate People’s Court, 2015).

The larger shipowner does not obtain the ship ownership based on the registration, in contrast, the ship ownership belongs to the smaller shipowner.

Another significant aspect worth considering is vessel financing. The vessel financing involves three parties: the vessel finance company, the shipowner, and the shipyard. The finance company, endowed with substantial resources, typically purchases a ship from a shipyard. The shipowner, needing more funds for a direct purchase, then charters this ship. By operating the ship, the shipowner generates revenue, part of which is remitted as rent to the finance company. When the shipowner pays enough rent to the vessel finance company, the vessel finance company transfers the ship ownership to the shipowner and the shipowner does not need to pay rent to the vessel finance company anymore. This commercial design can benefit all three side parties, and in this commercial design, it is reasonable to identify the ship ownership based on the agreement.

The opinion of this paper is that if the parties have an agreement about when the ship ownership is transferred, follow the parties' agreement. If the parties don't have an agreement about when the ship ownership transfer, the ship ownership transfer after the delivery. The "delivery theory" is the default rule of the transfer of ship ownership. After the ship is delivered, the parties can register the ship more conveniently. After registration, the party can obtain the complete ship ownership.

### *B. Registration versus Delivery*

The 1992 Maritime Law and the Civil Code of the People's Republic of China (2020) (hereinafter referred to as the 2020 Civil Code) assert that ship ownership cannot be invoked against a third party acting in good faith unless it is registered. This implies that registration is essential for ship ownership rights to be enforced against a third party. On the other hand, the Interpretation of the Supreme People's Court on Issues Concerning the Application of Law for the Trial of Cases of Disputes over Sales Contracts (2020) (hereinafter referred to as 2020 Sales Contracts Judicial Interpretation) dictates that delivery takes precedence over registration. Whether there is a conflict?

Paragraph 1 of article 13 of the Regulations of the People's Republic of China Governing the Registration of Ships (2014) (hereafter referred to as the 2014 Ships Registration Regulations) stipulates: "A shipowner applying for registration of the ownership of a ship shall produce to the ship registration authority at the port of registry the documents adequately evidencing his legitimate identification, and submit the originals and copies of the documents evidencing the procurement of his ownership over the ship and the technical information thereof." Paragraph 2 subparagraph 1 of article 13 of the 2014 Ships Registration Regulations stipulates: "Seller's

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See Gan Dongsheng yu Yin Jinliang, Wuhu Shi Hanghai Chuanwu Youxian Gongsi Chuanbo Quanshu Jiufen An (甘冬生与殷金良、芜湖市航海船务有限公司船舶权属纠纷案) [GAN Dongsheng v. YIN Jinliang, Wuhu Navigation and Shipping Co., Ltd.], (2015)武海法商字第01514号 (Wuhan Maritime Court, 2015).

invoice or sales contract and delivery document”. The delivery is one of the conditions to register the ship. Subparagraph 4 of article 7 of the 2020 Sales Contracts Judicial Interpretation stipulates: “where the seller delivers the subject matter to one of the buyers and handles the formalities for registering ownership for another buyer, if the buyer that has taken delivery of the subject matter requests registration of ownership of the subject matter under its name, the people’s court shall support such requests.” In the situation of selling the same ship to multiple parties, one person completes delivery, another person completes registration. The registration in this situation breaks the rules in the 2014 Ships Registration Regulations. Suppose the parties did not complete the delivery before registration. In that case, the registration cannot apply the transfer of ship ownership rules in the 1992 Maritime Law and the 2020 Civil Code. The registration which can act against a third party is the qualified registration. The registration here is unqualified registration. The unqualified registration cannot work against a third party in good faith. The court will support the person who delivered the ship in this situation.

Why the person who has not delivered the ship can register the ship? It depends on the review model. The register action is an administrative action. If the administrative action is an administrative license, the ship registration is applied to the substantial review. If the administrative action is administrative confirmation, the ship registration is applied to the formal review. The ship ownership registration is a confirmation registration. The registration is a confirmation of civil rights. The information is recorded and searched. The registration has a publication effect. The registration does not create any rights or obligations to anyone. The rights and obligations depend on the civil law relation or the legal facts.<sup>48</sup> The ship ownership review is a formal review. The person may register the ship without delivery.

The 2020 Sales Contracts Judicial Interpretation stipulates delivery takes precedence over registration. This rule is based on a balance of interests. For example, the shipowner sold the ship to the first buyer. The buyer delivered the ship and operated the ship. Then the buyer chartered the ship to another person or signed the carriage of goods by sea contract with another company. The shipowner also sold the ship to the second buyer. And the second buyer registered the ship. If the first buyer loses the ship, the first buyer might suffer high risks. If the second buyer loses the ship, the second buyer might suffer low risks.

### *C. The Publication Methods*

The publication methods are a fact issue. The publication methods show property rights. The possession can show property rights, and the registration can show property rights. Therefore, both possession and registration are the publication methods. Credibility is a legal issue. The

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<sup>48</sup> Yu Lingyun (余凌云), *Chuanbo Suoyouquan Dengji de Xingzheng Fa Fenxi* (船舶所有权登记的行政法分析) [Administrative Law Analysis of Ship’s Ownership Registration], 2 *ZHONGGUO HAISHANG FA YANJIU* (中国海商法研究) [CHINESE JOURNAL OF MARITIME LAW] 3, 10 (2021).

credible publication method shows reliable property information. A third party can trust the information, and the law protects a transaction between the property owner and the third party. The law will protect the third party in good faith if any dispute arises. There are no limitations to the publication methods. The methods that can show the property information are the publication methods. However, the credible publication method has only one.

In one type of property, there is only one credible publication method. For example, If both possession and registration are credible publication methods of a ship, in the situation that possession information and the registration information are inconsistent, which one should a third party trust? If the rules choose one publication method, another publication method might become meaningless. The third party will only focus on the credible publication method.

In conclusion, one type of property may have more than one publication method. One type of property has only one credible publication method.

#### *D. Registration has Weak Credibility*

Since registration is the confrontation element of the transfer of ship ownership, the accuracy of registration is low. This is not the reason to refuse the credibility of registration. Unregistered ship ownership has a risk in private law, and the shipowner should pay attention to the risk.

This paper agrees with the judges. The registration has a certain credibility. The opinion of this paper is that the registration has weak credibility. There are two categories of credibility. The strong credibility and the weak credibility. For example, the real property registration has strong credibility. The third party in good faith can trust the registration, and the court also trusts the registration. The court will support the third party in good faith. The ship registration has weak credibility. The court will support the parties who can prove that they are the owner of the ship. The agreement between the parties is significant. If the parties cannot persuade the court that they are the shipowner, the court will trust the registration. This is the function of weak credibility.

Furthermore, this paper thinks it is appropriate that the ship ownership registration has weak credibility. Most parties in the shipping industry are businessmen. They can find out the shipowner. Businessmen are very careful in transactions, and businessmen are better at avoiding or burdening commercial risks. In the area of house transactions, most people are not businessmen and they don't have enough ability to avoid or burden the transaction risks. Therefore, real property registration has strong credibility, and real property registration can protect transaction security.

## VI. CONCLUSION

The rules and judges' interpretation constitute a reasonable transfer of ship ownership system. Several questions are raised from theory and practice, and this paper attempts to answer these questions by interpreting the rules. First, the parties can have an agreement about when the ship ownership is transferred. If the agreement is absent, the ship ownership is



transferred after the delivery. Delivery is the default rule. Second, in the selling the same ship to multiple parties situation, since the registration is unqualified, the court will support the person who completed the delivery instead of the person who completed the registration. Third, both possession and registration are the publication methods of ship ownership. However, only registration is the credible publication method of ship ownership. Fourth, the registration has weak credibility and establishes a rebuttable presumption of ship ownership. If the parties cannot persuade the judge that they have the ship ownership, the judge will trust the registration.