**無權占有他人土地與相當於租金之不當得利——實證研究與政策建議**

摘 要

無權占有他人土地所生之相當於租金之不當得利，法院用「地價×年息＝租金」之公式計算返還價額，但實務上適用此公式時存有不少論理缺陷。本文隨機抽樣二○○四年到二○一二年九年間地方法院698筆判決，發現法院算出之不當得利返還價額，大多遠低於市場租金。運用抽樣之判決，及內政部實價登錄資料庫之數據，本文質疑最高法院年息判斷公式的理論基礎，也指出地方法院決定年息時欠缺說理。無權占有他人土地所生之不當得利返還責任，應該是「計算方法」相當於租金，而不是法律地位相當於租金；不當得利更不會是損害。爬梳土地法的立法背景，並進一步運用經濟分析方法，本文主張法院處理相當於租金之不當得利問題時，不應該類推適用民法第一二六條、土地法第九十七條、第一○五條、第一一○條。長遠之計，法官應該以實價登錄數據中之市場租金，與迴歸模型，直接計算相當於市場租金之不當得利，並不受年息10%上限之限制。

關鍵詞： 年息、市場、租金管制、定錨效應、消滅時效、相當於租金、無權

占有、不當得利

**Unlawful Possession of Land and Unjust Enrichment Equivalent to Rent: Empirical Analysis and Policy Suggestions**

Abstract

Unlawful possessors of others’ land have to disgorge unjust enrichment equivalent to rent. Taiwanese courts use the formula “land value × yield rate = rent” to calculate the amount of compensation. Judges, however, never offer any solid reasoning on their determinations of yield rates. Using 698 randomly sampled district court cases between 2004 and 2012, we find that most court-adjudicated rents are below market rents. Using this new data set and the transaction price and lease rent database compiled by the government, we challenge the empirical foundation of several Supreme Court precedents, which dictate certain variables in determining the yield rate. We argue that the statute of limitations for the claim of unjust enrichment should be 15 years and the rent control stipulations are not directly applicable to unjust enrichment, either. Our policy suggestion is that courts should use the official lease rent database to compute the amount of unjust enrichment.

Keywords: Annual Yield Rate, Market, Rent Control, Anchoring Effect, Statute of Limitation, Equivalent to Rent, Illicit Possession, Unjust Enrichment