

AperTO - Archivio Istituzionale Open Access dell'Università di Torino

Law and Tradition in a Socialist Market Economy: Haunted House Litigation in China

This is the author's manuscript

Original Citation:

Availability:

This version is available <http://hdl.handle.net/2318/1522859> since 2016-10-04T10:21:11Z

Published version:

DOI:10.1017/asjcl.2015.7

Terms of use:

Open Access

Anyone can freely access the full text of works made available as "Open Access". Works made available under a Creative Commons license can be used according to the terms and conditions of said license. Use of all other works requires consent of the right holder (author or publisher) if not exempted from copyright protection by the applicable law.

(Article begins on next page)

Law and Tradition in a Socialist Market Economy: Haunted House Litigation in China

Simona NOVARETTI*
University of Turin, Italy
simona.novaretti@unito.it

Abstract

The transition of the People's Republic of China into a market economy and the ensuing development of its real estate market have seen the rise of a new type of cases, related to the sale of "second hand properties" (*er shou fang*) (二手房); the "disputes in transactions for haunted houses" (*xiong zhai maimai jiu fen*) (凶宅买卖纠纷). Can the plaintiff's rights, which are not regulated by express provisions of statutory law but are rooted in traditional beliefs, be claimed in the courts of a socialist country? What are the legal grounds of these claims, if any? My aim is to highlight, through the analysis of several cases decided by the People's Courts since 2004, the complex relationship between tradition, law, and economy in a country that provides one of the greatest examples of "legal transplants" in the history of mankind.

I. THE "SECOND HAUNTING" AND THE LAW

What is the greatest problem in the world? Hunger is the greatest problem. What is the greatest power? The union of the masses is the greatest power. What must we not fear? We must not fear Heaven, we must not fear ghosts, we must not fear the dead, we must not fear bureaucrats, we must not fear warlords, we must not fear capitalists.¹

While Mao Zedong is clearly renowned for his war on capitalism, the Great Helmsman was also deeply engaged in a battle against superstition and the belief in ghosts. Today, of course, capitalists are no longer the source of any fear in the People's Republic of China, even if for reasons wholly unanticipated by its first Chairman. Ghosts, on the other hand, which had virtually disappeared during the Mao years thanks to the "campaigns against ghosts" launched by the Communist leadership in the early years of the People's Republic,² have made a rather startling comeback.

It seems that it could not have been otherwise. In the *Erya*, the first Chinese dictionary dating back to the third century BC, the character for "ghost" (*gui*) (鬼) holds the same meaning as "that which comes back" (*gui*) (归).³ This equivalence has taken on new meaning with the end of

* PhD (University of Milan). Currently Researcher and Assistant Professor of Chinese Law, Department of Law, University of Turin, Italy. A previous version of this paper has been presented at the Young Scholars Workshop: "Asian Legal Studies - New Issues and New Scholarship (University of Singapore, 5 – 7 December 2013) and at the ECLS 2013 Conference (University of Oxford, 19 – 20 September 2013). I wish to thank Andrew Harding (National University of Singapore), Wang Jiangyu (National University of Singapore), Sundram Soosay (National University of Singapore), Björn Ahl (University of Cologne, Institute of East Asian Studies), Jacques deLisle (University of Pennsylvania Law School), and Benjamin Liebman (Columbia University Law School) for their helpful comments and suggestions. I would also like to express my sincere gratitude to Raffaele Caterina and Michele Graziadei, who offered me invaluable advice after reading and discussing earlier drafts of this work.

¹ MAO Zedong, "Chuangkang Xuanyan (创刊宣言) [Founding Manifesto]" *Xiangjiang Pinglun (湘江评论) [Xiang River Commentaries]* (14 July 1919) [translation by author].

² Judith T. ZEITLIN, *The Phantom Heroine: Ghosts and Gender in Seventeenth-Century Chinese Literature* (Honolulu: University of Hawai'i Press, 2007) at 6.

³ David D. WANG, *The Monster that is History: History, Violence, and Fictional Writing in Twentieth-Century China* (Berkeley: University of California Press, 2004) at 266.

Maoism, the inauguration of the political and economic reforms of the 1980s and 1990s also introducing what David Wang has described as the “second haunting” of Chinese history.⁴

The re-emergence of ghosts in Chinese society has had a number of wide-ranging consequences. In the art world, it has generated a burgeoning literature about subjects previously considered taboo (e.g. occultism, geomancy, and sex), while the repertoire of classical Chinese opera – in which ghost stories have always been prominent⁵ – has returned to the stage after thirty years of oblivion. The legal field, reformed to support the development of private transactions, has also been impacted by this renewed interest in ghosts and the reoccurrence of the age-old beliefs about them. The belief in ghostly hauntings is no longer labelled as simple “feudal prejudices” and is increasingly identified as being among the “good traditions” of Chinese civilization. One consequence of the renewal of interest in this supernatural phenomenon has been the emergence of a number of cases related to “haunted houses”, or *xiongzhai* (凶宅), in a number of Chinese court dockets since the beginning of the third millennium. For the Chinese legal system, this is a new kind of litigation; rooted in folklore and ancient local traditions, haunted house litigation is also a product of social and economic development and a testimony to the emerging trust of the population in the ability of the legal system to protect rights. What can be done upon discovering that the house of your dreams, the one in which you have invested all your life savings, is considered taboo by everybody because it is supposedly “haunted”? And in today’s China, what else is likely to gain as bad a reputation such that surrounding an “evil” house?

II. THE GHOST, THE MARKET, AND THE LAW

Haunted houses have a long history in China. Chinese literature is generally rich with references of these kinds, as well as to the nefarious, if not deadly, consequences that can befall the person living in or having contact with this kind of dwelling. One example, taken from the *Draft Notes from the Court and the Country* (*Chaoye Qianzai*) (朝野僉载), a collection of tales from the Tang dynasty (618-907 AD) and one of the earliest references to haunted houses, describes a *xiongzhai* in the following terms: “No one lives in this house. Ask around. They will tell you that this is the Princess’ haunted house, and that is the reason why no one dares to live in it”.⁶

Despite the long history of recognized hauntings in Chinese civilization, Chinese commentators have not yet reached full agreement on what constitutes a “haunted house”. Nevertheless, there is at least reasonable consensus as regards the general criteria. First, there needs to be an empirically verifiable event that leads to the haunting. Subjective impressions and unjustified fears are generally not taken into consideration here,⁷ it being essential that a violent death (whether intentional or accidental) take place on the premises or that the premises be located near a site that traditionally inspires dread. Second, the associated death must also show some elements of “abnormality”.⁸ This

⁴ *Ibid.* at c. 8.

⁵ Zeitlin, *supra* note 2 at 6.

⁶ ZHANG Zhou, *Chaoye Qianzai* (朝野僉载) [*Draft Notes from Court and Country*], juan 6, quoted in LIU Pan, “Guanyu “Xiongzhai” Jieding Ji Qi Hetong Jiufen de Dhiyong (关于 “凶宅” 界定及其合同纠纷的适用) [The Definition of “Haunted House” and Its Use in Contract Litigation]” (2013) Huazhang (华章) [Brilliant Work] no. 1 at 20 [Liu, “Definition”] [translation by author].

⁷ Liu, “Definition”, *supra* note 6 at 20; GU Jiangbing and CAO Yanfei, “Zhu “Xiongzhai” Huo Buchang Siwan Yuan (住‘凶宅’获补偿四万元) [They Live in a Haunted House, They Get a Compensation of 40,000 RMB]” Renmin Fayuan Bao (人民法院报) [Journal of the People’s Courts] (29 July 2011) no. 3 at 1; WU Tingting, ed., “Gouman Xiongzhai Yinfa De Guansi (购买‘凶宅’引发的官司) [A Litigation Regarding the Purchase of a Haunted House] (2010) Gongmin Daokan (公民导刊) [Citizen Herald] no. 4 at 37.

⁸ LÜ Lixiang, *Xiongzhai Maimai Jiufen de Falü Jiuji* (凶宅’买卖纠纷的法律救济) [*Legal Solutions in Litigation for the Purchase of a “Haunted House”*] (Shuoshixuewei lunwen (硕士学位论文) [Master’s thesis], Jinan Daxue (暨南大学) [University of Jinan], 3 June 2011) at 6-7.

means that purely “natural” deaths are excluded, as are deaths caused by accidents (for example, a car crash), unless the accident resulted in the death of the entire family living in the house in question.⁹ Finally, and most importantly, the property should cause feelings of dread in most people, so much so that they would not dare to live in it or purchase it if they were aware of what previously happened in the property.¹⁰ This last characteristic is precisely the reason why haunted houses in the People’s Republic of China, as well as in Hong Kong and Taiwan, have a lower market value, and has resulted in specialized real estate markets¹¹ and online databases dedicated to the market¹² in haunted houses in Hong Kong, with similar if less successful attempts to create similar institutions in China as well.¹³

As might be expected, individuals have also sought recourse to the legal system as a means of addressing different aspects of the spectre of supernatural occupations. This is not an issue unique to China or the East. Western legal scholars have debated the issue of supernatural tenancies for at least four centuries.¹⁴ Modern legal systems, however, are generally called on to address the effects of haunted housings on a property’s market value. In the US, for example, recent concerns about the “psychological defects”¹⁵ of the property have raised the issue of whether states should introduce legislative disclosure requirements on the seller or broker, where early cases *Reed v. King*¹⁶ and *Stambovsky v. Ackley*,¹⁷ respectively decided in 1983 and 1991, addressed the issue of whether the law would recognize an injury. In finding a recognizable harm, the California Court of Appeal in *Reed v. King* emphasized the fact that plaintiff’s claims were not based on her fear or discomfort in living in the house but on the objective fact of the reduction in value of the property resulting from the nefarious event.¹⁸ In doing so, the Court noted that:

[i]f information known or accessible only to the seller has a significant and measureable effect on market value and, as is alleged here, the seller is aware of this effect, we see no principled basis for making the duty to disclose turn upon the character of the information. [whether physical, stigmatic, or otherwise].¹⁹

These cases have also led some states in the US to introduce disclosure requirements where the seller or broker knows of a murder, suicide, or other serious crime on the premises, either compulsorily (e.g. South Dakota)²⁰ or at the request of the purchaser (e.g. New York and

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Prices for these houses can deviate from the cost of a “normal” house by up to 20 or 30 percent and vary depending on the circumstances of the event that took place in the house. See Te-Ping CHEN and Jeffrey NG, “Hong Kong’s Real Estate Boom Conjures a Scary Development” *Wall Street Journal* (14 January 2013), online: Wall Street Journal <<http://online.wsj.com/article/SB10001424127887324669104578208181761763650.html>> (interviewing NG Goon Lau, known as the “haunted house Lord”). On the subject of haunted houses in Hong Kong see Diego LAJE, “How Secretive Database Control Hong Kong’s Haunted House Market” *CNN* (22 April 2013), online: CNN <http://edition.cnn.com/2013/04/21/business/hong-kong-haunted/index.html?hpt=hp_c4>.

¹² See, for example, “Squarefoot Haunted House Database”, online: squarefoot <<http://www.squarefoot.com.hk/haunted/>>, or the Chinese fee-based database “hk.compass”, online: hk.compass <<http://hk-compass.com/>>.

¹³ DENG Dahong, *Nanjing* “Xiongzhai Dang’an” Chudong Shehui Shenjing (南京‘凶宅档案’触动社会神经) [Nanjing “Haunted Houses” Database Hits Society’s Raw Nerve]” *Zhongguo Shangbao* (中国商报) [*China Business Herald*] (14 Nov. 2006) no. 2 at 1-4.

¹⁴ Raffaele CATERINA, *Storie di Locazioni e di Fantasmii* [*Stories of Rents and Ghosts*] (Soveria Mannelli: Rubettino Editore, 2011) at 8.

¹⁵ *Ibid.* at 53.

¹⁶ *Reed v. King*, 145 Cal App 3d 261 (1983) [*Reed v. King*].

¹⁷ *Stambovsky v. Ackley*, 572 NYS 2d 672 (NY App. Div. 1991) [*Stambovsky v. Ackley*].

¹⁸ *Reed v. King*, *supra* note 16 at [2c] (ruling for the plaintiff/appellant, who had purchased a house in which a mother and four children were murdered ten years earlier.).

¹⁹ *Ibid.* at [2c]

²⁰ *South Dakota Codified Laws*, tit. 43, c. 4, para. 43-4-44 (requiring the seller of a property to disclose whether he knows of any suicide, murder, or other serious crime having taken place in the property in the past twelve months). On the subject see more in detail Raffaele CATERINA, *supra* note 14 at 79-87.

Connecticut).²¹ And while the majority of states in the US continue to exclude disclosure requirements when it comes to “psychological vices”, in many cases even their laws specify that the seller or the real estate agent cannot lie when explicitly questioned on the subject.²²

III. EXAMINING PATTERNS OF LITIGATION CONCERNING HAUNTED HOUSES IN THE PRC

So far, the Chinese legislature has not found it necessary to intervene in such matters. Instead, the government has entrusted the courts with the task of restoring fairness between parties in cases where “the right of the plaintiff are recognized by tradition but not by statute law”.²³ These cases broadly fall into two categories. First, there are cases concerning the sale of *xiongzhai* where the plaintiff/buyer asks for the annulment of a contract that he considers vitiated by fraud because the seller omitted information regarding the property being haunted. Second, there are cases where the owner of a “normal” house that becomes haunted because of the action of a third party demands compensation from that third party.²⁴

Interestingly, without legislative provisions, the judges’ solutions to these problems have varied from case to case.²⁵ Chinese scholars have captured this variance and the air of uncertainty by coining the term “same case, different judgment” (*tong’an bu tong pan*) (同案不同判).²⁶ This section seeks to demonstrate the veracity of this expression in relation to each category of case through an analysing some recent cases decided by the People’s Courts at the grass-roots and intermediate levels in different regions of the PRC. Each section begins with an outline of several cases falling into the specific category under examination before providing a commentary on the cases.

A. Litigation Concerning the Purchase of a “Haunted House”

I. Cases

(a) *Case 1*: In December 2007, Miss Zhang, a resident of Zhengzhou (Henan), bought the house of Mr. Liu through a real estate agent in anticipation of marriage.²⁷ Barely a month after purchasing the home, however, had Miss Zhang learnt from a neighbour that her newly-acquired property was

²¹ New York Real Property Law, para. 443-a (expressly granting the buyer the right to request in writing information about any such occurrence); *General Statutes of Connecticut*, tit. 20, c. 392, s. 20-329 dd(b) (requiring the seller to reveal any information regarding any murder, serious crime, or suicide that has taken place inside the property if the buyer has declared in writing that such information is important in her reaching a decision regarding the purchase).

²² Raffaele CATERINA, *supra* note 14 at 86.

²³ Deng, *supra* note 13 at 2.

²⁴ LIU E, “Lun “Xiongzhai” Jiufen Chuli de Falü Shiyong” (论‘凶宅’纠纷处理的法律适用) [On the Use of the Law in “Haunted House” Litigation]” (2009) 23:6 Changsha Daxue Xuebao (长沙大学学报) [Journal of Changsha University] 45 [Liu, “On the Use of the Law”].

²⁵ See amongst others:, CHEN Yaodong and ZHANG Jin, ““Xiongzhai’ de Falü Xianding Ji Qi Jiaoyi Jiufen de Falü Shiyong” (‘凶宅’的法律限定及其交易纠纷的法律适用) [Legal Limitations of Xiongzhai and the Implementation of the Law to Litigation Concerning Their Transfer]” (2007) 25:10 Hebei Faxue (河北法学) [Hebei University Law Review] 91; Wu, ed., *supra* note 6 at 37.

²⁶ YU Houzhi, *Lun “Xiongzhai” Jiaoyi Jiufen de Falü Shiyong* (论凶宅交易纠纷的法律适用) [The Use of the Law in Disputes over Transaction for Haunted Houses] (Shuoshi xuwei lunwen (硕士学位论文) [Master’s thesis], Xinan Zhengfa Daxue (西南政法大学) [Xinan University of Political Science and Law], 17 March 2010) at 12.

²⁷ The information about this case have been derived from “Xiongzhai Maimai Yinfa de Guansi (凶宅买卖引发的官司) [A Lawsuit Initiated Because of a Haunted House]” *Sina* (14 May 2009), online: Sina <<http://news.sina.com.cn/c/2009-05-14/172117815349.shtml>>. The same case is also described in “Guke Yi Maidaio “Xiongzhai” Yintui Fang Zhi Zheng (顾客疑买到“凶宅”引退房之争) [A Dispute Regarding the Return of a Purchased Property, Suspected to be a Xiongzhai], *voc.com.cn* (11 May 2010), online: [voc.com.cn <http://www.voc.com.cn/article/201005/201005111549389355_2.html>](http://www.voc.com.cn/article/201005/201005111549389355_2.html); Liu, *supra* note 6 at 20.

haunted. Apparently, the wife of a former tenant had killed herself in the same house sometime earlier. Furious that the seller would withhold such important information, Miss Zhang demanded that the contract be terminated and that the sum already paid be returned to her. Following the seller's refusal based on the claim that he was unaware of the incident, Miss Zhang sued Mr. Liu and the real estate agent, asking that the contract to be declared null and void, that Mr. Liu return the RMB 400,000 deposit paid to him, and that the two defendants be compensated RMB 10,000 for moral damage suffered.

The People's Court rejected the claim, upholding the contract on the basis that it was a true reflection of the actual will of the parties. In doing so, the Court chalked Miss Zhang's belief that the house was haunted up to her own (i.e. subjective) belief in "feudal superstitions". As a result, the seller's failure to inform the plaintiff about the suicide did not affect the residential use of the property by Miss Zhang. The seller therefore had no obligation to return the deposit; neither was he liable for the economic damage suffered by the buyer. Further, the plaintiff was not able to prove that the real estate agent had intentionally omitted "important information concerning the property" (i.e. the suicide), and so the agency was not liable for the financial damage either.

The Intermediate Court of Zhengzhou, however, held a different view. It found that while a house being a *xiongzhai* does not prevent it from being used, the objective effects on the psyche may nonetheless cause extreme discomfort to those living in it and that this meant that the fact that the house was a *xiongzhai* was a material fact. According to the Court, the behaviour of the first defendant, who was aware that the house was haunted and did not reveal it to the buyer, violated Article 7 of the *General Principles of Civil Law of the People's Republic of China*, which stipulates that "[c]ivil actions must respect social ethics and cannot damage the public interest of society". The Court also found the second defendant, the broker, at fault for wilfully keeping information that he should have revealed this to the plaintiff in order to facilitate the transaction and obtain the full commission. This omission was held as infringing Article 425 of the *Contract Law of the People's Republic of China*, which provides that "the broker shall provide true information concerning matters relevant to the conclusion of the proposed contract". As a result, the Intermediate Court in March 2009 overruled the decision of the court of first instance on the basis of Article 7 of the *General Principles of Civil Law*, and Articles 52, 58 and 425 of the *Contract Law*, declaring the contract between Miss Zhang and Mr. Liu to be null and void and providing for the return of RMB 400,000 to the plaintiff, while rejecting the claim for compensation from the real estate agency.

(b) *Case 2*: In August 2005, Mr. Li sought the annulment of a contract to purchase an apartment after he discovered that two people had been murdered in the flat.²⁸ The People's Court of Baiyun (Guangzhou) rejected his claims. The Court held that Mr. Li failed to prove that the property was unsuitable for residential use. The Court further held that the seller's omission of the information about the deaths did not amount to a violation of public order and good customs. According to the Court, the purpose of these concepts is to fill gaps in the law, but their scope could not be expanded to suit anyone's needs.²⁹

(c) *Case 3*: On 19 September 2007, Mr. Li, who recently moved to Chengdu for work, purchased a house from Mr. and Mrs. Liu.³⁰ While planning for the renovation of the house before moving in, he learned from a neighbour that a gruesome murder had taken place in that very house in April

²⁸ Gu and Cao, *supra* note 7 at 1.

²⁹ *Ibid.*

³⁰ WANG Xin and CHEN Taixiu, "Bumingzhengxiang Mai Xia "Xiongzhai" Fayuan Yi Mai Fang Qizha Weiyou Chexiao Goufang Hetong (不明真相买下-凶宅.法院以卖方欺诈为由撤销购房合同) [Unaware of the Truth He Buys a Haunted House. The Court Revokes the Contract on the Basis of Fraud on the Part of the Seller]" *cdfy.chinacourt.org* (19 June 2008), online: *cdfy.chinacourt.org* <<http://cdfy-old.chinacourt.org/public/detail.php?id=11951>>.

2003. The son of the Liu couple had killed a ten-year-old girl and, after having cut the body into pieces, had concealed the corpse in the tank on the roof. The neighbours found the girl's remains a few days later, and the culprit had been sentenced to death and executed. After having ascertained that the information was true, Mr. Li was terrified. For him, the idea of living in a flat which "had cost two people their lives"³¹ was impossible to bear. He therefore asked Mr. and Mrs. Liu for restitution of the amount paid. Following their refusal, on 25 October 2007, he sued them before the Court of Jinniu (Chengdu, Sichuan), seeking rescission of the purchase agreement.

Mr. and Mrs. Liu gave three arguments in their defence. First, they denied that the failure to mention the tragic event was in any way relevant, as they had sold Li "a property and not its history".³² In any case, the occurrence of death inside a property should be considered a frequent phenomenon; if it were a problem, nobody could live in old houses. Secondly, they noted that the culprit had already paid his debt to society, and several years had passed since the event. Finally, they argued that Li's issue with the property being haunted was a result of his superstitious mentality, and did not prevent his normal use of the flat. Given the equality of bargaining power and the terms of the agreement constituting a true expression of the parties' will, the contract should thus be considered valid. Further, Mr. Li should take sole responsibility for his learning of the tragic event only after having signed the contract.

Ultimately, the People's Court held that the Lius had an obligation to disclose the information about the crime to Mr. Li as part of their obligation to act in good faith under Article 6 of the *Contract Law*. Their silence was deemed fraudulent, resulting in the contract being invalid. While fully accepting the plaintiff's claims, the Court also obliged Mr Li, in a judgment issued on 18 June 2008, to pay part of the legal expenses, because he "did not understand the situation of the property during the negotiations".

(d) *Case 4*: In March 2010, Mr. Xue purchased the flat of Mrs. Hu through a real estate broker for the price of RMB 490,900. Just before moving, Mr. Xue learned that Mrs. Hu's husband had killed himself in the apartment two years before. He then sued her, believing that Mrs. Hu had omitted this information with the intent of deceiving him.

In a judgment issued on 28 July 2011 and published in the *Journal of the People's Courts (Renmin Fayuan Bao)* (人民法院报),³³ the Court of Chongchuan (Nantong, Jiangsu) acknowledged that, according to Chinese traditions and customs, a house becomes "haunted" when it has been the site of an unusual death. The Court also recognized that such a reputation has a considerable impact on the quality of life of the house's resident(s) because most people consider the *xiongzhai* a taboo and, if forced to live in it, would experience feelings of fear, including bad luck. With the defendant concealing the fact that the house was haunted, the plaintiff could not be said to have expressed his true will when agreeing to the terms of the contract. Mrs. Hu's behaviour therefore constituted fraud.³⁴

Notwithstanding this conclusion, the Court did not void the contract in this specific case. First, the Court evaluated the objective difficulty in implementing such a ruling: the widow had already spent part of the proceeds from the sale of the flat to pay the debts incurred by her late husband, and she would not have been able to return the whole sum paid by Mr. Xue. Further, according to the Court, the abnormal death in the flat did not have that great an impact on the property's value, because suicide is not comparable to other grisly events such as murder. On these grounds, the Court ultimately mediated between the two parties, with Mrs. Hu agreeing to refund RMB 40,000 to the buyer as compensation.

³¹ *Ibid.*

³² *Ibid.*

³³ Gu and Cao, *supra* note 7 at 1.

³⁴ *Ibid.*

2. Legal reasoning and law applied

Clearly central to judgments concerning the purchase of a haunted house is the distinction between “feudal superstition” and “good customs”, as the People’s Courts can only give relief to claims that fall into the latter category. The importance of this distinction is clearly seen in the appellate-level decision in Case 1. While the People’s Court dismissed the buyer’s claims as “feudal prejudices” without further explanation, the Intermediate Court drew a substantive distinction between the two concepts as being essential for arriving at a correct decision of the case. According to the Court, the concept of “‘feudal prejudices’ ... has become a specific term”,³⁵ with beliefs such as horoscopes, divination, shamans, fortune-tellers, *feng shui*, or spirits characterized as developing out of an exploitative relationship between the ruling and lower classes.³⁶ While feudal prejudices should be dismissed, the Intermediate Court classified the belief in *xiongzhai* as a taboo (*jihui*) (忌讳) or “the concern people feel towards things, conversations or actions which are believed to bring bad luck”.³⁷ Taboos are “popular customs”, not “feudal prejudices”, with the Court basing its ruling on this distinction. In the absence of specific provisions regarding *xiongzhai*, popular customs prevail, and given that the belief in haunted houses is a “good custom” essentially comparable to social ethics, to go against this belief is, in practice, “a violation of social ethics which damages at the same time public social interest”.³⁸ For this reason the Court considered the seller’s behaviour to fall within the ambit of Article 52(4) of the *Contract Law* (i.e. “damaging the public interest”), which resulted in the contract being null and void.

Generally speaking, it would appear that the courts generally agree that *xiongzhai* should be included in the list of “good customs”. Commentary on Case 4 published in the *Remin Fayuan Bao* (人民法院报) follows a similar line, noting that in similar cases a plaintiff’s claims were not dismissed as “feudal prejudices” but rather were seen as “good customs that do not damage anybody”,³⁹ and that non-disclosure of the house’s reputation for being haunted by the seller would result in a material misunderstanding, which would in turn result in the contract becoming voidable for fraud.⁴⁰ This opinion is also consistent with the Court’s decision in Case 3.

However, not all judges believe that the violation of this taboo is comparable to the violation of fundamental principles of the law, and even fewer courts are willing to take such an analogy to mean that it should offer judicial redress. Case 2 clearly demonstrates this latter attitude towards *xiongzhai*. Similarly, Judge Li Chao of the Tianjing High Court has also commented that principles of “social ethics” or “public and moral order” should not apply to cases concerning haunted houses.⁴¹ According to him, as long as the law is silent on the subject, the plaintiff’s requests for compensation, however reasonable they may be, are not easily legally supported, the only way of ensuring the plaintiff’s protection being a preventive measure such as the inclusion of a “haunting guarantee clause” in the contract for sale.⁴²

Two questions present in all of the cases turn on whether the fact that the house is a *xiongzhai* constitutes a serious defect in accordance with the law and whether the seller has a duty to disclose that the property is a *xiongzhai*. It is interesting to note in this regard that the court in Case 3’s affirmative answers to both questions. This kind of double affirmation appears to be representative

³⁵ Liu, “Definition”, *supra* note 6 at 20.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Gu and Cao, *supra* note 7 at 1.

⁴⁰ *Ibid.*

⁴¹ WANG Shuo, “*Mai Fang Yu Xiongzhai, - Fali PK Qingli*” (买房遇凶宅 法理PK情理) [To Buy a Flat and to Find a “Haunted House” – Judicial Theory Against Common Sense] *Zhongguo xiaofeizhebao* (中国消费者报) [China Consumer Journal] (30 January 2013) at 2 [Wang, “Against Common Sense”].

⁴² *Ibid.*

of other cases where equally heinous crimes had been committed inside the house.⁴³ According to the judgment issued by the Jinniu District Court, this is because there is a high likelihood that the general public will create a stigma around the property and that this stigma is likely to have an objective (i.e. socially accepted) impact on the property in these kinds of circumstances. Clearly, while a murderous death might not have physically damaged the property, it is clear that it can considerably lessen the house's value.

Despite the focus on litigation, disputes over the sale of haunted houses are much more likely to be mediated by a judge than go to trial. One of the primary explanations for the use of mediation in these kinds of disputes is clearly the absence of legislative guidance on the issue,⁴⁴ a point which the curial divide as to whether a *xiangzhai* is representative of “good customs” falling under its purview or a remnant of a damaging and non-justiciable “feudal prejudice”. Interestingly, this preference for mediations would appear to extend to cases that have already been litigated; the authors of the commentary on Case 4, for example, argue that the case should be mediated (again) on the basis of the principles of “public order and good customs” established in the *General Principles of Civil Law*.⁴⁵ It is also a practice that the Supreme People's Court generally encourages in “those cases that present difficulties in applying the law because the matter is not regulated, or the legislation is not clear”.⁴⁶

Finally, it is worth noting how Judge Li Chao's suggestion to address the matter contractually essentially mirrors the legal provisions of some US states (e.g. the aforementioned provision in the *New York Real Property Law*)⁴⁷ in relation to contractual transactions for haunted houses. This similarity is not too surprising because, as has already been observed earlier, the relationship between law and haunted houses has been analysed and discussed by legal scholars of all ages and countries.⁴⁸

B. Cases Related to Haunted Houses in the PRC: Litigation Concerning the “Responsibility for the Haunting”

I. Cases

(a) *Case 1*: On 6 May 2009, Sun Xiaoyou, a young woman employed by Mr. Jiang Feng, was raped and stabbed to death by a man who had broken into the flat overnight.⁴⁹ Although the perpetrator had been arrested within a few days and sentenced to capital punishment, the owner, Mr. Li Zhihua, blamed Mr. Jiang, who had rented the building as lodging for his employees, for the subsequent depreciation of the flat's value. According to the terms of the contract, the tenant was responsible for the maintenance of the flat, and it was therefore his negligence that allowed the perpetrator to enter the property by taking advantage of the malfunctioning door lock. On 26 May 2009, Li sued

⁴³ The Court of Pudong, for example, has come to a similar conclusion in February 2012, when ruling about the transfer of a haunted house where a crime of similar seriousness had taken place: a man had murdered his mother and brother, who had died after having been hit numerous times in the head and face with a hammer and a knife. See *Pumin – (Min) Chuzi di 10764 Hao* (浦民 – (民)初字第10764号), [Pudong People's Court – Civil judgment – *Chu Zi no. 10764*] (2012).

⁴⁴ On the subject see Wang, “Against Common Sense”, *supra* note 41 at 2.

⁴⁵ Gu and Cao, *supra* note 7 at 1.

⁴⁶ Zuigao Renmin Fayuan Guanyu Jinyib Fayui Susong Tiaojie Zai Goujian Shehui Zhuyi Hexie Shehui Zhong Zhiji Zuoyong de Ruogan Yijian (fafa [2007] 9 hao) (最高人民法院关于进一步发挥诉讼调解在构建社会主义和谐社会中积极作用的若干意见 (法发 [2007] 9 号)) [Some Opinions of the Supreme People's Court Concerning Further Stressing the Positive Role of Mediation in Building a Harmonious Socialist Society] (No. 9, 2007) point 5.

⁴⁷ See above at s. II.

⁴⁸ Caterina, *supra* note 14 at 8.

⁴⁹ LIU Aiwu and ZHOU Tao, “*Chuzu Wu Cheng “Xiongzhai”, Zeren Shui Dan?* (出租屋成‘凶宅’,责任谁担?) [If a Rented House Becomes “Haunted”, Who Must Take Responsibility for It?]” *Jiancha Ribao* (检察日报) [Procuratorate Daily] (9 January 2010) no. 3 at 1.

Jiang in the Court of the Industrial Area of Yangzhou (Jiangsu), seeking compensation in the sum of RMB 160,000.

While the Court recognized the objective existence of the damage suffered by Mr. Li, it held that the losses were to be ascribed to the perpetrator instead. In a decision issued on 20 August 2009, the plaintiff's claims were rejected. Three months later, the trial court's judgment was affirmed on appeal by the First Intermediate People's Court of Yangzhou.

(b) *Case 2*: In November 2004, the People's Court of Dongli District settled the first controversial case regarding haunted houses to come before a Tianjin court.⁵⁰ The incident concerned a flat rented by a company as residence for some of its employees. During this time one of the female employees was murdered by her fiancé, whom she had rejected. The value of the property had consequently plummeted, and the owner sued the company, claiming compensation for her loss.

While reiterating that the company was in no way responsible for the plaintiff's losses, the People's Court nonetheless decided – on the basis of fairness and the effective depreciation of the property's value – that it was “proper”⁵¹ for the company to compensate the owner. To this end, it decided that the contract between the parties should continue, and ordered the company to pay the plaintiff RMB 43,200 as compensation. This verdict did not survive through appeal, the Second Intermediate People's Court of Tianjin finding that the tenant's use of the flat as living quarters for his employees was completely legitimate and that the plaintiff's claims of financial losses were unfounded, given that the contract was still in force and that, as a consequence, a claim for economic damages would be premature. On this basis the trial court was overruled and the owner's request for compensation rejected.

(c) *Case 3*: In 2004, Mr. Guan rented out his flat to Mr. and Mrs. Ye.⁵² In September 2005, the Ye couple's relationship started to break down, and their quarrels became increasingly violent, with screams and curses heard from the flat. In November 2005, these disturbances abruptly ended when Mr. Ye hanged himself in the flat. A month later, Mr. Guan asked for an evaluation of the property from the Appraisal Department. Using the appraisal as evidence, he then sued Mrs. Ye, seeking RMB 200,000 as compensation for the damage caused by the haunting. In making its decision, the Court found that although the suicide had caused no physical damage to the property according to Chinese traditional beliefs and popular customs, it had surely caused “a temporary shadow in the hearts of people using it or living in it”⁵³ and that this sentiment would likely affect the owner's ability to profit from it. On the basis of fairness, therefore, Mrs. Ye was ordered to compensate Mr. Guan in the sum of RMB 20,000, only one tenth of the sum sought by the plaintiff.

(d) *Case 4*: In February 2011, Mr. Zhang entered into an agreement to lease Mr Wang's house for a period of six months.⁵⁴ During this time, Mr. Zhang allowed Zhao Xia, a friend of his wife, and her husband to move in with them without seeking permission from the owner. On 2 June 2011 Zhao Xia was murdered by her husband in that house. Mr. Zhang, shocked and scared, moved out before the end date of the lease. Mr. Wang then sued his tenant, not for the payment of the rent for the remainder of the lease, as one might expect, but for compensation for the financial and moral

⁵⁰ For more details about this ruling see Chen and Zhang, *supra* note 25 at 74; ZHOU Shiman, “Tianjin Shouli “Xiongzhai” Shoupei an Shenjie” (天津首例‘凶宅’索赔案审结) [The Conclusion of the First Example of a Case of Damage Compensation a Haunted House in Tianjin]” *Beifangwang* (北方网) [*Enorth Netnews*] (25 November 2004), online: *Enorth Netnews* <<http://news.enorth.com.cn/system/2004/11/25/000911331.shtml>>.

⁵¹ Zhou, *supra* note 50.

⁵² The unpublished case is reported in Liu, “On the Use of the Law”, *supra* note 24 at 43.

⁵³ *Ibid.*

⁵⁴ *Wang Zhihui yu Zhang Hualei'an* (王志辉与张华磊案) [*Wang Zhihui v. Zhang Hualei*], Henan Sheng An'yang Shi Zhongji Renmin Fayuan, Minshi Panjueshu, (2001) Anmin – Zhongzi di 887 Hao (河南省安阳市中级人民法院, 民事判决书, (2011)安民一终字第 887 号) [Henan Province – Intermediate People's Court of the City of An'yang – Civil judgement (2001) An Min Zhong Zi no. 887] [*Wang Zhihui v. Zhang Hualei*].

damage caused by the haunting which had resulted from Mr. Zhang letting the Zhao couple move into the house without Mr. Wang's approval.

The People's Court of Huanxian (Henan) held that, in allowing a third party to live with him in the rented house without obtaining prior permission from the landlord, the tenant acted behind the landlord's back and that this had resulted in the murder and the property becoming haunted. Moreover, according to their contract and to the principles of Chinese contract law it was Mr. Zhang's duty to use the house appropriately and to care for it. The murder had taken place on the property because of his behaviour, and therefore, while he was not guilty of any misdemeanour, he was responsible for the depreciation in the property's value. On the basis of Articles 7 and 106 of the *General Principles of Civil Law*, Articles 219 and 220 of the *Contract Law*, and Article 64 of the *Civil Procedure Law*, the plaintiff's claims were therefore validated by the court, although the amount of compensation was drastically reduced: instead of the RMB 30,000 demanded, Mr. Wang was granted compensation of RMB 8,000 for financial loss and RMB 2,000 for moral damages. On appeal, the sum was further reduced: while confirming the substantive aspects of the Huanxian court's first instance decision, the Intermediate Court of Anyang departed from the Huanxian Court's decision in relation to compensation for moral damage, holding that this portion of Mr. Wang's claim was wholly unfounded in law.

2. *Legal reasoning and law applied*

"Responsibility for haunting" cases are considerably more scattered and inconsistent than those concerning the purchase of a haunted house. This fact is probably due to the objective difficulty for the owner of a property that has become haunted while in the possession of another to prove the existence of the elements leading to tort liability. The challenge, of course, is to establish a direct causal link between the tenant's behaviour and the haunting, especially in cases where the tenant has nothing to do with the crime.

Some of these difficulties are illustrated by the opinion expressed by Li Aiwu and Zhou Tao, judges of the Intermediate Court of Yangzhou (Jiangsu), in the commentary to Case 1 (settled by the same court) published in the *Review of People's Procuratorates (Jiancha Ribao)* (检察日报).⁵⁵ According to Judges Li and Zhou, a plaintiff must prove four elements for a claim in non-contractual liability to succeed: fault, injury, damage, and causation. In the case under consideration, the judges expressed concern with three of these factors. First, the judges found that the plaintiff had failed to establish the defendant's fault. Second, they both acknowledged that it was nearly impossible to quantify the resulting damages of the illicit action in a fair manner. According to them, the fact that the house depreciated in value was not due to material damage to the property but to the likely negative psychological impact the haunting would have on a potential buyer. This, the Court held, made it very difficult to assess any claims for damages, as the memory of the murder would likely fade away soon enough, and fluctuations in the property market would likely cancel or lessen the negative financial loss caused by the murder. Finally, and above all, the Court based its decision on the lack of causal evidence between the defendant's behaviour and the crime. In other words, given that Ms. Sun's death was not necessarily a consequence of Jiang Feng's negligence, Mr. Jiang was not liable for the losses claimed by the plaintiff.

The Jiangsu Court's opinion is only partly representative of Chinese judiciary's attitudes concerning responsibility for haunting cases. In complicated situations like these, the courts very often simply decide based on the principle of fairness in order to achieve a range of ends. Sometimes – as in Case 2 – the judge relies on principles of fairness as a reason to disregard the lack of causation; other times – as noticed by Liu E with reference to Case 3⁵⁶ – by judging according to the principle of fairness, the court cleverly avoids *tout court* the question regarding the

⁵⁵ Liu and Zhou, *supra* note 49 at 1.

⁵⁶ Liu, "On the Use of the Law", *supra* note 24 at 43.

plausibility of the tenant's "responsibility for the violation of the property's rights" caused by the bloody event. The use of these principles is not uncontroversial. Indeed, it may be difficult to understand the "fairness" of a decision that orders a defendant to pay compensation for damages that has not (legally) caused, regardless of the justifications put forward by the Court. However, we have to consider that, by ruling in this manner, the judge may distribute the financial loss between two parties who are equally "innocent", while also possibly taking the temporary nature of the loss into account.

One of the most interesting aspects of Case 3 is the Court's consideration of the "provisional" or temporary nature of a haunting (and, consequently, the depreciation of the property's value), as demonstrated in Case 3. This idea has very ancient roots, "impermanence" reflecting one of the crucial points in the Chinese philosopher Zhu Xi's (1130-1200 AD) reflection about ghosts.⁵⁷ Today, Chinese society still holds to this idea, with contemporary Chinese scholars noting that a residence can become "normal" again after the property is lived in over a period of time as "the negative energy is dispersed by the positive vital energy" of the living residents.⁵⁸ This belief in the reversibility of the damages is one likely explanation of why the Court ultimately reduced the amount of the compensation to a tenth of the sum originally claimed by the plaintiff.

At the same time, it is important not to see Case 3 as exemplifying a general rule. As with haunted house disputes more generally, the saying "same case, different judgment" remains applicable to "responsibility for haunting" cases. Indeed, the Intermediate People's Court decision in Case 2 demonstrates that it is equally likely that a court will find no harm at all.

Sometimes "responsibility for haunting" is characterized not as tortious but contractual. This possibility is demonstrated by Case 4. That case's verdict was actually primarily based on Article 219 of the *Contract Law*, which stipulates that "[w]here the lessee fails to use the lease item in the agreed manner or in a manner consistent with its nature, thereby causing damage to it, the lessor may terminate the contract and claim damages". In doing so, the Court assumed that the central issue was the value of the property, anchoring its position in the idea that the *xiongzhai* represented a widespread belief firmly rooted in society that would impact the value of a property and, as such, an objective basis for a claim. After all, "to pursue good luck and avoid calamity" (*quji bixiong*) (趋吉避凶) is a desire shared widely among the Chinese population, regardless of their socio-cultural background. It is therefore to be expected that "no one wants to live in a place that has been the scene of a crime".⁵⁹

IV. CONCLUSION

As a motto, "destroy the four olds" (*po si jiu*) (破四旧) is no longer in fashion. As this article demonstrates, societal concerns over haunted houses have returned in recent years. Judges are clearly aware of changing social attitudes, and have expanded upon the distinction between "good customs" and "feudal superstitions" to account for them, with most including *xiongzhai* in the first category of harmless popular beliefs rather than beliefs reflecting oppressive social power structures. This attitude does not imply acknowledgement of the existence of supernatural beings, the question being whether the negative reputation of being a *xiongzhai* has consequences that are actionable in law, not whether the haunting is real.

While both US and Chinese haunted house litigation appear to be similar in that they focus on the loss of economic value, both the cultural and legal context of these judgments are completely different. In the US, the *Reed v. King*⁶⁰ and *Stambovsky v. Ackley*⁶¹ decisions and the legislation produced in their aftermath are notable for their reasoned approach to the parties' interests and for

⁵⁷ On the subject see in more detail Zeitlin, *supra* note 2 at 50.

⁵⁸ WU, ed., *supra* note 7 at 37.

⁵⁹ *Wang Zhihui v. Zhang Hualei*, *supra* note 54.

⁶⁰ *Reed v. King*, *supra* note 16.

⁶¹ *Stambovsky v. Ackley*, *supra* note 17.

the plurality of opinions (and legislation) produced by the resulting debates. In some cases, some authors have even considered whether the applicable laws “should be based on reason and promote rationality, or whether they should reflect and promote a popular mentality imbued with superstition”.⁶² This situation is in sharp contrast to the one in China, where reactions to haunted house litigation at first appear to be extraordinarily homogeneous. In fact, however, this homogeneity breaks up when we move from acknowledging the social relevance of this belief and the possibility of protecting it in a legal context to the ways through which the judge should in practice guarantee such protection. As Section II clearly demonstrates, the case law on the subject reflects an extreme diversity of opinions.

The heterogeneity of outcomes found in Chinese cases can be explained by the fact that the Chinese legislator has yet to take a position on the issue, coupled with the lack of specific written rules and the Supreme Court’s silence on the subject, and despite the fact that they have all relied on a small number of general clauses contained in either the *General Principles of Civil Law* or *Contract Law*. Ultimately, this is not too much of a surprise. The use of vague provisions to bend the law to particular ends is not unique to the Chinese legal system, nor is it unique in China to cases involving *xiongzhai*.⁶³ However, haunted house litigation in China *has* acquired at least some unique features, and this is especially true with regard to outcomes. By connecting social taboos to fundamental principles contained in the legal system, judges can acknowledge the significance of a violent murder or a suicide for the purpose of the ruling while providing themselves with the discretion to evaluate the particulars of the case under consideration.

At the same time, it would appear that Chinese courts seldom question the effect of a tragic event that leads to a haunting on the validity of a contract, or order the person allegedly responsible for the haunting to pay large sums of compensation to the victim. Even in the cases where a court holds a defendant liable for fraud or requires her to account for the financial loss caused by the haunting, the remedy is usually reduced to a rather small sum connected to economic damages; the victim rarely sees compensation for moral damages, despite all the cultural importance accorded to *xiongzhai*. It also appears that while judges have generally been cautious in awarding damages, they have also been willing to abandon caution when the case presents “special” facts such as a purchase in contemplation of marriage or where an event demonstrates an unusual amount of bloodshed. This explanation is consistent with the idea of there being a “hierarchy of seriousness of the haunting”⁶⁴ that follows market trends not only in the People’s Republic of China, but also in Hong Kong.

In the end, it is not enough to acknowledge that “to pursue good luck and avoid calamity” (*quji bixiong*) (趋吉避凶) is a motto shared by all Chinese people. When we move from recognition in a social context to a legal one, the demands of tradition (and the law) have to meet the demands of the economy. Ghosts may be back in contemporary China, but they must come to terms with the reasons – and the values – of an emerging market economy.

⁶² Daniel M. WARNER, “Caveat Spiritus: A Jurisprudential Reflection upon the Law of Haunted Houses and Ghosts” (1993) 28:1 Valparaiso University Law Review 207 (cited in Caterina, *supra* note 15 at 90-1).

⁶³ On the subject see Simona NOVARETTI, “General Clauses and Practice: the Use of the Principle of Good Faith in the Decisions of Chinese Courts” (2010) 18:5 European Review of Private Law at 953.

⁶⁴ On the topic, see *supra* note 11.