

論凶宅之定義以及其與物之瑕疵間之必然性

張 瀟 文*

目 次

- 壹、前言
- 貳、凶宅之認定
 - 一、內政部相關見解
 - 二、法院歷年判決見解整理與分析
 - 三、本文見解
- 參、物之瑕疵之認定
 - 一、物之瑕疵之判斷標準
 - 二、物之瑕疵之態樣
 - 三、凶宅得為一物之瑕疵
- 肆、凶宅與物之瑕疵間是否存有必然性
 - 一、學者提出之質疑
 - 二、判決見解之觀察
 - 三、本文見解－兩者間不具必然性
- 伍、結論

關鍵詞：凶宅、凶宅之定義、物之瑕疵、兇殺或自殺、專有部分、產權持有期間、非自然身故

Keywords : Inauspicious House, Definition of Inauspicious House, Defects of Things, Murder or Suicide, Individual Unit, The Period of Possessing The Property Right, Death in a Unnatural Way

責任編輯：張煥熙

* 現就讀於國立臺灣大學法律研究所民法組二年級，國立臺灣大學法律系畢業。

摘要

於現今房地交易市場中，房屋是否為凶宅一事已成為交易上之重要資訊，對買受人之購買意願以及房屋價值有重大影響。買受人於購買房屋後始發現其為凶宅者，多會以物之瑕疵為理由，主張解除契約等法律效果，此時，系爭房屋是否屬凶宅即成為首要問題，惟凶宅並非一法律用語，而我國內政部函令、契約範本及法院判決間又未對其有明確之定義，容易造成判決上的歧異。為確保法安定性以及交易安全，實宜對凶宅做出明確之定義，是本文以法院歷年所提出之凶宅認定因素為主軸，探討以其作為凶宅要件之適宜性，並討論凶宅與物之瑕疵間是否存有必然性，同時針對多數法院判決於推理與用語上似容易將二者混為一事為說明。本文認為應釐清者，乃凶宅與物之瑕疵間並不具必然性，即便該當於凶宅者亦有可能於個案中被認定為非物之瑕疵；反面言之，不該當於凶宅要件者亦可能被認定為屬物之瑕疵，兩概念之不同不可不辯。

Comments on the Definition of an Inauspicious House and its Inevitable Implication with Defective Things

Ching-Wen Chang

Abstract

On the housing market nowadays, whether the house is inauspicious due to a murder or suicidal event once herein is a piece of important information which has a great deal of effects upon the housing price and the buyer's volition. After the buyer bought the house and found out that it is an inauspicious one, he might exercise his rights base on such defect. This situation raises the disputes about whether the house is inauspicious or not, which the court cannot decide unanimously since "inauspicious" is not a legal term and consequently not formally defined. Besides, it also needs to be discussed for whether an inauspicious house always implies flaws inside the house. To assure the stability of decisions and the transaction security, the author contends that it is necessary to give a clear definition for inauspicious house. Accordingly, this article will investigate the elements of an inauspicious house which has been put forward by the courts over the years, and used to be asked for the deduction as an inauspicious house always implies defective existence, which was applied discordantly by the court and causing confusion. After thorough elaboration, this article suggests that "defective things" should not be inevitable with an inauspicious house; on the contrary, it's a house which is not itself inauspicious according to the definition and may still be considered as the defective things if a murder, suicide or other similar event occurred nearby.