

# CHINESE IN NEW ZEALAND: CONTRACT, PROPERTY AND LITIGATION

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*This paper examines how Chinese legal culture and law may influence New Zealand Chinese in their commercial activities, property transactions and litigation. It surveys the general profile of New Zealand Chinese in recent years, discusses the influences of the key principles of the Confucian legal tradition, and examines Chinese law on contract, property, the court system and litigation from a comparative perspective.*

*La communauté chinoise est devenue depuis quelques années une importante composante de l'économie néo-zélandaise. L'auteure s'attache à démontrer dans une perspective comparatiste, l'influence de la culture juridique confucéenne et du droit des contrats chinois dans les activités commerciales, les transactions immobilières et les modes de règlement des contentieux au sein de cette communauté.*

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This paper examines how Chinese legal culture and law may influence New Zealand Chinese in their commercial activities, property transactions and litigation in New Zealand. This is done through a discussion of the Confucian legal tradition, Chinese law on contract and property, and the court system and litigation process in China from a comparative perspective. Part I paints a broad picture of Chinese people in New Zealand. It considers the definition and diversity of "Chinese", and surveys the population, education and employment status and age groups of Chinese in New Zealand over a period of time. Part II considers the cultural background of Chinese people. It reviews the Chinese legal tradition and legal culture which forms the backdrop and often underpins the behaviour of Chinese, and highlights the likely impacts of the culture on their commercial behaviour. Cultural shifts over time are appraised. Part III considers some aspects of Chinese contract and property law

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which contrast with New Zealand law. Part IV addresses the court system and litigation process in China to shed light on the behaviour of Chinese in litigation in New Zealand.

## ***I CHINESE IN NEW ZEALAND***

### ***A Definition***

As most terms which derive from a country's name and refer to a kind of people, the term "Chinese" could denote ethnic Chinese or people with Chinese nationality, and the two categories overlap only to a certain extent, as will be explained below.

Two terms in the Chinese language broadly correspond to the above two categories. The first is *Zhongguo ren*. *Zhongguo* refers to the country of China, and often specifically means the People's Republic of China (the PRC). *Zhongguo ren* is used almost exclusively by people with Chinese nationality to refer to themselves.

The term that refers to ethnic Chinese is *hua ren*. In tradition *hua* or *huaxia* referred to the land or people which carried the Chinese civilisation, as in the concept of "*hua yi zhifen*" ("the distinction between *hua* and barbarians, outsiders"). Those people eventually became known as the Han ethnic people, Han being an early unified dynasty of China (206BC-220AD). The last imperial dynasty in China, the Qing Dynasty (1636-1912), was a multi-ethnic empire with a vast territory. The subsequent regimes, namely the Republic of China (1912-1949) and the People's Republic of China (the PRC, 1949-), inherited the multi-ethnicity and most of the territory of the Qing. The PRC has 56 recognised ethnic groups, the Han Chinese being the overwhelming majority. However since the early 20<sup>th</sup> century the idea of one "Chinese people" or "Chinese nation" (*zhonghua minzu*. *Minzu* denotes ethnicity) has emerged, developed and has been officially promoted.<sup>1</sup> Therefore *hua ren*, or ethnic Chinese, theoretically can refer to people of any ethnic groups within China, but in practice people who do not share a claim to the Han civilisation, history and culture will not call themselves *hua ren*.

*Hua ren* includes overseas Chinese who have no or very little association with the PRC, in particular those who were born overseas, descending from ancestors who left China decades or centuries ago. It often appears in references such as Malaysian

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1 See Zheng Dawei "Lun wannian Sun Zhongshan 'zhonghua minzu' guan de yanbian jiqi yingxiang" [On the evolution and influence of Sun Yat-sen's concept of '*zhonghua minzu*' in his later years] [2014] 2 *Minzu yanjiu* 61-73 for the emergence of the idea of one Chinese people. See Zhao Yongchun "Guanyu zhongguo gudai hua yi guanxi yanbian guilu de lixing xikao: hua yi guanxi de lishi dingwei, yanbian guiji yu wenhua xuanze" [A rational consideration of the evolution pattern of the *hua-yi* relationship in ancient China: the historical position, evolutionary course and culture choice of the *hua-yi* relationship] 148-156 for academic efforts to downplay the divides between *hua* and *yi* and to emphasise the idea of one "Chinese people".

*hua ren* or Singaporean *hua ren*. Such overseas Chinese sometimes refer to themselves as *tang ren*, Tang being another prosperous dynasty of China (618-907AD).<sup>2</sup> Because people with Chinese nationality usually refer to themselves as *Zhongguo ren*, in practice the term *hua ren* usually associates with ethnic Chinese from outside of China.

In between the above two groups is a kind of Chinese who can be termed people originally from China. Those people were born in China, have lived there under the PRC for some time before leaving the country, and maintain connection with China but do not retain the nationality. They may refer to themselves as *Zhongguo ren* or *hua ren* interchangeably. They carry the imprint of Chinese culture, regardless of nationality.

This paper focuses on *Zhongguo ren*, including people originally from China. Most of them will be of Han ethnicity. One reason is because Han people are the majority in the Chinese population. Another reason is that most minority ethnic groups live in less developed regions in inland China where people have fewer opportunities to travel abroad.

## **B Diversity**

The Chinese people are culturally and linguistically diverse. The size of China, the different geographical and climate conditions, and even historical experience, of different groups of people, are some of the reasons.

The agrarian nature of the society and a household registration system that has been implemented in China for nearly two millennia<sup>3</sup> mean that large scale human movement was rare, at least until recent decades.<sup>4</sup> This contributed to the maintenance of distinct cultures. Linguists believe that 297 living languages exist in contemporary China.<sup>5</sup> For example, the southern hilly province of Fujian<sup>6</sup> has over a dozen distinct languages which are not mutually comprehensible. The reach of

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2 The well-known reference of "China town" is "*tangren jie*" (literally "the street of the people of Tang") in the Chinese language.

3 The household registration system was well established by the Sui Dynasty (581-618AD) and continued into contemporary China. See Zhang Jinfan, Zhang Xipo and Zeng Xianyi *Zhongguo fazhishi* [The legal history of China] (Renmin University of China Press, Beijing, 1981) at 266-267.

4 Large scale movements of a whole clan, village or region occurred in history, mostly because of war, but it was not common. Such migrants formed or maintained groups and cultures of their own.

5 "What Languages are Spoken in China?" <[www.worldatlas.com](http://www.worldatlas.com)> (accessed 23 March 2019).

6 Where the author originally came from. The language known in New Zealand as Hokkien is the language of southern Fujian and Taiwan.

Mandarin Chinese as the country's official and standard language to all parts of the country has increased significantly with the nine-year compulsory education scheme and increased human movement in recent decades, but it remains a work in progress. The different languages nurture diverse cultures.

The difference is reinforced by the government's different economic policies towards different regions. While the Chinese civilisation originated in the inland region of the Yellow River Basin, for centuries coastal cities or regions have been more prosperous economically, more exposed to the outside world and more open to modern or foreign ideas and practices. After the opening, China designated four cities in southern coastal areas as "special economic zones" and provided these cities with favourable policies for investment and commerce.<sup>7</sup> It was not until after the coastal areas were well-developed that the focus shifted to the inland part of the country.<sup>8</sup> The different degrees of exposure to commerce form different commercial and legal culture backgrounds.

In terms of historical experience, people who left China before 1949 (the establishment of the PRC), between 1949 and 1978 (before the economic reform when China was a planned economy), or in the past 20 years after the sweeping economic changes, would have different experience and memory of Chinese culture and have different encounters with Western custom and culture.<sup>9</sup>

There is a general but informal divide among the Chinese community in New Zealand: the early settlers and their descendants on the one hand, and migrants who came in the last two decades or so (sometimes called *xin huaren* "new Chinese [migrants]") on the other. Early settlers were typically Cantonese speaking, having come from Hong Kong or its neighbouring Guangdong province. New migrants are typically Mandarin speakers, having come from various parts of China and many are well-educated. Paradoxically, the community of early Chinese settlers often has a deeper sense of the Chinese tradition than the community of the new migrants. Part of the reason is that the China that the early settlers knew is the traditional China, while the China of the new Chinese migrants has undergone sweeping changes, broken down traditions and introduced new rules.

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7 The four Special Economic Zones were established in 1980. In 1988 a fifth one, the Hainan Island in southern China, was added. In 1992 a new district in Shanghai was designated as a new special zone. All are in the coastal areas. Liu Haishan *Zhongguo jingji tequ* [Special economic zones of China] (Shanghai renmin, Shanghai, 2008) traces the design, experiment and development of special economic zones.

8 In 2010 two areas in inland China were designated as special economic zones.

9 See Part II for further discussion on historical experience.

### *C Profile of the Chinese Community in New Zealand*

Factors such as the place a person originally comes from, age, education and employment are relevant to a person's memory and understanding of their own culture and reception of a new culture, which will directly or indirectly affect behaviour in commercial activities. Using some census and immigration data, this section paints a broad picture of the origin, education level, employment status and age group of the Chinese in New Zealand.

Chinese migrants to New Zealand started to become a sizeable minority in the early 1990s and has grown ever since.<sup>10</sup> Migrants from China occupied 12-18% of the residence approvals in the 11 years from 2006/07 to 2016/17.<sup>11</sup> China has become one of the largest source countries in various immigration categories such as Skilled Migrants,<sup>12</sup> Essential Skills Workers,<sup>13</sup> Residence From Work<sup>14</sup> and Business Immigration.<sup>15</sup> This corresponds with census results which show that the increase of the Chinese population in New Zealand mainly came from Northeast Asia.<sup>16</sup>

Among the Chinese migrants in New Zealand, most came under the Skilled Migrant Category. An examination of the 2006/07 to 2011/12 cohorts who had transitioned to residence by 30 June 2017 found 69% of Chinese migrants were skilled migrants.<sup>17</sup> The key criteria for gaining points for this category are age,<sup>18</sup> tertiary education, English proficiency, skilled employment in New Zealand and relevant prior work experience.<sup>19</sup> This means that most Chinese migrants to New

10 See Ministry of Business, Innovation and Employment *Migration Trends 2016/2017* (Wellington, March 2018) Figure 2.7 "Top Source Countries of Annual Permanent and Long-term Net Migration Arrivals of Non-New Zealand Citizens, 1979/80-2016/17" ("*MBIE 2018 Report*").

11 Figure 6.2.

12 Ranging between 8% and 14% of Skilled Migrants from all source countries in the 11 years from 2006/07 to 2016/17. See *ibid*, Figure 7.1.

13 Ranging between 6% and 9% of Essential Skills Workers from all source countries in the 11 years from 2006/07 to 2016/17. See *ibid*, Figure 4.2.

14 Around 10% of the category from all sources since 2012. See *ibid*, Figure 7.5.

15 Table 7.6.

16 The statistics do not specify the number from China, but it is safe to assume that most came from China. Chinese migrants from Northeast Asia has increased about 70% from 58,026 in 2001 to 98,769 in 2013, while the number of Chinese from Southeast Asia remained about the same in the 2001, 2006 and 2013 censuses, at about 15,000. See appended Table 1.

17 See *MBIE 2018 Report*, above n 10, Table 5.7.

18 The current age limit is 55.

19 See "Skilled Migrant Category Resident Visa" at <[www.immigration.govt.nz](http://www.immigration.govt.nz)> (accessed 29 March 2019).

Zealand in the past 10 years were born in the PRC period, have at least one university degree, are capable of interaction with New Zealand mainstream society and adaptable to the new culture.<sup>20</sup>

This observation is corroborated by census statistics. The percentage of Chinese in New Zealand with higher qualifications is reasonably high. In 2006, 34.97% of Chinese in New Zealand had a tertiary qualification as their highest qualification, including those with a Level 5 or 6 diploma, bachelor, postgraduate diploma, masters and doctorate degrees. This increased to 38.66% in 2013. To put it in context, the percentage of the general population having a tertiary qualification as their highest qualification was 23.55% in 2006 and 27.48% in 2013. In particular, the percentage of New Zealand Chinese who hold bachelor or masters degrees is about double of that of the general population, while the percentage of people who do not have any qualification is about half of that of the general population.<sup>21</sup> In general, people who have received higher education know what they do not know and are likely to seek assistance from legal professionals where necessary.<sup>22</sup>

While the number of migrants under the Business Immigration category is significantly smaller than that of Skilled Migrants, China has been the largest source country of New Zealand's Business Immigration category in the past few years. In the 2013/2014 year, 175 Chinese were granted visas under either the Entrepreneur or the Migrant Investment policy, amounting to 47% of the total approvals under the Business Immigration policy.<sup>23</sup> The number grew to 266 in the 2014/2015 year (61% of the total) and to 530 in the 2016/2017 year (82% of the total).<sup>24</sup> This group has reasonable resources, commercial experience and is likely to seek assistance from lawyers where needed.

The number of migrants under the Business Immigration category remains small compared to the total number of Chinese in New Zealand. Despite the higher percentage than the general population, it is notable that about two thirds of the Chinese in New Zealand do not have a tertiary qualification. These will include those at the two ends of the age spectrum who are unlikely to be engaged in commercial activities.

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20 The opportunities New Zealand employers may be willing to give them is another matter.

21 See appended Table 2.

22 Xiaogong Wu and Jinhua Cheng "The Emerging New Middle Class and the Rule of Law in China" (2013) 13 *China Review* 43, at 63.

23 See Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2014/2015* (Wellington, November 2015) Table 7.6 ("*MBIE 2015 Report*").

24 See *ibid.*, and *MBIE Report 2018*, above n 10, Table 7.6.

The age when a person is likely to be engaged in commercial and productive activities is between 20 and 64. The censuses in the past two decades show that a large portion of the Chinese population in New Zealand were between 20 and 49 years old: 48.5% in 2001, 56.2% in 2006 and 49.6% in 2013. These are in contrast to 42.7%, 42% and 39.3% in the respective years for the general population. In particular, the percentages of the year group of 20-24 were almost double, and in 2006, almost three times, those of the general population. The percentages of the 50-64 year-old group took up a further 12.3% in 2001, and 15.6% in 2013, both slightly lower than those of the general population.<sup>25</sup> Therefore about 55-60% of Chinese in New Zealand are at the age of productivity. All migrants originally from China, if they were younger than 65 in 2013, would have been born in the PRC period. Many of those under the age of 35 in 2013 would have been born under the one-child policy.<sup>26</sup>

In all three censuses, the percentages of the age group of 0-19 years old were only slightly different from those of the general population, and the percentages of those over 65 years old were about half of those of the general population.<sup>27</sup> Most Chinese migrants and visitors in New Zealand under 25 or so would have a lot less life experience outside of school or university than their Kiwi counterparts because of the value placed on formal education by Chinese people. Most of those over 65 years old are likely to have children to take care of their affairs.<sup>28</sup>

In contrast to the higher education level and younger age group, the percentage of the Chinese people in employment (full-time or part-time) has been lower than that of the general population. In the 2001 census, Chinese who were employed occupied 86.42% of those Chinese in the labour market and 42.96% of the total number stated (aged 15 and over). The general population had 92.55% of those in the labour force and 61.85% of the total number stated being employed. The figures of the Chinese improved in the 2013 census to 91.03% of those in the labour force and 52.04% of the total stated Chinese, but they were still lower than the figures of the general population, standing at 92.91% and 62.41% respectively.<sup>29</sup>

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25 See appended Table 3.

26 The possible implications of which will be discussed in Part II.

27 See appended Table 3.

28 Some implications of these will be discussed in Part II.

29 See appended Table 4.

Overall, the Chinese population in New Zealand has increased notably in the past 20 years, from 2.81% of the total population in 2001 to 4.1% in 2013.<sup>30</sup> Many of those who came from China were born in the PRC period and are at the commercially active age. About one third of the total Chinese in New Zealand are well-educated, suggesting their ability to interact with New Zealand culture and to seek legal assistance where necessary.

The diverse education level, age group, employment status and place of origin mean that the idea of there being one single "Chinese culture" should be treated carefully. That said, the Confucian tradition remains far- and wide-reaching for ordinary Chinese people because it penetrated every aspect of the society, affected people's lives and has been passed on from generation to generation.

## **II THE LEGAL TRADITION AND CULTURE IN CHINA**

Some aspects of the Chinese legal culture have long lasting influence on Chinese people and affect their dealings with commerce and property. Some fundamental values and traditions are shared by most Chinese people, albeit to different degrees. Changes in the economic, social and legal environments have also altered the tradition in some aspects.

### **A Historical Developments**

Boasting a legal history of 4,000 years,<sup>31</sup> the Confucian legal tradition is one of the seven major legal traditions of the world.<sup>32</sup> The Confucian philosophy took the name from the great thinker and educator Confucius (551-479 BC), whose philosophy was but one school among many during the Spring and Autumn period and the Warring States period (770-221 BC).<sup>33</sup> Confucian thought was suppressed and Confucian scholars persecuted during the Qin Dynasty (221-206 BC). The Qin Dynasty was established by the Qin state which conquered the warring states, unified China, replaced the feudal society with a bureaucratic system of government, and favoured the Legalism school of thought over Confucianism. However, the

30 The numbers of Chinese in the 2001 and 2013 censuses were 100,683 and 163101 respectively. See the population numbers in Statistics New Zealand "Selected ethnic groups (total responses) by age group, for the census usually resident population count, 2001, 2006, and 2013 Censuses (RC, TA, AU)" (March 2013), available at [www.nzdotstat.stats.govt.nz](http://www.nzdotstat.stats.govt.nz).

31 Zhang, Zhang and Zeng, above n 3, chs 1 and 2. Among the claimed 4,000 years, the period of the *Xia* and *Shang* kingdoms (cir 21<sup>st</sup>-11<sup>th</sup> century BC) lacked concrete or detailed records and the state and governance was in the early stage of development.

32 See H Patrick Glenn *Legal Traditions of the World* (5ed, Oxford University Press, Oxford, 2014) in general.

33 The phenomenon was known as the "contention of a hundred schools of thought" (*baijia zhengming*).



Confucian tradition became the orthodoxy during the reign of Emperor Wu (141-87 BC) of the Han Dynasty (206 BC-220 AD), and continued to be so till the late 19<sup>th</sup> and early 20<sup>th</sup> centuries.<sup>34</sup>

China underwent significant changes in the 20<sup>th</sup> century. The last imperial regime, the Qing Dynasty (1636-1912), made unsuccessful efforts to reform the legal system along European lines in its late stage.<sup>35</sup> After the Qing Dynasty ended in 1912, for about 70 years there were some significant but short-lived changes, which meant that any new models had little opportunity to be impressed on the people in general.

The Republic of China (ROC, 1912-1949) had a different political structure from the imperial period, but it attempted to continue the reform of laws started in the late Qing period. The brief and turbulent period of the Republic of China, marred by competition and conflicts among war lords, the Japanese invasion during World War I (1938-1945) and the subsequent civil war (1945-1949) with the Communist-led segment of the country, marked a transitional period.

Established in 1949 by the Communist Party following Marxist legal theory and modelled on the Soviet socialist legal system, the PRC is a sharp contrast to the previous imperial regimes in China. It also has a legal system that is distinct from Western ones. On its establishment, the PRC repudiated any connection with the previous regimes and abolished all existing laws of the ROC.

Before the construction of a socialist legal system was completed, China entered into the lawless period of the Culture Revolution (1966-1976). Confucius and Confucian philosophy became a target for criticism and attacks, traditional values were abandoned and class struggle was extended to struggles in all forms of human relationship.

Having experienced the lawlessness and considering the poor condition of the country, in 1978 the Chinese government started its opening-up policy, endeavouring to engage in economic development and to rebuild a legal system. Since then China has achieved rapid economic development and made significant progress towards modernising its laws and legal system, including the promulgation of a comprehensive body of legislation and the cultivation of a well-trained legal profession and qualified judicial officers. China has modernised many of its laws to

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34 Although scholars have also recognised that the Chinese legal tradition was Confucianism at the surface with Legalism at the core.

35 See Albert HY Chen *An Introduction to the Legal System of the People's Republic of China* (Butterworths Asia, Singapore, 1992) ch 3 for a fuller review of the legal reforms in the late Qing and Republic of China periods and the construction of a legal system in the early PRC period.

be consistent with international practice, especially in the economic and commercial areas.<sup>36</sup>

At the same time, there has been a trend to revive Confucian values by the government and among the people,<sup>37</sup> possibly an effort to correct the moral decline or simply a return to the nation's roots. Chinese leaders in the past two decades have proposed "ruling the country with virtue" (*yide zhiguo*) to go alongside "ruling the country according to law" (*yifa zhiguo*) and called for the building of a "harmonious society" (*hexie shehui*).<sup>38</sup>

The combination of Socialist ideology, Confucian tradition and Western institutions and practices, and the constant changes and development in the past century, would have subjected the people to different influences when acting in the commercial context. In the past few decades, on the one hand law was not always accessible; primary legislation was often supplemented or in some cases even substituted de facto by local regulations which varied in content, standard of drafting and accessibility; and people often acted under a mixture of state law and customary notions and practice. On the other hand people are increasingly aware of the need to comply with the state law following the rapid economic development and modernisation of law. The culture is still in the process of transition and development.

### ***B The Confucian Tradition***

The Confucian tradition focused on *li* (propriety, rites), which referred to socially binding norms and moral restraints that regulated all areas of social life and human relations. In contrast, in historical China<sup>39</sup> law (*fa*) regulated criminal offences. Conduct seriously breaching *li* would be dealt with by law.

As such *li* was more pervasive than law. The Confucian tradition was adhered to for 2,000 years. It was deep-rooted in the culture and among the people. It was passed on as a way of living and influenced the way people did business.

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36 See Chen Jianfu *Chinese Law: Context and Transformation* (Rev ed, Brill Nijhoff, Leiden, 2015) ch 2 section 6 for details.

37 For example, see Wang Xuedian (trans Stefano Gandolfo) "Where is China Headed? New Tendencies in the Humanities and Social Sciences" (2017) 3 *Journal of Chinese Humanities* 156-176 for discussion of the Chinese leaders' exaltation of Confucianism. It is no coincidence that the China-sponsored overseas language learning facilities are called Confucius Institutes.

38 The slogans were proposed by the previous leaders Jiang Zemin (1989-2002) and Hu Jintao (2002-2012) respectively, but they have nevertheless continued under the current leadership.

39 In this paper historical China refers to China up to the end of the last Dynasty, the Qing Dynasty, in 1912.

The tradition emphasised hierarchical social and family structures, preserved the authority of fathers and husbands, officials and one's superior, valued social harmony, preferred collective interests over that of individuals and the obligation-based legal relationship rather than the rights-based.<sup>40</sup> These have some implications for people's dealings with commerce and property, as well as behaviour in litigation.

### *1 Respect for authority*

Chinese people respect, even to the degree of submission, those in authority, including officials, government departments or those who hold power over them ("the superior"). This tradition is reinforced by the authoritarian state of the PRC.

As a consequence, people generally do not directly challenge authority. The usual approach is to live with undesirable decisions made by the superior. Where it is difficult to live with undesirable situations, the next choice is to get around it.<sup>41</sup> Lack of protest or complaint from Chinese people does not necessarily mean that they agree or accept the decision or outcome. Many will not complain until a situation is unbearable and there is no way of getting around it. As such they may miss the opportunity to assert their legal rights.

### *2 Family and collective interests*

Family continues to be an important social unit in China. Within the family, relation by blood is usually more important than relation by union, such as marriage. This means that often people perceive their parents and children, and in some cases siblings, as more important than the spouse or partner.

Although the law of trust was not introduced with modifications in China until 2001,<sup>42</sup> the operation of one individual holding property on behalf of the family or a certain group was not unknown to the Chinese. For example, a piece of land could be registered under the name of one member who managed the land for the benefit of the other members, who were all male descendants of the family or clan and who were beneficiaries as tenants in common.<sup>43</sup> It continues to be common in

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40 See Chen, above n 35, at 12-16.

41 Zhihong Chen and Emma Pitt "Chinese Culture and the Law" (Dec 2013) LJ 46, at 49, notes that "Chinese are used to challenging the regulations that impact their daily lives". Arguably this is the exception rather than the norm.

42 Lusina Ho, Rebecca Lee and Jin Jinping "Trust Law in China: A Critical Evaluation of its Conceptual Foundation" in Lusina Ho and Rebecca Lee (eds) *Trust Law in Asian Civil Law Jurisdictions: A Comparative Analysis* (Cambridge University Press, Cambridge, 2013) at 80.

43 See Lusina Ho and Rebecca Lee "Reception of the Trust in Asia: An Historical Perspective" in Ho and Lee (eds), *ibid*, at 13-14. The authors classify the interest as a life interest, but in fact each owner's share could be inherited by his descendants without having to return to the pool, and the owners could also request to sever the property. Arguably it was an estate akin to fee simple. The

contemporary China for a member of the family to hold, manage and dispose of family property, including those under the name of another family member. Exactly who will hold the property depends on various factors, such as family dynamics or the need to get around restrictions.

The closeness of family relations is extended to the clan. It is not uncommon for a clan to maintain a book of genealogy (*zupu*) which can date back centuries. Many villages or towns consist exclusively or predominantly of people with the same surname, or in other words, the wider clan. Loyalty to the clan can also translate to a sense of camaraderie between people from the same geographical area or who speak the same dialect, once they have left the homeland. This tendency of grouping around a common ancestry, place of origin or dialect extends to a tendency to associate with each other because of other common factors, such as having attended a same school or university or served in the army at around the same time.

The tendency to form close relations on the basis of a common factor becomes an inclination to treat people differently according to whether they are close relations or strangers. They affect the degree of formality in people's commercial dealings. In general dealings with a stranger will be more at arm's length and more formal, while one may feel uncomfortable to insist on their rights or spell out all terms of an agreement with a close relation. This will often become an issue when a relationship and cooperation breaks down.<sup>44</sup>

### 3 *Social harmony*

Social harmony is a Confucian value and has been trumpeted in China again in recent years. Chinese generally do not like conflicts, and will usually try to resolve disputes through a non-confrontational method.

The Confucian tradition strived to achieve an ideal society of "no litigation" (*wusong*) and outlawed professional legal advocates (*songshi*) in any legal proceedings, for fear that they would inflame more conflicts.<sup>45</sup> This not only impacted on litigation behaviour,<sup>46</sup> but also impeded the development of a legal

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modern trust law in China is different from this arrangement as it mainly focuses on regulation of development of collective investment funds and non-bank financial institutions. See *ibid*.

44 Guy Olivier Faure and Tony Fang "Changing Chinese values: Keeping up with Paradoxes" (2008) 17 *International Business Review* 194, at 202, has a similar observation. More will be discussed about terms of contract in Part III.

45 This is a generally recognised fact. For example, see Zhang Jinfan *Qingchao fazhishi* [Legal history of the Qing Dynasty] (Zhonghua shuju, Beijing, 1998) at 628-630.

46 This aspect is further explored in Part IV.

profession. The lack of a legal profession in turn negatively influenced the development of a modern legal system and access to law.

In contemporary China, the quality and number of lawyers have increased significantly. The number of practising lawyers nearly quadrupled in just over a decade, from 90,602 in 1995 to 35,7193 in 2017. The ratio of lawyer to general population has increased from one lawyer for every 13,368 people in 1995 to one lawyer for every 3,892 people in 2017.<sup>47</sup> This contrasts to one lawyer per 365 people in New Zealand in 2018.<sup>48</sup> People in China are more used to going to a lawyer for complex financial or commercial matters than previously, but legal service is still less accessible, and less accessed, than in New Zealand.

Unlike China where custom, common sense and local rules still play important roles in people's lives, law in New Zealand is a very specialised area. Those Chinese who do not use a lawyer in New Zealand may not know the "right" way of doing things. They could miss out on their rights or do something that could be invalid or illegal because of technical deficiencies of which they are unaware.

#### 4 *Obligation-based relationship*

While individuals have legitimate interests, the emphasis on propriety requires one to have "the predisposition to yield rather than the predisposition to insist".<sup>49</sup> This creates something of a conundrum where one has a sense of entitlement but feels obliged not to insist on it. It is less of a problem between strangers than between close relations. Chinese people are willing and able to negotiate with strangers,<sup>50</sup> but between family and friends people do not necessarily spell out the terms of the bargain, despite their sense of entitlement. The concern for maintaining propriety as well as for harmony prevents many from standing up for their own full benefits until they have to, by which time it is usually too late.

The sense of propriety and the obligation-based relationship does entail a requirement, if not explicit, for reciprocity. Rights may not be claimed at the outset, but they are expected as a return for a favour or a concession given. When favourable terms are not reciprocated, the scale of equity will lose balance and cause grievance or disputes. While Western courts, and increasingly contemporary Chinese courts,

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47 Calculated from raw data in *China Statistics Yearbook 2018*, available at [www.stats.gov.cn](http://www.stats.gov.cn).

48 See New Zealand Law Society "Snapshot of the Profession 2019" in (2019) 926 *Lawtalk* 27 at 27.

49 BI Schwartz "On Attitudes toward Law in China" in M Katz (ed) *Government under Law and the Individual* (American Council of Learned Societies, Washington DC, 1957) 27, at 32, quoted in Chen, above n 35, at 15.

50 Chen and Pitt, above n 41, at 49.

may find for or against a party because of procedural or technical issues, in the eyes of ordinary Chinese people, the key is not the fulfilment of legal techniques, but the fairness of the transaction and the maintenance of the equitable scale. There continues to be a focus on the substance of fairness while ignoring procedural defects.

### *C Shifting Culture*

Chinese legal culture has undergone shifts over time, and the changes have a mixture of different influences on individual participants in the commercial practice.

As mentioned earlier, the PRC severed any connection with the "old China" and introduced the Marxist theory of class struggle and the dictatorship of proletariat. Under Chairman Mao, China underwent one mass movement after another, culminating in the chaotic Cultural Revolution. Brutal treatment of fellow human beings and betrayal by colleagues, neighbours, friends and even family members were widespread. These destroyed trust among people from which the society has not recovered. One consequence is that people are extremely cautious in entering commercial transactions. Many will require not only written evidence of an agreement or transaction, but also seek to be in a not-disadvantaged position, if not an advantaged position. An example is that, the two largest online shopping platforms in China, *Taobao* and *Jingdong*, both maintain a third-party payment system to guarantee retailers receive payment and purchasers receive the goods to their satisfaction.<sup>51</sup> People are increasingly conscious of preparing for situations of dispute when they enter into commercial transactions.

The one-child policy has caused change of family structure and focus. The one-child policy was formally propounded in 1979,<sup>52</sup> and was subsequently implemented across the country. The policy was stricter in cities than in rural areas, because of the need for a sufficient labour force in the country. Most urban families have three members. Although the effects of the policy on the only-children's psychology and personality are subject to debate,<sup>53</sup> there is no longer a patriarch in the family, as the

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51 A direct contrast to the New Zealand online sales platform Trademe which does not provide similar guarantees.

52 See Chen Muhua (the then vice premier) "Shixian sige xiandaihua, bixu youji huadi kongzhi renkou zengzhang" [Realising the four modernisation calls for methodical control of population growth] in *People's Daily* (11 August 1979) page 2. The policy of reducing population through birth control was introduced earlier, but 1979 marked the beginning of the one-child policy. See "Zhongguo jihua shengyu zhengce yanbian xiaoshi" [A brief history of China's birth control policy] at <[www.yicai.com](http://www.yicai.com)>.

53 See discussions in Feng Xiaotian "Zhongguo dusheng zinu: xiaohuangdi haishi xin gongmin" [China's only-child: 'little emperor' or new citizen] (2013) 5 *Twenty-first Century Southeast Asia Social Science* 25-34.

focus of family shifts from the father to the only child. This reduces the authority of the grandfather or father of the family, removes one from the environment of a large family and lessens the sense of collective interest.<sup>54</sup> Generally, individuality is on the rise.

As between parents and the child, the child would usually expect the parents to provide all that they have to support the child in endeavours, while the parents would expect the child to care for them even long before the parents enter retirement. Mutual reliance between parents and the child seems to be stronger than where there are several children, and a parent's property could be under the child's name or vice versa. The closeness of the nuclear family members means less clear division and appropriation of family property.

While the vast rural areas may have experienced less impact from the Cultural Revolution and the one-child policy, urbanisation has significantly changed traditional communities. In 1949, 89.36% of the Chinese population lived in the country where tradition prevailed. Little was changed at the beginning of the economic reform, when the rural population still occupied 82.08%. Once the economic development sped up, urbanisation steadily increased. The rural population was reduced to 63.78% of the total population in 2000 and to 41.48% in 2017.<sup>55</sup> People who were "migrants" (*liudong renkou*)<sup>56</sup> in their own country amounted to 121 million in 2000. The number doubled to 244 million in 2017.<sup>57</sup> Disconnection from the traditional community further distances people from their tradition.

Other factors also pushed the culture shift. The increased ease of travelling abroad and of exposure to other cultures, and the wide use of internet and online transactions,<sup>58</sup> all increased the tendency to be outward- and forward-looking and weakened the hold of the Confucian tradition.

Overall, the Confucian tradition remains fundamental to Chinese living. However, as the nuclear family structure, urbanisation, globalisation and technology

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54 Although in some cases, cousins and children of parents' friends are often treated as though they are brothers and sisters as the traditional longing for a large family persists.

55 National Statistics Bureau (China) *China Statistics Yearbook 2018*, Table 2.1.

56 Referring to people who do not have permanent residency in the city they live in. Under the household registration system, each person has a place of permanent residence which is not within the individuals' power to change.

57 *China Statistics Yearbook 2018*, Table 2.3.

58 Cell phone apps have replaced cash and credit cards as the main medium of payment and money transfer. They are used a lot more widely in China than in New Zealand.

advancement increased their impact on the Chinese people, tradition has been diluted. Different factors play different roles and can often work together to produce complex results. Each case is best examined against relevant factors, some of them very different from the New Zealand context.

### ***III ASPECTS OF CHINESE LAW***

Some Chinese people may bring their understanding of certain aspects of Chinese law or legal practice to New Zealand and assume similar practice in the commercial activities and property transactions in the new country.

In imperial China, the state law mainly dealt with criminal offences and regulation of official conduct, and seldom concerned itself with private law matters. A feature of the Chinese legislation was that legislation dealt with the principles and had to be supplemented by regulations and precedents. Commercial activities existed in historical China, sometimes very dynamic. Consequently, sophisticated customary law developed to regulate commercial activities and property matters.

After 1978, China quickly enacted a number of laws to regulate economic activities and individuals' commercial or property relationships. As the Chinese tradition was never elaborated in legislation and little concerned commercial matters, many of the laws after the opening up set out only basic principles and needed to be supplemented by the Supreme People's Court's interpretation. Some of them have since been replaced by more sophisticated Acts (for example the Contracts Act 1999), while some were only recently enacted (for example the Property Law Act 2007).

This part highlights some aspects of Chinese contract law and property law that are in contrast to that of New Zealand and may mislead Chinese in New Zealand when they engage in commercial or property matters.

#### ***A Contract Law***

Under the early PRC's planned economy and state management or ownership of enterprises, commercial contracts were hardly needed. However this was only a short period of anomaly in the history of China. China had a long tradition of written contracts, which emerged since the Western Zhou period (11<sup>th</sup> Century BC to 770 BC) when transactions of land, slaves, jewellery and other valuable commodities were evidenced in writing.<sup>59</sup>

After the opening up, as one of the earliest pieces of legislation, the Economic Contracts Act was enacted in 1981 and came into force in 1982. The Act had only

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<sup>59</sup> See Zhang, Zhang and Zeng, above n 3, at 61.



47 sections. It set out general principles for the formation, termination and performance of contracts, as well as dealing with some categories of contracts, such as sales and purchase agreement, lease agreement, loan agreement and transportation of goods agreement.<sup>60</sup>

The Economic Contracts Act required contracts to be in writing except those that could be performed immediately.<sup>61</sup> This was consistent with the Chinese tradition that important contracts had to be in writing.

The Contracts Act 1999 replaced the Economic Contracts Act and is a significant expansion from that Act. It contains 428 sections and consists of two parts, one on general principles and one on 15 categories of contracts.<sup>62</sup> The Part on general principles closely follows the International Institute for the Unification of Private Law (UNIDROIT) Principles of International Commercial Contracts.<sup>63</sup>

The Contracts Act 1999 recognises a written or oral contract to be a valid contract, unless the law provides otherwise. Because of the long tradition and difficult access to law, it is likely that most people will continue to have some form of writing for their contracts.

Exceptions to the norm of written contracts could exist. This is particularly so when parties are family or friends. As written contracts are perceived as evidence for transactions, and requiring evidence for agreements with one's family or friends would appear to be distrustful, many harmony-loving Chinese will find it difficult to ask for a written contract with family, friends or close acquaintances. In cases of close relationship, it is honour that binds the parties, rather than the written contract. Nevertheless, each party would believe that a binding contract exists between them if terms of the agreement have been discussed and words of confirmation have been spoken unequivocally. Where the subject matter is important enough or the amount involved is substantial, people are likely to ask for or try to obtain something in writing even between close relations.

The technique for drafting legislation, featuring brevity, was similarly adopted in contracts. This was sufficient when the society operated on the basis of mutual trust

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60 Contracts involving foreigners and contracts involving technology were separately provided for by two other Acts, enacted in 1985 and 1987 respectively. These three Acts provided general guidance for contract-making until they were repealed in 1999 and replaced by the Contracts Act.

61 Section 3.

62 Including categories of sale and purchase, supply of energy, gift, loan, lease, hire purchase, certain types of contract for service, construction, transport of people and goods, technology, bailment, storage, agency (disclosed and undisclosed) and brokerage.

63 Chen, above n 36, at 589.

and was governed by social pressure. It is increasingly becoming insufficient as modern life becomes more complicated. Parties who are not assisted by competent lawyers do not necessarily turn their minds towards complex or ambiguous matters. When disputes arise, they will often resort to the principle of fairness rather than to law.

The general principles of offer and acceptance are broadly similar to those of New Zealand. The Act notes that a contract will generally include provisions about the parties, the subject matter, quality and quantity, price or remuneration, details of performance, liability for breaches and dispute resolution.<sup>64</sup> The use of "generally" indicates that it is not essential to have all the provisions for a contract to be valid. In particular, unlike under the Common Law, consideration is not required for the formation of a contract under Chinese law.<sup>65</sup> Lacking the necessity for consideration, a Chinese party may have a different perception as to whether or when a contract is formed from that of a New Zealand party.

The place a contract is performed affects the choice of courts when it comes to litigation.<sup>66</sup> Chinese courts are funded by the local government and in general could be protective of local businesses. Because of this, Chinese parties are often mindful of choice of jurisdiction through making sure that the contract is performed at one's desired locality where possible.

## ***B Property Law***

Some practice in China concerning real property has a long tradition, while the contemporary state law on real property is developing. This creates a complex understanding about property law among the people.

### *1 The tradition*

China developed a complex real property law much earlier than the Western countries. A feudal system was developed in the *Shang* period (16<sup>th</sup>-11<sup>th</sup> century BC) and perfected in the Western *Zhou* period (11<sup>th</sup> century BC – 770 BC).<sup>67</sup> During the Spring and Autumn period (770-476 BC), private land ownership emerged and land could be bought and sold. A bureaucratic system replaced the feudal system when

64 Section 12.

65 Chen, above n 36, at 589. Notably an agreement of gift is a contract under the Contracts Act.

66 The court of the locality where the defendant resides (for individuals) or is registered (for organisations) and the court of the locality where the contract is performed both have the jurisdiction. Civil Litigation Act 1991 s 23.

67 See Zhang, Zhang and Zeng, above n 3, at 34-35 and 60-61 for a description of the granting of feuds, and the relationship between the King and his lords and that between the lords and their under-lords. These appear to be very similar to the English feudal system.

the Qin state conquered the various states and established the first unified empire (221-206 BC). In the subsequent millennia, new ruling houses of successive dynasties often reformed land grant schemes, but the land ownership system did not change. It was not unlike the English tenure system where the Crown owned the radical title and the subjects had the fee simple.<sup>68</sup>

The state law focused on criminal matters and administration of officials, and did not try to interfere with private law matters unless where state administration or public order was concerned. This allowed dynamic development of customary practice on land transactions. Where the government intervened for state administration purposes, complex practices to cope with or to bypass undesirable regulations would usually be developed.<sup>69</sup>

As noted earlier, land transactions were almost always in writing, even among family members and in cases of dividing family land. In sales and purchases and in long-term leases, usually the vendor or the lessor would make up a document called "deed" (qi), which would be impressed with the seals (or thumb prints if no seal) of the vendor or the lessor (as the case may be), a middleman<sup>70</sup> and one or more witnesses. The deed would be retained by the purchaser or the lessee as the proof of title.

## 2 *Land ownership and legislation under the PRC*

The PRC has changed the basic land tenure and does not allow private land ownership. The Constitution Act 1982 stipulates that the state is the owner of urban land, and the people own rural land in collectives (such as a village). Before the economic reform in 1978, no private land transactions existed, as land was not only state or collectively owned, but also state or collectively controlled and managed. After the opening up in the late 1980s and early 1990s, a real property market emerged and has continued to develop.

Legislation in the property law area has been slow. The Land Administration Act 1986 chiefly concerns the state administration of land, as the name suggests. The Urban Land and Housing Administration Act 1994 also largely concerns the grant of land use rights (*shiyong quan*) to property developers, although it provides some

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68 See a brief discussion of this point in Ruiping Ye *The Colonisation and Settlement of Taiwan, 1684-1945: Land Tenure, Law and Qing and Japanese Policies* (Routledge, London and New York, 2018) at 76-77.

69 For example, a "dual [level] ownership" system was adopted in many cases to cope with the difficulty of land tax administration, and in Taiwan, to bypass the ban on purchasing aboriginal land. See *ibid*, ch 4.

70 It was essential to have a middleman even if the parties knew each other.

general principles regarding transfer of land use rights and housing ownership, including sale and purchase, lease and mortgage of such rights. Land use rights vary in length of terms depending on the purpose of use.<sup>71</sup> Public or private entities and individuals are allowed to own buildings or apartments built on land.

After much anticipation and debate,<sup>72</sup> a Property Law Bill was introduced in 2005; it was enacted in 2007. The Act provides for the creation, modification and transfer of property rights, ownership, usufructuary rights (*yongyi wuquan*) and mortgages and pledges.

### 3 *Creation and transfer of property rights*

Before the Property Law Act 2007, it was unclear when the creation or transfer of property rights took effect. Under the Urban Land and Housing Administration Act, real property rights (including land use rights and ownership over the building or apartment) and the transfer of such rights are required to be registered. However that Act does not spell out the legal effect of registration. The only consequence of failing to register rights over urban land and housing is that the rightsholder cannot transfer the rights. The Act also requires leases to be "registered for information" (*dengji bei'an*), but in practice few people do so.

In historical China, land deeds were more important than registration. The government retained a register of land, but it was for tax purposes only. In cases of dispute, the register was weaker evidence of ownership than land deeds. The tendency to rely more on written contracts than on the government record is changing. Rightsholders usually register their titles, mainly because housing is too important an asset for owners to take the risk, even if they do not fully appreciate the legal implications of contract and registration. The difference between the legal effects of land registration between China and the Torrens system in New Zealand means that some Chinese people may not realise that it is the registration that confers title.

The Property Law Act 2007 (PRC) elaborates on and improves the system of land registration. The creation, alteration and transfer of real property rights is validated by registration unless the law stipulates otherwise, but a contract creating, altering or transferring real property rights is valid once it is form, and the validity of contract

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71 Seventy years for residential use, 50 years for industrial use and 40 years for retail and hospitality. See Provisional Regulations for Grant and Transfer of State-owned Urban Land Use Rights 1990 reg 12.

72 One of the debates concerned whether protection of private property rights might jeopardise the socialist system of public ownership. See Chen, above n 36, ch 10 for an account of the birth of the Property Law Act 2007.

is not affected by non-registration.<sup>73</sup> This means that a purchaser has the right to compel the creation or transfer of real property rights according to the contract. This brings the land registration system closer to the Torrens system, but the law on registration is still ambiguous and less developed than the Torrens system. Many ramifications of the Torrens system are not present in the Chinese law.

#### 4 *Usufructuary rights and lease*

The Property Law Act 2007 (PRC) does not change the land ownership structure, but provides legislative guidance for usufructuary rights. Usufructuary rights are defined as rights to possess, use and benefit from other's property.<sup>74</sup> They include land use rights over state-owned land (*guoyou tudi shiyong quan*), land use rights over rural collective land for business ventures through contracting with the rural collective (*chengbao jingying quan*), land use rights by members of the rural collective for residence, and servient rights.<sup>75</sup>

Use rights over state-owned land and contractual use of rural land are in essence the same as fixed-term leases in New Zealand, although they are not so regarded in Chinese law or by the Chinese people. State-owned land use rights can be transferred, leased, mortgaged and inherited, so long as the term does not exceed that granted by the state. The state also guarantees not to withdraw the grant unless for public works purposes.<sup>76</sup> The Property Law Act 2007 provides that use rights over urban residential land are automatically renewed, a provision that clarifies the situation and calms many anxious minds.<sup>77</sup>

The law allows the rural collective owners (usually through the village committee) to grant land use rights to individual members of the collective or to businesses and individuals outside of the collective for the purpose of agricultural, industrial or other enterprises.<sup>78</sup> The terms of contractual use of rural land range between 30 and 70 years, depending on whether the land is agricultural land, pasture or forest land.<sup>79</sup> Contractual users are guaranteed the estate for the period of the contract, as the law specially stipulates that rural land owners cannot request the

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73 Sections 9 and 15.

74 Section 117.

75 See Property Law Act, Part 3. Servient rights are discussed in section 5 below.

76 Provisional Regulations for Grant and Transfer of State-owned Urban Land Use Rights 1990 reg 42.

77 Property Law Act s 149.

78 Non-agricultural use needs special permission. See s 128.

79 Rural Land Contractual Use Act 2002 s 21.

return of the land before the contract expires.<sup>80</sup> They can also transfer the use rights with consequences similar to a Common Law assignment or sub-lease.<sup>81</sup>

The term "lease" (*zu*) has experienced fundamental changes of meaning. In historical China when private ownership was permitted, and when concepts akin to Common Law tenure and estate existed, lease had a wide ambit. It included permanent leases, fixed-term leases and short-term tenancies. Under contemporary Chinese law, this has changed. The Property Law Act 2007 does not provide for leases, which suggest that lease is not a property right. Instead the Contracts Act provides for lease contracts, but does not distinguish between leases of moveable and immovable property.<sup>82</sup> Against the background of difficult enforcement of contracts in China, in practice either party could terminate the lease provided that they are willing to forfeit the bond or pay the agreed penalty.<sup>83</sup>

The lack of private land ownership, the classification of the "land use rights" and the nature of "lease" in China could lead a Chinese person, either as a lessee or a lessor, to enter into a lease agreement in New Zealand without fully appreciating the legal consequence.

## 5 *Servient rights*

Chinese people are not familiar with servient rights as they did not exist in Chinese law until the Property Law Act 2007. The General Principles of Civil Law 1986 (now replaced by the General Provisions of Civil Law 2017) codified the good neighbour principle and provided for "neighbouring rights" (*xianglin quan*) which requires rightsholders of neighbouring land to "correctly deal with neighbouring relationships such as water use, water discharge, passage and access to air and light".<sup>84</sup> It provided that those who caused obstruction or damage to their neighbours must stop the infringement and pay damages. This was as far as the protection went.

The Property Law Act defines servient rights as rights to use other people's real property to increase the value of one's own real property, but it does not specify what kind of rights constitute servient rights. In practice, easements and land covenants have been developed as servient rights. Servient rights are registrable but registration

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80 Property Law Act, s 131; Rural Land Contractual Use Act 2002 s 27. There is no provision on whether the user can return the land on their own motion.

81 Rural Land Contractual Use Act 2002 ss 34 and 44.

82 The provision in s 229 that ownership change of leased property does not affect the original lease agreement seems to suggest that leases go beyond privity of contract.

83 Unless the stake of termination is high and the other party may pursue legal action to dispute the termination of contract and compel actual performance.

84 Section 83.

is not compulsory; the term of such rights cannot exceed the term of the state-owned land use rights or contractual use of rural land; they are automatically transferred to the new owner of land use rights and contractual use rights in cases of transfer, but the contract can stipulate otherwise; and if the dominant owner abuses the rights or fails to pay agreed fees, the servient owner can cancel the contract and terminate the rights.<sup>85</sup> In this regard servient rights in China are different from those in New Zealand. The effect of contract and the freedom to cancel suggest that they are more contractual rights than real rights.

The Act also continues the provision in the General Principles of Civil Law for the "rights of neighbours"; it similarly requires a real property owner to provide "necessary convenience" of water flow, drainage, passing over of person and passing through of cables and pipes, and not to obstruct light and air.<sup>86</sup> There appears to be some overlap between servient rights and rights of neighbour, but the provision of both suggests that there are some distinctions, which are not spelt out. It seems reasonable to understand the provisions as requiring the grant of servient rights under the principles of good neighbourliness. Neighbouring rights are also likely to be wider than servient rights.

Because of the foreign origin and the recent introduction of servient rights, and because of the ambiguity in the Property Law Act regarding the nature and ambit of servient rights, Chinese parties are less likely to understand the full implications of entering into arrangements concerning easements and covenants.

## 6 *Mortgage*

In historical China, land owners either provided the land deed (*tai*) or surrendered possession of land (*dian*) as a means for security. The former was in essence mortgage, but it was not as popular as the latter which resembled pledge. Modern mortgage has a history of 30 years or so in China.

A new provision of the Property Law Act 2007 is that a mortgage of real property must be registered and it becomes valid upon registration.<sup>87</sup> For a long time banks required mortgagors to surrender their certificate of housing (*fangchan zheng*) and retained it for the full course of the loan. The physical possession of the certificate of housing was to prevent the title holder from selling the property fraudulently or from refinancing the same property which might complicate the process when there

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85 Sections 158, 161, 164 and 168.

86 Sections 86 to 89.

87 Property Law Act s 187. The Urban Land and Housing Administration Act 1994 provides for mortgage but does not require registration.

is a default. This somewhat mirrored the historical practice of surrendering land deeds for mortgages. It was also because the law was unclear on the legal effect of registration and the priority between the register and on the certificate of housing. The Property Law Act 2007 has clarified these aspects<sup>88</sup> and most major banks have abandoned their practice to retain physical possession of certificates of housing.

The mortgagee and the mortgagor can negotiate to transfer the property as a means of repayment for the debt, but other creditors can apply to the court to cancel such agreements if their interests are detrimentally affected.<sup>89</sup> The priority of lenders is similar to the law in New Zealand.

One thing to note is that principles like the law of fixtures under the Common Law are non-existent. A mortgagee does not enjoy rights or benefits over buildings erected subsequent to the mortgage.<sup>90</sup>

## 7 Unit titles

Most housing in urban China is in apartment building blocks. The rights and obligations of the unit owners were not universally defined until the Property Law Act 2007, which still leaves room for clarification and improvement. Local government rules (which were made often to address issues as they arose and to deal with government administration), common sense and common consensus provide a framework for parties' behaviour. The Property Law Act seems to be a codification of the general practice in this regard.

In general, each unit owner owns their unit and co-owns the public area of the development. Each unit usually has two numbers concerning the area, one is the "actual area" (*shiyong mianji*) and the other the "building area" (*jianzhu mianji*). The "actual area" represents the area of the unit within its own external walls. The "building area" includes the "actual area", the unit's external walls plus a portion of the public area, which is added to the unit according to the proportion it occupies in the total area of the building. Owners use the public areas by physical possession, usually possessing areas adjacent to their units and on a first come first serve basis.

The apartment blocks are mostly managed by a property management company, often set up by the property developer. The owners pay a fee each month. They can form an owners' general meeting which elects an owners' committee.

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88 The registration validates the creation and transfer of title; the register takes priority over the certificate when inconsistent. Property Law Act ss 14 and 17.

89 Section 159.

90 Section 200.



Leaving aside the issue of land ownership, the rules on unit titles in China are more ambiguous and less developed than those in New Zealand.

### 8 *Succession and relationship property*

Succession is an area where tradition continues to influence the current law and practice. In the Chinese tradition, only sons had the right of inheritance. All sons had equal shares to the family property, but more often than not they inherited and managed land together because of the Confucian emphasis on family. Sons could request or agree to "sever the property" (*xichan*), which was usually conducted by elders of the clan who were both arbitrators and mediators; they strove to achieve fairness among the successors.

One thing the Succession Act 1985 introduced was equal rights to succession between male and female offspring. Although succession can be testate or intestate – the Succession Act stipulates the formality requirements for wills – few Chinese people make wills. A few reasons can be suggested. One is the tradition which had worked reasonably well. Another is that in the early PRC period, most Chinese people did not have much wealth for inheritance. In recent decades family wealth has increased for many, but the one-child policy and simple family structure renders a will unnecessary for most people.

In cases of intestate succession, the Succession Act provides for two classes of successors; successors within each class have the same priority and equal shares in the estate. The first class includes spouse, children and parents. A widow or widower who cares for his or her parents-in-law is entitled to succeed as a child of the parent-in-law. The second class includes siblings and grandparents.<sup>91</sup> Putting parents on the same footing as spouse and children, and grandparents on the same footing as siblings is a manifestation of the traditional emphasis on one's obligation to parents and, eventually, grandparents.

The importance of one's obligation to parents also shows in the provision that adult children have the obligation to financially provide for their parents.<sup>92</sup> This is partly because the social security system is not well developed, and partly because of tradition and practice. This obligation can extend to siblings, grandchildren and grandparents in certain circumstances.<sup>93</sup> A person who does not fulfil the obligation of filial piety cannot, in the eyes of Chinese culture as well as the law, complain if they miss out on inheritance.

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91 Succession Act 1985 s 10.

92 Succession Act s 21.

93 Succession Act ss 28 and 29.

These different traditions and provisions mean that Chinese in New Zealand may have different expectations and different predictions of the consequence of disposal of their property before death.

The Marriage Act 1980 was amended in 2001. The law recognises that relationship property is jointly owned by the couple, including inheritance by one party, unless the will specifies one partner for inheritance.<sup>94</sup> The 2001 amendment clarifies that any property before marriage remains the property of that party.<sup>95</sup> This includes where a party buys property before marriage but uses the family income to pay off the mortgage, although in such a case, the other party is entitled to compensation.<sup>96</sup> Because of the boom in the housing market, the embracing of materialism and the increase of divorce rates in recent decades, this new rule became well-known and was well discussed among the people.

The tradition to value one's relation by blood more than relation by marriage continues. Some academics have even called for the amendment to a spouse's priority in intestate succession so that when a deceased did not leave children and parents, the intestate's siblings and grandparents could take the succession together with the spouse.<sup>97</sup> The wide spread conviction of the priority of blood relations means that most people are careful on issues of relationship property, and the tradition to focus on men rather than women means that women are often in a disadvantaged position.

#### **IV LITIGATION**

The judiciary and litigation in China is one area that retains very distinct Chinese characteristics. The role of the judiciary, the structure of the courts, the status of judges and the procedure in litigation in China could affect Chinese litigants in New Zealand.

Civil litigation in the modern form has a history of about 40 years in China. Confucian philosophy strove to regulate the society through education and propriety and, as mentioned in Part II, to achieve an ideal society of "no litigation" (*wusong*). Chinese people tended to, and still do, avoid conflicts and litigation. In historical China, civil disputes were mostly resolved informally. Clan heads or village elders were the first port of call; they resolved disputes through mediation. Within the state structure, the same official of the locality was the executive official and the judge,

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94 Marriage Act 1980 ss17 and 18(3).

95 Marriage Act 1980 (as amended in 2001) s 18(1).

96 Supreme Court's Interpretation 2011 No 18, cl 10.

97 For example, see Yang Lixin "Woguo jichengfa xiuding rudian de zhang'ai yu qidai" [The obstacles and hopes for amendment of succession law in China] (2016) 157 Henan caijing zhengfa daxue xuebao 1-10.

and there was no separate procedure for criminal cases and civil cases. If mediation was unsuccessful and any dispute was dealt with by the state machine, professional legal advocates (*songshi*) were prohibited.

### ***A Courts and Judges***

The court system was rudimentary after the establishment of the PRC, and it was soon destroyed during the Cultural Revolution. After the 1978 decision to rebuild the legal system, the Courts Act 1979 and the Provisional Civil Litigation Act 1982<sup>98</sup> established the basic structure and procedures for litigation.

There are four levels of courts in China: District Courts<sup>99</sup> at the country level, Intermediate Courts at large city level, High Courts at provincial level and the Supreme Court.<sup>100</sup> What is different from New Zealand, where the District Court and the High Court are single courts, is that each province has one High Court, and there are multiple Intermediate Courts and District Courts.

Unlike in New Zealand, where the High Court has the jurisdiction to hear any case that may be necessary to administer the laws of the country,<sup>101</sup> in China any court could be the first instance court, including the Supreme People's Court. Which court serves as the first instance court in any particular case depends on the type of case,<sup>102</sup> the amount in dispute (*biaodi*) in civil cases, the possible sentencing in criminal cases and the "impact" (*yingxiang*) of the case, the latter being a very vague criterion.

Courts are staffed by judges and administrative personnel. In the early years of rebuilding the legal system, lack of qualified legal professionals meant that most judges were not legally trained and many litigants were not legally represented. The Judges Act of 1995 imposed conditions of tertiary education with legal knowledge and one or two years of work experience.<sup>103</sup> The Act was amended in 2001 to require the work experience to be law related and to increase the period to two or three

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98 A provisional Act is enacted when the legislature wishes to test the applications and replace it later with an improved Act. It nevertheless has the same effect as a formal Act. The Provisional Civil Litigation Act was replaced by the Civil Litigation Act in 1991.

99 Called "Basic People's Courts" in Chinese.

100 In addition there are specialised courts such as maritime courts and railway transport courts.

101 For example, see Senior Courts Act 2016 (New Zealand) s 12.

102 For example, intellectual property law cases or maritime cases must be heard at the Middle People's Court level.

103 Section 9. One year for those with an LLB degree, two years for those who have a diploma in law or a non-law degree but have knowledge of law. The work experience was not limited to legal work.

years.<sup>104</sup> A further requirement of passing the national judicial exam was also imposed.<sup>105</sup> The usual route to becoming a judge is to work as a clerk (*shujiyuan*, literally "registration clerk") for some years<sup>106</sup> before promotion to assistant judge or judge.<sup>107</sup>

Public attitudes towards courts and judges are somewhat ambivalent. On the one hand, courts represent the state authority and Chinese people are submissive to authorities. On the other hand, courts and judges do not command the same kind of authority or respect as their Western counterparts do. Courts are not independent, as they are subject to constraints from institutions at the same level: the supervision of the People's Congress (legislature), source of funding from the executive government and the responsibility to report to the Political and Legal Committee of the ruling party. Judges are public servants,<sup>108</sup> some of them are very young due to the criteria of selection. There is no sense of deep respect for the courts or the judges, and little court etiquette has been developed.

### ***B Court Procedure***

There is little restriction on the right of audience in China. The Provisional Civil Litigation Act allowed the parties to be represented by next of kin, a person recommended by a social organisation or the parties' employer, and any other person approved by the court, in addition to lawyers.<sup>109</sup> The Civil Litigation Act largely retains this provision with only minor adjustments.<sup>110</sup> As the representative before the court does not need to be legally qualified, the role of legal representative is a lot less important than it is in New Zealand.

In contrast, judges are more active in conducting the case. The Chinese legal system is inquisitorial, as opposed to adversarial. Judges have the power and obligation to collect evidence where necessary, although there are also rules for the parties' burden of proof. Parties expect the judges to find the truth.

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104 Section 9 as amended in 2001. Three years for High Court and Supreme Judges.

105 Section 12.

106 Usually two or more years.

107 The system of judges is under reform at the moment.

108 Public Servants Act ss 2 and 3.

109 Section 50.

110 Section 58. The provision for any person approved by the court has been deleted, but the local community, social organisations and employers can still recommend litigation representatives. If the party is an organisation, its employee can be the representative.

Cases are heard by a panel of odd numbers, unless in summary proceedings, where only one judge sits.<sup>111</sup> The panel discusses and decides the case under the principle of majority rules. Usually one judge is the responsible judge for the case (*zhushen faguan*) and that judge will write the judgment without noting dissenting views. In any case, any disagreements are usually dealt with at the discussion stage and dissents are rare. If the panel cannot reach consensus, the case will be reported to the adjudication committee of the court. The committee is a standing committee consisting of leading figures of the court and does not hear cases; instead it hears reports by the panel and makes the final decision.<sup>112</sup>

The doctrine of precedent does not apply in China, but in practice lower courts follow the lines of the higher courts in similar issues. This is largely because the courts are supervised by their higher courts. In recent years the Supreme Court has also started a practice of issuing exemplary judgments which are supposed to be followed.

Worth noting is the "people's assessor" (*renmin peishen yuan*) system. Assessors are lay people who can sit on the judicial panel and take part in the hearing and deliberation of first instance cases. The system had its origin in the Communist Party-controlled regions before the establishment of the PRC and continues until the present day.<sup>113</sup> The assessors can vote on findings of fact and application of law,<sup>114</sup> but in practice they have not been able to meaningfully participate in the discussion of issues of law or even findings of fact and have become window dressing.<sup>115</sup> Nevertheless, this system was not only maintained but strengthened by the passing of the People's Assessor Act 2018, even though the demands for judicial qualification and competency have increased.<sup>116</sup> This probably lowers the authority of the court in the eyes of litigants.

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111 Civil Litigation Act s 39. Summary proceedings are used when there are no major disputes on facts or law.

112 Courts Act 1979 s 11.

113 See Tang Li "Faguan shifa: peishen yuan rending shishi de zhidu baozhang" [Judges explaining the law: the system that safeguards assessors' finding of facts] [2017] 6 Bijiaofa yanjiu 1, at 1.

114 The Standing Committee of the National People's Congress "Guanyu wanshan renmin peishen yuan zhidu de jue ding" [A decision to improve the people's assessor system] (28 August 2004), cl 11. This provision was reproduced in the People's Assessor Act 2018, s 21.

115 Tang, above n 113, at 1-2.

116 The purpose as stated in s 1 of the Act is to ensure citizens participate in adjudication, promote justice and increase trust in the judiciary. This in itself is hardly a convincing reason given the specialty required for adjudication.

Mediation, where possible, was a required process under the Provisional Act and is encouraged under the 1991 Act.<sup>117</sup> Mediation can be undertaken by the judges any time before judgment. Where the mediation is successful, the court will issue a document recording the claims, facts and the result of the mediation. This is binding and can be enforced once the parties acknowledge the receipt of the document.<sup>118</sup> The mediation process makes the court process less formal than what it would under a system like New Zealand's.

A large proportion of civil cases are resolved by mediation inside and outside of courts. For example, in 2017 just under 25% of civil dispute cases were resolved by mediation in courts.<sup>119</sup> In addition, community-based People's Mediation Committees dealt with 8,741,000 cases in the same year.<sup>120</sup> Therefore mediation is still a means for resolving disputes encouraged by the state legal institutions and accustomed to by most people.<sup>121</sup>

Judges are under great pressure to close cases and very often disputes are processed as though they are on a product line. First instance courts are required to close a case within six months and appellate courts within three months.<sup>122</sup> In 2017 in total 11,651,363 of first instance civil cases were decided by about 120,000 judges.<sup>123</sup> This amounts to 97 first instance cases per judge in a year, or close to two

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117 Provisional Civil Litigation Act s 97; Civil Litigation Act s 93.

118 Civil Litigation Act s 97.

119 See *China Statistics Yearbook 2018* Table 24-18.

120 *Ibid*, Tables 24-20 and 24-22. Most of the community mediation disputes were marriage, family, neighbouring and damage of property cases.

121 But see an observation in Prestige Law "Working with Chinese Clients", available at <[www.prestige.law](http://www.prestige.law)>, at 17, where it is noted that some Chinese clients may perceive suggestions for mediation or other alternative dispute resolution options as "lack of confidence in their case".

122 Civil Litigation Act ss 149 and 176.

123 See *China Statistics Yearbook 2018* Table 24-18 for number of cases decided. There are no detailed statistics of the total number of judges in China, but according to Ye Sanfang and Ye Shengbin "Ruhe miandui faguan yuan'e 'zijue tuichu' jizhi" [How to face judge quota "voluntary exit" system] on an official court publication, Renmin fayuan bao (15 July 2017) available on <[www.chinacourt.org](http://www.chinacourt.org)> (accessed 29 Jan 2019), there were about 120,000 judges. The Supreme Court President's report to the National People's Congress (25 March 2018) also mentions that there were 120,138 judges, although the specific year was not mentioned (the report is once every five years so it is unclear which year it referred to).

cases a week.<sup>124</sup> If appellate cases are included, the number is much higher.<sup>125</sup> The process will necessarily be much less prolonged and legal arguments less complex if the judges have to close cases quickly.

### ***C Processes after Judgment***

The appeal, reopening and enforcement of court decisions are different from that in New Zealand.

In principle, there is one opportunity of appeal against a court decision.<sup>126</sup> Appeal is filed at the court which made the first decision, which will send the files to the higher court.<sup>127</sup> In cases where the Supreme People's Court is the first instance court, there is no appeal opportunity.<sup>128</sup>

A more problematic issue for parties to the proceedings is that there are multiple opportunities for a closed case to be reopened. After a court decision has taken effect, the president of the court could submit the case to the adjudication committee of the court for decision to reopen the case; a higher court could reopen a case or order the lower court to reopen the case; the People's Procuracy could "protest" (*kangsu*) a decision of the court at the same level or the level below and ask that court to reopen the case; and, finally, parties to the proceedings can apply to the court that made the decision to reopen the case.<sup>129</sup> There is no time limit for the courts or the procuracy to request the reopening of a case. There are 13 grounds on which parties can apply for the reopening of a case, and they must do it within six months from the date when the judgment took effect.<sup>130</sup> This adds much uncertainty to litigation outcomes and reduces the authority of court decisions.

Where a court decision has taken effect, the winning party can apply for enforcement if the other party does not perform. Enforcement of court decisions is

124 The official Xinhua News reported that in 2017, on average each judge decided 189 cases. See "Zuigao fa: shenru tuijin sifa renshi zhidu gaige" [Supreme court: further promoting the reform of the law enforcement personnel system] (16 March 2018) on <[www.xinhuanet.com](http://www.xinhuanet.com)> (accessed 12 April 2019).

125 For example, in 2012 the courts in Jiansu Province achieved an average of 141 cases. See He Fan "Faguan duoshao cai gouyong" [How many judges do we need] in the Renmin fayuan bao (7 June 2013), available on <[www.chinacourt.org](http://www.chinacourt.org)> (accessed 15 April 2019).

126 Civil Litigation Act s 10; Courts Act s 12.

127 Civil Litigation Act s 166.

128 Courts Act s 12.

129 Civil Litigation Act ss 198, 199 and 208; Courts Act s 14.

130 Sections 200 and 205. In certain circumstances, the time limit is six months from the date when the parties knew about the circumstance. See s 205.

carried out by the Enforcement Division of the court, which is also staffed by judges. Courts have the coercive power to enforce the decisions, including ordering third parties who hold the property of the defendant to comply.<sup>131</sup> Even so, it is well-recognised that enforcement of judgments is difficult in China, so much so that the President of the Supreme Court made a report on "enforcement difficulty" (*zhixing nan*) to the Standing Committee of the National People's Congress in 2018.<sup>132</sup> It was reported that just over 50% of court decisions were performed voluntarily by the parties. Among those that had to be enforced by the courts, 43% could not be enforced because the relevant party did not possess any property.<sup>133</sup> This situation necessarily will cause a plaintiff to be anxious about enforcement even at an early stage. It is also another incentive for parties to choose mediation because it may secure voluntary performance.

## V CONCLUSION

China has a vast territory and complex history. Chinese culture has been deeply influenced by the Confucian tradition but it has also experienced changes which continue to transform the people and the way people do business. Chinese laws on contract and property in their modern form are reasonably new. They are similar to those of New Zealand law in some aspects but distinct in others. In litigation, the courts' status, role and procedures are quite different from that in New Zealand. Chinese people in New Zealand will be influenced by the Confucian tradition, the law of China, the common practice in China and the New Zealand law and practice to different extents depending on factors such as age, education level and experience. There is no "one culture explains all" model. It is hoped that this paper adds some insights into the various factors and therefore contributes to understanding the behaviour of New Zealand Chinese in commercial and property dealings and in litigation.

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131 Civil Litigation Act s 242.

132 Zhou Qiang "Zuigao renmin fayuan guanyu renmin fayuan jie jue 'zhixing nan' gongzuo qingkuang de baogao" [The Supreme People's Court's report on work resolving enforcement difficulty] (24 October 2018), available on <[www.npc.gov.cn](http://www.npc.gov.cn)> (accessed 15 April 2019).

133 Ibid.



**Table 1: Chinese People in New Zealand by Birthplace according to Censuses 2001, 2006 and 2013**

<b>Birthplace</b>	<b>North-East Asia</b>	<b>South-East Asia</b>
<b>Chinese 2001</b>	58026	14043
<b>Chinese 2006</b>	89592	14661
<b>Chinese 2013</b>	98766	15477
<b>Total People Stated 2001</b>	88902	44529
<b>Total People Stated 2006</b>	134445	57708
<b>Total People Stated 2013</b>	141885	87069

[Source – Statistics New Zealand]

**Table 2: Chinese People in New Zealand by Education according to Censuses 2001, 2006 and 2013**

Education	Not elsewhere included	No qualification	Overseas secondary school qualification	Level 1 certificate	Level 2 certificate	Level 3 certificate	Level 4 certificate	Level 5 or 6 diploma	Bachelor degree and level 7 qualifications	Post-graduate and honours degree	Masters degree	Doctorate degree
<b>Chinese 2006</b>	6996	13788	26844	4593	5151	14217	3213	9729	22797	2298	4728	663
<b>Chinese 2013</b>	7710	17256	29727	4497	4773	14052	3414	9765	29847	3882	6777	1050
<b>Total People Stated 2006</b>	210786	703644	170754	392376	304797	246267	284874	267063	314427	55158	59376	16623
<b>Total People Stated 2013</b>	202155	625002	199842	388332	319209	287904	290733	277161	407130	86289	83577	22179
<b>Chinese 2006 (%)</b>	6.1	12.0	23.3	4.0	4.5	12.4	2.8	8.5	19.8	2.0	4.1	0.6
<b>Chinese 2013 (%)</b>	5.8	13.0	22.4	3.4	3.6	10.6	2.6	7.4	22.5	2.9	5.1	0.8
<b>Total People Stated 2006 (%)</b>	7.0	23.3	5.6	13.0	10.1	8.1	9.4	8.8	10.4	1.8	2.0	0.5
<b>Total People Stated 2013 (%)</b>	6.3	19.6	6.3	12.2	10.0	9.0	9.1	8.7	12.8	2.7	2.6	0.7

[Source – Statistics New Zealand]

**Table 3: Chinese People in New Zealand by Age according to Censuses 2001, 2006 and 2013**

Age group	0-4 Years	5-9 Years	10-14 Years	15-19 Years	20-24 Years	25-29 Years	30-34 Years	35-39 Years	40-44 Years	45-49 Years	50-54 Years	55-59 Years	60-64 Years	65-69 Years	70-74 Years	75-79 Years	80-84 Years	85+ Years
Chinese 2001	7428	6831	7299	12312	11025	6438	7608	9540	7563	6495	5352	3513	3561	2658	1470	816	462	306
Chinese 2006	8007	8328	8373	11547	25584	13722	8901	10152	11532	8490	6777	5307	3948	3966	2637	1326	693	444
Chinese 2013	12279	8991	9084	12279	16656	16746	16467	9378	10650	11010	9291	9027	7158	4896	4002	3024	1374	792
Total people stated 2001	261033	277083	281979	256248	229251	235755	266982	285168	273909	241353	226218	174561	147711	122313	113004	90087	57942	46041
Total people stated 2006	263679	275580	294759	288054	256506	229680	264021	288702	300990	281520	242688	224409	172791	142899	112596	97374	69423	54489
Total people stated 2013	276717	272481	272697	278712	269664	240216	240732	252840	289446	285981	284115	247014	221457	186702	143157	101916	77442	70107
Chinese 2001 (%)	7.4	6.8	7.2	12.2	11.0	6.4	7.6	9.5	7.5	6.5	5.3	3.5	3.5	2.6	1.5	0.8	0.5	0.3
Chinese 2006 (%)	5.7	6.0	6.0	8.3	18.3	9.8	6.4	7.3	8.3	6.1	4.9	3.8	2.8	2.8	1.9	0.9	0.5	0.3
Chinese 2013 (%)	7.5	5.5	5.6	7.5	10.2	10.3	10.1	5.7	6.5	6.8	5.7	5.5	4.4	3.0	2.5	1.9	0.8	0.5

Age group	0-4 Years	5-9 Years	10-14 Years	15-19 Years	20-24 Years	25-29 Years	30-34 Years	35-39 Years	40-44 Years	45-49 Years	50-54 Years	55-59 Years	60-64 Years	65-69 Years	70-74 Years	75-79 Years	80-84 Years	85+ Years
Total people stated 2001 (%)	7.3	7.7	7.9	7.1	6.4	6.6	7.4	8.0	7.6	6.7	6.3	4.9	4.1	3.4	3.2	2.5	1.6	1.3
Total people stated 2006 (%)	6.8	7.1	7.6	7.5	6.6	6.0	6.8	7.5	7.8	7.3	6.3	5.8	4.5	3.7	2.9	2.5	1.8	1.4
Total people stated 2013 (%)	6.9	6.8	6.8	6.9	6.7	6.0	6.0	6.3	7.2	7.1	7.1	6.2	5.5	4.7	3.6	2.5	1.9	1.7

[Source – Statistics New Zealand]

**Table 4: Chinese People in New Zealand by Employment Status according to Censuses 2001, 2006 and 2013**

<b>Work and labour force status</b>	<b>Employed full-time</b>	<b>Employed part-time</b>	<b>Unemployed</b>	<b>Not in the labour force</b>
<b>Chinese 2001</b>	25890	8103	5343	39786
<b>Chinese 2006</b>	41394	17520	6816	49293
<b>Chinese 2013</b>	53559	15522	6804	56865
<b>Total people stated 2001</b>	1315413	395601	137721	917787
<b>Total people stated 2006</b>	1519875	451392	105342	949539
<b>Total people Stated 2013</b>	1533144	457290	151923	1047150
<b>Chinese 2001 (%)</b>	32.7	10.2	6.8	50.3
<b>Chinese 2006 (%)</b>	36.0	15.2	5.9	42.9
<b>Chinese 2013 (%)</b>	40.3	11.7	5.1	42.8
<b>Total people stated 2001 (%)</b>	47.5	14.3	5.0	33.2
<b>Total people stated 2006 (%)</b>	50.2	14.9	3.5	31.4
<b>Total people stated 2013 (%)</b>	48.1	14.3	4.8	32.8

[Source – Statistics New Zealand]

