

# *Civil Litigation Mechanism for the Return of Stolen Artifacts from the US: An Example of Taizong Horses*

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**Abstract:** A large number of ancient artifacts were stolen, plundered, and displaced abroad due to aggressions and wars in the early 1900s, and the US is one of the largest recipients of stolen artifacts from around the world. In past practices, negotiation and purchasing have been the main means to recover these lost artifacts. This article argues that legal means, especially the civil litigation approach, can play a unique role in recovery. Through analyzing original ownership, bona fide acquisition, and the statute of limitations in domestic law, the passage demonstrates the feasibility and effectiveness of litigation for the return of artifacts in the US. This paper also analyzes the civil litigation mechanism for the recovery of international stolen cultural property under the American legal system by taking the Chinese cultural relic Taizong Horse exhibited in the Museum of the University of Pennsylvania as an example and proves that civil litigation for the recovery of international cultural relics is completely feasible.

**Keywords:** artifact, international cultural property recovery, original ownership, bona fide acquisition, statute of limitation

## 1. Introduction

There are two exquisite oriental stone horse reliefs on display at the Penn Museum that are referred to as Taizong Horses, also known in Chinese as ‘*Zhaoling Liujun*’ (the six stone horses of Zhao Mausoleum). These stone reliefs’ realistic depiction and exquisite carving techniques earn them a unique place in Chinese art and sculptural history. They bear exceptional historical significance as personal relics of one of the greatest Chinese sovereigns [1]. The two reliefs, *Quanmaogua* and *Saluzi*, were stolen and smuggled out of China in 1914 and resold many times, finally coming to the Penn Museum as a loan in 1918. They were later purchased by Eldridge R. Johnson, who donated them to the Museum in 1921, since which they have been exhibited in the US. There are so many Chinese cultural properties, just like the Taizong Horses, scattered throughout the US due to theft and resale in history. Despite extensive attempts by the Chinese government and NGOs, diplomatic negotiations and civil consultations seem unable to yield an absolute effect on the recovery.

Legal means, including national cooperation in international treaties, civil litigation, and international arbitration, may be viable solutions to this dilemma. However, most international treaties were signed in the late 1900s and are not retroactive, and arbitration is based on the arbitration agreement of both parties, which is hard to achieve in this situation. Under such circumstances, civil litigation provides much-needed help. A prime instance is the case of a stolen 1,000-year-old

Buddhist mummy, known as the statue of Zhanggong-sushi, in which the Chinese plaintiffs won the suit over the Dutch defendant in Sanming, Fujian, recently, showing the crucial role of transactional litigation [2].

International civil litigation refers to the filing of a lawsuit by a competent party before a competent national court for the restitution of lost cultural objects. The advantage of this litigation mechanism is that it is highly binding and somewhat enforceable, since once a judgment for the restitution of lost cultural objects has been rendered, the return of the objects is almost inevitable. However, because cultural relics are always auctioned or resold several times, the plaintiffs in the litigation are victims of the owners of the stolen cultural relics, while the defendants are usually mostly bona fide purchasers. In such cases, the interests of both parties seem to be more or less jeopardized, and fairness is thus difficult to determine.

Therefore, the three matters in dispute between the Chinese and American sides in recovering stolen cultural relics in civil litigation are original ownership, bona fide acquisition, and the statute of limitations. This paper provides a general analysis of the relevant rules by way of a literature review and applies the rules to the above case of cultural relic recovery in the hope of providing a reasonable perspective on the recovery of stolen cultural relics in the United States.

## 2. Preliminary Issue of Private International Law

The preliminary question in civil litigation is the jurisdiction and application of the law. In the case of Zhanggong-zushi, the Chinese court exercised its jurisdiction and applied Chinese law. Nevertheless, such a decision is quite debatable in private international law. According to the widely-recognized principle '*actor forum rei sequitur*', it is self-evident that the courts of the state in which the artifact is located have jurisdiction over the case of recovery. In this regard, US courts have jurisdiction over the lawsuit brought by the Chinese plaintiffs who try to recover the artifacts, insofar as the defendant's domicile is located there. As for the applicable law, it is a common understanding that a court applies the '*lex rei sitae*' in determining property rights. Hence, it is advisable to discuss the case under the law of the US because it would be more compliant with the 'justice of conflict law' and more likely to get the subject matter enforced.

## 3. Focus of Controversy

### 3.1. Original Ownership

As the basis of the claim for the return of cultural property, original ownership is the most fundamental issue in the lawsuit. Identifying a qualified owner is of paramount importance. The original owner seeking to establish his right to recover from the good-faith purchaser must first prove his own title to the art [3]. *U.S. v. McClain* established the 'McClain Doctrine', whereby foreign laws vest ownership of undiscovered antiquities in the national government, resulting in ownership that is recognized by US courts [4]. The 1930 Protection of Cultural Relics Law, the first Chinese law to explicitly provide for state ownership of cultural property, is applicable [5]. However, large-scale excavations of cultural relics in China occurred mainly before 1930, in which case the government had no standing to sue. Therefore, in such cases, only private owners can be competent plaintiffs, and the most important thing is to prove the original ownership, although it is indeed difficult to identify the real owner or the competent plaintiff.

In the case of the Statue of Zhanggong-zushi, the local Villagers' Committee is the plaintiff in the Chinese court, and the court confirms its ownership based on the legitimate creation, succession, and maintenance of the statue [6]. This reasoning can also be applied to the Taizong Horses. Since the government had not declared its ownership in 1914 and the reliefs were buried underground for a long time, successors of tomb watchers and the villagers in Zhaoling Town could be able to claim

ownership by proving their cooperative and continuous protection and maintenance of Zhaoling artifacts. The reliefs had been *res nullius* since the initial owner, Taizong, had deceased. Instead, the villagers in town were assigned to protect the artifacts in the Zhao Mausoleum. According to the pre-empt principle, they had been in *de facto* possession of the Taizong Horses and were thus entitled to the property. Moreover, since the Taizong Horses were excavated and stolen in 1914, the local villagers had taken action to prevent the theft in the first place [7]. In addition, since these reliefs were smuggled to the United States, local villagers and museums have never stopped making efforts to find these art treasures [8]. If these facts are proven, it can be presumed that the original owners and their heirs have made every effort to secure their ownership, so the inheritors are entitled to request the return of the artifacts.

Evidence in terms of witness testimonies, audio-visual materials, case materials, and relevant government certificates demonstrating the legitimate creation, circulation, management, and maintenance of artifacts is deemed strong support for ownership.

### **3.2. Bona Fide Acquisition**

When being requested to return the Taizong Horses in 2017, Director of the Penn Museum Julian Siggers stated that the museum was unaware of how the objects came into Loo's ownership prior to being purchased by Penn [9]. This was a typical *bona fide* defense. A significant exception to the general rule that a non-owner cannot transfer a legitimate title is the good faith purchase rule [10]. Since the items are cultural property, commercial regulations apply to their sale. As a result, the laws of the Uniform Commercial Code (UCC), as enacted by several states, apply to transactions involving cultural property [11]. Therefore, it is necessary to understand the mechanism of the *bona fide* acquisition system in UCC.

According to the UCC, a buyer of goods obtains all title that his transferor had or had the authority to transfer, with the exception that a buyer of a limited interest only acquires rights in proportion to the interest they have paid for [12]. Therefore, a buyer simply obtains the property rights that the seller already owned [13]. But the question is to what extent a theft acquires the property right. It is notable to distinguish between 'voidable' and 'void' titles. A genuine buyer can purchase the property in the event of a fraudulent transfer since the real owner is in the best position to know what transpired and the title is voidable [14]. Moreover, according to UCC, a holder of voidable title has the authority to transfer a good title to a good faith purchaser for value in order for the latter to obtain the property right [15]. However, the theft transfer is void because the true owner here cannot know exactly where the property goes, and the purchaser is in a better position to get pertinent information [16].

To summarize, pursuant to the UCC, no rights are transferred by a thief in stolen property, not even to a genuine buyer. Despite the fact that each state in the US has its own stolen property laws, most of these laws are mostly based on the UCC [17]. So as long as we can prove that a third party purchases the artifacts from a thief, the true owner has the right to prevail in an action for *replevin* even though the purchaser (actual holder) is in good faith [18]. This rule derived from the UCC can deny the goodwill defense of the purchaser and thus yield great support for the recovery of stolen artifacts. Therefore, in the Taizong Horses case, as long as it can be proved that the Taizong Horses were stolen in the first place, the defense of *bona fide* acquisition is not available for the Penn Museum.

### **3.3. Statute of Limitations**

Another decisive issue in the recovery of stolen artifacts is the limitation law. A statute of limitations establishes a deadline for filing a lawsuit on a specific claim, and it starts to run or kicks in when the cause of action accrues [19]. After the limitation period elapses, a party's specific rights become legally invalid. The statute of limitations aims to reduce the defendant's potential liability in an

indefinite, continuous action and to urge the plaintiff to assert his or her rights in a timely manner and to expedite prosecution. But for the recovery of stolen artifacts, the limitation can be a great obstacle because artifact theft often occurs many years before a civil lawsuit can be filed. So it is important to consider the rules for the time point that starts to count.

The due diligence rule, also called the reasonable discovery rule, is a limitation rule applied in most US jurisdictions: the clock starts ticking against the owner of stolen property on the day that the owner reasonably should have learned where the commodities were and who was in possession of them [20]. The plaintiff in *Autocephalous Greek Orthodox Church of Cyprus v. Goldberg* made a significant effort to track out the whereabouts of stolen mosaics and alert the appropriate authorities. Thus, their lawsuit was not time-barred [21]. This rule is not so friendly to the true owners because there is no sufficiently clear guideline on the necessary level of diligence, which means that their obligations are relatively vague [22].

As one of the major centers of art commerce, the California Civil Procedure Code sets a distinctive statute of limitation rule in 338(3)(A) for the true owner of lost arts, known as the “actual discovery” doctrine: An action for the specific recovery of arts shall be commenced within six years of the actual discovery of the identity and the whereabouts of the work of fine art and the information or facts that are sufficient to indicate that the claimant has a claim for a possessory interest by the claimant or the claimant’s agent [23]. This provision is most favorable to the true owner of the stolen artifacts: the limitation period does not begin to run from the date of the theft or the date of transfer but only from the time the owner discovers the whereabouts of the lost property. There are some jurisdictions operating under both rules above, such as Pennsylvania. The Pennsylvania Supreme Court states that the discovery rule states that the limitation period does not start to run until it is reasonably possible to discover the injury in cases where the complaining party is unaware of the existence of the injury and such knowledge cannot be reasonably ascertained within the specified statutory period. [24]. In other words, the statute of limitations period will not begin to count down until the plaintiff either becomes aware of the theft or reasonably should have become aware of it. The demand and refusal regulation, which also benefits owners, has been adopted in New York, the other major US city, for the sale of commercial art. Time does not start to run under this provision until the evicted owner formally requests that the possessor restore the property [25].

Overall, the limitation rule is inclined to protect the interests of true owners. In the case of *Taizong Horses*, according to the Pennsylvania Code, the burden of proof will be allocated to the Penn Museum, which means it has to prove that Chinese owners were aware or should be reasonably aware of the whereabouts of the artifacts. It can be really demanding to prove, and issuing a public notice back in the 1900s is not sufficient evidence. The more important thing is the scope of information access of Chinese true owners. Thus, the purchaser, even though in good faith, is likely to bear the unfavorable consequences of failure to meet the burden of proof.

#### 4. Discussion

An artifact is a special kind of property. Generally, it follows the property law, but in some detail, it is more reasonable to set some specific rules. The loss of artifacts as a result of war and aggression has greatly complicated this issue, and balancing the interests of good-faith purchasers and dispossessed owners is indeed a difficult task. Nevertheless, we must be aware that artifacts are the memory of a nation and have indelible significance for its people. By identifying a true owner, excluding the good faith acquisition, and reasonably counting down the limitation period, this passage provides a possible path for the recovery of the cultural property. Apart from working on the litigation mechanism, the improvement of domestic systems may play a more direct role. Through the establishment of a cultural relic registration system to clarify ownership so as to protect cultural property more effectively.

## 5. Conclusion

The passage analyzes how the civil litigation mechanism works for the recovery of international stolen cultural property under the US law system. Generally speaking, the demonstration of original ownership may be a challenge because the burden of proof is on the plaintiffs, while bona fide acquisition and limitation are more favorable to the original owner, as the defendants are responsible for proving. This leads to the conclusion that civil litigation is quite feasible for international artifact recovery in the US. The passage focused mainly on the legal relationship, and the research of evidence is not sufficient, so the next stage is to address the issues in the law of evidence and work on turning the opportunities into practices.

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- [13] *U.C.C. § 2-403(1)*; *R. ANDERSON*, at 584.
- [14] *Supra* note 45, at 445.
- [15] *U.C.C. § 2-403(1)* states: *A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though... (d) the delivery was procured through fraud punishable as larcenous under the criminal law..*
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