

INHERITANCE OF ANCESTRAL WORSHIP AND/OR PROPERTIES THE APPLICATION OF THE CLASSICAL CHINESE LANGUAGE IN THE

Case of Liu Ying Lan

Abstract

The Chinese clan is a patriarchal one, and the traditional law and ethic of China are to safeguard the patriarchal society as such. As a traditional code of laws, the Qing Code (Ta Ching Lu Li) definitely defends the moral value of the concepts of "loyalty" and "filial piety" because the greatest beneficiaries of "loyalty" and "filial piety" are "monarch" and "patriarch" - the highest leader in politics and a clan. The very name of the Qing Code suggests that it is the general code of laws of the Qing Dynasty (1644 - 1911), and it should have been abolished following the collapse of the Dynasty. However, owing to the needs of the colonial government, certain parts of the Qing Code still remain in force in Hong Kong even after the downfall of the Qing Dynasty. Although the legally valid parts are confined only to those concerning the Marriage Laws, they still have bearing on important social issues, such as the inheritance of estates. Under the protection of the Qing Code, the patriarch and males in his extended line enjoy various inheritance rights. In some regions of Hong Kong, or more precisely the New Territories, females are deprived of the opportunities of inheriting their parents' estates. This is the result of the validity of certain parts of the Qing Code, which was abolished in China but has still remained in force in Hong Kong for about 80 years.

Following the establishment of the Hong Kong Special Administrative Region (HKSAR), a case with far-reaching consequences, namely, the case between Liu Ying Lan (Plaintiff) and Liu Tung Yiu (1st Defendant) and Liu Ying Kwai (2nd Defendant) (Case No. CACV 279/2002), was heard in the Court of Appeal of the HKSAR. Three judges well versed in law established, as per the legal clauses and customs of the Qing Era, that females of the New Territories of Hong Kong have the inheritance rights to lands! The Plaintiff Ms Liu Ying Lan's mother had passed away, and she requested the Court to confirm her right to inherit a small piece of residential land, as a bequest left by her deceased mother, in Sheung Shui, the New Territories. The first defendant is Ms Liu's cousin, i.e. her father's nephew. According to the ancient custom, married daughters have no inheritance rights, and the estates are generally inherited by nephews from the male line. In handling questions like this, the authorities will usually cooperate with the eligible nephews from the male line, and complete the procedure of transfer of title to land for them. This is tantamount to the government's endorsement of the inequality of men and women. Therefore the ruling made by the Court of Appeal in the High Court of the HKSAR removes the legal foundation from the custom regarding the inheritance rights. In addition to setting a precedent in the realm of law, this case is also highly valuable for scholars in the study of the Chinese language and related Chinese customs.

Based mainly on the case mentioned above, this essay attempts to review, from a linguistic point of view, how the common-law-trained judges look upon the clauses which bring about the conflict between the modern social values and the traditional patriarchal society. Firstly, the Qing Code is entirely written in the classical Chinese language which is known to be extremely concise. How the language of the clauses of the Qing Code is to be interpreted poses an important question. Secondly, the Qing Code was set down in the Chinese language, and should certainly be interpreted by writers of the very language so as to produce the greatest accuracy and vividness. However, the judgments in courts of Hong Kong are written in English. Hence when the judges consult and interpret the Qing Code, they are inclined to accept the version provided by such English translators. The problems resulting from such a language barrier should not be overlooked. Thirdly, law and customs are inextricably interwoven. There is no doubt that the clauses in Qing Code are seriously studied by the judges, but customs are far beyond the generalization of clauses in law. It is noteworthy that traditional customs do sometimes break through the confines of clauses. Fourthly, when a society changes, its customs will follow and change accordingly. How does the modern society look upon these changes? This is a further problem.

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