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CHEN YUH FENG & ORS v LOO BOO CHEAI (PENTADBIR HARTA  
PUSAKA CHAN KUN HONG, SI MATI)

CaseAnalysis

[2019] MLJU 588

**Chen Yuh Feng & Ors v Loo Boo Cheai (Pentadbir Harta Pusaka Chan Kun  
Hong, Si Mati)**  
**[2019] MLJU 588**

Malayan Law Journal Unreported

HIGH COURT (KOTA BHARU)

WAN AHMAD FARID BIN WAN SALLEH, JC

GUAMAN CIVIL NO. WA-22NCVC-321-06/2017

3 May 2019

*Dinesh Nandrajog (Pradeep Kumar & Henna with him) (Syarikat K L Rekhraj) for the plaintiffs.  
R Karnan (Keshwinjit with him) (Firdaus Azlina & Co) for the defendant.*

**Wan Ahmad Farid bin Wan Salleh JC:**

JUDGMENT

[1]Chan Kun Hong (“the deceased”) died intestate on 30.1.2013.

[2]On 17.2.2014, the Kuala Lumpur High Court vide OS S-31NCVC-69-01/2014 (“OS 69”) had granted the Letters of Administration to the defendant, who was his wife, to administer the deceased’s estate (“the Grant of Letters of Administration”).

[3]The defendant, in her capacity as the administratrix of the deceased’s estate, distributed the deceased’s assets and properties according to their respective shares as reflected in the Grant of Letters of Administration.

[4]The assets include cash at bank, shares in the CDS account and a property known as Hakmilik Strata Geran 42843/ M1/2/22 No. Petak 22, Tingkat 2, Bangunan M1, Lot 37781 Mukim Petaling, Wilayah Persekutuan.

The plaintiff’s pleaded case

[5]The 1<sup>st</sup> plaintiff is a Taiwanese citizen residing in Malaysia. The 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs are the daughters of the 1<sup>st</sup> plaintiff.

[6]According to the 1<sup>st</sup> plaintiff, she was married to the deceased sometime in December 1978 in Kaohsiung City, Taiwan through a customary and/or traditional marriage that is deemed to be valid and registered under the Law Reform Act (Marriage and Divorce) Act 1976 (“the Law Reform Act”).

[7]In para 17 of the statement of claim, the plaintiffs plead that the defendant had deliberately concealed or otherwise did not disclose the actual facts and evidence in OS 69 in the course of obtaining the Letters of Administration where the 1<sup>st</sup> plaintiff has allegedly equal rights to administer the estate and effects of the deceased.

[8]Wherefore the plaintiffs claimed *inter alia* for the following reliefs:

(a) A declaration that the 1<sup>st</sup> plaintiff is the lawful widow of the deceased;

....

- (b) A declaration that the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs are the lawful children and next of kin of the deceased;
- (c) An order that the Grant of Letters of Administration is set aside;
- (d) An order to appoint the 3<sup>rd</sup> defendant and one of the children of the defendant to jointly administer the estate and effects of the deceased; and
- (e) A consequential order to the newly appointed administrators of the deceased's estate to take steps to distribute the estate of the deceased to the respective beneficiaries pursuant to the Distribution Act 1958.

#### The defendant's defence

**[9]**It is the defendant's case that no such marriage had taken place between the 1<sup>st</sup> plaintiff and the deceased and that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are illegitimate children of the deceased.

**[10]**The contention of the defendant is that the alleged customary marriage, it at all, is invalid, null and void under the Civil Marriage Ordinance 1952 and the Law Reform Act.

**[11]**In para 9 of the Defence, the defendant states as follows:

[9] Sekiranya perkahwinan adat dan/atau tradisional tersebut berlaku antara Simati dan Plaintiff Pertama di negara Taiwan (yang dinafikan), Defendan menegaskan bahawa perkahwinan tersebut adalah tidak sah di sisi undang-undang kerana Simati pada ketika itu telahpun berkahwin dengan Defendan dan berada dalam hubungan monogami dengan Defendan. Dalam apa jua keadaan, Defendan menegaskan bahawa perkahwinan adat dan/atau tradisional yang tidak didaftarkan di negara Malaysia tidak sah di sisi undang-undang.

**[12]**In the circumstances, the defendant averred that the plaintiffs were not legally entitled to the deceased's estate.

#### The Trial

**[13]**At the trial, 5 witnesses testified for the plaintiffs and 3 witnesses gave evidence on behalf of the defendant.

**[14]**The main issue in the instant case is whether the 1<sup>st</sup> plaintiff was the lawful wife of the deceased. At the trial, the 1<sup>st</sup> plaintiff, who is a Taiwanese citizen, testified that she was married to the deceased sometime in December 1978 at the Ambassador Hotel, Kaohsiung City, Taiwan through a customary or traditional marriage ("the disputed marriage").

**[15]**The disputed marriage was, according to the 1<sup>st</sup> plaintiff who was PW1, attended by a small group of family and friends. A customary wedding ceremony of tea offering to the senior members of the family was also held. The 1<sup>st</sup> plaintiff also testified that there was also an exchange of tea offering between her and the deceased prior to the serving of food to mark the celebration of the union.

**[16]**The 1<sup>st</sup> plaintiff said the solemnisation of the disputed marriage was held in Taiwan because it was only practical to do so. The reason being, and bearing in mind that this was 40 years ago, logistically it was not easy for a large group of family to be flown over to Malaysia.

**[17]**According to the 1<sup>st</sup> plaintiff, all the photographs of the wedding ceremony were destroyed by a fire that occurred at her brother's house in Taiwan in 1987.

**[18]**PW2, Chen Shu Ching, who was a friend of the 1<sup>st</sup> plaintiff, testified that she attended the wedding ceremony of 1<sup>st</sup> plaintiff and the deceased which was held at the Ambassador Hotel in Kaohsiung sometime in December 1978. After the disputed marriage, PW2 said that the 1<sup>st</sup> plaintiff and the deceased returned to Malaysia. On a few occasions, PW2 visited Malaysia and brought her family along. During those visits, she would stay at the plaintiff's place who lived with the deceased and their two children, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants at a house known as 246, Lorang Maarof, Bangsar Park, Kuala Lumpur (the "Bangsar house").

**[19]**The Bangsar house was at the material time owned by one Feisco Sdn Bhd ("Feisco"). It is not in dispute that the deceased and the defendant were, at the material time, the directors of Feisco.

....

**[20]** PW2 even brought her daughter to attend the local private school, one Kuen Cheng Girls' High School, in Kuala Lumpur where she stayed with the 1<sup>st</sup> plaintiff's family at the Bangsar House.

**[21]** The 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs also gave evidence that they lived with the deceased and the 1<sup>st</sup> plaintiff and that the defendant about them staying in the Bangsar house. The exchange during cross-examination with the 3<sup>rd</sup> plaintiff, who was PW3 went as follows:

D/C:	My question is how do you know the defendant knows the plaintiffs as the second family?
PW3:	First of all, we lived in 246 Lorang Maarof for the past 30 over years. And that house belongs to Feisco Sdn Bhd which she was one of the directors of the company.
D/C:	You must go slowly.
PW3:	How can she not know? First thing. Second thing, my father's nephew, one of his nephews actually was taking care of the renovation of the house. And how can he not know? And my father (was) a prominent businessman, I went to a lot of official functions with my father and mother and the whole family. My father attended my graduation.

**[22]** In short, PW3's evidence is that the deceased and the 1<sup>st</sup> plaintiff had attended official functions openly as a family. It is also the evidence of the 3<sup>rd</sup> plaintiff that the deceased's nephew, one Chan Kuan Chai, whom she referred to as Ah Chai, used to go to the Bangsar house to take of some renovation works. This goes to show that at the very least, one member of the deceased's family was aware of the existence of the Bangsar house whom PW3 said is their family home since the deceased and all the plaintiffs resided there.

**[23]** The defendant on the other hand vehemently denied the existence of the disputed marriage. In her testimony, the defendant, who was DW3, reaffirmed her position that the deceased was married to her at all material times during the course of his life. She said, they lived and resided together at all material times.

**[24]** According to the defendant, the deceased never mentioned the existence of the plaintiffs to her and her family until January 2013. Prior to his death, the deceased confessed to their son, Dr Chan Kuan Yoong, who was DW1, that he had an extra-marital affair with the 1<sup>st</sup> plaintiff. As a result of the affair, the 1<sup>st</sup> plaintiff had given birth to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, being illegitimate children of the deceased.

**[25]** DW1, in his evidence, confirmed what was narrated by the deceased at his death bed. He said the deceased told him at his death bed that it was the wish of the deceased for the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs to be allowed to attend his funeral and to be included in his obituary.

**[26]** In answer to Q6 of his witness statement DW1 said this:

Q6:	Were the wishes of the deceased fulfilled?
DW1:	Yes. The 2 <sup>nd</sup> and 3 <sup>rd</sup> plaintiffs attended the deceased's funeral. I also included the names of the 2 <sup>nd</sup> and 3 <sup>rd</sup> plaintiffs in the obituary of the deceased.

It is not in dispute that the obituary as appeared in The Star on 31.1.2013, had listed both the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs as the daughters of the deceased alongside with Chan Hui Ming, who is the elder sister of Dr Chan, DW1.

**[27]** During cross-examination, DW1 testified that he was not aware that Feisco was the registered owner of the Bangsar house. He however conceded that his mother, the defendant, was the director of Feisco since 1978. The exchange during cross-examination of DW1 was as follows:

P/C:	Right. Did you ... while you were there for about a year, did you know about the house?
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....

DW1:	No. I didn't know.
P/C:	And your late father never told you about it?
DW1:	No. He didn't.
P/C:	So, you would agree your father never told you many things?
DW1:	That's correct.

Did the Ambassador Hotel exist in 1978?

**[28]**The plaintiffs led evidence that the disputed marriage took place at Ambassador Hotel, No. 202 Minsheng Second Road, Qianjin District, 80144 Kaohsiung City ("Ambassador Hotel"). Both the plaintiff and PW2 affirmed this. PW2 in her answer to Q5 of her witness statement testified as follows:

Q5:	How do you know the 1 <sup>st</sup> plaintiff is married to the said deceased?
PW2:	I was invited and did attend the wedding ceremony between the 1 <sup>st</sup> plaintiff and Mr Chan Kun Hong which was held at the Ambassador Hotel in Kaohsiung, Taiwan on or around the month of December 1978.

**[29]**However, it is the position of the defendant that the Ambassador Hotel, never existed in 1978. According to DW1, from his search made at the website of the Department of Commerce of Taiwan, the earliest the Ambassador Hotel could have operated would be in 1981.

**[30]**It is therefore the contention of the defendant that since the Ambassador Hotel was not in existence in 1978, the disputed marriage never took place.

**[31]**The 3<sup>rd</sup> plaintiff, who herself went to Kaohsiung to visit the Ambassador Hotel, testified that from her research at the Kaohsiung Public Library and having referred to two architectural books found therein, she discovered that the said hotel was built between 1977 to 1981.

**[32]**While DW1's evidence seemed to point out that official opening of the Ambassador Hotel was in 1981, he himself could not be certain as to when was the soft opening of the same. He even conceded that it could have been before. When asked during cross-examination, DW1 conceded that the soft launch of the hotel could have been earlier.

**[33]**My finding on the matter is this. The 1<sup>st</sup> plaintiff testified that she and the deceased went through the ceremony of the disputed marriage at the Ambassador Hotel. Her testimony was confirmed by PW2 who testified that she attended the ceremony and it was at the said hotel. The defendant on the other hand said that the hotel did not exist in December 1978. The burden to disprove it therefore lies on the defendant.

**[34]**In my considered opinion, in a situation where the standard of proof is on the balance of probabilities, it takes more than a computer printout of the said hotel to disprove otherwise.

**[35]**I therefore hold that on the balance of probabilities, the ceremony did take place at the Ambassador Hotel in 1978.

**[36]**The remaining issue to be determined now is whether the disputed marriage is recognised in law.

The Respective Submissions of the Parties

**[37]**Learned counsel for the plaintiffs submitted that the evidence submitted by the plaintiffs had sufficiently satisfied the 1<sup>st</sup> plaintiff and the deceased:

- (a) had gone through a customary marriage;

....

- (b) thereafter cohabitated; and
- (c) recognised by society as husband and wife.

My attention was then drawn to the case of *Re Lee Choon Guan, Deceased Lew Ah Lui (F) v Choa Eng Wan & Ors* [1935] MLJ 78. The said case is an authority for the proposition that to prove a Chinese secondary marriage, though no ceremony need be proved, it is necessary to prove (a) long continued cohabitation (b) an intention to form a permanent union (c) repute of marriage. On this issue Terrel J (as he then was) held that if the secondary wife was:

introduced to the male members of the husband's family such proof might well be conclusive, as there could be no better evidence of an intention to effect a permanent union and the ceremonies themselves would provide evidence of recognition.

**[38]**Reference was also made by learned counsel for the plaintiff to the case of *Tan Ah Bee v Foo Koon Thye and Another* [1947] 123 MLJ 169 where it was held that while no precise ceremony of marriage is requisite in the case of a secondary wife, there must be some evidence of intention and some recognition of the status of wife in order that a secondary marriage may be established. What is "some recognition of status" is of course a question of fact.

**[39]**Finally, learned counsel for the plaintiffs referred me to [s 4](#) of the [Law Reform Act](#). Counsel then argued that since the disputed marriage was solemnised under law, custom and usage of the parties of the marriage, prior to 1.3.1982 the date on which the Law Reform Act came into effect, the disputed marriage, being a valid marriage was deemed to be registered under the said [s 4](#).

**[40]**Learned counsel for the defendant on the other hand referred me to the case of *Chan Kam Kew v Chan See Chuen & Ors* [2014] 1 LNS 442. In that case there was no evidence of any customary marriage at all as there was no evidence of any tea ceremony with witnesses who attended. Applying the law to the instant case, learned counsel for the plaintiffs argued that in the absence of such documentary evidence, this Court should conclude that there was no ceremony at all in respect of the disputed marriage.

**[41]**In any event counsel argued, the court should disregard the alleged destruction of the documentary evidence in the fire that purportedly occurred in 1987 since it was not pleaded by the plaintiffs. Reference was made *inter alia* to the case of *Lee Ah Chor v Southern Bank Berhad* [1991] 1 CLJ Rep 239 SC where the then Supreme Court held that where a vital issue was not raised in the pleadings it could not be allowed to be argued and to succeed on appeal.

**[42]**Further, learned counsel for the defendant submitted that from the oral evidence adduced, none of the family members of the deceased were said to have attended the disputed marriage ceremony in Taiwan. This was confirmed by the 1<sup>st</sup> plaintiff during her cross-examination. The 1<sup>st</sup> plaintiff also conceded that after she came to Malaysia subsequent to the disputed marriage, she did not go and meet the family of the deceased. Again, counsel relied on *Chan Kam Kew*.

**[43]**My attention was drawn to the case of *Hue Chooi Yin v Chew Pit King* [2010] 1 LNS 998 where the learned trial Judge, after having referred to s 4 of the Civil Marriage Ordinance 1952 ("CMO"), held that:

Assuming that there was a customary marriage between the Petitioner and the late CCM on 5.5.1979, the customary marriage would not be valid or registrable under the CMO at the material time because the late CCM had no legal capacity to marry a second time. This is because on 5.5.1979, the late CCM was still married to the late Soo Poi Eng.

**[44]**Reference was also made to the case of *Pang Kwee Yin v Teh Swee Wan* [2012] 3 CLJ 235, which carries the same proposition.

**[45]**Since the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs are considered as the illegitimate children of the deceased, it is the contention of the defendant that by virtue of [s 3](#) of the Distribution Act 1958, they are not legally entitled to the estate of the deceased. The aforesaid section defines "child" as legitimate child.

The analysis

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[46]As I indicated earlier, since I have made a finding that the ceremony in respect of the disputed marriage had taken place at the Ambassador Hotel, the remaining main issue to be decided is whether the disputed marriage is recognised in law.

[47]In my considered opinion, the two authorities referred to by learned counsel, *Lee Choon Guan* and *Tan Ah Bee*, archaic as they are, are representatives of the present legal position. It is now a matter of fact, whether the plaintiffs had complied with the requirements stated in both cases. My finding of the facts which are at times intertwined with law are as follows:

- (a) That the ceremony had taken place at the Ambassador Hotel sometime in December 1978;
- (b) Although, documentary evidence can strengthen the case for the plaintiffs, the absence of the same for whatever reasons does not mean that the plaintiffs' case would collapse altogether, provided they are other form of evidence to support the requirements stated in both *Lee Choon Guan* and *Tan Ah Bee*;
- (c) Since the Bangsar house was at the material time in the name of Feisco, and the defendant is the director of Feisco since 21.3.1979, I can only conclude that the defendant must have known of the existence of the said house. This is so because the Bangsar house was acquired by Feisco in 28.10.2013;
- (d) I accept PW3 evidence that the deceased had stayed with the plaintiffs at the Bangsar house as a family. Although the deceased spent more time at the defendant's house in Jalan Awan Kecil, OUG, Jalan Kelang Lama after DW1 and her sister came back from overseas, the deceased had not abandoned the plaintiffs;
- (e) There was therefore a long-continued cohabitation;
- (f) That the deceased had not abandoned the plaintiffs had indicated an intention to form a permanent union;
- (g) In terms of evidence of repute of marriage and some recognition of status, I make the following findings:
  - i. I accept PW3's evidence that the deceased had attended official functions with her mother, the 1<sup>st</sup> plaintiff and the deceased as this was not seriously challenged by the defendant;
  - ii. The birth certificates of the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs showed that the 1<sup>st</sup> plaintiff as their mother and the deceased as the respective father. While I accept the birth certificates *per se* were inconclusive on the marital status of their parents, the certificates have to be viewed by other form of documentary evidence;
  - iii. Other form of evidence can be seen in the Obituary as appeared in *The Star* indicated clearly that the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs were the daughters of the deceased alongside with the other daughter of the deceased with the defendant. If indeed the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs were the illegitimate children of the deceased, I do not think that their names would have appeared in the Obituary; and
  - iv. I also accept PW3's evidence that the deceased's nephew, Ah Chai, used to go to the Bangsar house to take of some renovation works at the instance of the deceased. This means that the deceased was prepared to expose the existence of his second family to his own nephew. There was no secrecy in the relationship.
- (h) In *Wong Fong Yin & Anor v Wong Choi Lin & Anor and another suit* [\[2013\] 4 MLJ 82](#), Vernon Ong J (now JCA) held as follows:

Even if there was no tea ceremony at the deceased's family home as contended by the plaintiffs, there is nothing to preclude the court from holding that there was a common Jaw marriage between the deceased and WCL; given the fact that they had cohabited for a considerable length of time accompanied by repute and the presumption of marriage. In consequence of the above findings, the court holds that WCL was married to the deceased.

[48]In *Wong Fang Yin*, the marital union lasted for 29 years. In the instant case, it lasted for more than 30 years with no evidence of any permanent separation until the demise of the deceased.

[49]As to the case of *Chan Kam Kew* referred to by learned counsel for the defendant, the alleged secondary marriage of the plaintiff's father, Dr Chan Chin Cheun ("Dr Chan") was not publicly known save for Dr Chan's

....

mother. In the aforesaid case, the plaintiff, claiming to be the grandson of Chan Wing, contended that he was entitled as the beneficiary of estate of Chan Wing, by virtue of the phrase “my grandson in the male line” in the Will of Chan Wing. Dr Chan was the son of Chan Wing.

**[50]** The plaintiff in that case admitted that he had never met any of the other family members of Chan Wing, Dr Chan’s father. When Dr Chan’s late mother Chan Lee Lai Heng passed away the plaintiff’s name was not even mentioned in her Obituary under the list “grandsons”. In fact, Dr Chan agreed that he had never mentioned or publicised his alleged relationship with Chan Ah Mooi, the plaintiff’s mother, in addition to not mentioning the birth of his alleged son, the plaintiff to the Trustees of the Estate of Chan Wing. Therefore, it was not surprising that the learned trial Judge found that there was no credible evidence of repute of marriage.

**[51]** On the passport of the deceased as adduced by the defendant, I do not find it helpful, even assuming that it is admissible on the ground that it was already cancelled. DW1 even admitted that the deceased could have possibly obtained a new passport. In short, the passport adduced does not prove or disprove that the deceased was or was not in Taiwan in December 1978.

**[52]** On the pleaded case of the plaintiffs that the deceased alleged 17,400 units of shares at the rate of £1 per unit in a company known as T.D.C. Systems Ltd, I find that the plaintiffs have failed to prove the same. I accept DW1’s evidence that the deceased had transferred the said shares to him *inter vivos*. The shares therefore should not be included as part of the List of Assets and Liability of the estate of the deceased. DW1 was therefore at liberty to dispose of the shares as he wished.

#### Conclusion

**[53]** In the result, I therefore find that, on the balance of probabilities the plaintiffs have successfully proved that the requirements as stated in both *Lee Choon Guan* and *Tan Ah Bee* in that there was (a) long continued cohabitation (b) an intention to form a permanent union (c) repute of marriage.

**[54]** *Hue Chooi Yin* and *Pang Kwee Yin* are therefore distinguished. In any event, according to the editor’s note of the report, Court of Appeal had allowed the appeals pertaining to the petitions referred to in *Pang Kwee Yin* and remitted the matter back to the High Court for trial.

**[55]** It is also my further finding that [s 4](#) of the [Law Reform Act](#) is applicable in that the disputed marriage being a valid marriage was deemed to be registered.

**[56]** I therefore make the following orders :

- (a) A declaration that the 1<sup>st</sup> plaintiff is one of the lawful widows of the deceased;
- (b) A declaration that the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs are one of the lawful children and next of kin of the deceased;
- (c) Since there is no evidence of fraud, I am not allowing prayers (e) and (f) of para 26 of the Statement of Claim;
- (d) In the circumstances, I am not setting aside the Grant of Letters of Administration but I hereby order that the defendant in her capacity as the administratrix of the estate of the deceased shall take further steps to hand over the estate and effects of the deceased to the respective beneficiaries pursuant to the Distribution Act 1958.
- (e) There shall be no order as to costs.

#### Epilogue

**[57]** I have to thank the respective counsel for their in-depth research that has assisted me in the determination of this case.

**[58]** I am ever mindful that a dispute of this nature has to be handled with extreme care during the trial. I must however put it on record that Encik Dinesh Nadrajog has conducted himself very well especially during cross-examinations of the plaintiffs’ witnesses. It is not a pleasure to refer to somebody as an illegitimate child or to make an allegation of an extra-marital affair. But Encik Nadrajog has a job to do and he has to uphold the case of his client in the manner in which he was briefed. And he has done that with utmost courtesy. This is the kind of

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advocacy that I wish to see more in our courts.

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