

## **The Clan and the Customary Law: Tso and Tong in the New Territories**

**Patrick H. HASE**

### *Individual Land-holding in the Customary Law*

The three most basic rules of the traditional customary land-law of the New Territories were that women could not inherit land, nor hold ancestral land by way of testament or gift; that inherited land had to pass in accordance with the customary rules on succession from one generation to the males in the next generation; and that inherited land could not be freely sold, but had to be sold within the clan, unless that proved impossible<sup>1</sup>.

The reason for these rules was the paramount need to protect the position of the clan. Preservation of the clan was universally seen as the greatest social good.

The clan consisted of all the males descended from a single common ancestor, with their wives and unmarried daughters. Women normally left the clan on marriage, and became part of their husband's clan. If women could inherit, or if women could be allowed to take inherited land by gift or by testament, then this land would become part of the land of their husband's clan when they married, and would thereafter descend in that clan. Only by cutting women out of the ownership of inherited land could the position of the woman's natal clan remain preserved. Equally, if a man had the right to grant his inherited land away by will, sooner or later the clan would suffer. Only the rigid application of the traditional rules on succession would ensure that the society of the village remained

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<sup>1</sup> Most of the information in this paper is taken from unpublished research undertaken by the author, especially in Sheung Wo Hang village near Sha Tau Kok, Hoi Ha village in North Saikung, and Tai Wai village in Sha Tin. In the Appendix to this paper is a table of information relating to Sheung Wo Hang Tso and Tong holdings.

unchanged<sup>2</sup>. Similarly, any land-law which allowed free sale of land to persons outside the common descent line would automatically bring outsiders into a village, and damage the clan's standing. There was thus only a partial understanding of the concept of individual rights in land<sup>3</sup>.

It will be seen that underlying these rules was a concept that land was held by individuals in trust from their ancestors for their descendants. A man thus had an almost absolute right to inherit his ancestors' land from his father, but had an equal duty to hand that land on to his sons, either enhanced, or at least undiminished.

Traditionally, under the New Territories customary law, inherited ancestral land could be sold, but only subject to certain restraints. Land could usually only be sold if a family was at the edge of starvation, and that was the only way out: it could not be sold on a whim<sup>4</sup>. When a family wanted to sell land, it had to offer it first of all to all the other members of the vendor's clan, starting with members of the vendor's own immediate descent line. Only where all the rest of the clan were unable to buy could the vendor offer the land on the open market<sup>5</sup>. A neutral middleman had to be appointed (he was paid a commission by the vendor): his main job was to ensure that the price charged was a fair one, and that there was no collusion between buyer and seller to defraud the clan<sup>6</sup>. There had to be at least one, preferably two, witnesses to any sale: again, their

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<sup>2</sup> Because land could not be devised by will, the District Officers in the New Territories tended not to use the word "inheritance" when speaking of land subject to customary law, but "succession", since the concepts inherent in the English law on "inheritance" did not apply.

<sup>3</sup> As noted below, however, many New Territories clans felt these traditional rules were still too lax, and used even stronger ways of preserving the clan intact, involving the use of trusts.

<sup>4</sup> Exchanges, where land inconveniently located was exchanged for land more conveniently located, were always acceptable and where the family disposing of land retained as much land as before.

<sup>5</sup> It should be noted that, in practice, families faced starvation, or extreme privation, mostly in years of poor harvests, or in famine years, which were precisely those years when the vendor's clan brothers were least able to buy.

<sup>6</sup> I.e., that the price was not inflated to ensure that members of the clan could not meet the price, and that the price was in fact paid in full.

job was to check that the sale was a fair and honest one<sup>7</sup>.

It was always acknowledged that land which had not been inherited was much more at the free disposal of the land-owner. If a man had cut a field with his own labour or at his own expense from the hillside, making new arable land where previously there had been waste, then this was "new land" and he could sell it with fewer restraints than land he had inherited<sup>8</sup>. Similarly with arable land reclaimed from the sea, although such reclamations were so very expensive that those investing in them normally did so with a view to the long term. If a man took his savings and bought a shop in the market-town, and went into business there, then it was understood that he could, when he retired, sell the shop again. In these circumstances the clan did not suffer. The land had never been the clan's: it had not come by inheritance from the ancestors. Nonetheless, if that land was inherited by the next generation, then it became inherited land, and from that generation on usually became subject to the normal restraints on sale<sup>9</sup>. Moreover, even "new land", even when that was in the hands of the first land-holder, was subject to some restraints on free sale if it lay close to the village itself.

### *Customary Land-deeds*

The customary land-deeds reflect these basic rules. There were no lawyers or conveyancers available to villagers, and the land-deeds were, therefore drawn up by the villagers themselves. Village scholars learnt how to draw up deeds as part of their general

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<sup>7</sup> The clan elders could intervene to stop a sale in some circumstances, if they felt there was no reason for the sale, or that it was collusive or dishonest, although the extent of the clan elders' powers was always a matter of dispute.

<sup>8</sup> The waste near the village was regarded, in the customary law, as being communally owned by the village as a whole, for use for burials, fuel-cutting, and grazing. However, rice-land was of such paramount importance to the life of the village that these rights of the community at large were regarded as waived over any land that anyone wished to try to render productive, although it would be a foolish villager who did not seek the consent of his village community before he started.

<sup>9</sup> Where "new land" was concerned, and especially market-town property, land bought could be sold on the death of the first purchaser as well. If it was retained in the family, however, for more than two generations, the normal restraints would start to come into play.

education. Most village scholars owned hand-written Handbooks, with exemplars of various sorts of document: land-deeds were a normal component of these Handbooks. We know from the very detailed collection of documents at Hoi Ha<sup>10</sup> that village scholars lent Handbooks to each other, and that they copied out useful documents that came their way, eventually to incorporate them in new Handbooks written out by themselves. By these means, a basically common wording and format for land-deeds developed within the area<sup>11</sup>.

It was the responsibility of the vendor to find a deed-writer. The deed-writer had to be a person neutral to the sale<sup>12</sup>. The deed-writer was *ipso facto* a witness to the deed. He was paid a small commission by the vendor. He was expected to be a man of substance and standing within the village community, to ensure that he would be able to oversee effectively the *bona fides* of the transaction<sup>13</sup>. The deed once written, and checked by vendor and purchaser, was handed over to the purchaser. In the event that the land was registered for the Land Tax, it was then the purchaser's responsibility to take it to the *yamen* and register it.

The deed almost always contains a number of standard features which become immediately explicable in the light of the rules of the customary land-law noted above.

The deed invariably starts with a statement as to whether the land is being sold absolutely, or mortgaged, and whether the land had been owned by the vendor absolutely or under a perpetual tenancy, and whether a rent-charge or a mortgage was outstanding on the

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<sup>10</sup> Now in the Sha Tin Central Library.

<sup>11</sup> None of the deeds known are exactly identical, but they all share a common "family feel". Probably, if we had more of them to study, we would be able to distinguish regional variations and practices, and changes in practice over time, but, at present, because of the small number of surviving deeds, all that can be said with any surety is that there was a small but definite movement towards slightly longer and more explicit deeds at the end of the nineteenth century.

<sup>12</sup> Even if the vendor was a scholar, he could not usually draw up a deed for land he himself was selling. This rule, however, was not observed when a scholar was selling land to his own immediate relatives, when the risk of fraud was considered very small.

<sup>13</sup> Of course, as a scholar, the deed-writer was likely to be a person of standing in the community anyway.

land.

The deed always makes it clear if the land was 先年祖父遺下, "land inherited from my ancestors, passed down from old times", or 先年已買, "land I myself bought some years ago", or uses similar phraseology designed to make it clear whether the land is ancestral land subject to restraints on sale, or "new land" under fewer restraints. The reason for the sale is given. It is usually 今因家中少錢使用<sup>14</sup>, "because there is no money in my house to use at the moment", although other reasons are sometimes given<sup>15</sup>. Usually there is some wording to make it clear that the vendor's immediate relatives are involved in and agree to the sale (the vendor is usually described as ▼ 父子, "X, father and son"; or ▼ 母子; "mother and son" - this is the invariable wording when a woman holding land in trust for her under-age son sells some of the land; ▼ 兄弟, "X, with his brothers"; or 數人 ▼, "that group [of relatives] centred on X").

After these initial phrases the land is described. The number of fields is given, and the rough location, and the area (described in 斗種, *Tau Tsung*<sup>16</sup>) is given. Any rent-charge or mortgage outstanding, or other encumbrance, is detailed.

The deed then almost always states that the vendor has asked his relatives to buy the land, but that they could not do so, 先招房親人等俱各不接. Then the deed states who was appointed as middleman. The next section of the deed specifies who the purchaser was, and details the 時值, "fair price" as agreed between the three parties. The

<sup>14</sup> The transcribed wordings in this section do not appear exactly in every deed, but almost all deeds contain sections which give their substance.

<sup>15</sup> Deeds are known giving as reasons the lack of cash to pay the Land Tax, or because of the urgent need to repair a house damaged by a storm, for which there was not enough money in the household.

<sup>16</sup> The *Tau Tsung* is strictly speaking a measure of the amount of land which requires one bushel, *Tau*, of seeds, *Tsung*, to sow properly, and was the almost universal measure of land in the area. Deeds intended to be registered for the Land Tax had, by law, to be denominated in *mau*, which was a genuine measurement of area, but the villagers usually did not know what a *mau* was. In documents to be registered for the Land Tax, the area was measured in *Tau Tsung*, and then converted to *mau*, usually at the rate of 1 *mau* = 1 *Tau Tsung*. The *Tau Tsung* differed in size from area to area, depending on the size of the *Tau*. There were at least three different *Tau* used in different areas of the New Territories. Of course, the villagers themselves knew what the customary *Tau* was in their own village.

deed then specifies that the price was handed over in full, in the presence of witnesses, to the vendor, and that the land was handed over in the presence of witnesses to the purchaser, “to plough, plant, and maintain”: 即日馮中臺足交到與永云親手接回應使。其田……以後推過……耕管業納租。

If the sale was an absolute alienation, then the deed will contain a phrase to the effect that the vendor and his relatives can never “regret the sale”, nor may they “cause disturbances”, or seek to revise the terms hereafter<sup>17</sup>. Since so many sales of land were cast in the form of redeemable mortgages, where the sale was absolute the deed will also usually contain a specific statement that the transaction is not redeemable.

If the sale was a redeemable mortgage, the deed will at least contain the phrase relating to the impossibility of “regretting the transaction”, and will detail the terms under which redemption is permitted. The wording of this section of the deed tends to differ more than the other sections, although usually the overall meaning is more or less the same.

The deed often also has at this point another statement that the transaction and the price have been agreed by all parties without pressure or deceit, 兩家允意並無迫勒. The deed usually ends with a statement that the deed was drawn up “fearing that verbal agreements have no force”, 恐口無馮今立……存照<sup>18</sup>.

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<sup>17</sup> Of course, if the land was bought in a famine year, the 時值 would be low, even if fair, and likely to give rise to “regrets” later on.

<sup>18</sup> Given the anxiety expressed about the possibility of “regrets and disturbances”, it is not entirely surprising that these did happen. Sales of land in lean years were regretted later, in the fat years. If the land was close to the vendor’s village, then the elders of that village, once the situation was such that they could afford it, might bring moral pressure on the elders of the purchaser’s village, to get the purchaser to resell the land back to the elders of the vendor’s village. So long as a “fair price” was offered (and this would be, by definition, a good deal higher than in a famine situation), then it would be “unconscionable” for the purchaser not to sell the land back to the vendor’s clan. To some degree, the willingness of the purchaser to be gracious in such circumstances depended on the relative political power and strength of the vendor’s and purchaser’s clans. Of course, if the land sold had been on the periphery of the vendor’s village area, and as close to the purchaser’s village as to the vendor’s, then re-sale back to the vendor’s clan would be unlikely. If the vendor’s clan repurchased land, it would usually be bought back by an ancestral trust of that clan: it is unlikely that it would get back into the vendor’s personal possession, although he might be able to rent it from his ancestral trust.

At the foot of the deed, the middleman, the deed-writer usually, and any other witnesses are named, and usually add a comment in autograph to the effect that the transaction is fair. Then follows the date, and, sometimes, the vendor adds an autograph comment to the effect that he accepts the transaction as fair.

These customary land-deeds are unsophisticated, and are clearly not intended to be argued over in a law-court. They were adequate in the village environment of the past because they were backed by the considerable force of village public opinion. If a transaction was considered “fair”, then the villagers would insist on the spirit of the transaction being honoured.

It will be noted that the deed is a record of the transaction, and not the transaction itself. The actual transaction was complete and irrevocable when the price of the land was handed to the middleman, and the fields handed over to the purchaser, and this was usually some time before the deed was issued. It seems that the usual practice was for vendor, purchaser, middleman and witnesses to inspect in person the boundaries of the land to be sold, and for the cash to be handed to the middleman by the purchaser while standing within the fields, and for the middleman then to hand it over to the vendor. Sometimes the deed refers to this practice as having taken place. Some deeds specify the date when the transaction took place, and the date when the deed was drawn up, often between five and ten days later.

The features of the customary land-deed which reflect the rules of the customary land-law were not mere meaningless words. Where the circumstances of the transaction were such that they were inappropriate, then they were not included. Thus deeds relating to division of property between brothers (eg after the death of the father) rarely have middlemen or witnesses, nor do they refer to the consent of the relatives<sup>19</sup>. Sales between close relatives<sup>20</sup> also often

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<sup>19</sup> In one deed known to the author, following a division of property, a brother became dissatisfied with the house he had received, and exchanged it and a sum in cash for his brother's house: this deed, too, did not include any middleman or reference to the consent of the relatives.

<sup>20</sup> Usually defined by villagers as men with a common paternal great-grandfather.

omit middlemen and references to the consent of relatives.

### *Villages with Little Individually Owned Land*

In many villages the clan felt that these customary rules on individual land-holding were too lax, and made it too easy for the clan to loose control of land. In these villages the clan put most, or all, of its arable land into the ownership of trusts. Individual families of the clan, therefore, had to live off land rented from their ancestral trusts, albeit at very low rentals. In such circumstances, the individual families were never other than tenants-at-will of their own ancestral trusts, no matter how many years, or even generations, the family had rented and farmed the same fields. They could not, therefore, sell them, even *in extremis*.

Wong Chuk Yeung village, in Sha Tin, for instance, kept the whole village, including the houses, Ancestral Hall, fields and surrounding waste rights under the sole ownership of the prime ancestral trust, and the village was so registered as a single lot in the Block Crown Lease<sup>21</sup>. Shan Ha Wai (Tsang Tai Uk) in Sha Tin was another village which opted for registration of the entire village in the Block Crown Lease as a single lot owned by the prime ancestral trust<sup>22</sup>. Perhaps more typical was the situation at Sheung Wo Hang<sup>23</sup>. There most of the arable land was held by trusts, with only three of the 123 households holding enough private agricultural land to support themselves. Between 78% and 85% of the arable land was held by the village trusts. In Sheung Wo Hang land cut from the hillsides by the labour and at the personal costs of individual villagers remained their personal property, and this seems to have been where most of the privately owned land in the village

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<sup>21</sup> This was the survey and registration exercise conducted by the Government between 1900 and 1905, which ended with the acknowledgement of the villagers as tenants of the Crown. In 1905 Wong Chuk Yeung had about 18 households.

<sup>22</sup> Shan Ha Wai was richer than Wong Chuk Yeung, and a little bigger. In 1905 it probably had about two dozen households. Both Wong Chuk Yeung and Shan Ha Wai sought consent from the District Office to divide the village into individual lots some decades later.

<sup>23</sup> See Appendix.



had come from<sup>24</sup>.

In all cases where ancestral trusts owned all or most of the agricultural land in any village the reason seems to have been to make sale of the land to outsiders impossible. The trusts were managed by the wealthier and better-educated villagers, and these people, whose consent would have been required for a sale, would not have been prepared to sacrifice the security of the clan to the importunings of impoverished clan-brothers<sup>25</sup>.

### *Joint Ownership and Family Trusts*

Joint ownership of land was extremely common in the New Territories. In some places (for instance Sha Tin) such joint ownership was traditionally considered ownership by a trust, and was often, perhaps usually, so registered in the Block Crown Lease. Elsewhere (as for instance in Sheung Wo Hang) it was not registered in the Lease as a trust but as land owned by a group of named individuals. There seems, however, to have been no significant difference in how the land was managed in the two cases.

If a man died, leaving two houses and a latrine, and two sons, it was easy for the sons to agree to take a house each, but what of the latrine? Both households would need to continue to use it. In Sha Tin, the normal response to circumstances like this was to leave the latrine in the nominal possession of the deceased father, as a tiny ancestral trust, with the elder son as Manager of the trust on behalf of both families. In Sheung Wo Hang it was the normal practice to consider the latrine as owned jointly by the two brothers, with the elder brother answering for it as needed. The practical consequences were the same. In Sheung Wo Hang there were several dozen

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<sup>24</sup> The village houses were also individually owned in Sheung Wo Hang, but these were, in any case, unsaleable outside the descent line - throughout the New Territories restraints on sale of houses within the village were always considerably stricter than those on the sale of arable land.

<sup>25</sup> At Sheung Wo Hang the Village Headman of 1905 himself had put all the privately owned land he had inherited from his father into a trust, to ensure that it was safe from future alienation. In his case, he even put his house into the trust's hands, retaining no privately-owned property at all. See Appendix.

instances of such pieces of jointly owned or trust property<sup>26</sup>.

Closer to a trust, as viewed by English law, were, in 1905, those families where one or more of the men were resident outside the village, as seamen abroad, or as labourers in the city, or in the South Sea. Normally, a brother or male cousin would maintain the absent brother's or cousin's house, and farm his land, under an agreement between them which would specify the duties and rights of each. This agreement might be formal, setting up a trust, or informal<sup>27</sup>. The land and house would remain the property of the absent villager, but the one with actual control would have the right and responsibility of answering for the land<sup>28</sup>. It is difficult in practice to distinguish cases like this from "extended families", that is, households where a number of married brothers continued to live and farm as one unit. "Extended families" can be considered as either examples of joint ownership, or as groups holding land under a trust<sup>29</sup>.

It will be seen that the customary land-law did not draw clear

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<sup>26</sup> See Appendix. The land held jointly, or under trusts of this type, was mostly latrines, threshing-floors (rice-drying grounds), orchards, small fishponds, and other property difficult to divide, but it included also some fields cut from the hills by the joint labour of two brothers, which were similarly difficult to divide.

<sup>27</sup> If the absent villager was married, normally it would be his wife who farmed his land in his absence. This, too, was sometimes seen as a trust situation, especially if, in the case of prolonged absence by the husband, and lack of contact, the wife felt obliged to sell some land. Usually, if the reason was good, the villagers would allow the sale, implicitly accepting that the wife was trustee for her absent husband. Sometimes, it must be remembered, absences of husbands were very long. One lady known to me married at the age of seventeen. Her husband left two weeks later to work as a seaman. The wife had never seen her husband again: when I knew her she was 81 years of age, and knew only that her husband was still alive, in America, at the age of 84.

<sup>28</sup> In Sheung Wo Hang, a likely example of a case of two brothers with commonly held or trust property is the case of Lei San-yin and Lei San-kwai, for which see the Appendix.

<sup>29</sup> It was normal in Sha Tin for extended families to hold their land in the form of an ancestral trust, in their father's or grandfather's name as appropriate, and with the senior resident male as Manager on behalf of the whole household. Yung Sze-chiu, at Hoi Ha, also held his lands in a trust - three of his four sons were living abroad, and this would have made the legal position of the fourth, and only resident son, easier on Yung Sze-chiu's death. There are no certain examples of "extended families" in 1905 in Sheung Wo Hang: it is more likely there that "extended families" would have been considered as holding their lands jointly.

and precise boundaries between land owned individually, and land owned by a trust or group, and equally drew only the vaguest of distinctions between jointly-owned property and property held in trust.

Somewhat closer to the English concept of a trust were lands held by widows, especially when this was on behalf of infant children. Where a man died leaving an infant child and a widow, it was village custom for the widow to retain control of her husband's lands in trust until the son reached the age of majority<sup>30</sup>. In Sha Tin it was the usual custom in such cases for the land to be registered in the Block Crown Lease in the deceased husband's name as an ancestral trust, with the widow as Manager. In Sheung Wo Hang it seems that, in such cases, the infant son was treated as the owner, no matter how young, with the mother merely allowed to answer for the land<sup>31</sup>. Again, the practical consequences were identical<sup>32</sup>. It is possible that the Punti<sup>33</sup> people were more inclined to treat such cases formally as trusts, and Hakka<sup>34</sup> people as cases of simple ownership or joint ownership.

In a very similar situation were widows with no sons. They again would normally be allowed control of their late husband's lands for

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<sup>30</sup> Which was the age at which he could marry, and which was usually considered to be eighteen *sui*, or seventeen years of age. If the man left infant children, but the wife had predeceased him, then the deceased father's nearest male relative would normally act as trustee for the child.

<sup>31</sup> No certain examples can be identified in Sheung Wo Hang, as the age of individual registered land-owners in the Block Crown Lease cannot be ascertained. One certain example is known to me in Sha Tin, despite the usual practice there being to register such cases as trusts. On reclaiming land there in 1981, the original Block Crown Lease lessee came forward to surrender it, he having been registered as the owner in 1902, at the age of 3 years: he was a Hakka.

<sup>32</sup> There are many land-deeds to prove that widows acting as trustees in these cases had the right to sell land where the reasons were good.

<sup>33</sup> "Cantonese-speaking". Certainly, the Punti villagers in Sha Tin saw their willingness to formalise such land-holding by widows as a mark of Punti propriety: it made it more difficult for Punti widows to be oppressed or bullied by their husband's nearest male relatives. Certainly, the widows I have heard of forced to re-marry because they were not left in control of their husband's lands were all Hakka.

<sup>34</sup> "Guest-people": these are people who speak the Hakka dialect, which is mutually incomprehensible with Cantonese. Very broadly, half the population of the New Territories falls into each group.

life. Where the husband's estate was large, or he was an only son, the widow would often adopt a son for him *post mortem*, but this was by no means invariable, and many widows lived out their life on their husband's lands. In many places (eg Sha Tin) widows in such situations were seen as acting as trustees for their husband's nearest male relatives, who would succeed to the land on the widow's death, with the land in the meanwhile being left in the deceased husband's name as an ancestral trust. Elsewhere the arrangements (while in practice identical) were not dignified with so formal a title<sup>35</sup>.

The trusts or semi-trusts discussed so far were all temporary. When the infant son came of age, he would inherit his father's full rights. If the land had, up to then, been held in his father's name as a formal, if small, ancestral trust, then that trust would, on his majority, be cancelled. Similarly, when the widow without children died, any ancestral trust erected in the husband's name would be cancelled, and her late husband's nearest male relatives would succeed to the land. If a man was farming land in trust for his brother, that arrangement would come to an end when the brother returned. "Extended families" usually, sooner or later, had their lands divided among the men of the family: if the land had previously been held in a trust, it would be cancelled. If a latrine or threshing-floor was the sole property of a tiny ancestral trust because it was difficult to divide, then one day, when it needed repair, the members of the trust would rebuild it as two or several latrines or threshing-floors, and take one each.

It is thus completely wrong to see traditional New Territories trusts as being all permanent, as being all "trusts in perpetuity". The customary law of the New Territories area used trusts for a vast range of purposes: they were an easy to use, well-understood, and

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<sup>35</sup> As in most parts of China, it was considered disgraceful for a widow to re-marry. But, if a clan did not allow the widow control of her late husband's lands, then "the disgrace is the clan's", for it left the widow with no alternative. If a widow controlling her late husband's lands did re-marry, then the clan could (and would) eject her, since her rights over the land were those of a trustee only. In Sheung Wo Hang, Chan Kiu and Chung Sze were holding land as widows in 1905, see Appendix.

flexible legal tool. In most villages, at most dates, the majority of trusts, or semi-trusts, were in fact seen as temporary, and were of the types discussed above.

### *Commercial, Charitable, and Religious Trusts*

Village trusts of a more permanent character are usually called “ancestral trusts”, but this title covers a wide variety of distinct types, not all of which were “ancestral” in any real sense of the word, and some of which are not “ancestral” in any sense. Many multi-clan villages had trusts of a purely and explicitly communal character. A good example is the trust known as the “Tin Sam Community”, 田心眾, in the village of Tin Sam, in Sha Tin. This trust, which represented the village as a whole, had all the households of the village, of all the clans, as members (the village had seven indigenous clans). It owned and ran the village school, and the village Han Uk<sup>36</sup>, and was responsible for maintaining the sluices and irrigation ditches, and the village walls and gate and weapons, on all of which the safety of the village depended. This trust acted for the village as a whole whenever necessary. This Tin Sam Community Trust also owned the village Earthgods, and arranged for the annual rituals conducted before them by the village household heads: while it thus had ritual duties, it was, clearly, essentially a communal body. The Manager of this trust was the Village Headman for Tin Sam.

At Tai Wai in Sha Tin (another multi-clan village with some eleven clans) there was a Hau Wong Temple within the walls of the village. The communal activities of the village were centred on the temple. There was a trust called “His Excellency, Hau Wong”, 侯王公. This trust owned the temple, and had income-producing property to maintain it, and to support the annual rituals there and at the Earthgods. But the trust also owned two houses next to the temple, used as a Village Office, and as the village Han Uk. The trust

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<sup>36</sup> Han Uk ( 間屋 ) were club-houses where the menfolk of the village could meet, drink tea, chat, and play cards. Many of the wealthier villages had such club-houses. See the Appendix for the Han Uk in Sheung Wo Hang, and the Pui Man Tong which ran it.

also owned and maintained the village moat and let the contracts for keeping the village streets clean. The village gateway, and the two small cannon kept there, were also held by this trust. Every household of the village, of every surname, had a share in this trust, which thus represented the village as a whole. The annual meetings of the elders were held under the aegis of this trust. The three Managers of the trust were the Village Headmen for this village. This trust must be seen as having a dual purpose, both religious and communal.

There were, of course, customary trusts which were explicitly and solely religious in character. Most of the small Buddhist monasteries in the New Territories area were founded by village or district communities, and usually those communities founded trusts to hold the land on which the monastery stood, and any land donated for the upkeep of the house and its inhabitants<sup>37</sup>. Similarly, many villages with temples to the gods of the Chinese customary religion established trusts to maintain the temples, and to ensure that the seasonal rituals were properly conducted. It was, however, not uncommon for these religious trusts to have some communal functions as well, since any functions placed under the care of a temple trust could be assumed to be under the eye of the deity, and thus less likely to be at risk of fraud or similar problems<sup>38</sup>.

Very similar to these religious trusts were charitable trusts. These usually began with a donation campaign towards a specific charitable aim. The donations were then usually put into a trust, with Managers elected by the community involved. Thus the Fong Pin Hospital (方便醫院) on Cheung Chau was established in 1878 by

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<sup>37</sup> There is a good example near Sheung Wo Hang: the trust which owned and controlled the Cheung Shan Kwu Tsz (a nunnery) - see Appendix. For the Cheung Shan Kwu Tsz, see the author's "Cheung Shan Kwu Tsz, An Old Buddhist Nunnery in the New Territories, and its Place in Local Society", in *Journal of the Royal Asiatic Society, Hong Kong Branch*, Vol. 29, 1989, pp. 121-157, and "Ta Kwu Ling, Wong Pui Ling and the Kim Hau Bridges, in *Journal of the Royal Asiatic Society, Hong Kong Branch*, Vol. 30, 1990, pp. 257-265.

<sup>38</sup> Some of the land held by the Cheung Shan Kwu Tsz nunnery trust, for instance, seems to have been essentially communal property of the neighbouring villages, held by that trust in the name of the deity to ensure its safe-keeping.

means of a donation campaign among the island's merchants and others<sup>39</sup>. The local commander of the Chinese navy strongly supported the campaign, as did other outsiders. Once the hospital was a success the remaining funds were used to maintain it. The Kaifong (街坊: the committee of merchants which effectively ran the town) took the hospital over, but it is believed that the accounts of the Hospital were kept separate from the Kaifong accounts in a separate trust, with the Kaifong nominating the Managers.

The history of the Lok Sin Tong (樂善堂), a hospital and general charitable body established in 1880 in Kowloon City, is almost identical. The staff of the yamen in the City supported the project enthusiastically, and a donation campaign took place throughout the area. In district meetings it was agreed to grant the hospital a toll on all persons buying and selling in the market at Kowloon City. Here there is no question as to the holding of the funds: they were left in a trust, managed by a committee elected from the merchants of the town and the senior elders of the district each year<sup>40</sup>. The early history of the Yan Oi Tong (仁愛堂) in Yuen Long (also established in the late nineteenth century) is much the same.

These examples all come from the market towns, but there were a scatter of such charitable trusts throughout the area. In most cases these trusts cut completely across clan and genealogical lines, and are demonstrably communal in character. Many such trusts were temporary. A committee would get together to build or repair a bridge, or a section of road, or a pier, or some other essential facility. A donation campaign would be undertaken by the committee. Funds would be placed in a trust until the work was completed, and satisfactory accounts rendered, after which the committee would disband itself and the trust, their work completed.

Sometimes permanent charitable trusts were not endowed with land. The Lok Sin Tong got a good deal of its income from the toll which the district agreed that it could levy, for instance. In some

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<sup>39</sup> On the Fong Pin Hospital, see J.W. Hayes, *The Hong Kong Region, 1850-1911: Institutions and Leadership in Town and Countryside*, Archon Books, Hamden, Connecticut, 1977, p. 67.

<sup>40</sup> See J.W. Hayes, *The Hong Kong Region*, op. cit., pp. 168-173 and 176-177.

places - Wu Kau Tang is an example - village communities would agree to put a rent-charge on the village fields to support the village school: the moneys were paid to and accounted for by a trust. In Hoi Ha the village decided, for Fung Shui reasons, to move all the ancestral graves. It was decided in a Village Meeting that the costs were to be met by a fee to be paid by every villager travelling overseas to work<sup>41</sup>. In all these cases the funds were handled by a trust, which presented annual accounts to the community, although none of these trusts were endowed with land<sup>42</sup>. All these trusts were communal, not ancestral, and looked, usually, to a larger constituency than a single clan.

Something very similar took place at Sha Tau Kok in the early nineteenth century. There the villagers of the whole area established a political union called the Tung Wo Heung, or the Sha Tau Kok Shap Yeuk (東和鄉, 沙頭角十約), and used their united power to eject the “great clans” of the Sham Chun (Shenzhen) area from the district and to establish a market town of their own<sup>43</sup>. The Tung Wo Heung was managed by a committee of the senior elders of the forty or so villages involved. There had been a donation campaign at the start of the district’s bid for independence, and, when the campaign was successful, these funds were used to build the walls and gates and buy the cannon of the new town, the fine bridge across the river, the town wells and piers, and a large community school and temple. When all this was completed there remained some unspent money, and the trust was continued in being to manage this money. To it

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<sup>41</sup> It should be noted that the customary law allowed communities to agree rules in meetings, which, after general consensus was agreed, then became legally enforceable. Local custom demanded that any such rules be written out, and pasted up on the village walls for a period, to allow objections to be raised. Rent-charges of this kind were a frequent component of Village Rules.

<sup>42</sup> Another trust of the same type was the communal trust set up in Luk Keng, which took a rent-charge from all the village fields to pay for the reclamation being undertaken there, as noted below.

<sup>43</sup> For Sha Tau Kok and the Tung Wo Heung, see the author’s “The Alliance of Ten: Settlement and Politics in the Sha Tau Kok Area”, in *Down to Earth: The Territorial Bond in South China*, eds. David Faure and Helen F. Siu, Stanford University Press, Stanford, 1995, pp. 123-160, and “Eastern Peace: Sha Tau Kok Market in 1925”, in *Journal of the Royal Asiatic Society, Hong Kong Branch*, Vol. 33, 1993, pp. 147-202.



was added the income from a “rate” charged on every shop-keeper in the market, fees for the use of the town weighing scale, fees from ferry operators, and a few other incidental pieces of income. These were all put into the trust. A Manager was appointed from among the shop-keepers, and he was responsible for letting contracts (eg to clean the streets), and running the Town Watch. In other words, these funds were, in origin and use, the town expenses. But they were kept in the form of a customary trust (called the “Tung Wo Funds”, 東和分), and the accounts were presented annually to the committee of the Heung.

### *Mixed and Ancestral Trusts, and Land-holding Trusts*

Many trusts in single-surname villages were also mixed in character: they were by no means the simple ancestral trusts they are often assumed to be. At Sheung Wo Hang<sup>44</sup> the prime ancestral trust, the Sam Tsit Tong, owned and ran the school as well as the Ancestral Hall and the prime ancestral graves. It is clear that the school was not run solely for the clan, but was a mixed clan and broader communal facility<sup>45</sup>, although, in this case, the trust was primarily ancestral in character.

Many other trusts, however, even those named after a single apical ancestor, and with all the descendants of that ancestor as members, while they look, at first sight, like ancestral trusts, cannot really be called so. Sheung Wo Hang again provides many cases in point<sup>46</sup>. In that village, only the Sam Tsit Tong was appreciably involved with ancestral functions. The graves of the high clan ancestors, the single Ancestral Hall, and the rituals at them, were all handled by this trust, and by this trust alone. Although this trust

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<sup>44</sup> See Appendix.

<sup>45</sup> The school was open to boys from clans other than the Leis of Sheung Wo Hang, especially boys from Ngau Au. It had, from the 1870s, facilities for boarding pupils, and boys from many villages within a range of fifteen kilometres or so came there to finish their education after receiving a few years of education in their own village's school. The school was in no way limited to the Leis, but served the whole community of the valley. It brought the Leis great prestige, but it was not a clan facility, or not primarily so.

<sup>46</sup> See Appendix.

was a mixed one, its land was all used to provide for the upkeep of the school, Ancestral Hall, and graves, and the trust was, therefore, essentially ancestral, even though it had some communal functions. The other 47 trusts in the clan named from, or with names implying, an apical ancestor or group of ancestors were not ancestral, or communal, trusts in this real sense: they were merely, or primarily, vehicles for the holding of land.

As noted above, land bought by a villager was more easily sold, and under fewer restraints, than land inherited. Where villagers did not wish their purchases to be alienated after their death, the easiest way to avoid this was to make the purchases into a trust. The aim of such a trust was to ensure that the purchaser's descendants had access to the land so bought, but could not sell it easily. Where a villager bought land, and put it into a trust in this way, the normal way was to call the trust after his name, or after the name of his father, but these trusts were family trusts, not ancestral trusts, and were designed essentially as land-holding and land-controlling bodies, with little if any "ancestral" functions. They were vehicles to allow access to members of a family to land for subsistence, without risking alienation. No doubt, the descendants of one of these trusts, subsisting on the use of the land of the trust, had a moral obligation to worship the ancestor at his grave once a year, but they would have had such an obligation anyway, and the existence of this obligation cannot make these trusts into ancestral, rather than family trusts. They had, in fact, more in common with the trusts which under-pinned "extended families"<sup>47</sup> than with genuine "ancestral" trusts such as the Sam Tsit Tong. Trusts such as the Lei Kwok-kei Tso, the Lei Ting-kwong Tso, the Lei Chiu-leung Tso, or the Lei Chiu-mui Tso at Sheung Wo Hang<sup>48</sup> were all essentially of this kind: merely vehicles to hold land and control its use in this way. As can be very clearly seen at Sheung Wo Hang, family trusts of this kind were established as and when significant opportunities for investment in land came up.

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<sup>47</sup> Indeed, a few of them may well have originated as trusts for an "extended family".

<sup>48</sup> On all these, see the discussion in the Appendix.

In Sheung Wo Hang, some of the so-called “ancestral” trusts are demonstrably land investment agencies only. Thus, the trusts in that village called the “Two United Ancestors”, 二合祖, the “Four Prosperities Hall”, 四興堂, and the “Hundred Prosperous Ancestors”, 百興祖, were all without even the shadow of an ancestral function. These trusts used cash drawn from several descent lines (respectively, two, four, and thirteen) to buy land, which was then rented to descendants, but without any ritual or ancestral function, since each of these descent lines had other trusts which took responsibility for the worship at the graves.

Sheung Wo Hang again provides a good deal of evidence as to how these land-holding and land-controlling family trusts grew up. The prime ancestral trust (the Sam Tsit Tong) was centred on the First and Second Generation ancestors, but was formed initially from land purchased by the Third Generation ancestors, over the 70 years following the death of the Founding Ancestor. Additional land was bought for this trust at various dates by the Fourth, Fifth and Sixth Generation ancestors. Because the trust was initially established on purchases made by the Third Generation ancestors, and because there were three of them, each with the character “Tsit” (捷) in their names, so the trust was called the Sam Tsit Tong (三捷堂, “Hall of the Three Tsit Brothers”)<sup>49</sup>.

Similarly, the three trusts of which the three Tsit brothers are the apical ancestors were established after their deaths, initially on purchases made by their sons, the Fourth Generation ancestors. These trusts take their names from the Fourth Generation ancestors, even though it is the Third Generation ancestors on whom they are centred. Thus, the eldest of the three Tsit brothers had five sons, and the trust centred on him is called the Ng Fuk Tong “Hall of the Five Blessings”, 五福堂, while the youngest of the Tsit brothers had three sons, and his trust was called the Sam Yue Tong “Hall of the Three Abundances”, 三餘堂. These trusts were established in the generation after the death of the apical ancestors, but were very much expanded by further purchases over the following fifty or so years. This was

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<sup>49</sup> For more detail, see the Appendix.

particularly so with the “Hall of the Three Abundances”, which was hugely expanded by purchases around 1815 and again around 1850, the apical ancestor having died about 1760.

Much of Sheung Wo Hang was dependent on the lands of the trusts centred on the Third and Fourth Generation ancestors for their subsistence. It was very much to the village’s benefit for these trusts to buy extra land whenever they could, as this expanded the subsistence basis of the whole clan. The rent paid for use of the fields was collected and saved, and new fields bought when the opportunity presented itself. While this can be demonstrated for Sheung Wo Hang, it is likely to have been a common practice for the estates of the main village trusts to be expanded after their death, to the greater benefit of the clan as a whole.

In Sheung Wo Hang, wealthy villagers in the Fourth and subsequent generations also bought fields whenever the opportunity arose. Usually, these fields were erected into a trust either during the lifetime of the original purchaser, or immediately on his death, to preserve the lands purchased for his descendants. Trusts of this character were normally seen as family trusts rather than trusts of interest to the clan as a whole, and do not seem usually to have been expanded by further purchases at a later date: in Sheung Wo Hang some of the Fifth Generation ancestral trusts were expanded after the death of the apical ancestor, but none of those of the Sixth or Seventh Generation. It is believed that this is a general and widespread pattern: ie that it was common for the prime ancestral trusts of the high clan ancestors to be established after their death, and to be expanded by subsequent purchase, but that it was rather rare for trusts formed from lands purchased by lower generation ancestors to be expanded subsequent to their deaths.

In short, while some of the so-called ancestral trusts have genuine ancestral duties, particularly those centred on the Founding Ancestor or his immediate descendants, most are family trusts, vehicles for the family, or at best the descent line, to hold and control its lands, and even the prime ancestral trusts are often found to have communal as well as ancestral roles.

*Customary Trusts Operating as Commercial Bodies*

There were also customary trusts which were investment agencies pure and simple. Much of the New Territories faced an arable land shortage from the mid-nineteenth century. The best way around this was reclamation of the shallow sea-bed of the bays at the head of which the villages tended to stand. By reclaiming the bay in this way it was possible for a village, in some cases, to double the amount of arable land at its disposal. But reclamation was immensely expensive. Building the bunds, clearing the mangrove, setting up the sluices, etc, required a great deal of labour, which all had to be paid for. Then the area reclaimed had to be flooded with fresh water for seven years to leach out the salt, and then more labour had to be hired to bank the reclaimed land up into fields. Only after that would there be any return. Investment in reclamation was a long-term affair, therefore, which would tie up a good deal of money for a long time.

In most places, reclamation was undertaken by trusts which were purely commercial bodies, and, which sold shares to those who could afford to invest in the undertaking. In Sha Tin, the major reclamation off Sha Tin Wai (this reclamation was of the shallow waters between the island of Yuen Chau Kok and the coast) was conducted by such a trust, the Yi Shing Tong, 二盛堂, "Hall of the Two Prosperities". It was called the "Hall of the Two Prosperities" because the trust was originally formed from two shares. One was taken up by the village of Sha Tin Wai, and the other by the villages of To Shek and Tsok Pok Hang in a 3:2 ratio. The Tsok Pok Hang share, and, it is believed, the To Shek share were funded communally: the villages established new trusts within their villages to which every villager had to pay a fixed rent on all their land, the income from which went to the Yi Shing Tong to meet the costs of the reclamation. The Sha Tin Wai share, however, was broken into a number of sub-shares, which were sold off to whichever villager could afford to buy. The resultant ownership of shares in the Sha Tin Wai share of the Yi Shing Tong (and subsequently of the fields on the new reclamation) bore, therefore, no relationship to the genealogy or descent patterns of Sha Tin Wai: it merely identified

those families relatively rich in the later nineteenth century, when this reclamation was in hand.

The reclamation at Kuk Po was handled in the same way, with shares sold to whoever had the money to buy. That at Luk Keng was handled through a trust which covered all the villagers of that village<sup>50</sup>. As at Tsok Pok Hang, each villager was obliged to pay a rent-charge or else to labour for a set period each month on the reclamation. At Wo Hang the reclamation of the bay (mid-nineteenth century) was probably also handled by a trust, broken down into sub-shares, which were taken up by those villagers of Wo Hang and Ma Tseuk Leng able to afford to do so. The resultant land-owning was, again, not in any way linked to genealogical or descent patterns, but reflected merely the distribution of wealth in the villages at that time. In this case, once the reclamation was complete, and the resulting fields distributed to the investors, the original trust was cancelled. It did not survive to 1905.

In many places, when the shares in a reclamation project were finally transformed into allocations of fields on the new land, the new land-owner formed a trust to hold the land for himself and his descendants, to reduce the risk of alienation after his death. The fields of such trusts were used by that new land-owner's descendants for their subsistence. But, even if these fields then became the estate of a land-holding trust, this does not make the process any less a completely commercial one, nor the trust which undertook the reclamation any less a purely investment body. It will be noted that, both at Wo Hang and at Sha Tin Wai, the trust which undertook the reclamation covered several villages, with no genealogical connections. The same is true for Kuk Po, where a substantial share was taken up by a wealthy villager of Yim Tin, ten kilometres away, as a straightforward investment.

In Sheung Wo Hang there was at least one other purely investment trust. This was the Man Cheung She, 文昌社, or Man San She, 文新社. Sheung Wo Hang had a literary club called the Man

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<sup>50</sup> For the reclamation at Luk Keng, see D. Faure, *The Structure of Chinese Rural Society: Lineage and Village in the Eastern New Territories, Hong Kong*, Oxford University Press, Hong Kong, 1986, p. 204, n. 30.

Cheung She. In 1883, a considerable amount of land came on the market, at Kuk Po and Wu Kau Tang. No individual in the area could find the quarter of a million cash that was being asked. But the elders of the Man Cheung She found that by joining together they could afford it, and so they bought it in the name of the club. Almost immediately, as new members joined the literary club, who had not invested in the purchase, it became necessary to separate the affairs of the club and of the joint owners of the land. The elders who had bought the land therefore formed a new trust to hold the land they had bought. This was initially called the Man Cheung She Trust, but the similarity of the two names became an embarrassment, and, by 1905, the trust had been renamed the Man San She, to distinguish it yet more clearly from the club. The land bought in 1883 was too far away from Wo Hang to be farmed by Wo Hang villagers, and this purchase was of land that must always have been viewed as rent-producing.

In modern associations, it is often found to be convenient for the association to have a number of separate bank accounts to keep the accounts of the various functions of the association separate and distinct. In the traditional New Territories there were no banks, but the same problems were present. The only effective way they could be tackled was by realising the account, and establishing a trust to allow the income to be hypothecated to the function. In Sheung Wo Hang there are three clear cases<sup>51</sup>.

The whole clan thus constituted the Sam Tsit Tong, as noted above, for the central ancestral and communal needs of the clan. This trust covered all the villages lived in by descendants of the Founding Ancestor: Sheung Wo Hang which was inhabited by the descendants of the Founding Ancestor's First and Third Sons, and Ha Wo Hang and Tai Long, which was where the descendants of the Second Son lived. Identical in membership was the Pak Hing Tso ("The Hundred Prosperous Ancestors"), which was, as noted above, probably in its origin a simple investment trust, established to allow the clan to invest as a whole in the new reclamation projects, without

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<sup>51</sup> For details, see Appendix.

entangling in this possibly risky undertaking the central ritual and communal accounts of the clan, which were kept separate in the Sam Tsit Tong. After the reclamation was completed, this trust was used by the clan as the vehicle for its political expenses (ie to meet its expenses due to the Tung Wo Heung, to fund the annual meetings of the elders, and to meet expenses such as the repair or rebuilding of the bridges in the three villages). It is easy to see why the village should decide to keep the ritual accounts separate from the political and communal accounts in this way.

Another trust which similarly overlaps the Sam Tsit Tong is the Tang Fa Wui (燈花會, "Firecracker Association"). This was formed from all the residents of Sheung Wo Hang, and so was not identical in membership with the Sam Tsit Tong (which covered those clan-members living at Ha Wo Hang and Tai Long as well, who had a Tang Fa Wui of their own), but it was identical in membership with the Ng Fuk Tong and the Sam Yue Tong. As far as the Sheung Wo Hang residents went, therefore, this Association, together with the Sam Tsit Tong and the Pak Hing Tso, were very similar insofar as they were the three trusts everyone in the village was a member of. This Association was formed to ensure funds were available to buy firecrackers for the various festivals of the year<sup>52</sup>.

The third example is the Pui Man Tong (培文堂), which seems to have duplicated the Sam Yue Tong. Here, the Third Fong of the clan decided to build a Han Uk, and to endow it, and so formed the Pui Man Tong. This trust is now used by the Fong, not only to manage the Han Uk, but also for other communal requirements of that branch of the clan<sup>53</sup>.

### *Shop-management Trusts*

There remain two types of customary trust not yet discussed - trusts set up to run a shop, and private trusts of various kinds. Running a shop in a market town was an expensive business. Paying for a lease, or buying a shop, was not cheap, and the purchase of

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<sup>52</sup> And to fund the annual release of hot-air balloons on the Mid-Autumn Festival.

<sup>53</sup> For details, see Appendix.



stock, payment of goodwill gifts, and gathering cash-in-hand for the shop required a lot of cash<sup>54</sup>. Probably most shops were operated as partnerships, with a Manager operating on the basis of a trust funded from the partners. The Manager would present his accounts, either quarterly, or annually, to the partners. There must have been hundreds of these trusts in existence at any time, but we know in detail of very few. They were not endowed, and so do not appear on the Block Crown Lease, for instance<sup>55</sup>.

### *Money-lending*

All trusts - ancestral, communal, religious, charitable, family, or commercial - were commercial in that they almost all lent money. In the absence of banks, people in need of money had to borrow it privately. Anyone, or any trust, with cash in hand would lend it. Borrowing money against the next season's catch was a normal practice of the boat-people, and borrowing against the next season's crop almost equally frequent among the land-people. New houses, a marriage, a funeral, all led inevitably to borrowing money. Where a villager saw an opportunity to buy a field, but had only part of the purchase price, the result was again a resort to borrowing money<sup>56</sup>. Money-lending was absolutely universal in the area. Rates of interest were extremely high<sup>57</sup>. Money-lending allowed trusts with a little cash in hand to increase that cash, to the point where, hopefully, it could buy more land. Individuals or trusts, almost all lent money, either on personal guarantees, or through mortgages. Every villager knew all about interest from an early age. Every set of trust accounts

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<sup>54</sup> The local custom was to deal with shops on credit, and to settle the bill only at the four quarter-days. This meant that a substantial amount of cash, enough to cover a whole quarter, was needed. Furthermore, the rules on bankruptcy in the customary law were not favourable to shop-keepers, and it would be courting disaster to have set up shop without a solid cash backing.

<sup>55</sup> The Hoi Ha papers have some information on a shop run by Yung Sze-chiu for a time.

<sup>56</sup> As noted above, anyone buying a field was required under the customary law to pay over every last cash of the price on the very day the sale was agreed.

<sup>57</sup> So were the risks!

is divided into three: Income, Expenditure; and Moneys Lent<sup>58</sup>. The trusts we have discussed were not quiet or static organisations, but took every opportunity to make what money they could, even at the risk of bankruptcy: it is at least partly for this reason that the major ancestral trusts were kept separate in many villages from the investment trusts set up by the village. Where this was done, the major ancestral trusts were kept to ritual functions, or to ritual functions plus the running of the school or some other equally unambiguously non-commercial communal function, and were kept to the minimum income consonant with these functions. Such trusts were usually run on extremely conservative lines, and usually did not lend money, or risk foreclosure on the clan's ritual property - the clan would have other trusts to lend and invest money<sup>59</sup>.

In the New Territories area in the past, villagers in need of money either had to borrow it commercially from a shop or a trust, or they had to join a *Wui* ( 會 ), or Money-Loan Association. There were many hundreds of these. By joining a *Wui* a villager could borrow money at a much lower rate than commercially<sup>60</sup>. *Wui* often failed or became entangled, much to the exasperation of the District Officer during the thirty years before the War. These Associations

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<sup>58</sup> This is very clear from the Hoi Ha trust accounts. It was, almost invariably, over-exposure to lending that caused market-town shops to become embarrassed so often. As so often in the New Territories, the problems arose in years of poor harvest or famine, when interest on money lent often just could not be paid, and where public opinion would not countenance unsympathetic action towards the starving. The result was, every time, a rash of bankrupt shops and seriously embarrassed trusts.

<sup>59</sup> The risks of allowing the prime ancestral trust to lend money or to invest commercially are exemplified by one of the clans at Tai Wai, Sha Tin. Their prime ancestral trust became deeply involved in local investment possibilities in the mid nineteenth century, and became seriously embarrassed as a result. Eventually, creditors foreclosed on the clan Ancestral Hall, which had to be demolished and replaced by a row of houses, sold off by the creditors to reclaim their cash. It was to avoid such a disaster that the Leis at Wo Hang kept the Sam Tsit Tong so carefully distinct from the Pak Hing Tso, and the other money-lending and investment trusts of the clan.

<sup>60</sup> Put at its simplest, a Money-Loan Association was an Association of a fixed number of men, who agreed to pay a fixed sum into the Association each month for as many months as there were members. Each in turn got the use of one month's income. There were no controls, and entangled Money-Loan Associations were frequent. Particular problems arose with Associations where members died or went bankrupt during the life of the Association.

were all trusts. Occasionally, the better-run and more permanent of these Associations were endowed, the income from the endowment providing the necessary “float” against the inevitable temporary cash-flow problems. There was one such endowed *Wui* in Sheung Wo Hang, the Fuk Tin Wui (福田會), which operated within the village, and which had a few fields as endowment. Most *Wui*, however, were far less well-established than this.

The final group of customary trusts requiring comment are private trusts. Whenever any two or three villagers came together for any purpose, a trust was likely to be formed. Again, Sheung Wo Hang has a classic example, the Tai Wong Wui (大王會). Every year those Sheung Wo Hang villagers who wanted to, clubbed together to buy a pig for sacrifice at the New Year<sup>61</sup>. Somewhen in the nineteenth century a few of the village households decided that it would be a good idea to buy a field, the income from which would pay for their shares in the New Year pig for ever, and this trust was the result. Most districts of the New Territories can show such private trusts, for all conceivable and inconceivable purposes.

### *Summary*

So, to sum up, what can be said about the customary trust? It lay at the very heart of the customary law. The local New Territories society had made of the customary trust an extremely flexible, simple, and effective tool for most local needs. Trusts ranged from the august and formal ancestral trust, to the tiny private or family temporary trust. Some trusts functioned almost as joint-stock companies, others as commercial partnerships, others as clubs or voluntary associations. Some had the proper solemn performance of the necessary annual rituals at Ancestral Halls, graves, or shrines as their main aim, but only a few. Far more were interested in the control and management of arable land, or in the undertaking of costly public works such as reclamations or bridges or in playing the local money-market. Many had as members the entire male population of a clan or a major descent line, others had only one or

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<sup>61</sup> Details are in the Appendix.

two members. Some were designed to be permanent, many were temporary. Some were charitable, religious, political or social in their aims, many more were just covers for joint ownership of small rural property. Trusts owned and operated magnificent institutions such as the Chan Family Temple at Canton, or such tiny ones as a tumble-down village latrine. Schools and hospitals, shops, workshops, ferries, gambling-houses, threshing-floors and irrigation ditches, sluices, and ponds - all were fit subjects for control by a customary trust. The care of widows and minors, absent relatives, or the under-pinning of an "extended family" were all usually handled in this way.

It is impossible to define or limit the customary trust. Whatever rules were suggested (the District Officers and the Government suggested publication of annual accounts, and a nominated Manager) it is easy to find exceptions to. What can be said, however, is that without the customary trust, the customary law, and especially the customary land-law, would have been a very ill set out system. Even today there are many hundreds of customary trusts still functioning in the New Territories, although their relative lack of sophistication when faced with the demands of modern legal systems has meant that many have ceased to function. Few are now formed *de novo*, for the same reason. Some (Money-loan Associations, for instance, and some of the trusts for widows), have become illegal, or else subject to control in recent decades, but most are still quite legal, and still very effectively functioning. The problems some types of trust face (especially the religious and charitable trusts) are a matter for separate treatment. Long may the surviving examples of this fascinating type of customary body continue to function!

## *Appendix*

### *Tso and Tong in Sheung Wo Hang Village*

The Wo Hang Valley lies at the head of Starling Inlet (Sha Tau Kok Harbour), in the north-east of the New Territories<sup>1</sup>. The valley is about two kilometres long. It is of average fertility, and closely hemmed in by mountains to north and south. The valley was inhabited in the Ming (when there was a village at Ma Tseuk Leng), but probably rather lightly. During the Coastal Evacuation (1662-1668), the area was abandoned. It was re-settled during the 1670s when new villages were founded by Hakka newcomers at Ma Tseuk Leng and Sheung Wo Hang. In the middle eighteenth century newcomers settled at Ngau Ha. Probably in response to this, the Sheung Wo Hang villagers established two new settlements, at Ha Wo Hang and Tai Long, and Ma Tseuk Leng others at San Uk Ha and Shek Kiu Tau, in both cases in order to occupy as much land as possible. The only subsequent settlements were the two desperately poor settlements of Yim Tso Ha and Pok Tau Ha, founded in the middle nineteenth century by small groups looking to make a living from the foreshore.

Both Sheung Wo Hang and Ma Tseuk Leng were founded as multi-clan villages. Sheung Wo Hang originally had four resident clans, Tang ( 鄧 ), Tsang ( 曾 ), Ho ( 何 ), and Lei ( 李 ). The present-day villagers believe the Tangs were the first to settle, and the Leis the last. The Leis, however, settled before 1692.

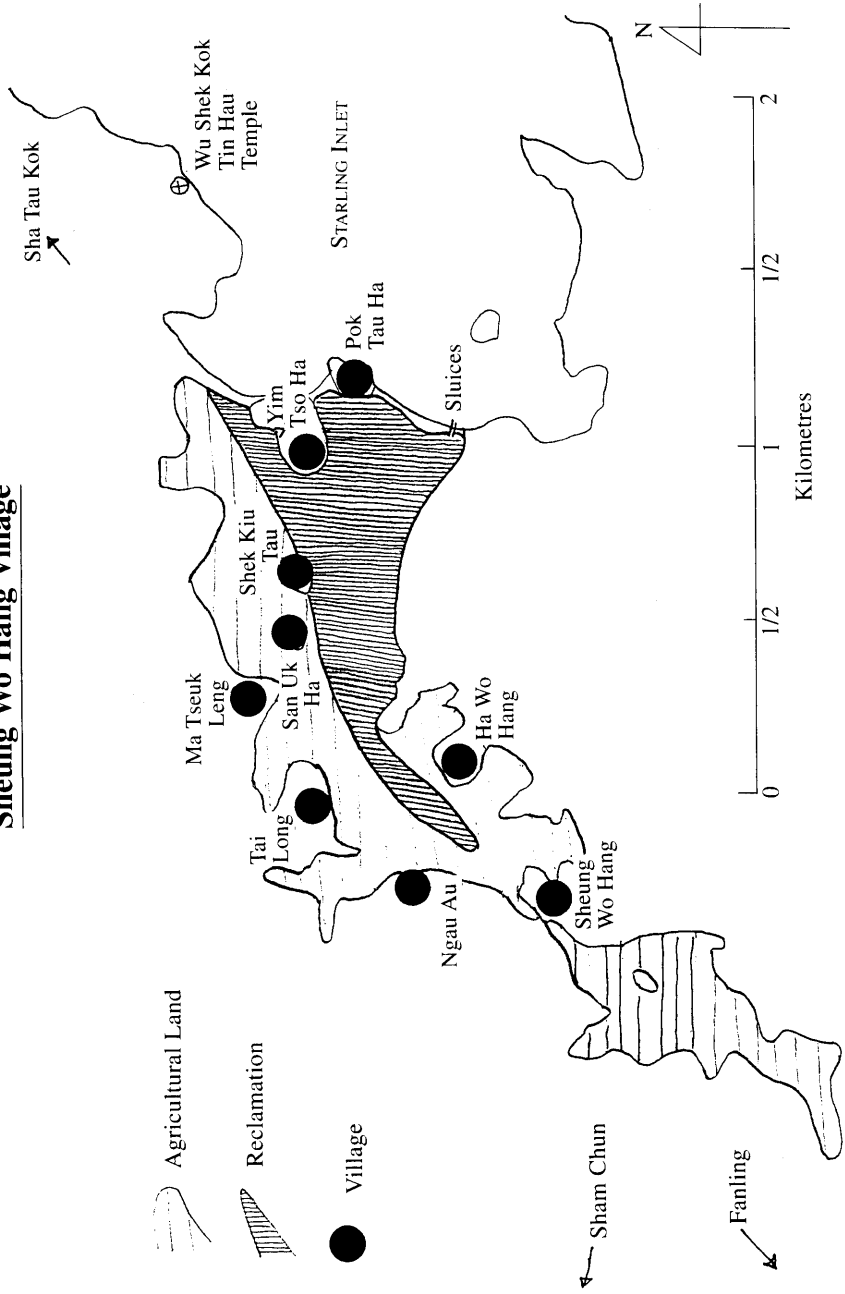
The Lei founder was Lei Tak-wa ( 李德華 ), but he was over seventy when he came to Sheung Wo Hang, and it was presumably his son, Lei Kuen-lam ( 李權林 ), who did the actual work of the settlement<sup>2</sup>. Lei Tak-wa died at the age of 76 in 1692. Kuen-lam was born in 1644, and was probably in his mid-forties when he settled at Sheung Wo Hang. Kuen-lam probably married only after the move to Sheung Wo Hang, since his sons were still all alive in 1759.

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<sup>1</sup> See Map attached.

<sup>2</sup> See genealogy at the end of this Appendix.

**Sheung Wo Hang Village**



He was by no means poor, since he was one of the leaders in the project to build the provincial Lei clan Ancestral Hall in Canton in the early eighteenth century. Kuen-lam had three sons, thirteen grandsons who survived to marry and have children, and forty great-grandsons who survived to marry.

The Leis today believe that the family lived in temporary houses until after Kuen-lam's death (1721), and that they then employed a very good Fung Shui master to set out the permanent housing, including the Ancestral Hall. The Leis intended to force the other three families out of Sheung Wo Hang, and the Fung Shui of the Ancestral Hall was designed with this in mind.

In fact, they succeeded in this aim. The Tangs left Sheung Wo Hang, and founded new villages, at Kong Ha near Sha Tau Kok, Ma Mei Ha near Loi Tung, and Hok Tau near Lau Shui Heung, all within about ten kilometres of Sheung Wo Hang. The Tangs seem to have moved out mostly between about 1750 and about 1850<sup>3</sup>. The Tsangs all moved away to a new village at Ma Yau Tong, some twenty-five kilometres from Sheung Wo Hang, about 1800, although they still owned an Ancestral Hall in Sheung Wo Hang in 1905. The Hos failed as a family, but there was still a Ho Ancestral Hall at Sheung Wo Hang in 1905. By 1915, however, the Leis had succeeded in buying out the remnants of the other three families, and Sheung Wo Hang is now a single-clan village. For some ritual purposes, the Leis still accept the Tangs as co-villagers. One of the main Tang clan graves lies close to the village.

The only other major historical event in the valley was the reclamation of a large area of sea at the head of the bay, to provide additional arable land. Bunds were thrown up, anchored on the two tiny islands of Yim Tso Ha and Pok Tau Ha, and everything landward of these bunds was reclaimed<sup>4</sup>. This reclamation was undertaken jointly by the Leis of Wo Hang, and the Ma Tseuk Leng villagers, almost certainly in the middle nineteenth century. Major

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<sup>3</sup> There were, however, still two Tangs owning houses in Sheung Wo Hang in 1905 (the date of the Block Crown Lease), and three others (plus four Tang ancestral trusts) who still owned a little land there (plus an Ancestral Hall) at that date

<sup>4</sup> See Map attached.

reclamations, to provide additional farmland, salt-pans, and space for a new town, had also taken place at Sha Tau Kok between about 1815 and about 1850, and the Leis of Wo Hang had also invested in this reclamation.

By 1905, when the British surveyed the area in advance of the Block Crown Lease, there were 207 houses owned by Leis in Sheung Wo Hang<sup>5</sup>, not including the Ancestral Hall and the School, plus eight owned by Tangs, Tsang, and Hos, including their Ancestral Halls. The Leis also owned three houses near Ma Tseuk Leng, and four outside Sha Tau Kok Market, plus an unknown number (up to a dozen) in Sha Tau Kok Market<sup>6</sup>. These were owned by 123 registered households, of which 24 were joint households with more than one adult male. There were in addition a few house-sites, where there were ruined houses, which no one claimed at the Block Crown Lease. There were thus almost two houses per household, which suggests that Sheung Wo Hang was moderately prosperous<sup>7</sup>.

The village also had more than 50 traditional trusts of a permanent or semi-permanent character which were endowed with land<sup>8</sup>, and at least a couple of dozen temporary trusts.

The total arable land-holdings of the Leis within the New Territories came to 166.12 acres (67.23 hectares)<sup>9</sup>. At a little over one and a third acres per household, the village held just enough arable land in 1905 for bare subsistence, but certainly there was little lee-way. The arable land was not evenly distributed, however, with a disproportionate amount being held by the Third Fong of the clan.

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<sup>5</sup> This short note does not consider the Leis at Ha Wo Hang and Tai Long. These two villages were inhabited by the descendants of Lei Kuen-lam's second son (the Second Fong): the descendants of the first and third sons (the First and Third Fong), who remained in Sheung Wo Hang, are the subjects of this note.

<sup>6</sup> Sha Tau Kok Market lay outside the New Territories, in China.

<sup>7</sup> Some very wealthy villages, mostly Punti, had 3 houses per household. Many poor Hakka villages in the mountains had barely one house per household.

<sup>8</sup> There were certainly others which existed without being endowed with land, and having only cash, or leased accommodation. There were several shops owned by members of the clan through trusts which existed without any formal land-endowment, having just the lease of the shop, the stock, cash in hand etc.

<sup>9</sup> The clan held a little arable land as well within China, but only a few acres.



By 1905, the shortage of land held by the First Fong had forced many young men of that Fong to look for work as seaman overseas. This was common in villages in the Sha Tau Kok area.

The oldest of the trusts was the Sam Tsit Tong (三捷堂). The village tradition is that the Leis only built their permanent houses after Lei Kuen-lam died (1721). As such, it was his three sons (who shared the character Tsit, 捷, in their names), who had to set up the clan Ancestral Hall. They did so, and set up an Ancestral Trust into which the ownership of the Ancestral Hall and the houses built to either side could be put. The three brothers also placed into the ownership and control of this new Ancestral Trust the graves of their father, Kuen-lam, and grandfather, Tak-Wa, and their wives, and the Charitable Grave which Kuen-lam had established for uncared-for bones discovered while the land at Wo Hang was being cleared for settlement, together with the Earthgods of the village. The new Ancestral Trust was called Sam Tsit Tong ("Hall of the Three Tsit Brothers") after their common name-character. This Trust was initially established as a purely ancestral trust, to hold the ownership of the clan ritual places, with enough property to enable the clan to maintain them.

The earliest land-deeds of the Sam Tsit Tong do not survive, but deeds exist of 1759 and 1762<sup>10</sup>. In 1759 the three Tsit brothers bought land worth 80 taels near Ma Tseuk Leng from members of the Tang clan: in 1762 the two older brothers, and the eldest son of the third brother, bought land near Kwai Tau Leng worth 16 taels, again from members of the Tang clan. The youngest brother had presumably died between 1759 and 1762. The three brothers had inherited land from Kuen-lam, that is, the land that he himself had

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<sup>10</sup> The author discovered, by great good fortune, 56 deeds (relating to land held by certain of the trusts of the Third Fong of the Leis), plus ten envelopes previously used to contain deeds, where the contents are noted in brief on the envelope, but where the deeds themselves are now missing. Later, by an even greater piece of good fortune, the author discovered some 14 further land-deeds relating to property owned by these trusts in Sha Tau Kok in China. Much of the remainder of this Appendix uses the information which can be drawn from these deeds.

opened after he had bought the right to settle in Wo Hang<sup>11</sup>. This land descended as inherited land, to become the personal property of the three brothers' sons - there were thirteen of them who survived to adulthood. The land bought in 1759 and 1762, and the land earlier set aside for the Ancestral Hall, were placed in the new Ancestral Trust. At some date in the middle of the eighteenth century, according to village tradition today, a school was established in the village. The ownership was vested in the Sam Tsit Tong, which thus became a mixed trust, with both specifically ancestral and communal functions. It is very possible that the purchases of 1759 and 1762 were connected with the establishment of the school - the school itself, being built on what at the time was waste land on the periphery of the village, required no land-deed.

The Sam Tsit Tong, however, did not remain static after the death of the three brothers who had established it. Further land was bought for the trust in 1810<sup>12</sup>, 1858 (10 taels worth of land near Wo Hang), and in 1883 (land worth 15,700 cash, near Shek Chung Au). The purchases in 1858 and 1883 were from members of the Lei clan themselves. There were also two other purchases, of 1.2 *mau* of land near Hok Tau, and of 1.2 *mau* near Wo Hang, but the details (including the dates) do not survive: both are probably nineteenth century. In addition, the Tong invested in land in and near Sha Tau Kok Market in China, where it owned a few shops and a little land, and on the Wo Hang Bay Reclamation. In neither case (since this was "new land" being formed) were land-deeds issued. These investments took place about 1820 and about 1850 respectively. In 1905, the Tong owned 1.77 acres of arable land within the New Territories, as well as the Ancestral Hall, School, and a house in Wo Hang, plus two houses and a threshing-floor in British Sha Tau Kok. Most of the land of the Tong was in Wo Hang or on the Wo Hang Bay Reclamation: 1.28 acres of the 1.77 acres owned in 1905.

It is interesting to see that this trust was not static, but dynamic. In each generation between the death of the founders and the coming

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<sup>11</sup> The envelope of the deed by which Tak-wa bought "the land of the village at Wo Hang" survives, but, unfortunately, the deed itself does not.

<sup>12</sup> Details are missing.

of the British some extra land was bought for this, the most central trust of the clan. Probably, the income of the trust's land was saved until there was enough to allow another purchase, and then the purchase was made. This Ancestral Trust was never very rich, but it did not need to be. It had clearly expressed functions and duties (upkeep of the graves of the high clan ancestors, of the Ancestral Hall, of the Earthgods, and of the school, and the rituals required by these), and only needed as much income as sufficed for those roles.

The second group of trusts in Sheung Wo Hang are those centred on each of the three Tsit brothers individually. However, just as the three Tsit brothers called the trust centred on their father and grandfather by a name referring to their name-character, so the three trusts centred on them have names which refer to their sons. The oldest Tsit brother (Lee Tsit-kwai, 李捷桂) had five sons who survived to have sons, and the trust centred on him is called the Ng Fuk Tong (五福堂, "Hall of the Five Blessings"). The second Tsit brother (Lee Tsit-wing, 李捷榮) similarly, had five sons, and the Ancestral trust there is called the Ng Kwai Tong (五桂堂, "Hall of Five Cassia Trees"). The third Tsit brother, Lei Tsit-fong (李捷芳) had three sons, and the Ancestral Trust there was called the Sam Yue Tong (三餘堂, "Hall of Three Abundances"). These three, but especially the last, were sometimes also known by the name of the apical ancestor.

We have details of the purchases made by the last of these, the Sam Yue Tong. Lei Tsit-fong's own purchases all seem to have gone to the Sam Tsit Tong. Land was bought by the sons of Lei Tsit-fong in 1764, 1769, 1770 (two), 1777, 1781, and 1793, and these purchases formed the basis of the Sam Yue Tong's holdings. These purchases totalled 385 taels. After the death of Lei Tsit-fong's sons (mid 1790s), his descendants continued to add to the holdings of this trust, with purchases in 1816, 1817, 1823, 1824, 1827, 1858, and 1868. The total added to the Sam Yue Tong by purchase after the death of the sons of the apical ancestor was 286.31 taels. In addition to these purchased lands, this trust invested very heavily in the reclamations at Sha Tau Kok and Wo Hang Bay: in 1905, the trust

owned 5.77 acres on the Sha Tau Kok Reclamation, and 9.21 acres on the reclamation at Wo Hang Bay. The investment in the Sha Tau Kok Reclamation (probably in the 1820s) may have been done while the last of Lei Tsit-fong's grandsons was still alive: there is some evidence from the land-deeds that Lei Ting-Kwong (李廷光) and Lei Ting-fan (李廷勳) were still alive in the 1820s. The investment in the Wo Hang Bay reclamation was undoubtedly the work of the following generation, however.

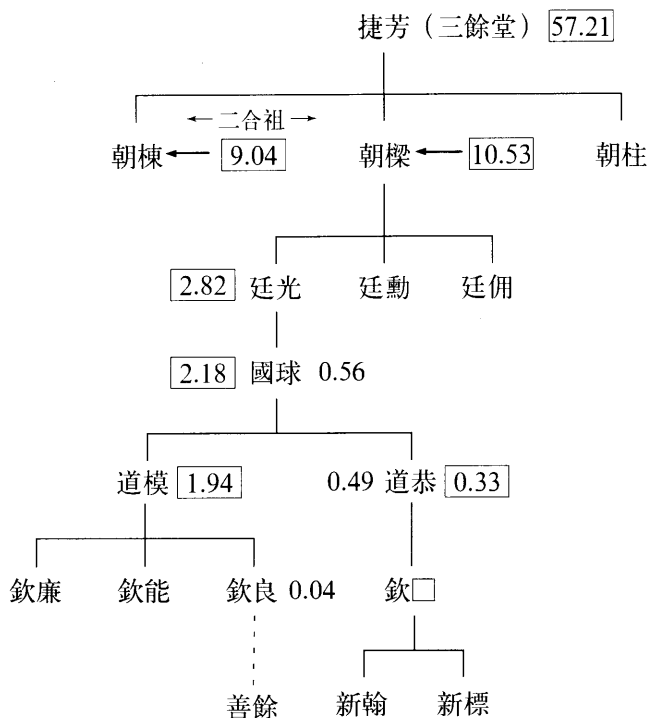
The Sam Yue Tong cannot be called an ancestral trust in any real sense. Its huge land-holdings (57.21 acres in 1905) were very much greater than could possibly be needed for the care of Lei Tsit-fong's grave. In fact, this trust was predominantly a device for holding land for the members of the descent line. In 1905 very few members of the descent lines of the Third Fong had in their personal possession more than tiny parcels of land. The deeds and the Block Crown Lease enable us to see something of this.

The best example comes from the descendants of Lei Ting-Kwong. He held a third share in the trust formed around his father Lei Chiu-leung (that trust held 10.53 acres, and the third share of it was 3.51 acres), and a ninth share in the Sam Yue Tong (which had 57.21 acres, of which the ninth share was 6.37 acres). He also held a one-sixth share in a trust (the Yi Hap Tso, 二合祖 "Two United Ancestors") established by his father and his father's elder brother (Lei Chiu-tung). This trust held 9.04 acres, and the sixth share of it was 1.51 acres. He himself bought land, and established a trust in his own name (2.82 acres). His son in turn (Lei Kwok-kau, 李國球), also bought land and established a trust in his own name (2.18 acres), as did his two grandsons (Lei To-mo, 李道模 and Lei To-kung, 李道恭, respectively 1.94 and 0.33 acres).

In 1905, the descent line consisted of five families, the three sons of Lei To-mo, and the two grandsons of Lei To-kung. Lei Kwok-kau had not put all the land he had acquired into his trust, he left 0.56 acres which was inherited by his descendants as personal land. One of To-mo's sons, Lei Yam-leung, had cut a new field from the hillside. This 0.04 acres was his alone. Lei To-kung had also formed some new land, and this 0.49 acres was the personal inherited

**Figure One***The Descent Line of Lei Ting-kwong*

(numbers circled = land, in acres, held in trust, numbers not circled = land, in acres, held as private property)



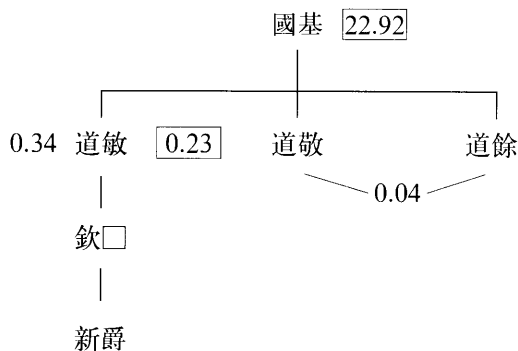
property of his two grandsons. Thus, in 1905, the five members of this descent line had, as personal property, no more than a quarter or a sixth share in the 0.56 acres inherited from Lei Kwok-kau, plus the 0.04 acres in the case of Lei Yam-leung, and plus the half share each of the 0.49 inherited from Lei To-kung in the case of his grandsons. Lei Yam-lim and Lei Yam-nang thus each held 0.09 acres of personal land, Lei Yam-leung 0.13 acres, and Lei San-hon and Lei San-piu each held 0.81 acres. None of these holdings would have sufficed to keep a family - or, indeed, even, in the case of Lei Yam-

leung and his brothers, an individual - alive. But Lei Yam-leung and his brothers also had a right to a sixth share of the trusts held by Lei Kwok-kau, and a third share in those held by Lei To-mo. Lei Kwok-kau had access to 16.4 acres held in trust, and a sixth share of that was 2.73 acres. The third share of Lei To-mo's trust was 0.65 acres. So, on top of their tiny 0.9 or 0.13 acres of personal property, these brothers had access to a relatively vast area of 3.8 acres of ancestral trust property each. Lei San-hon and his brother similarly had access to 4.35 acres of ancestral trust land each, plus their own personal 0.81, or a total of 5.16 acres. This descent line was, therefore, one the richest in the clan, despite the individual members of it having almost no personal land of their own.

Another case in point is the descendants of Lei Kwok-kei (李國基). It is unclear whose son he was, but he was of the Third Fong. He was clearly the wealthiest villager of his day, and bought huge quantities of land, all of which seems to have been placed into a trust. By 1905, this descent line was represented by three families: his two sons Lei To-king (李道敬) and Lei To-yue (李道餘), and his great-grandson, Lei San-tseuk (李新爵), the grandson of his eldest son, Lei To-man (李道敏). Since Lei Kwok-kei's estate was, in 1905, 22.92 acres, these three families each had access to no less than 7.64 acres. In addition to this, Lei To-man had established a small trust in his own name (0.23 acres), to which Lei San-tseuk was the only claimant, raising his ancestral trust property rights to 8.39 acres. In these circumstances, the tiny areas of personal property owned by the three families (0.34 acres owned by Lei San-tseuk, 0.04 acres shared by the other two families) were of very little economic importance to them. The small areas of personal property were all Third Class land, and had almost certainly been cut from the hillside as new land in the years immediately before 1905.

These two examples come from the richest families in the village, but the situation was the same with the poorer families. Thus the descent line from Lei Chiu-mui (李朝梅) was represented in 1905 by Lei To-wai (李道維), Lei To-kan (李道近), Lei Kam-kwan (李錦坤), and Lei Kam-sang (李金生). These families held, respectively, 0.36, 0.08, 0.21, and 0.22 acres of personal land, almost

**Figure Two**  
*The Descent Line of Lei Kwok-kei*



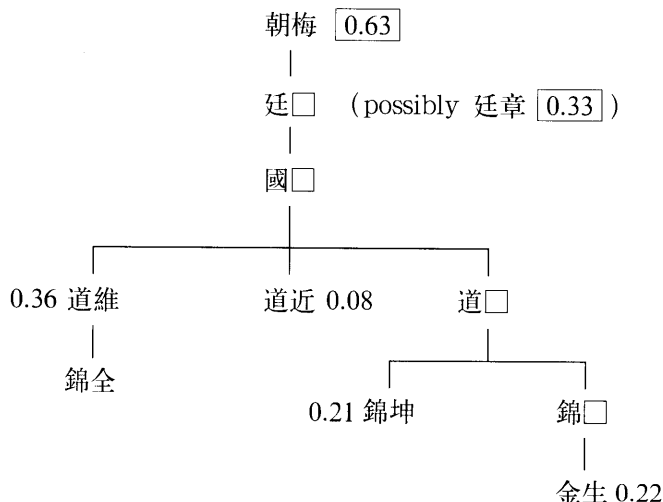
all of it poor quality, and all of it almost certainly recent formation of new land cut from the hillside. The 0.63 acres of the Chiu-mui trust (which added 0.15 acres to each of the four families), brought the families up from almost no arable land to somewhere close to a third or a half an acre each, which, although far short of the subsistence level, was probably enough to live on, when opportunities to work as wage-labourers for other villagers is taken into account<sup>13</sup>.

Taking the village as a whole, in 1905 there were only eighteen households which owned more than  $\frac{1}{2}$  acre in personally owned land, and among these, only three owned  $1\frac{1}{2}$  acres or more, and could hope to subsist on their privately held property alone, without assistance from their ancestral trusts. On the other hand, there were at least nineteen households which owned no arable property at all, and whose only personal property was the house they lived in. These households were entirely dependent on the land of their ancestral trusts.

The reason for this village tradition of placing the great majority

<sup>13</sup> It is, though, easy to see why it was families such as these which provided the bulk of the early emigrants from the village, seeking work abroad as seamen or in the plantations in the South Sea.

**Figure Three**  
*The Descent Line of Lei Chiu Mui*



of the arable land in the village trusts (78% by area, 85% by value) was in order to make it difficult (or impossible) for villagers to sell their land. Given the Leis' 150 years of pressure on the other families of Sheung Wo Hang, ending in the complete victory of the Leis, and the establishment of the village as a single-clan settlement, it is, perhaps, no surprise that they should have placed a very high value on keeping the clan intact and keeping outsiders out. It was a principle of the local customary law that villagers could sell their privately-owned land to outsiders, if no-one in the descent line could afford to buy it. The Leis felt this was too lax a rule, and imposed stricter controls on alienation, by ensuring that the villagers had very little personally held property that was eligible for sale in even the most extreme of circumstances. No matter how many years, or even generations, a family had been farming lands rented from their ancestral trust, they were tenants-at-will only, in the eyes of both the traditional customary law and the Imperial law, and could not hope to sell anything.



Interestingly, neither of the two Village Headmen in 1905 (Lei Cheung-chun, 李長春, for the Ng Fuk Tong, and Lei Shin-yue, 李善餘, for the Sam Yue Tong) owned any personal property at all<sup>14</sup>. Lei Cheung-chun was clearly a man who strongly supported the village tradition of restraining sales of land outside the clan by placing it in trusts. All the land he inherited from his father (Lei Kam-fat, 李錦發) he accordingly made into a trust in his father's name, leaving Cheung-chun no private property at all. The Lei Kam-fat Tso owned in 1905 2 houses, a threshing-floor, and 0.98 acres of arable land. This trust may have had a second beneficiary as well as Lei Cheung-chun: Lei Yung-chun ( 李容春 ) may have been a brother of Lei Cheung-chun. Lei Yung-chun owned only a house and a tiny field he had cut from the mountainside (0.05 acres of Third Class land) in 1905, and must have been living on land held in a trust.

Lei Shin-yue was a member of the descent line of Lei Ting-kwong (see Figure 1 above). He was the son of Lei Yam-leung who was still alive in 1905, and so could not own land, since the family property was all still held in his father's name. His father was very old in 1905, certainly over seventy.

It is worth noting at this stage that all the personally held property of the villagers in 1905 lay within a kilometre of the village. This is about the maximum limit to which it is feasible to carry a plough every day. The holdings of the village further away than this were all held by village trusts. Where villagers farmed these distant fields they would build bamboo huts in the fields to live in during peak agricultural seasons, but these distant fields were rented to outsiders as often as not, and the proceeds distributed to the villagers of the descent lines in question.

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<sup>14</sup> Lei Cheung-chun was the Manager of the Sam Tsit Tong, the Ng Fuk Tong, the Chiu-ying Tso, the Ting-chun Tso, the To-kam Tso, the Kam-fat Tso, and the Tang Fa Wui. Lei Shin-yue was the Manager of the Sam Yue Tong, the Yi Hap Tso, the Pui Man Tong, the Chiu-leung Tso, and the Man San She. The deeds discovered which have thrown so much light on the trusts of the Third Fong were those held by Lei Shin-yue in 1905. Lei Cheung-chun was a Sau Choi, passing out first of his year in 1887. He died about 1910, at about fifty years of age: Lei Shin-yue survived into the 1930s, by when he was over eighty.

To return to the village trusts, the deeds discovered allow us to see how the estate of the Lei Chiu-leung Tso was built up. Lei Chiu-tung and Lei Chiu-chue, the first and third sons of Lei Tsit-fong, are last mentioned in the land-deeds as purchasers in 1793, and Lei Ting-kwong is mentioned as buying land in his father's name (Lei Chiu-leung, 李朝樑, the second son of Lei Tsit-fong) in 1795. It is likely that all these three brothers died about the middle 1790s. The surviving land-deeds show land being purchased by Lei Chiu-leung himself in 1776, 1783, 1785, and 1792. He also took out a Mortgage in 1778, although it seems likely that this was only converted into an absolute sale in 1883. These purchases by Lei Chiu-leung and his son formed the original basis of the Lei Chiu-leung Trust. After his death, however, purchases of land for this trust continued in a very steady stream, with four major purchases in 1795 (totalling 216 taels), and further purchases in 1823, 1825 (two), 1826, 1828 (two), 1853, and 1883, plus one other purchase of which the date is now lost. In the generation 1795-1828, following the death of Lei Chiu-leung, no less than 359 taels were spent purchasing land for his trust.

The land-deeds of this trust show that closely related trusts sometimes exchanged lands. Thus, in 1810, land was bought by the Sam Yue Tong, which later on came into the hands of the Lei Chiu-leung Tso. The 1823 purchase for the Chiu-leung Tso was subsequently divided into three, with a share being placed in each of the Chiu-leung, Ting-kwong, and Ting-fan Tso. The deeds also show that land bought by Lei Chiu-tung in 1764 and 1771 (totalling 53 taels), and further land bought in 1768 and 1772 by Lei Chiu-leung (totalling 45 taels), was all in the event passed on to form the basis of the Lei Chiu-chue trust. Similarly, 21.6 taels of land bought by Lei Chiu-leung in 1771 eventually passed into the trust formed around his son, Lei Ting-kwong. We do not have any evidence for the political and family backgrounds to these exchanges, but can assume that some sort of family agreement underlies them.

We do not have as much evidence for the parallel trusts in the rest of the Third Fong, or for the First or Second Fong, but it is likely that the general historical pattern remains the same as for the Third Fong trusts for which we have good evidence, that is, that the

ancestral trusts centred on the ancestors of the fourth and fifth generation resident at Sheung Wo Hang began to be built up in the later years of the life of the apical ancestors, but were then increased in size by purchase and investment by following generations. This can, however, be shown in part. Thus, the Ng Fuk Tong owned 0.36 acres on the Wo Hang Bay Reclamation in 1905, which could only have been acquired when that area was reclaimed in the mid-nineteenth century, 60 years and more after the death of the five brothers around whom the trust was centred. Of the trusts centred individually on the five brothers of the Ng Fuk Tong, the Chiu-ching Tso owned 0.69 acres on the Wo Hang Bay Reclamation, and 0.33 acres on the Sha Tau Kok Reclamation; the Chiu-ying Tso owned 2.67 acres on the Wo Hang Bay Reclamation, and the Chiu-yeung Tso 0.28 acres on the Wo Hang Bay Reclamation. All these acquisitions must have been made many decades after the death of the ancestors in whose name the trusts stand.

It is possible to trace three major phases in the growth of the Sheung Wo Hang land-holdings. The first phase is the land opened by Lei Kuen-lam and his sons in the period between about 1690 and about 1750. From 1750 to about 1800 the main opportunity for expansion was in buying land from the Tang clan as they left Sheung Wo Hang group by group to settle elsewhere. Since the Tangs would have needed cash to buy themselves into the new areas they were interested in, they were anxious to sell their old lands off, and thus gave the Leis the opportunity to buy. It can be demonstrated in the case of the Lei Chiu-leung Tso, for which we have the deeds of sale, that this is precisely what was happening there. Lei Chiu-leung and his descendants bought no less than 575 taels worth of land from the Tangs between 1750 and 1825.

It is likely that the reason that seven of the eight Fourth Generation ancestors in the First and Third Fong of the Leis have individual trusts centred on them is precisely because, when they were in the prime of life, and in the decades after they died, there were such excellent opportunities for purchase of land in the area. The customary law, which gave greater powers to purchasers in the disposal of land during their lifetimes, but restrained the following

generations who had inherited it, meant that, where purchases were made which were viewed as permanent acquisitions, it was more convenient and safer to have them transferred immediately to trusts, from where they could be disposed of only with difficulty. So all these seven ancestors can be assumed to have been buying as much from the Tangs as they could afford, and establishing trusts to hold the newly purchased land. The Second Fong established only one Tso around a Fourth Generation ancestor (Lei Chiu-tsip, 李朝楫). The reason for this was that all the descendants of this ancestor moved to Tai Long, while the descendants of the other four Ng Kwai Tong brothers settled in Ha Wo Hang. So Lei Chiu-tsip was the founding ancestor of Tai Long, and this explains the trust established centred on him. As for the rest of the Second Fong descendants, they moved to Ha Wo Hang and Tai Long at about the same time as the Tangs began to move out of Sheung Wo Hang: since the Tangs had not held any land in the Ha Wo Hang-Tai Long area, the Second Fong had no opportunity to buy, and so there were few trusts established there at this period, ie in the name of Fourth Generation ancestors.

The effects of the heavy buying by the first generation of Sheung Wo Hang trusts in the immediate Sheung Wo Hang area can be seen by looking at the pattern of landholding there in 1905. 48% of the total area of Sheung Wo Hang was owned by the village trusts, but 59% of that was held by trusts centred on the Third and Fourth Generations of the village.

The second-phase of village expansion was triggered by the Wo Hang Bay Reclamation. If the Fourth Generation Trusts had become wealthy by purchasing land from the Tangs, it was the Sixth Generation Trusts which flourished in the opportunities the reclamation provided. Relatively speaking, the Fifth Generation ancestors have few trusts centred on them, and these were relatively poor (most owned only between one-eighth and two-eighths of an acre). Only the trusts centred on the brothers Lei Ting-kwong and Lei Ting-fan were in any way wealthier (2.82 and 1.04 acres respectively), and then only marginally so.

It can be shown that a large number of the Sheung Wo Hang

village trusts were established to respond to the opportunities provided by this reclamation. The descendants of the two Fourth generation brothers, Lei Chiu-leung and Lei Chiu-tung, although they already had trusts centred on each of them, and on the Fong as a whole, established another trust, the Yi Hap Tso ( 二合祖 , “Two Ancestors United”), in order to invest in the reclamations. This trust must be seen as purely an investment agency of the Fong. It had no ritual or ancestral duties (these were covered by the other trusts existing), and its property all lay on reclaimed land. In 1905, this trust owned 1.42 acres on the Sha Tau Kok reclamation, and 7.61 acres on the Wo Hang Bay Reclamation. There can be little doubt that this trust was established purely to make it easier for the Third Fong to invest in reclamation projects. Money invested in reclamations was tied up for some years: although the long term profits could be great, the short term return was very low. So putting these accounts into a separate trust had a good deal of practical good-sense about it.

The Lei clan as a whole also wanted to invest in this reclamation, alongside and as well as the various Fong and sections of the clan that were doing so. But, again, it felt it desirable to keep the reclamation accounts and activities away from the Sam Tsit Tong. The clan probably wanted to avoid any risk to the central clan ritual property. So a new trust was established, the Pak Hing Tso ( 百興祖 , “The Hundred Prosperous Ancestors”), which had a membership identical to the Sam Tsit Tong (ie, the whole clan), but which was an investment arm, interested in a special way in reclamation. In 1905 the Pak Hing Tso held 0.43 acres on the Sha Tau Kok reclamation, and 0.45 on the Wo Hang Bay reclamation, and this constituted the whole of its property. Other trusts seem to have been very similar. Thus, the Sze Hing Tong ( 四興堂 , “Hall of the Four Prosperities”) had an identical membership to the Chiu-ying Tso, but was a reclamation investment agency, although not a very large one (it owned 0.08 acres on the Wo Hang Bay Reclamation in 1905). At a later date, the Pak Hing Tso was used by the clan to fund their political and communal activities (in particular, it funded the annual feast for the elders, at which the problems of the clan and district

were discussed, and it was the funds of this trust that were used, for instance, to clear the stream-beds in the village of rubbish, and repair the bridges over them), but in its origin it seems certain that it was an investment trust, pure and simple, which allowed the elders on behalf of the clan at large to risk the accumulated profits of the clan in reclamations.

The Sixth Generation was the dominant one in the village at the time of the Wo Hang Bay reclamation, and the huge number of trusts centred on ancestors in this generation must reflect the opportunities then available, especially in the Third Fong. Much of the money invested which formed the basis of the land-holdings of this raft of trusts was spent during the lifetime of the men in whose name the trusts were eventually set up: this land was then formed into trusts to ensure that the land was not disposed of outside the clan. There is no evidence from the land-deeds discovered that any of these trusts were expanded by subsequent purchase after they were first established<sup>15</sup>.

Wo Hang had no temple. The religious focus of the village was the Earthgods. There are six of these in the village, four having fine stone shrines. The shrines are owned by the Sam Tsit Tong, which also ensures that the appropriate rituals are conducted, especially at the New Year<sup>16</sup>. When the villagers wished to worship at a temple they went to the temples in the market town at Sha Tau Kok (where there were a Tin Hau Temple, a Man Mo Temple, and, just outside the town, a Kwan Tai Temple). A Sheung Wo Hang villager was the temple-keeper (and town letter-writer) in the Man Mo Temple in the early decades of this century.

Because there was no temple owned by Sheung Wo Hang, the village had no trust of a specifically religious character. Ma Tseuk

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<sup>15</sup> The Lei Ting-kwong Tso is the latest Tso which can be shown to have expanded by purchase subsequent to the period when it was set up. Land was bought for this Tso in 1874 (20 taels) and 1879 (39.2 taels). Land was also bought for the Yi Hap Tso in 1879 (3 *mau*) and 1882 (23.1 taels), but this trust was, perhaps, *sui generis*.

<sup>16</sup> One of the shrines is considered by the Leis to have been "the Earthgod of the Tang people". They are unclear if the Sam Tsit Tong can be properly called the owner of this shrine, but the Sam Tsit Tong arranges the annual rituals there as well, "in case the Earthgod there becomes angry that there is never any worship at his shrine".

Leng did. That village owned the Tin Hau Temple at Wu Shek Kok (a kilometre from the village, to the east, on the coast), and had done so, probably, from the Ming<sup>17</sup>: in 1905 the temple was owned by a Ma Tseuk Leng village trust. The details are unclear, but the temple trust was probably owned by the entire village community of Ma Tseuk Leng, with those villagers particularly interested being appointed trustees on behalf of the rest of the village. The temple was not endowed, and was maintained from the offerings of the devout. The Sheung Wo Hang villagers did not patronise this temple, however.

However, the Sheung Wo Hang village did have a special relationship with the tiny Buddhist nunnery at Cheung Shan, four kilometres east of the village, on the road to Sham Chun (Shen Zhen 深圳). This nunnery had been established in 1789, by the villages of Ping Che, Ping Yuen, Wo Keng Shan, Loi Tung, Tai Tong Wu, and Man Uk Pin. These six villages were all single-clan villages. Wo Keng Shan was an offshoot of Ping Yuen, and Tai Tong Wu of Loi Tung. Ownership of the nunnery was in a trust, which was divided into six shares, one for each of the founding villages, with four Managers, one from each of the founding clans, with the Chief Manager taken from either the Chans (of Ping Yuen and Wo Keng Shan) or the Tangs (of Loi Tung and Tai Tong Wu). The trust (which was called the Cheung Shan Kwu Tsz, 長山古寺) owned the temple, and a few fields nearby, which were designed more to allow the nuns to grow vegetables for their own table rather than to provide income for the nunnery. The villagers of the founding villages had, at some date, agreed to donate rice and vegetables to the nuns as well, to allow for their subsistence, and the trust had to ensure these donations were duly paid. The trust and its Managers also had to ensure that donations were forthcoming whenever the nunnery needed repair. A further important function of the trust and its Managers were that they were the “representatives of the pious” who, by Buddhist custom, were responsible for ensuring that the nunnery remained a devout and pious house, without scandal, and

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<sup>17</sup> The ferry pier for the district was at the temple until it was moved into the new market at Sha Tau Kok from about 1820.

who were responsible for ensuring that devout women were appointed as nuns and as the abbess whenever needed. The document by which the trust appointed an abbess in 1931 survives, and demonstrates the care and attention by which the trust undertook this work.

Wo Hang had no share in the ownership of this nunnery, but, in the late nineteenth and early twentieth century had a close and intimate relationship with it. This had begun in the 1880s. Lei Pui-yuen ( 李培元 ) of Sheung Wo Hang had been a noteworthy teacher in the village school, but, after his retirement, he had decided to become a monk. The Cheung Shan house being vacant at the time had been handed over to him<sup>18</sup>.

One of his pupils, Lei Cheung-chun, who was on his way to Canton to take the Sau Choi exam in 1887, spent his last night in his home district with his old teacher, praying for divine assistance. He succeeded, not only in passing, but in coming out the first in his year<sup>19</sup>. Lei Cheung-chun later became Sheung Wo Hang Village Headman for the Ng Fuk Tong. His colleague for the Sam Yue Tong was another pupil of Lei Pui-yuen; Lei Shin-yue. While these two elders lived, Sheung Wo Hang was generous to the Cheung Shan nunnery, donating to its repairs, and assisting the subsistence of the nuns with donations. While the owners did not give Sheung Wo Hang a share in the ownership of the monastery, they did make the Leis Managers in the trust (other than where questions of ownership were concerned) for some decades. In 1931, for instance, at the appointment of the new abbess, Wo Hang signed along with the other villages, being ranked third of the five Managers. On that very solemn occasion, each Manager was supported by other villagers as signatories. Three Wo Hang villagers signed: Lei Shin-yue, Lei Kwan-lan ( 李均蘭 : he was a villager of Ha Wo Hang, from the Second Fong, and very elderly in 1931 - he, too, must have been a

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<sup>18</sup> The Cheung Shan house is called a nunnery because that is what it usually was. However, if the house was empty, and a devout monk appeared, then there was no objection to it being used for a time as a male house.

<sup>19</sup> All subsequent Sau Choi candidates from the Sha Tau Kok area took to doing the same, and making a substantial gift while they did so. This, for a time, made the nunnery of greater consequence than before.



student of Lei Pui Yuen), and Lei San-ming ( 李新明 ).

The villagers today believe that this relationship with the Cheung Shan nunnery was never actualised within Wo Hang. "It was a matter for Lei Pui-yuen's students". Those students, and a few Buddhist devotees within the village, "got together", and made the donations and assisted, as individuals, without establishing any trust to support the work. After Lei Shin-yue and Lei Kwan-lam died in the 1930s the relationship between the village and the nunnery slowly withered away. In the 1931 document, while the four Managers from the four founding clans are entered with their village names, since their relationship with the nunnery was actualised within their villages, and their Managership was a matter for decision by those villages as wholes, the Wo Hang Managers are entered merely under their personal names, with no reference to the village from whence they came. Nonetheless, this Wo Hang Managership within the trust which maintained and supported the nunnery gives some indication of how religious trusts worked in the area.

Another important relationship which was never actualised within the village, was the political relationship between Wo Hang and the other Sha Tau Kok villages. Within the New Territories, the social and political history of the area in the nineteenth century was marked by a move to strengthen the "small families" against "the great clans". The "great clans" were the *Tei Kwat* landowners, and the "small families" were the *Tei Pei* landowners. The "small families" established sworn mutual-aid associations (Yeuk, 約), by which the "sworn brothers" would come to each other's aid, and by which the joint forces of all the sworn villages would act as one in restraining the "great clans", or even in ejecting them altogether.

In the Sha Tau Kok area, the *Tei Kwat* landowners were the "great clan" of the Cheungs ( 張 ), of Wong Pui Leng (Huangbeiling) near Sham Chun. The "small families" of Sha Tau Kok established their Yeuk in about 1810. The Cheungs had their attention distracted at the time because of major political conflicts in the immediate Sham Chun area. The Sha Tau Kok "small families" formed eleven Yeuk, and these eleven Yeuk established a district union, or Heung,

鄉. The Heung was called Tung Wo Heung (東和鄉), but was usually known as the Sha Tau Kok Shap Yeuk (沙頭角十約, “The Ten Yeuk of Sha Tau Kok”). The Sha Tau Kok people managed to eject the “great clans” totally from the area, and were able to establish a market of their own at Sha Tau Kok (about 1820), instead of using the Cheung market at Sham Chun. Of these eleven Yeuk, Wo Hang (Sheung Wo Hang, Ha Wo Hang, and Tai Long) formed one, and Ma Tseuk Leng (plus the other villages of the area) formed another<sup>20</sup>.

The Leis were always very important in the Shap Yeuk. The dominant villages of the area were Sheung Wo Hang, Nam Chung, Yim Tin (Yentian, in China), and Lin Ma Hang. At all stages, it would appear, the dominant elders of Sheung Wo Hang were central to the politics of the wider area. Certainly they were in 1898-1899, when the Sha Tau Kok area submitted various petitions to the Hsin An County Magistrate and the Hong Kong Government about the British takeover of the New Territories. Lei Cheung-chun was the dominant Wo Hang elder, and signed all these petitions.

Its role within the Shap Yeuk was crucial to Sheung Wo Hang, but it was never actualised with a trust. The villagers used the Pak Hing Tso to provide for their duties to the Yeuk and the Heung.

A rather unusual trust within the village was the Pui Man Tong (培文堂, “Hall of Increasing Knowledge”). In 1905, this trust owned a small amount of arable land (0.25 acres, mostly of poor quality Third Class land), and three houses in the village. The Ng Fuk Tong had long had a Han Uk (閒屋, “Rest House”), a house used as a meeting place for the elders and others, a place to talk, play cards, drink tea - a clubhouse, indeed. These Han Uk were found here and there in the New Territories in those villages wealthy enough to afford them (especially Hakka villages). The Sam Yue Tong had no Han Uk, and wanted one, and the Pui Man Tong seems to have been established as the vehicle to build and maintain a Sam Yue Tong Han Uk. This trust is said to duplicate the Chiu-tung Tso in the Third

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<sup>20</sup> The Tangs, who were in the middle of moving out of Sheung Wo Hang to establish their new village at Kong Ha near Sha Tau Kok when the Yeuk were being established, were also left as part of the Wo Hang Yeuk.

Fong, having identical membership, but it may rather duplicate the whole Sam Yue Tong. Certainly, it has an intimate relationship with the Chiu-leung Tso as well as the Chiu-tung Tso. In 1883, the Pui Man Tong spent 21 taels buying land which was, in 1905, in the Lei Chiu-leung Tso's ownership, and, in the same year, the Chiu-leung Tso spent 8 dollars buying land which in 1905 was in the hands of the Pui Man Tong. The Pui Man Tong Han Uk is still used today as the main "clubhouse" in the village. The Sam Yue Tong people often nowadays call themselves Pui Man Tong people. This trust was certainly not an ancestral trust in any way: the money donated to it was for a purely secular and communal purpose.

There remain a few trusts in Sheung Wo Hang which were of a completely different character from any discussed to date. The Fuk Tin Wui (福田會, "Felicitous Fields Association") was a Money-Loan Association. Money-Loan Associations were voluntary associations of people who contracted to pay a fixed sum each month into the Association, each member getting the right to take and use one month's income (less a sum offered as interest) in turn. These Associations provided loans at lower costs than the market-town money-lenders. The Fuk Tin Wui was a Money-Loan Association which operated within the clan only. The District Officers in the 1920s and 1930s were constantly expressing their exasperation with Money-Loan Associations, many of which fell into entanglements, or were seriously ill-run. This clan Money-Loan Association (it was particularly closely associated with the Third Fong of the clan) had endowed itself with a small amount of property (0.1 acres of land). The Manager of the Wui was the appointed trustee of the trust (in 1905 it was the wealthy and well-connected Lei Yam-leung who held the post), and not someone out to make a personal killing. It is unclear who of the clan had a "share" in this Wui, but it seems likely that the membership varied from time to time depending on who needed cash, but that any clan member could join if he wished.

The Tai Wong Wui (大王會, "Earthgod Association") was a voluntary association. It was founded by a group of villagers in the mid nineteenth century. Each paid a small share, and, with the

proceeds a small area of 0.13 acres was bought on the Wo Hang Bay Reclamation. At the New Year, it was the village custom for each family who wished to to donate towards the cost of a pig which would be offered to the Earthgods<sup>21</sup>. The families which formed the Tai Wong Wui decided to actualise their annual contribution: the rent from the fields they bought together would provide for their contributions thereafter. There was no ancestral basis to this trust, the members came from all descent lines. Only a few families had shares in this trust.

Another pure investment trust, with members chosen solely according to their willingness to buy shares, and not taken from any one descent line or lines, was the Man Cheung She (文昌社, “Man Cheung Society<sup>22</sup>”) (also known as the Man San She, 文新社, “Man San Society”). It seems that the vast majority of the shares were taken from the Third Fong, which had most of the wealth of the village at that time, but the villagers today are sure that it was in fact open to any villager who could afford to put in a share. Even within the Third Fong only a few families could afford shares, in fact. The Society was established in 1886, when three large pieces of land came up for sale, at Kuk Po and Wu Kau Tang, both some ten kilometres or so from Sheung Wo Hang. No individual in Sheung Wo Hang could afford the cost (in total 225,000 cash), and only by selling shares and establishing a trust to manage the sale jointly could the village afford to buy. In 1905 the Society owned 3.29 acres in Kuk Po and Wu Kau Tang, consisting of the land it had bought in 1883.

The final permanent or semi-permanent trust worthy of notice in Sheung Wo Hang is the Tang Fa Wui (燈花會, “Firework Association”). This Association owned 0.22 acres of land in 1905. The village always had a need for fireworks at certain ritual

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<sup>21</sup> The ritual involved cutting off the pig’s ear and sprinkling the Earthgod with the blood, while the elders besought the Earthgod to bring peace and stability to the village. The pig was then slaughtered, parboiled, and the meat distributed to the participating householders. The ritual is still conducted, although not every year.

<sup>22</sup> Despite the name, this Society seems to have had no connection with the god Man Cheung, nor does it seem to have had ritual or religious significance: it was a pure investment trust.

occasions. In addition, the village has for many generations set off Hung Ming Tang (孔明燈, "Lanterns of Chuko Liang") - hot-air balloons which are sent off thousands of feet into the sky at the Mid-Autumn Festival, trailing long tails of fireworks. At some date, the village bought some fields the income of which was set aside to help pay for these festivities. The "membership" of this Wui was the whole village (in other words, it had an identical membership within Sheung Wo Hang as the Sam Tsit Tong and the Pak Hing Tso), but the best way of viewing this trust is to take it as a "subsidiary account" in a modern association. There were no banks in the traditional New Territories. Setting aside income could only be done by actualising the account, and setting aside land the income of which could be hypothecated to the use desired.

In addition to these permanent or semi-permanent trusts, Sheung Wo Hang also had a several dozen temporary trusts, designed to be short-term. At least three types of temporary trusts existed in the village: commercial trusts, especially under-pinning shops operated by groups of villagers in the Sha Tau Kok market; trusts by which groups of close relatives held property used communally between them; and trusts designed to provide for widows for their lifetimes, or for under-age boys whose fathers were dead, until they reached their majority. In some villages of the New Territories it was the custom to treat these trusts formally, so that they were entered as trusts onto the Block Crown Lease, but in others (including Sheung Wo Hang) they were not, and have to be sought by reading between the lines of the Block Crown Lease.

Of the last type of temporary trusts noted above there are two certain examples. Two women held land in Sheung Wo Hang in 1905, Chung Si (鍾氏), and Chan Kiu (陳嬌). Chung Si held a house and 0.52 acres of land, Chan Kiu two houses and 0.22 acres of land. Since it is the deepest and least flexible of all the rules of the local customary land-law that women cannot inherit land, it is axiomatic that these two women were not owning this land absolutely or in their own right. It was the custom in the New Territories where a man died, leaving a widow and no son, that the widow should continue to hold the husband's land for life, in trust

for his nearest male relatives<sup>23</sup>. Similarly, if a man dies, leaving a widow and an infant son, then the widow should receive the husband's lands in trust for her son, until he become old enough to take them over himself. As trustee, the widow would have the same rights as the husband over the land<sup>24</sup>. Chung Si and Chan Kiu can safely be assumed to be widows, either with infant sons, or living alone.

There are a number of cases where a group of close relatives can be seen in the Block Crown Lease holding property jointly. It is not always easy to distinguish between property held jointly, and property held in trust for the benefit of a group - in part because the villagers themselves see very little difference in the two concepts. Thus Lei To-yin (李道賢) owned 2 houses and 0.38 acres of arable land. Lei To-shun (李道純) owned 1 house, a latrine, and a threshing floor, and 0.73 acres of arable land. But the two jointly owned in addition a further threshing-floor. These two villagers were probably cousins, with a common grandfather. Presumably this jointly owned threshing-floor had been left by their grandfather, and kept as the joint property of the whole family. Similarly, Lei To-tsun (李道進) owned 3 houses, a threshing-floor, and 1.02 acres of Third Class arable land. Lei Kam-piu (李錦標), probably a nephew, owned 2 houses and a latrine, and 1.15 acres of arable land. But these two families also owned a threshing-floor and a field of 0.05 acres jointly. The field may well have been a small orchard. Again, these were probably property inherited from their common ancestor, left as joint property because they were not easy to divide.

These two cases come from well-established families. Both Lei

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<sup>23</sup> The villagers say that it is a disgrace if a widow ever remarries, but that, if the clan do not allow her to occupy the husband's land in trust in this way, then the disgrace is the clan's and not the widow's, since they leave her no alternative.

<sup>24</sup> Including the right to sell the land, *in extremis*, although the nearest male relatives would have a particularly strong moral obligation to buy in such circumstances. In many cases, especially if the husband's lands were extensive, or if he was an only son, then, if he died without a son, then the widow would adopt *post mortem*. This was common, but not universally done, and there were many widows who lived single on their husband's lands to the end of their days. In Sheung Wo Hang, where the men held very little personal property, the widow would have received the same rights as her husband to rent the property of her husband's ancestral trusts.

To-yin and Lei To-tsun were elderly in 1905. Similar arrangements can be seen, however, where the younger villagers are concerned. Thus Lei San-yin ( 李新賢 ) owned a latrine, and 0.26 acres of arable land in 1905. This arable land lay on the Wo Hang Bay Reclamation, and had probably been bought by Lei San-yin, very possibly with the profits from a period spent as a seaman. Lei San-kwai ( 李新貴 ) was almost certainly Lei San-yin's brother. He owned a house, and 0.12 acres of poor quality Third Class arable land in 1905. This land he had almost certainly cut with his own labour from the mountainside. The two brothers, however, also owned a house jointly. This was probably Lei San-yin's house. If he was away from the village as a seaman then his house would have to have been cared for by someone else. The arrangement with his brother is likely to have been a trust relationship, where Lei San-kwai kept the house in trust for his brother. In Sheung Wo Hang, the tendency was for temporary trusts such as this to be called joint ownership, as being simpler when the lands were registered for the Block Crown Lease<sup>25</sup>. Another similar case is Lei Yam-wong ( 李欽煌 ). He owned three houses and 0.12 acres of arable land. It is purely by chance that the Block Crown Lease shows that Lei Yam-wong's houses were inhabited, not only by him, but also by his brother, Lei Yam-toi ( 李欽怡 ). The reason we know this is that the two brothers had cut a small field (0.27 acres of Third Class land) from the mountainside by their joint labour, and this field was entered under both brothers' names. There are many more cases of a similar character, and there were very probably many others which cannot be spotted from the record. As noted above, these arrangements can be seen as joint ownership, or temporary trusts, and the villagers themselves see little difference between the two ways of viewing them.

The Block Crown Lease does not provide any evidence for trusts of a commercial character, although it is known that the village had quite a number. Commercial concerns were normally run on leases. Where a shop-owner operated a shop from his own premises, it seems that the operation of the shop was normally kept distinct from

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<sup>25</sup> Although such cases often caused major legal problems decades later, when the question of who owned the property became a matter of contention.

the ownership (in other words, it was usually treated as if the owner had leased the shop to himself).

Sheung Wo Hang owned at least a dozen or so shops out of the ninety or so in Sha Tau Kok Market. In the early part of this century, Sheung Wo Hang villagers were also usually operating about the same number, although not necessarily in premises owned by villagers or village trusts. In 1925 we know of seven shops operated in the market by Sheung Wo Hang villagers: two groceries/general stores including what was probably the largest shop in the market, the Sam Lei (三利) shop; a slaughterer of dogs and seller of dogmeat; a cattle broker and slaughterer; the local gambling house (this was another of the largest commercial operations in the town); the town letter-writer (this job was combined with temple-keeper of the Man Mo Temple); and a sweet and cake seller. There were others no longer remembered, including at least one doctor. We also know of a limekiln operated by a villager: this stood a little inland from the sluices which controlled the Wo Hang Bay Reclamation.

Since the Block Crown Lease contains no details of leases, and since no deeds or account books are known to survive relating to these commercial activities of Sheung Wo Hang villagers, no detailed descriptions of the trusts which undoubtedly underpinned them can be given. It must be remembered that setting up a shop, including purchase of stock, rent of premises, good-will gifts, and the gathering of enough cash to provide for trade<sup>26</sup> was all very expensive, and few villagers could afford to set up shop on their own. Most would gather other “sleeping partners”, who would invest a share. The shop would then be run by a trust: the “active partner” would present his accounts to the other share-holders usually once a year, sometimes after each quarter-day. By running the shop as a trust, the “sleeping partners” had greater protection against fraud on the part of the “active partner”. In the relatively unsophisticated framework of the customary law, it was only by placing the shop

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<sup>26</sup> Especially important since it was the local custom to deal with market town shops on a credit basis, paying off the accumulated debt at the four quarter-days. Any shop-keeper, therefore, had to have a good deal of cash in hand to carry him over at least one quarter.

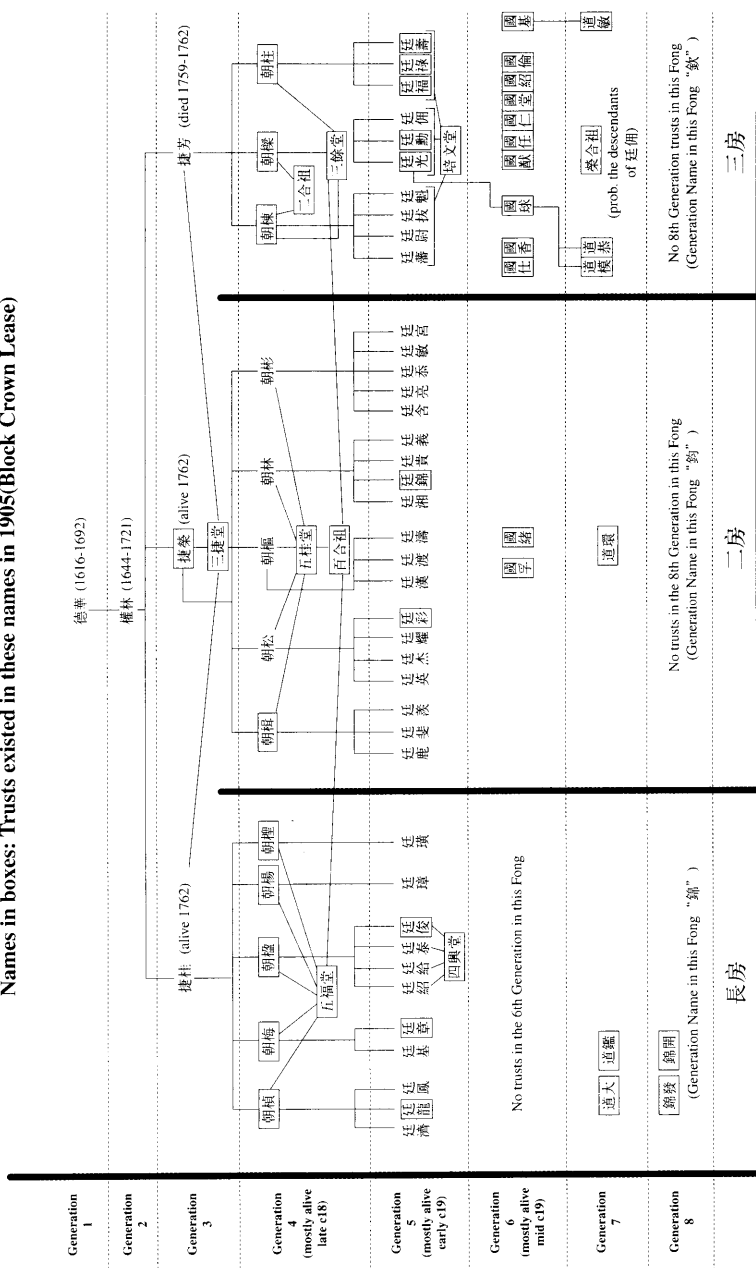


under a trust that adequate protection to share-holders could be achieved.

Elsewhere in the New Territories, and especially at Hoi Ha in North Saikung, (where Yung Sze-chiu, 翁仕朝, left papers including a number referring to a shop at one date operated by him, with his three brothers as “sleeping partners”), more details of the traditional commercial trusts can be gathered. It will be seen that the commercial trusts were dependent entirely on the “active partner” producing very detailed and accurate accounts, and it is interesting to note the comments of the District Officer in 1916, who after dealing (extra-legally) “as a kind of receiver in bankruptcy” in settling the affairs of a large number of embarrassed shops said:

*In all such cases I have been much impressed by the scrupulous accuracy of local shop books.*

**Names in boxes: Trusts existed in these names in 1905(Block Crown Lease)**



**Trusts not of an Ancestral Character:** 燈花會(membership of 五福堂 and 三餘堂); 大王會; 福田會; 文新社; 永盛堂

[Note: Descent-lines between 5th and 8th generations generally unclear]